

**KINGSTON CITY SCHOOL  
DISTRICT  
SPECIAL EDUCATION PLAN  
2022-2025**

## ACRONYM GLOSSARY

AIS	Academic Intervention Services	LEA	Local Educational Agency
BIP	Behavioral Intervention Plan	LEP	Limited English Proficient
BOCES	Boards of Cooperative Educational Services	LPT	Language Proficiency Team
BOE	Board of Education	LRE	Least Restrictive Environment
CBVH	Commission for the Blind and Visually Handicapped	MTSS	Multi-Tiered System of Support
CCSI	Coordinated Children Services Initiative	NYSED	New York State Education Department
CDOS	Career Development and Occupational Studies	NYSITELL	New York State Identification Test for English Language Learners
CDRC	Community Dispute Resolution Center	OAPWD	Office of Advocate for Persons with Disabilities
CPSE	Committee on Preschool Special Education	OASAS	Office of Alcoholism and Substance Abuse Services
CSE	Committee on Special Education	OCFS	Office of Children and Family Services
DDSO	Developmental Disabilities Services Offices	OMH	Office of Mental Health
DOL	District of Location	OMRDD	Office of Mental Retardation and Developmental Disabilities
DOR	District of Residence	OSES	Office of Special Education Services
ECDC	Early Childhood Direction Center	PBIS	Positive Behavioral Interventions Support Systems
ELL	English Language Learner	PTIC	Parent Training and Information Centers
ERSS	Educationally-Related Support Services	RSE-TASC	Regional Special Education Technical Assistance Support Centers
ESL	English as a Second Language	RtI	Response to Intervention
FAPE	Free Appropriate Public Education	SACC	Skills and Achievement Commencement Credential
FERPA	Family Education Rights and Privacy Act	SEIT	Special Education Itinerant Services
HLQ	Home Language Questionnaire	SETRC	Special Education Training and Resource Centers
IAES	Interim Alternative Educational Setting	SP	Service Plan
IDEA	Individual with Disabilities Education Act	SRO	State Review Officer
IEE	Independent Educational Evaluation	SSHSP	School Supportive Health Services Program
IEP	Individualized Education Program	TAC-D	Technical Assistance Center on Disproportionality
IESP	Individualized Education Service Plan	TCS	Transition Coordination Sites
IHO	Impartial Hearing Officer	USDOE	United States Department of Education
KCSD	Kingston City School District	VESID	Vocational and Educational Services for Individuals with Disabilities

# Table of Contents

<i>Board of Education</i> .....	5
<i>Overview</i>	
Special Education Plan.....	6
Recent Legislative Activity.....	7
<i>Program Objectives</i>	
Program Objectives.....	8
Graduation Credentials for Students with Disabilities.....	9
Programs/Initiatives Related to Special Education.....	10
Implementation of School-wide Approaches and Response to Interventions.....	11
Definitions.....	13
<i>Special Education Programs and Services</i>	
Special Education Programs and Services.....	15
School Calendar and Least Restrictive Environment.....	16
Procedures to Implement Least Restrictive Environment Requirements.....	16
Similarity of Needs.....	18
<i>Provision of Appropriate Special Education Services</i>	
Provision of Appropriate Special Education Services.....	19
Committee on Preschool Special Education and Committee on Special Education.....	20
Training CPSE/CSE Members and General Staff Development.....	22
<i>Committee On Preschool Special Education</i>	
Committee on Preschool Special Education.....	23
CPSE Membership.....	24
Definition: “Preschool Student With a Disability” .....	25
CPSE Procedures.....	26
Continuum of Services.....	29
<i>Committee On Special Education</i>	
Committee on Special Education.....	31
CSE Membership.....	33
CSE Subcommittee Membership.....	33
Classification.....	34
CSE Procedures.....	37
Continuum of Services.....	45

## *Additional Evaluation, Individualized Education Program and Placement Considerations*

Additional Evaluation, IEP and Placement Considerations.....	48
Arrangement of Special Education Placements CPSE and CSE.....	49
Declassification of Students with Disabilities.....	50
Procedures for Assessing Limited English Proficient (LEP) Students.....	51
Extended School Year (CPSE/CSE).....	55
Assistive Technology Devices and Services.....	56
Exemption from Foreign Language Requirement.....	57
Transition Planning.....	58
Vocational Assessments.....	59
Aging Out Guidelines for Students with Severe Disabilities.....	61
Opportunities to Earn High School Diplomas.....	62
Guidelines for Issuance of a Skills and Achievement Commencement Credential (SACC).....	63

## *Procedural Safeguards*

Procedural Safeguards.....	64
Informed Consent (CSE and CPSE).....	65
Independent Evaluations.....	67
Surrogate Parents.....	67
Special Education Mediation.....	68

## *Records Access and Confidentiality*

Records Access and Confidentiality.....	71
-----------------------------------------	----

## *Discipline*

Discipline.....	79
-----------------	----

## *Accessibility*

Accessibility.....	85
--------------------	----

## *Miscellaneous*

Miscellaneous.....	87
Guidelines for Providing Public School Services to Students in Non-Public Schools.....	88
Space Allocation for Special Education Programs.....	90
Procedures for Evaluating Program Objectives.....	89
Services and District Programs.....	91
Continuum of Services.....	94
Students by disability, age and recommended setting.....	98

## *Attachments*

Attachment A- A Parent's Guide to Special Education Services.....	105
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## *Board Policies Related to Special Education*

Interpreters for Hearing Impaired Parent

Programs for Students with Disabilities Under the IDEA and New York's Education Law Article 89

Provision of Special Education Services in the Least Restrictive Environment

School-Wide Pre-referral Approaches & Instruction

Allocation of Space for Special Education Programs

Independent Educational Evaluations

Confidentiality and Access to Individualized Education Programs, Individualized Education Service Programs and Service Plans

Availability of Alternative Format Instructional Materials for Students with Disabilities

Districtwide and Statewide Assessments of Students with Disabilities

Impartial Hearing Officer Appointment and Compensation

Declassification of Students with Disabilities

Programs and Services for Parentally-Placed Nonpublic School Students with Disabilities

Public Report on Revisions to District Policies, Practices and Procedures Upon a Finding of Significant Disproportionality

Preschool Special Education

Special Education Personnel

Response to Intervention (RtI) Academic Interventions Services (AIS)

Students with Disabilities Pursuant to Section 504

Discipline of Students with Disabilities

Medicaid Compliance

## **BOARD OF EDUCATION**

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## **DISTRICT ADMINISTRATION**

Dr. Paul J. Padalino – Superintendent of Schools

Mary Beth Bonville – Assistant Superintendent for Secondary Education

Sharifa Carbon – Assistant Superintendent for Business

Dr. Stacia P. Felicello – Assistant Superintendent for Elementary Education

### ***Philosophy***

The philosophy of the Department of Special Education of the Kingston City School District is to provide for the early identification and assessment of potentially disabled students. This District is committed to providing an appropriate individualized Special Education Program for students deemed by New York State Education Department Regulations and the committee on Special Education.

The Kingston City School District Special Education Department provides the continuum of service models (Pages: 28, 42, 92). This model includes but is not limited to the provision of the following: related services, transitional support services, resource room, inclusion, consultant teacher services, self-contained classes, BOCES programs, 853 Day School, homebound/hospital instruction and residential placement. (Pages: 19, 29, 42, 44)

Students with disabilities in the Kingston City School District, are considered an integral part of the total student population. The District is committed to provide excellence in education to all of our students.

It is the goal of the Special Education Department, in conjunction with the Board of Education policies, to provide the least restrictive learning environment (LRE) for disabled students within the regular school program. Management, academic, physical and social needs are addressed for each student in order to promote success in regular settings on all levels of education.

## Special Education Plan

### **Section 1:**

#### **Introduction**

Commissioner's regulations 200.2 (c) require that each board of education shall prepare satisfactory plans and review as necessary as required by subdivision 8(b) of section 3602 of Education Law.

Each plan shall include, but not be limited to, the following:

- A description of the nature and scope of special education programs and services currently available to students and preschool students residing in the district;
- Identification of the number and age span of students and preschool students to be served by type of disability and recommended setting;
- Method to be used to evaluate the extent to which the objectives of the program have been achieved;
- Description of the policies and practices of the board of education to ensure the continual allocation of appropriate space within the district for special education programs that meet the needs of students and preschool students with disabilities;
- Description of the policies and practices of the board of education to ensure that appropriate space will be continually available to meet the needs of resident students and preschool students with disabilities who attend special education programs provided by boards of cooperative education services;
- Description of how the district intends to ensure that all instructional materials to be used in the schools of the district will be made available in a usable alternative format;
- Estimated budget to support such plan; and
  - The date on which such plan was adopted by the board of education.
  - The plan must be kept on file and made available for public inspection and review by the commissioner as required by subdivision 8(b) of section 3602 of the Education Law.

## Recent Legislative Activity

### NYS adopts a “Blueprint for Improved Results for Students with Disabilities” – November 2015

“This Blueprint was developed in consultation with stakeholders and is consistent with the mission of NYSED, Office of Special Education - supported by all offices within NYSED - to ensure that students with disabilities have the opportunities to benefit from high quality instruction, to reach the same standards as all students, and to leave school prepared to successfully transition to post-school learning, living and employment. As rigor and expectations for all students in New York State have increased, policy and practices must be adjusted to support students with disabilities to meet these challenges.

While there are many components or key principles that are important for students with disabilities and their families, this Blueprint focuses on seven core principles and practices supported by research for all students with disabilities. Improving results for students with disabilities requires a renewed focus on these core principles:

1. Students engage in self-advocacy and are involved in determining their own educational goals and plan.
2. Parents, and other family members, are engaged as meaningful partners in the special education process and the education of their child.
3. Teachers design, provide, and assess the effectiveness of specially designed instruction to provide students with disabilities with access to participate and progress in the general education curriculum.
4. Teachers provide research-based instructional teaching and learning strategies and supports for students with disabilities.
5. Schools provide multi-tiered systems of behavioral and academic support.
6. Schools provide high quality inclusive programs and activities.
7. Schools provide appropriate instruction for students with disabilities in career development and opportunities to participate in work-based learning.”

This Blueprint will be used by the State to develop State policy and guidance and for schools to review their policies and practices to support students with disabilities. Resources to assist school districts in this work will be posted on the Department’s website shortly; please be advised the website is currently under construction.”

<http://www.p12.nysed.gov/specialed/publications/2015-memos/blueprint-for-improved-results-forstudents-with-disabilities.html>

The special education department is working to ensure our programs and services support the principles outlined in the Blueprint. All special education services in the Kingston City School district comply with the Federal IDEA laws and NYS Part 200 and Part 201 Regulations. The most recent Kingston City School district data are available at the following website: <https://data.nysed.gov/profile.php?instid=800000036308>



# ***PROGRAM OBJECTIVES***

## **Graduation Credentials for Students with Disabilities**

<http://www.p12.nysed.gov/specialed/gradrequirements/home.html>)

### **Multiple Pathways**

<http://www.nysed.gov/curriculum-instruction/multiple-pathways>)

### **Career Development Occupational Studies Commencement Credential**

Beginning with the 2013-14 school year and thereafter, students with disabilities are able to earn a New York State (NYS) Career Development and Occupational Studies (CDOS) Commencement Credential. This credential will recognize each individual student's preparation and skills for post-school employment. For students with disabilities who are exiting with a regular high school diploma, it provides them with the additional opportunity to exit school with a credential that also recognizes the students' work readiness skills.

### **Skills and Achievement Commencement Credential (SACC) replaces IEP Diploma – Effective 9/1/13**

History and Rationale for change - In 1984, the Regulations were amended to authorize schools to award an IEP diploma; in 1999 further regulations demanded that the IEP diploma must be based on the student's achievement of the educational goals on the IEP. Criticized as a misleading credential that many parents and students believed represented a regular diploma; the IEP diploma credential has been rejected by colleges and military and did not represent any recognized level of achievement of public-school learning standards. Amendments to Sections 100.5, 100.6, 100.9 and 200.5 of the Regulations of the Commissioner of Education, beginning with the 2013-14 school year and thereafter, replace the New York State IEP diploma with a Skills and Achievement Commencement Credential for students with severe disabilities who are eligible to take the New York State Alternate Assessment. (J.P. DeLorenzo Memo of April 2012) We will continue to work with adult service agencies to ensure we are providing appropriate information to support transition for these students.

## **PROGRAMS/INITIATIVES RELATED TO SPECIAL EDUCATION**

- The District has committed to teaching students to read by investing in the Orton-Gillingham multisensory reading program. Ensuring all students can read will impact positive student experiences and outcomes.
- District teams were created to accommodate the self-contained 4<sup>th</sup> through 8<sup>th</sup> grade curriculum.
- The Student-Directed IEP Project engages students at KHS in their own IEP development.
- Ulster County BOCES has created a Behavior Support CoSer supporting our teams with proactive behavior management strategies.
- The District has merging RTI and PBIS to create a Multi-Tiered System of support and will include Restorative Practices K-12
- We decreased our classification rate
- NYSED review found the Special Education Department in 100% compliance
- Developed trauma responsive culture
- Increased mental health clinics in schools
- Developed professional development for Registered Behavior Technicians
- Developed Social Emotional Well-Being survey for students and professional

## **IMPLEMENTATION OF SCHOOL-WIDE APPROACHES AND RESPONSE TO INTERVENTIONS**

In accordance with the IDEA and Part 200 of the Commissioner's Regulations, the District has developed BOE Policy 4321.2 and implemented a plan to establish response to interventions to assist a student's educational progress before consideration of referral to the Committee on Special Education (CSE). In keeping with BOE Policy 4321.2 and Part 100 general education regulations, it is the responsibility of the school district to have "Response to Intervention" programs in place; that is, the school district must have appropriate, scientific and research-based instruction delivered to all students in general education classes by qualified personnel, on-going screenings and assessments to assess which students are not making academic progress at expected rates and instruction matched to student need with increasingly intensive levels of targeted intervention for students who do not make satisfactory progress. In line with this, the school's principal and building level teams must investigate all possible avenues of general education support services that would enable the student to achieve the learning standards. Such services may include, but are not limited to, Response to Intervention Services and Educationally Related Support Services. These services must be afforded to all students who do not meet the minimum designated standards on State assessments, and to Limited English Proficient (LEP) students who do not achieve the annual CR Part 154 performance standards. A description of these services will be approved by the Board of Education and reviewed periodically. Supplemental instruction in English, language arts, and math, as well as support services to deal with barriers to student progress such as attendance, discipline, health, family nutrition, and transient issues will be afforded to students who score below level on elementary or intermediate State assessments or score below the State designated or local performance levels on any one of the State examinations required for graduation. All school-wide approaches to provide remediation activities for students who are at risk of not meeting State standards or in danger of not meeting graduation requirements will be considered by school personnel prior to making referrals to the CSE. These approaches may also include but are not limited to extra teachers or supplemental aids and service support, student or volunteer tutorial assistance, counseling support, and computer assisted programs. These examples are not an exhaustive list. The principal shall notify each student's parents whenever Response to Intervention Services (RtI) are provided and shall ensure that written quarterly progress reports are provided in the native language of the parents. These school-wide approaches shall serve as pre-referral interventions prior to consideration of special education programs through the Committee on Special Education (CSE).

The referral form to the CSE used by the district staff will describe in writing intervention services, programs or instructional methodologies used to remediate the student's performance prior to referral including any supplementary aides or support services provided, or the reason why no such attempts have been made. The principal and/or building level team shall maintain a record of pre-referral interventions implemented for each student. Each referral shall be reviewed to determine its appropriateness and whether pre-referral interventions and the Response to Intervention processes have been adequately utilized, and if further interventions are deemed necessary.

**Within 10 days of receipt of a referral to the CSE, the building administration, may request a meeting with the parent or person in parental relationship, the student, and the referring person, to determine whether the student would benefit from additional general education support services as an alternative to special education.** These services may include but are not limited to Speech and Language Improvement Services, Educationally Related Support Services, Response to Intervention Services, and any other services designed to address the learning needs of the student and maintain the student’s placement in general education. At this meeting, if there is a written agreement that with the provision of additional general education support services the referral is unwarranted, the referral shall be deemed withdrawn and the building administrator shall provide a copy of this agreement to the Chairperson of CSE, the referring person, the parent or person in parental relationship, and the student if appropriate. The copy of the agreement will be in the native language of the parent and will name the additional general education support services that will be provided as well as the length of time of each service. This agreement will be placed in the student’s cumulative educational record file. If there is no written agreement reached at this meeting, the required timeline of the CSE will be maintained.

These pre-referral interventions will not be utilized as a barrier to prevent appropriate referrals for special education services but shall be used to assess the ability of the student to benefit from regular education services.

[KCSD Response to Intervention Plan](#)

## DEFINITIONS

Students with disabilities are those whose special needs are significant enough to warrant the provision of special education services in accordance with an individualized program. Effective October 30, 1990, Congress substituted the term “student with disabilities” for the term “handicapped student” in the Federal Law establishing access to fair procedures and appropriate placements.<sup>1</sup> **The following statutory and regulatory definitions are controlling:**

The term “**student with a disability**” means a student with a disability who has not attained the age of twenty-one prior to September 1st and who is entitled to attend public schools pursuant to Section 3202 of New York State law and who, because of mental, physical or emotional reasons, has been identified as having a disability and who require special services and programs approved by the department. Such term does not include a student whose educational needs are due primarily to unfamiliarity with the English language, environmental, cultural or economic factors. In making a determination as to eligibility, a student shall not be determined to be a student with a disability if the determinant factor is lack of instruction in reading or math or limited English proficiency.

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The term “**all students**” applies to every student listed on the registry of the District:

- **Special education** means specially designed individualized or group instruction or special services or programs, as defined in subdivision 2 of Section 4401 of the Education Law, and special transportation, provided at no cost to the parent, to meet the unique needs of students with disabilities:
  1. Such instruction includes but is not limited to that conducted in classrooms, homes, hospitals, institutions and in other settings.
  2. Such instruction includes specially designed instruction in physical education, including adapted physical education.
- **Specially-designed instruction** means adapting, as appropriate to the needs of an eligible student under this part, the content, methodology, or delivery of instruction to address the unique needs that result from the student’s disability; and to ensure access of the student to the general curriculum, so that he or she can meet the educational standards that apply to all students.

The term “**special education programs**” may include:

- Special class, resource room program, consultant teacher services, integrated co-teaching, adaptive physical education and travel training.
- Contracts with other districts for special services or programs.
- Contracts for special services or programs provided by Boards of Cooperative Educational Services (BOCES).

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<sup>1</sup> Legal Reference: Individual with Disabilities Education Act (IDEA), formerly the Education of the Handicapped Act (EHA), 20 U.S.C. Sections 1400-1485.

- Appointment by the Commissioner to a state or state-supported school in accordance with Article eighty-five, eighty-seven or eighty-eight of New York State law.
- Contracts with private non-residential schools which have been approved by the Commissioner and which are within the state.
- Contracts with private non-residential schools which have been approved by the Commissioner and which are outside the state.
- Provision of educational services in a residential facility for the care and treatment of students with disabilities under the jurisdiction of a state agency other than the State Department of Education.
- Related services means developmental, corrective, and other supportive services as are required to assist a student with a disability and includes speech-language pathology, audiology services, psychological services, physical therapy, occupational therapy, counseling services, including rehabilitation counseling services, orientation and mobility services, parent counseling and training, school health services, school social work, assistive technology services, other appropriate developmental or corrective support services, appropriate access to recreation and other appropriate support services.
- Contracts for residential or non-residential placements with a special act school district listed in chapter five hundred sixty-six of the laws of nineteen hundred sixty-seven.
- Contracts with New York State approved and funded schools (Article 89).

#### Additional Definitions:

- Change in placement means a transfer of a student to or from a public school, BOCES, or schools enumerated in Articles 81, 85, 87, 88 or 89 of the Education Law or graduation from high school with a local high school or Regents diploma. For purposes of removal of a student with a disability from the student's current educational placement under education Law 3214, change of placement is defined in Part 201 of the Regulations of the Commissioner Regulations (March, 2000).
- General Curriculum means the same curriculum as for students without disabilities.
- Individualized Education Program (IEP) means a written statement, developed, reviewed and revised in accordance with section 200.4(d)(2) of the Regulations of the Commissioner of Education to be provided to meet the unique educational needs of a student with a disability.

In accordance with Section 200.6 of the Regulations of the Commissioner of Education, the district provides a continuum of services which allows placement of preschool and school-age students in the least restrictive environment consistent with their needs and which provides for placement of students on the basis of similarity of individual needs.

# ***SPECIAL EDUCATION PROGRAMS AND SERVICES***



## **SCHOOL CALENDAR**

Special education students participate in the same school calendar as their general education peers.

School days means calendar days unless otherwise indicated as school day or business day:

1. School day means any day, including a partial day that students are in attendance at school for instructional purposes. The term school day has the same meaning for all students in school including students with disabilities and students without disabilities, except that, during the months of July and August, school day means every day except Saturday, Sunday and legal holidays.
2. Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day).

## **LEAST RESTRICTIVE ENVIRONMENT (LRE)**

The District provides a wide continuum of services, ranging from placement in residential settings to placement in mainstream classes with support and related services. The District is committed to Board of Education Policy 4321, to place students in the least restrictive environment consistent with their needs. *“Least Restrictive Environment”* means that the placement of students with disabilities in special classes, separate schools or other removal from the general educational environment occurs only when the nature or severity of the disabilities such that even with the use of supplementary aids and services, education cannot be satisfactorily achieved:

- Placement shall be based on the student’s individualized education program and determined at least annually.
- Placement shall be as close as possible to the student’s home, and unless the student’s individualized education program requires some other arrangement, the student shall be educated in the school he or she would have attended if not disabled.
- In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the student or on the quality of services that he or she needs; and
- A student with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

## **PROCEDURES TO IMPLEMENT LRE REQUIREMENTS**

The student will receive a comprehensive, nonbiased, individual evaluation in the student's dominant language or other mode of communication, unless it is clearly not feasible to do so, to determine his/her educational needs. In making a determination of a student’s eligibility, the CSE shall not determine a student to be a student with a disability if the determination factor is lack of scientific, research-based instruction in reading or math or limited English proficiency. The CSE must review evaluation information to determine whether any additions or modifications to special education services are needed to enable the student to participate, as appropriate, in the general curriculum.

- Prior to placement in special education, the CSE will ensure that the appropriateness of the resources of the general education program, including Response to Intervention programs and educationally-related support services, have been considered.
- A student's educational program will be developed with the meaningful involvement of the student's parent or guardian and teacher and the student, when appropriate. The Committee will include persons knowledgeable about the student, the meaning of the evaluation data, and the continuum of placement options. IDEA requires that at least one of the student's general education teachers must be a member of the Committee (if the student is, or may be, participating in the general education environment). In addition, the representative of the school district qualified to provide or supervise the provision of special education services must be knowledgeable about the general curriculum and the availability of resources of the school district. The individual knowledgeable about the evaluation data must be able to interpret the instructional implications of the evaluation results.
- The Committee on Special Education or Committee on Preschool Special Education will first consider placement in general education with appropriate support for the student and the student's teachers. The IEP must include statements of the student's present levels of educational performance, including how the student's disability affects involvement and progress in the general curriculum; or for preschool students, as appropriate, how the disability affects the student's participation in appropriate activities.
- Measurable annual goals must be related to meeting the student's needs that result from the disability to enable the student to be involved in and progress in the general curriculum and meeting each of the student's other educational needs that result from the disability. Under IDEA '04, short-term objectives will continue for pre-school students and for students who participate in alternate learning standards.
- Alternative placements such as special schools or other removal from the general education environment will be considered only when the CPSE/CSE determines that a student's education cannot be satisfactorily achieved even with the use of supplementary aids and services.
- The IEP of the student will include an explanation of the extent to which the student will not participate with students who do not have disabilities. The parent or guardian and the board of education will be provided a recommendation from the CPSE/CSE which describes the program and placement options considered for the student and a rationale for those options not selected.
- The CPSE/CSE must indicate clearly defined expected benefits to the student from the special education program selected in the areas of academic or educational achievement and learning characteristics, social development, physical development and management needs.
- The CPSE/CSE will conduct an annual review of the student's needs for continuation or
- modification of the provision of special education programs and services. Such review shall consider the educational progress of the student and the student's ability to participate in general education programs.
- The district is committed to BOE Policy 4321 and will place students in the least
- restrictive environment consistent with their needs. The district provides the full continuum of services as described in 200.6 of the Commissioner's Regulations.

## **SIMILARITY OF NEEDS**

Whenever students with disabilities are grouped together for purposes of special education, they are grouped by similarity of need. The CPSE and CSE identify educational needs in accordance with the following factors:

- Academic or Educational Achievement, Functional and Learning Characteristics – The levels of knowledge and development in subject and skill areas, including activities of daily living, level of intellectual functioning, adaptive behavior, expected rate of progress in acquiring skills and information and learning style.
- Social Development – The degree and quality of the student’s relationships with peers and adults, feelings about self, and social adjustment to school and community environments.
- Physical Development – The degree or quality of the student’s motor and sensory development, health, vitality, and physical skills or limitations which pertain to the learning process.
- Management Needs – The nature of and degree to which environmental modifications and human or material resources are required to enable the student to benefit from instruction.

# ***PROVISION OF APPROPRIATE SPECIAL EDUCATION SERVICES***

## **PROVISION OF APPROPRIATE SPECIAL EDUCATION SERVICES TO ENABLE INVOLVEMENT AND PROGRESS IN THE GENERAL EDUCATION CURRICULUM**

All students with disabilities who reside in the school District shall be provided with an appropriate individual educational program (IEP) that meets the student's unique educational needs as determined and recommended by the Committee on Special Education (CSE) and arranged for by the Board of Education. This IEP shall be designed to enable involvement and foster progress in general education to the extent appropriate to the needs of the student. In designing the IEP, the CSE will consider the present levels of performance and the expected learning outcomes of the student. The student's academic, social development, physical development, and management needs will be the basis for written annual goals. Short-term objectives will also be developed for preschool students and students with the most severe disabilities who are held accountable to alternate learning standards.

In keeping with BOE Policy 4321.1, the CSE will consider mainstreaming or inclusion classes at each initial, program or annual review for the student as well as the appropriate support or related services needed for the student to make educational progress within this environment. Progress or educational benefit shall be indicated by successful academic progress, including improvement in skills, achievement on State mandated examinations, ability to perform activities of daily living and an increase in adaptive behavior. Progress will also be considered in the social areas, including relationships with peers and adults, feelings about one's self, and the adjustment to school and community environments. Physical development areas such as the student's improvement in motor or sensory areas, health, vitality and physical skills and the decrease of management needs that require environmental modifications or human resources shall also be considered as progress.

The District will ensure equal access to a diploma for all students with disabilities through its establishment of heterogeneous Regents classes, inclusion classes and special education classes that provide equivalent instruction. Appropriate academic intervention services shall also be considered and determined by the building principal to assist students with disabilities in meeting their academic goals. These services shall be in addition to the special education services deemed appropriate by the CSE. No student, by virtue of designation as a student with a disability, shall be precluded from receiving equivalent instruction unless the CSE has determined that the student requires an IEP diploma program. If the student has the potential to achieve a regular High School diploma but requires a restrictive environment outside the District, the CSE will seek placement in a program that provides equivalent instruction.

The District will also ensure equal access for students with disabilities to after school activities such as clubs, sports, or evening activities and will provide, as recommended by the CSE, appropriate services to enable this participation. Students who are receiving education in out of District facilities, as recommended by the CSE, shall also have an equal opportunity to participate in these activities, as deemed appropriate to meet their individualized needs.

## **COMMITTEE ON PRESCHOOL SPECIAL EDUCATION AND COMMITTEE ON SPECIAL EDUCATION**

### **APPOINTMENT AND TRAINING**

To implement its commitment to the education of students with disabilities, the Board of Education annually appoints a Committee on Preschool Special Education (CPSE) and a Committee on Special Education (CSE). The Committees are appointed in accordance with the provisions of New York Education Law, Sections 4402 and 4410 and Section 200.3 of the Regulations of the Commissioner of Education. Section 4410 of the Education Law which established the Committee on Preschool Special Education was signed into Law on July 5, 1989, and the CPSE established for the first time during the 1989/90 school year. Major functions of the CPSE and CSE include:

### **RESPONSIBILITIES**

The Committees have the responsibility to ensure that all necessary procedures for the identification, diagnosis, placement and annual review of the status and progress of every student with a disability are carried out in accordance with federal and state law and regulations. Subcommittees are authorized to perform the function of the Committee on Special Education except when a student is considered for initial placement in:

1. a special class; or
2. a special class outside of the student's school of attendance; or
3. a school primarily serving students with disabilities in a school outside the student's district.

Upon a written request from a parent or a person in parental relationship of a student, the subcommittee must immediately refer to the CSE any matter in which the parent disagrees with the recommendation of the subcommittee regarding a modification or change in the identification, evaluation, educational placement or the provision of a free appropriate public education to the student.

The CSE is responsible for oversight and monitoring of the activities of each subcommittee to assure compliance with federal and State law and regulations. Each subcommittee must annually report the status of each student with a disability within its jurisdiction to the CSE.

## **TRAINING CPSE/CSE MEMBERS**

The district is committed to ensuring that all members of the CPSE and CSE are appropriately trained for their responsibilities on their respective committees. Committee members are made aware of their responsibilities to ensure that services are identified to allow the student to be involved in and progress in the general education curriculum. Specific administrative practices for training these members, including general education teachers and parents, to carry out the provisions of Part 200 include:

- arranging for attendance at meetings of the Office of Special Education Services (OSES) regarding CPSE/CSE issues;
- conducting district-based training on a regular basis;
- providing copies of written guidelines pertaining to district practices and procedures for referring and evaluating preschool and school-age youngsters suspected of having a disability;
- participating in annual CPSE/CSE training provided by the New York State Education Department;
- disseminating the Guidebook for Committees on Special Education in New York State, Part 200 of the Commissioner's Regulations, all amendments to the Regulations of the Commissioner, and informational bulletins and pamphlets, including memorandum from SED, to all committee members;
- scheduling workshops and training sessions in the district;
- inviting committee members to annual site visits of special education placements to familiarize them with placement options available to resident special education students;
- utilizing RSE-TASC as a training resource; and utilizing the district's attorney as a resource person, if needed, to interpret specific information for the committee members.

## **GENERAL STAFF DEVELOPMENT**

As part of an ongoing effort to assist special and mainstream teachers to better understand the needs of youngsters with special needs, staff development plays a critical role in preparing teachers to work with diverse learners.

**Chapter 408 requires districts to share all elements of the IEP with all of the student's teachers. At the beginning of each school year, all teachers working with students who have an IEP will be able to access, review and meet with special education teachers for clarification and guidance at their request.** All teachers and paraprofessionals need to be aware of each student's area of disability, testing modifications, special needs with regard to specialized equipment (e.g. enlarged print, taped textbooks, use of a calculator, etc.) and any other special accommodations as stipulated in the IEP. **The KCSD staff views IEPs electronically through our student information system.**

# ***COMMITTEE ON PRESCHOOL SPECIAL EDUCATION***



## CPSE MEMBERSHIP

**At its yearly reorganization meeting, the Board of Education shall appoint a Committee on Preschool Special Education comprised of at least the following mandated members:**

- the student's parent;
- the general education teacher of the student if the student is, or may be, participating in the general education environment;
- the special education teacher or special education service provider of the student;
- the CPSE chairperson who is a representative of the district qualified to provide, or supervise the provision of, specially-designed instruction to meet the unique needs of students with disabilities who is knowledgeable about the general curriculum and about the availability of the resources of the local educational agency;
- an individual who can interpret the instructional implications of evaluation results, who may be a member of the team selected from the general or special education teacher or provider or district representative described above;
- the parent of a preschool or elementary school age student with a disability who resides in the district or neighboring district, provided that such parent is not a required member if the parent(s) of the child requests that the additional parent member not participate;
- for a student in transition from early intervention programs and services, the appropriately licensed or certified professional from the Department of Health's Early Intervention Program;
- an appropriately licensed or certified professional from the municipality is invited but not required for a quorum;
- other persons having knowledge of special expertise regarding the child, including related services personnel as appropriate, as the school district or the parents shall designate. The determination of knowledge or special expertise of such person shall be made by the party who invited the individual to be a member of the CPSE.

Consensus is the preferred decision-making process. Parents of the student being reviewed and other knowledgeable persons are encouraged to share information, outside evaluations and reports with the Committee. Written notice of CPSE meetings is provided to parents at least five days in advance of the meeting date. Meetings of the CPSE are held in the Administration Building as needed to review referrals throughout the school year and during the summer months.

## **DEFINITION: “PRESCHOOL STUDENT WITH A DISABILITY”**

**“Preschool Student with a Disability”** refers to a preschool student who has been identified by the Committee on Preschool Special Education (CPSE) who is eligible to receive preschool programs and services, and is not entitled to attend the public schools of the district. To be identified as having a disability, a preschool student shall either exhibit a significant delay or disorder in one or more functional areas related to cognitive, language and communicative, adaptive, social-emotional or motor development which adversely affects the student’s ability to learn. Such delay or disorder shall be documented by the results of the individual evaluation which includes, but is not limited to, information in all functional areas obtained from a structured observation of a student’s performance and behavior, a parental interview and other individually administered assessment procedures, and, when reviewed in combination and compared to accepted milestones for student development, indicate:

- a 12-month delay in one or more functional area(s); or,
- a 33 percent delay in one functional area, or a 25 percent delay in each of two functional areas; or,
- if appropriate standardized instruments are individually administered in the evaluation process, a score of 2.0 standard deviations below the mean in one functional area, or a score of 1.5 standard deviations below the mean in each of two functional areas; or
- meet the criteria as Autistic, Deaf, Deaf-Blind, Hard of Hearing, Orthopedically Impaired, Other Health Impaired, Traumatic Brain Injury or Visually Impaired.

**“First Eligible for Services”** is the earliest date on which a student becomes eligible for services as defined in current regulations. Students in Family Court placements may, if the parent so chooses, continue to receive such services through August 31st of the calendar year in which the student first becomes eligible to receive services under section 4410. A student can be considered a preschool student with a disability through the month of August of the school year in which they first become eligible to attend kindergarten.

The Committee shall first consider providing special education services in a setting where age-appropriate peers without disabilities are found.

## **CPSE PROCEDURES**

### **REFERRAL**

The Committee on Preschool Special Education (CPSE) is responsible for arranging for evaluation of any student who is suspected of having a disability, who meets the age eligibility requirements specified in the Regulations and is a resident of the school district.

The evaluation process begins when a written request for evaluation is made by either:

- the student's parent or person in parental relationship;
- a Building Principal;
- a staff member of a preschool program approved pursuant to Section 4410;
- a staff member of an approved program providing special instruction to students ages birth to 3;
- a staff member of a program serving infants and toddlers or preschool students;
- a representative of a public agency with responsibility for the welfare, care or education of students;
- a staff member of the Early Direction Center.

The referral can be made at any time during the school year. It should specify the extent to which the preschool student has received any services prior to referral. When the CPSE receives a referral, the chairperson will write to the parent, describing the evaluation procedures and requesting parental consent for the evaluation. A list of County approved evaluation sites will be included. Translations will be provided as needed. In the event that consent is not provided, the Committee shall implement the district's practices for ensuring that the parents have received and understood the request for consent.

### **EVALUATION AND RECOMMENDATION**

The individual evaluation of a preschool child shall include relevant functional and developmental information regarding the child's abilities and needs related to participation in age appropriate activities.

This evaluation will include the following, at no cost to the parent:

- a physical examination;
- an individual psychological examination, except when a school psychologist determines after an assessment that further evaluation is unnecessary;
- an observation;
- a social history; and
- other appropriate assessments or evaluations as necessary to ascertain the physical, mental and emotional factors which contribute to the suspected disabilities.

The evaluator will use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. Test will be administered in the student's dominant language or other mode of communication, unless it is clearly not feasible to do so. The tests will be validated for the specific purpose for which they are used and are administered by trained personnel. Tests will be administered so as not to be racially or culturally discriminatory and to ensure that they measure the extent to which the student has a disability and needs special education, rather than measure the student's English language skills.

The CPSE will arrange for specialized evaluations where necessary. These assessments may include, but are not limited to, bilingual evaluations, psychiatric and neurological examinations, audiological evaluations, visual evaluations, and assistive technology assessments. Specialized evaluations are not limited to the initial evaluation process; they may be indicated at any time.

When completed, the evaluation reports will be submitted to the CPSE and a CPSE meeting will be scheduled. The parents will be provided with a copy of the evaluation and summary statement prior to the meeting. The results of the evaluation will be provided to the parent in their dominant language or other mode of communication. Reasonable measures will be made to ensure the parent attends the meeting. This means:

- A written notice is sent to the parent at least five days prior advising them of the meeting. Prior notice means written statements developed in accordance with section 200.5(a) of the Part, and provided to the parents of a student with a disability a reasonable time before the school district proposes to or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.
- At least one additional attempt is made to notify the parents. This may mean additional written notice or a telephone call.
- Additionally, under 34 CFR §300.503(a), the school district must provide a written notice (information received in writing), whenever the school district: (1) Proposes to begin or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education (FAPE) to your child; or (2) Refuses to begin or change the identification, evaluation, or educational placement of your child or the provision of FAPE to your child. The required content under 34 CFR §300.503(b) is listed below in this model form. The school district must provide the notice in understandable language (34 CFR §300.503(c)).

Prior to making any recommendation in an approved program of the agency that conducted the initial evaluation, the Committee may, at its discretion, obtain a second evaluation from another approved evaluator.

The CPSE submits a recommendation to the Board of Education and to the parent of the preschool student within 30 school days. If the Committee determines the student is ineligible for special education, written notification is sent to the parent, indicating the reasons for the finding.

If the Committee determines that a student has a disability, an IEP (Individualized Education Program) is prepared which indicates the classification of the disability, the student's present levels of functioning including how the disability affects the student's participation in appropriate activities, measurable annual goals, including benchmarks or short-term objectives, and the type of special education program and/or services recommended. The CPSE will seek, in every case, to recommend placement in the least restrictive environment consistent with the needs of the student. If, for any reasons, the recommendation of the Committee differs from the preference of the parent, the report shall include the reasons for the Committee's recommendations. The notices will also indicate that, in the event that the parent does not provide consent for placement, no further action will be taken by the CPSE until such consent is obtained.

## **PLACEMENT**

If the Board of Education agrees with the Committee's recommendation, the Board will arrange for the student to receive appropriate special programs and services. Services will not be provided without parental consent, but if the parent disagrees with the recommendation of the Board, he/she may request special education mediation or an impartial hearing review and may appeal the decision to the Commissioner of Education. Review of placement decisions will be conducted in accordance with the same rules of procedural due process applicable to the placement of school-aged students. Placement in an approved program will take place as soon as possible following Board approval. If the Board of Education disagrees with the Committee's recommendation, it may remand the recommendation to the Committee for further review.

## **ANNUAL REVIEW**

An annual review is conducted for every preschool student who has been classified as having a disability. Parents are notified by mail of the meeting; reasonable measures will be taken to ensure that the parent attends the meeting. This review is conducted to consider continued eligibility for services and to determine whether the annual goals for the student are being achieved. The IEP is revised, as needed, to address any lack of expected progress towards annual goals, the results of any reevaluation, information about the student provided to, or by, the parents and the student's anticipated needs. A new IEP is prepared at the meeting.

Written consent of the parent or guardian is required to conduct an initial evaluation for a student who has not previously been identified as having a disability. In the event that parental permission is withheld, such parent shall be given the opportunity to attend an informal conference with designated professionals most familiar with the proposed evaluation. If at this meeting a decision is made that the referral is not warranted at this time, the referral shall be withdrawn.

## **CONTINUUM OF SERVICES**

### **PROGRAM RECOMMENDATIONS**

The CPSE must consider the appropriateness of services to meet the student's needs in the least restrictive environment in the following order:

- related services only;
- special education itinerant services only;
- related services in combination with special education itinerant services;
- an integrated special education preschool program;
- a half-day preschool program;
- a full-day preschool program;
- if the CPSE determines that a student needs a single service that service must be provided only as a related service or only as a special education itinerant service.

The Committee shall first consider providing special education services in a setting where age-appropriate peers without disabilities are found.

#### **1. RELATED SERVICES:**

Services defined in Section 4401 of Education Law, including speech pathology, audiology, psychological services, physical therapy, occupational therapy, counseling services, including rehabilitation counseling, orientation and mobility services, medical services as defined by regulation, parent counseling and training, school health services, school social work, other appropriate developmental or corrective support services, appropriate access to recreation and other appropriate support services.

Related Services are provided at a site determined in accordance with BOE Policy 4321.13 including, but not limited to:

- an approved or licensed pre-kindergarten or Head Start Program;
- the work site of the provider;
- the student's home\*;
- a hospital;
- a state facility;
- a childcare location as defined in section 4410.

The initial location for the delivery of one or more related services must be stated on the IEP.

#### **2. SPECIAL EDUCATION ITINERANT SERVICES:**

Provided by a certified special education teacher of an approved program on an itinerant basis at a site determined by the BOE in accordance with BOE Policy 4321.13, including, but not limited to:

- an approved or licensed pre-kindergarten or Head Start program;
- a student's home\*;
- a hospital;
- a state facility;

- a student care location.

Changes of location for the provision of services may occur without the review of the CPSE.

*\* - Students are entitled to services in the home if the BOE determines that documented medical or special needs indicate that the student should not be transported to another site.*

The purpose of Special Education Itinerant Services is to provide:

- Direct Service: Specialized individual or group instruction to a preschool student to aid such student in benefiting from the early Childhood program.
- Indirect Services: Consultations provided by a certified special education teacher to assist the student’s teacher in adjusting the learning environment and/or modifying instructional methods to meet the individual needs of a preschool student with a disability who attends an early Childhood program.

Special Education Itinerant Services are not less than two hours per week, and total number of students with disabilities assigned to the special education teacher should not exceed twenty (20). Related services shall be provided in addition to SEIT services in accordance with the student’s IEP.

**INTEGRATED SPECIAL CLASS:**

No more than 12 preschool students staffed by at least one special education teacher and one paraprofessional. This class may be provided:

In a class of no more than 12 preschool students which includes both students without disabilities and students with disabilities.

- In a class of no more than 12 preschool students with disabilities which is housed in the same space as a preschool class with non-disabled students taught by another teacher.

**SPECIAL CLASS (Half or Full Day)**

A special class is defined as a class consisting of students with the same disabilities or with differing disabilities who have been grouped together because of similar individual needs for the purpose of being provided a special education program in a special class.

- Chronological age range shall not exceed 36 months.
- Maximum class size shall not exceed 12 preschool students with at least one teacher and one paraprofessional.
- Services are provided not less than 2-1/2 hours per day, 2 days per week.

**5. RESIDENTIAL SPECIAL EDUCATION PROGRAMS AND SERVICES:**

This program is a minimum of five hours per day, five days a week, for twelve months. Placements in residential programs must be approved by the Commissioner in accordance with 200.6 (l) of the Commissioner’s Regulations.

# ***COMMITTEE ON SPECIAL EDUCATION***



## CSE MEMBERSHIP

**At its yearly reorganization meeting, the Board of Education shall appoint a Committee on Special Education comprised of at least the following mandated members:**

- the parents or persons in parental relationship to the student;
- the general education teacher of the student if the student is, or may be, participating in the general education environment;
- the special education teacher or special education service provider of the student;
- a school psychologist;
- the CSE chairperson who is a representative of the district qualified to provide, or supervise the provision of, specially-designed instruction to meet the unique needs of students with disabilities, who is knowledgeable about the general curriculum and about the availability of the resources of the local educational agency;
- an individual who can interpret the instructional implications of evaluation results, who may be a member of the team selected from the general or special education teacher or provider or district representative described above;
- the school physician, if specifically requested in writing by the parent or by a member of the school at least 72 hours prior to the meeting;
- an additional parent member of a student with a disability residing in the school district or a neighboring school district, provided that the additional parent member may be the parent of a student who has been declassified within a period not to exceed five years or the parent of a student who has graduated within a period not to exceed five years, if specifically requested in writing by the parent of the student, the student or by a member of the committee at least 72 hours prior to the meeting; other persons having knowledge or special expertise regarding the child, including related services personnel as appropriate, as the school district or the parents shall designate. The determination of knowledge or special expertise of that person shall be made by the party who invited the individual to be a member of the CSE.
- whenever appropriate, the child with a disability;

A Parent can request 72 hours prior to a scheduled CSE meeting that a Parent Member be invited. A parent member is a parent of a student who resides in the district or a neighboring school district, provided that such parent is not a required member if the parent(s) of the student request that the additional parent member not participate in the meeting; parents of students who have already graduated and/or have been declassified for a period not to extend beyond five years from these instances;

Consensus is the preferred decision-making process. Parents of the student being reviewed and other knowledgeable persons are encouraged to share information, outside evaluations and reports with the Committee. **If consensus cannot be met, the Chairperson of the CSE will make the final decision.**

Written notice of meetings is provided to the parents at least five days in advance of the meeting date. Meetings are held in the Special Services Office and in the buildings as needed throughout the calendar year.

## CSE SUBCOMMITTEE MEMBERSHIP

At its yearly reorganization meeting, the **Board of Education shall appoint a Sub-Committee on Special Education** comprised of the following mandated members:

- the parents of the student;
- the general education teacher of the student if the student is, or may be, participating in the general education environment;
- the special education teacher or special education service provider of the student;
- the subcommittee CSE Chairperson who is a representative of the district qualified to provide, administer, or supervise special education and who is knowledgeable about the general curriculum and about the availability of the resources of the school district;
- an individual who can interpret the instructional implications of evaluation results, who may be a member of the team selected from the general or special education teacher or provider or district representative described above;
- such other persons having knowledge or special expertise regarding the student, including related service personnel as appropriate, as the committee or parent shall designate. The determination of knowledge or special expertise of that person shall be made by the party who invited the individual to be a member of the CSE;
- the student if appropriate;
- a psychologist whenever a new psychological evaluation is reviewed.

Consensus is the preferred decision-making process. Parents of the student being reviewed and other knowledgeable persons are encouraged to share information, outside evaluations and reports with the Committee.

Prior Written notice of meetings is provided to the parents at least five days in advance of the meeting date. Meetings are held in the building as needed throughout the calendar year.

Additionally, under 34 CFR §300.503(a), the school district must provide a written notice (information received in writing), whenever the school district: (1) Proposes to begin or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education (FAPE) to your child; or (2) Refuses to begin or change the identification, evaluation, or educational placement of your child or the provision of FAPE to your child. The required content under 34 CFR §300.503(b) is listed below in this model form. The school district must provide the notice in understandable language (34 CFR §300.503(c)).

## CLASSIFICATION

The term “*student with a disability*” includes the following classifications:<sup>2</sup>

1. **Autism** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a student’s educational performance. Other characteristics often associate with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a student’s educational performance is adversely affected primarily because the student has an emotional disturbance as defined in paragraph 4 of this subdivision. A student who manifests the characteristics of autism after age 3 could be diagnosed as having autism if the criteria in this paragraph are otherwise satisfied.
2. **Deafness** means a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a student’s educational performance.
3. **Deaf-blindness** means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.
4. **Emotional disturbance** means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student’s educational performance:
  - i. an inability to learn that cannot be explained by intellectual, sensory, or health factors;
  - ii. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
  - iii. inappropriate types of behavior or feelings under normal circumstances;
  - iv. a generally pervasive mood of unhappiness or depression; or
  - v. a tendency to develop physical symptoms or fears associated with personal or school problems.

The term includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance.

5. **Hearing impairment** means impairment in hearing, whether permanent or fluctuating, that adversely affects the child’s educational performance but that is not included under the definition of **deafness** in this section.

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<sup>2</sup> Legal Reference: Regulations of the Commissioner of Education, Section 200.1

6. **Learning disability** means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which manifests itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural or economic disadvantage. The District will use *Response to Intervention* practices ensuring that scientifically, researched approaches to reading, writing and mathematics practices and instruction have been consistently applied through general education. Detailed information including, but not limited to, the collection of quantitative and qualitative student data, histogram outlining three levels of interventions services, report cards, and state assessments must be provided to the Committee on Special Education for any student who is suspected of having a learning disability.
7. **Intellectual Disability** means significantly sub average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.
8. **Multiple disabilities** means concomitant impairments (such as mental retardation-blindness, mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which cause such severe educational needs that they cannot be accommodated in a special education program solely for one of the impairments. The term does not include deaf-blindness.
9. **Orthopedic impairment** means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputation, and fractures or burns which cause contractures).
10. **Other health impairment** means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems, including but not limited to a heart condition, tuberculosis, rheumatic fever nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning leukemia, diabetes, attention deficit disorder or attention deficit hyperactivity disorder or Tourette syndrome, which adversely affects a student's educational performance.
11. **Speech or language impairment** means a communication disorder, such as stuttering, impaired articulation, a language impairment or a voice impairment, that adversely affects a student's educational performance.
12. **Traumatic brain injury** means an acquired injury to the brain caused by an external physical force or by certain medical conditions such as stroke, encephalitis, aneurysm, anoxia or brain tumors with resulting impairments that adversely affect educational performance. The term includes open or closed head injuries or brain injuries from certain medical conditions resulting in mild, moderate or severe impairments in one or more areas, including cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not include injuries that are congenital or caused by birth trauma.

13. **Visual impairment including blindness** means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

## CSE PROCEDURES

### INITIAL REFERRAL

In accordance with the New York Education Law Section 4402 and Part 200.2, 200.4 and 200.5 of the Commissioner's Regulations, the CSE is responsible for evaluating all school-age students thought to be disabled, identifying a disabling condition (or determining that no disabling condition exists), and recommending a type of placement. Referrals can be made at any time during the school year. Within 60 calendar days of receipt of consent, the school district must complete the initial evaluation to determine if the student is a student with a disability. A referral for an initial evaluation may be made by:

- student's parent or person in parental relationship;
- a Building Principal in KCSD;
- the commissioner, or designee, of a public agency with responsibility for the education of the student;
- a designee of an education program affiliated with a child care institution with committee on special education responsibility pursuant to section 4002(3) of the Education Law.

A request for referral for an initial evaluation may be made by:

- a professional staff member of the school district in which the student resides, or the public or private school the student legally attends or is eligible to attend;
- a licensed physician;
- a judicial officer;
- a professional staff member of a public agency with responsibility for welfare, health or education of children; or
- a student who is 18 years of age or older, or an emancipated minor, who is eligible to attend the public schools of the district.

All new entrants to the district are screened at the time of enrollment and such screening, if it indicates a possible disability condition, can lead to a CSE referral. All referrals are made to the building principal or the Chairperson of the Committee. The referral must be written and dated.

A written request for referral made by persons other than the student or a judicial officer must:

- state the reason(s) for referral and include any test results, records or reports upon which the referral is based;
- describe attempts to remediate the student's performance prior to referral, including any supplementary aids or support services provided for this purpose, or state the reason why no such attempts were made;
- describe the extent of parental contact or involvement prior to the referral.

Upon receipt of a referral, the Chairperson of the Committee or a building representative of the public school will contact the parent or guardian and request consent for evaluation. A copy of A Parent's Guide to Special Education and Due Process Rights are given to the parent at this time. Translations are provided to assist parents as needed.

**Referrals may be withdrawn under the following circumstances:**

- The parent and the person submitting the referral agree to the withdrawal in writing.
- The building administrator, upon receipt of a referral or copy of a referral, may request a meeting with the parent or person in parental relationship to the student, and the student, if appropriate, to determine whether the student would benefit from additional general education support services as an alternative to special education, including the provision of educationally related support services, speech and language improvement services, and academic intervention services. If the person making the referral is a professional staff member of the school district in which the student resides, that person shall attend such meeting. The building administrator shall ensure that the parent understands the proceedings of the meeting and shall arrange for the presence of an interpreter, if necessary. Any other person making a referral shall have the opportunity to attend such meeting. If at the meeting the parent or person in parental relationship and the building administrator agree in writing that, with the provision of additional general education support services, the referral is unwarranted, the referral shall be deemed withdrawn, and the building administrator shall provide the Chairperson of the Committee on Special Education, the person who made the referral if a professional staff member of the school district, the parent or person in parental relationship shall be in the native language of such person. Such agreement shall contain a description of the additional general education support services to be provided, instructional strategies to be used and student-centered data to be collection, and the proposed duration of such program. A copy of the agreement shall also be placed in the student's cumulative education record file. The meeting:
  - I. shall be conducted within 10 school days of the building administrator's receipt of the referral; and
  - II. shall not impede a Committee on Special Education from continuing its duties and functions under this Part.
- If the parent does not consent to the initial evaluation within thirty (30) days, the Chairperson will offer the parent an opportunity for an informal meeting with the person who made the referral, professionals most familiar with the proposed evaluation and counsel or an advisor of the parent's choice. The reasons for the referral will be discussed and if both the parent and the person submitting the referral agree in writing, the referral will be withdrawn. If the referral is not withdrawn and the parent continues to withhold consent, the chairperson shall document attempts made by the chairperson or other representatives of the committee to obtain parental consent may recommend that the Board appoint an impartial hearing officer to hear evidence and testimony on the need for evaluation.
- In all circumstances, the withdrawal agreement will be in writing and will be placed in the student's cumulative educational file, with copies given to all parties involved. The agreement will specify in writing any alternative methods suggested to resolve the student's difficulty and an opportunity for a follow-up conference within an agreed period of time to review the student's progress.

## **EVALUATION AND RECOMMENDATION**

The initial evaluation will consist of procedures to determine whether a student is a student with a disability and to determine the educational needs of such a student. The evaluation will include a variety of assessment tools and strategies including information provided by the parent to gather relevant functional and developmental information about the student and information related to enabling the student to participate and progress in the general education curriculum. The individual evaluation will include the following at no cost to the parent:

- a physical examination;
- an individual psychological examination;
- an observation of the student in the student's learning environment;
- a social history;
- other appropriate assessments or evaluations, including a functional behavioral assessment for a student whose behavior impedes his or her learning or that of others, as necessary to ascertain the physical, mental, behavioral and emotional factors which contribute to the suspected disabilities.

The evaluator will use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. Test will be administered in the student's native language or other mode of communication, unless it is clearly not feasible to do so. The tests will be validated for the specific purpose for which they are used and will be administered by trained personnel. Tests will be administered so as not to be racially or culturally discriminatory. The CSE will arrange for specialized evaluations where necessary, using appropriate resources outside of the district. These assessments may include, but are not limited to, bilingual evaluations, psychiatric and neurological examinations, audiological evaluations, visual evaluations, vocational evaluations and assistive technology assessments. Specialized evaluations are not limited to the initial evaluation process; they may be indicated at any time. The CSE shall maintain a list of appropriate resources and certified professionals for this purpose.

A variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parents, will be used in determining whether the student is a student with a disability and the content of the student's individualized education program, including information related to enabling the student to be involved in and progress in the general education curriculum. No single procedure is used as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for a student. The evaluation will be sufficiently comprehensive in order to identify all of the student's special education needs, whether or not commonly linked to the disability category in which the student has been identified. Existing evaluation data on the student will be reviewed, including evaluations and information provided by the student's parents, current classroom-based assessments and observations, and teacher and related service providers' observations. The evaluation will be sufficiently comprehensive in order to identify all of the student's special education needs, whether or not commonly linked to the disability category in which the student has been identified. Assessment tools and strategies are used to provide relevant information that directly assists persons in determining the educational needs of the student.



## Eligibility Determination

In making a determination of eligibility for special education and related services, a student may not be identified as a student with a disability if the determinant factor is lack of instruction in reading, math or limited English proficiency. A student with a disability remains eligible to receive special education services even if the student is advancing from grade to grade.

When an evaluation is completed, a CSE meeting is scheduled. Reasonable measures will be made to ensure the parent attends the meeting. This means:

- a written notice will be sent to the parent at least five days prior advising them of the meeting;
- at least one additional attempt will be made to notify the parents. This may mean additional written notice or a telephone call. The attempts will be documented.

Parents are provided with copies of the evaluation reports prior to the CSE meeting. At the CSE meeting, the results of the evaluation will be provided to the parent in their native language or other mode of communication. The CSE reviews the results to determine eligibility and submits a recommendation to the Board of Education. A student may not be determined to be eligible for special education if the determinant factor for the eligibility determination is lack of instruction in reading or math or limited English proficiency. A student with a disability remains eligible to receive special education services even if the student is advancing from grade to grade. If the Committee determines the student is ineligible for special education, written notification is sent to the parent/guardian and to the principal, indicating the reasons for the finding.

If the Committee determines that a student has a disability, an IEP (Individualized Education Program) is prepared which specifies the classification of the disability. In developing the recommendations for the IEP, the Committee must consider the results of the initial or most recent evaluation, the student's strengths, the concerns of the parents, the results of the student's performance on any general, State or district-wide tests, and other factors unique to the student's disability. These recommendations shall include:

- the student's present performance and individual needs in the following areas: academic or educational achievement and learning characteristics, social development, physical development and management needs including how the disability affects student involvement and progress in the general curriculum;
- measurable annual goals, including benchmarks or short-term objectives for **only** those students who are working towards meeting alternative learner standards and all preschool students, related to enabling the student to be involved in and progress in the general curriculum and meeting each of the student's other educational needs that result from the student's disability;
- special education and related services and supplementary aids and services to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel in order for the student to advance appropriately toward attaining annual goals, to be involved and progress in general curriculum, and to be educated and participate in activities with other students with and without disabilities;

- the extent, if any, to which the student will not participate with non-disabled students in the general education class and in other activities;
- if a student is not participating in a regular physical education program, the extent to which the student will participate in specially designed instruction in physical education including adapted physical education;
- any individual testing accommodations to be used consistently by the student in the administration of State or district-wide assessments of student achievement and in accordance with the State Education Department policy, that are needed in order for the student to participate;
- if the Committee determines that the student will not participate in a particular State or districtwide assessment or part of such assessment, a statement of why the assessment is not appropriate and how the student will be assessed;
- the projected date for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications;
- how the student's progress towards the annual goals will be measured, how the student's parents will be regularly informed of their student's progress towards annual goals, and the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year;
- indicate the general education classes in which the student will receive consultant services; and
- a description of assistive technology devices or services needed for the student to benefit from education.

***The IEP must also include:***

- Beginning the school year the student will turn 15 (or younger, if determined appropriate by the Committee) a statement of needed transition services and post-secondary goals for the student, including, a statement of the responsibilities of the school district and, when applicable, a statement of the interagency responsibilities or any needed linkages.

***Consideration of Special Factors:***

1. in the case of a student whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive interventions, and supports to address that behavior;
2. in the case of a student with limited English proficiency, consider the language needs of the student as such needs relate to the student's IEP;
3. in the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the CSE determines after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or use of Braille is not appropriate for the student; and

4. consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode:
5. consider whether the student requires assistive technology devices and services, including whether the use of school-purchased assistive technology devices is required to be used in the student's home or in other settings in order for the student to receive a free appropriate public education;
6. include a statement in the IEP if, in considering the special factors listed above, the Committee has determined a student needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the student to receive a free appropriate public education.

## **IEP IMPLEMENTATION**

If the Board of Education agrees with the Committee's recommendation, the parents will be notified of the decision. Placement of the student in the appropriate special education program or provision of appropriate services will take place within 60 school days of receipt of consent to evaluate a student not previously identified as having a disability or 60 school days of referral for review. If the recommendation is for placement in an approved in-state or out-of-state private school, programs and services shall be provided within 30 school days of the BOE receipt of the CSE recommendation. Initial placements require the written consent of the student's parent/guardian. The CSE ensures that each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for the implementation of a student's IEP shall have electronic access to a copy of the IEP; and each teacher and provider is informed of his or her specific responsibilities related to the implementing the student's IEP and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP. A copy of the IEP shall be provided to the student's parents at no cost to them.

The school district must provide special education and related services to a student with a disability in accordance with the student's IEP and must make a good faith effort to assist the student to achieve the goals and objectives or benchmarks listed in the student's IEP.

If the Board of Education disagrees with the Committee's recommendation, it may remand the recommendation to the Committee for further review.

## **ANNUAL REVIEW, REEVALUATION AND DECLASSIFICATION**

An annual review is conducted for every resident student who has been classified as having a disability. Parents are notified by mail of the meeting; reasonable measures will be taken to ensure that the parent attends the meeting. The review is conducted to determine the student's present levels of performance and educational needs, continued eligibility and need for special education services and whether any modification or additions to the special education and related services are needed to enable the student to meet the measurable annual goals of the IEP and to participate, as appropriate, in general education. If a revision of the IEP is recommended it must address:

- any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;
- the results of any reevaluation and any information about the student provided to, or by, the parent;
  - the student's anticipated needs;
- or other matters, including a student's need for test accommodations and/or modifications.

As part of any reevaluation, a review of existing evaluation data, including evaluations and information provided by the student's parents, current classroom-based assessments and observations, teacher and related service provider's observations, is conducted to determine what additional data, if any, is needed. The group may conduct its review without a meeting. If no additional data is needed to determine whether the student continues to be a student with a disability, the parents are notified of the determination and the reasons for it. The parent is notified of the right to request an assessment and that the district is not required to conduct such an assessment unless requested by the students' parents.

A comprehensive reevaluation is conducted at least once every three (3) years by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of the student's disability. The reevaluation shall be sufficient to determine the student's individual needs, educational progress and achievement, the ability to participate in instructional programs in general education and the student's continued eligibility for special education, assess the appropriateness of classification, program and placement. Reevaluations are also initiated prior to the triennial requirement if requested by the student's parent or teacher.

Parental consent is retained prior to conducting any new test or assessment as part of a reevaluation of a student with a disability. If the district takes reasonable measures to obtain such consent and the student's parent fails to respond, reevaluation may take place without parental consent.

If the Committee determines that no additional testing is needed, the CSE will notify the parent of that determination, the reasons for it, and the right of the parent to request an evaluation. The Committee will also indicate that it is not required to conduct such assessment unless requested by the student's parent.

Before determining that a student is no longer eligible to receive special education services, an evaluation must be conducted. When the CSE determines that a student no longer needs special education services, the Committee may recommend declassification support services for no more than the first year in general education. Such services may include psychological, social work, speech and language services or non-career counseling or they could consist of assignment of an aide or consultant to the classroom teacher.

Continuation of test modifications upon declassification is not automatic. The CSE may determine that test modifications previously documented in a student's IEP must continue to be consistently provided to the

student for the balance of his or her public-school education. A school district is not required to conduct a reevaluation of a student before the termination of a student’s eligibility due to graduation with a local high school or Regents diploma or exceeding the age eligibility for a free appropriate public education.

## **CONTINUUM OF SERVICES**

### **1. TRANSITIONAL SUPPORT SERVICES**

When specified in a student's Individualized Education Program, transitional support services are provided to a teacher on a temporary basis to aid in the provision of an appropriate educational program to the student with a disability who is transferring to a general education program or to a less restrictive program or service. These services do not continue beyond one year. These services may be provided by the building psychologist, a special education teacher, a speech/language therapist, physical therapist, occupational therapist or other appropriate professional who understands the specific needs of the student with a disability.

### **2. CONSULTANT TEACHER SERVICES**

Consultant teacher services will be for the purpose of providing direct and/or indirect services to students with disabilities enrolled full-time in general education classes including career and technical education. Such services shall be recommended by the Committee on Special Education to meet specific needs of such students and shall be included in the student's individualized educational program (IEP). Consultant teacher services shall be provided in accordance with the following provisions:

- Each student with a disability requiring consultant teacher services shall receive direct and/or indirect services consistent with the student's IEP for a minimum of two hours each week.
- The total number of students with disabilities assigned to a consultant teacher shall not exceed 20.

### **3. RELATED SERVICES**

Related services means developmental, corrective, and other supportive services as are required to assist a student with a disability and includes speech and language pathology, audiology, psychological services, physical therapy, occupational therapy, counseling services, including rehabilitation counseling, orientation and mobility services, medical services as defined by regulations, parent counseling and training, school health services, school social work, assistive technology services, other appropriate developmental or corrective support services, appropriate access to recreation and other appropriate support services.

The frequency, duration and location of each service shall be in the IEP, based on the individual student's need for the service:

- Speech/language services will be provided based on the recommendation of the Committee on Special Education. The teacher's caseload will not exceed 65.
- When a related service is provided to a number of students at the same time, the number of students in the group will be recommended by the Committee on Special Education.

### **4. RESOURCE ROOM PROGRAM**

The resource room program is for the purpose of supplementing the general or special classroom instruction of students with disabilities who are in need of such supplemental programs. Resource room services shall be provided in accordance with the following provisions:

- The instructional group in each resource room period does not exceed five students. Each resource room period is instructed by a special education teacher.
- Students shall spend a minimum of 3 hours per week and not more than 50 percent of the day in the resource room program.

- The total number of students assigned to a resource room teacher will not exceed 20 at the elementary level and 25 at the middle and high school levels.
- Resource room services may be provided either in a pull-out or push-in program or a combination of both.

## **5. INTEGRATED CO-TEACHING**

Students in integrated co-teaching classes are fully included into the general education environment but are in need of a more intense level of support than can be provided in resource room. Integrated co-teaching classes contain a general and special education teacher full time.

## **6. SPECIAL CLASS**

A special class is defined as a class consisting of students with the same disabilities or with differing disabilities who have been grouped together because of similar individual needs for the purpose of being provided a special education program. The chronological age range of students who are less than 16 years of age will not exceed 36 months. A student with a disability shall be placed in a special class to the extent indicated in his/her IEP.

## **7. ADAPTIVE PHYSICAL EDUCATION**

Students who require a specially designed program of developmental activities, games, sports and rhythms suited to the interests, capacities and limitations of students with disabilities who may not safely or successfully engage in unrestricted participation in the activities of the regular physical education program.

## **8. TRAVEL TRAINING**

Students requiring instruction, as appropriate, to students with significant cognitive disabilities, and any other students with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live; and learn the skills to move effectively and safely from place to place within that environment.

## **9. OUT-OF-DISTRICT PLACEMENT**

- Students with disabilities whose needs are too intensive to be addressed appropriately in an in-district special education program, may be placed in one of the following, listed from least restrictive to more restrictive: special class operated by another school district
- a BOCES program
- an approved Private School (day)
- 4201 or State Operated school
- an approved Residential Placement

## **10. HOME AND HOSPITAL INSTRUCTION**

Students with disabilities who are recommended for home and/or hospital instruction by the CSE shall receive instruction as follows:

- instruction for elementary school students will be provided a minimum of 5 hours per week;
- secondary school students will receive a minimum of 10 hours of instruction per week, preferably 2 hours daily;

- youngsters who are awaiting placement may be assigned, on an interim basis and with their parent’s consent, to alternate-site instruction. This instruction is identical to home teaching except that the actual instruction takes place outside the home.

#### **11. DECLASSIFICATION SUPPORT SERVICES**

Students exiting special education may be considered for declassification services. Declassification support services are defined in the Part 100 Regulations. Testing modifications may be continued as recommended by the CSE.

If a student has been receiving special education services but the Committee on Special Education determines that the student no longer requires such services and can be placed in a general education program on a full-time basis, the recommendation shall:

- identify the declassification support services if any;
- indicate the projected date of initiation;

frequency and duration of such services, not to be continued for more than one year.



# ***ADDITIONAL EVALUATION, IEP AND PLACEMENT CONSIDERATIONS***

## **ARRANGEMENT OF SPECIAL EDUCATION PLACEMENTS CPSE AND CSE**

The Board of Education shall upon receipt of the IEP recommendations, arrange for programs and services to be provided to a student with a disability after consideration of the recommendation of the Committee on Special Education or Preschool Special Education. The Board shall notify the parent that this has been arranged.

For CPSE the Board shall arrange for the services commencing with the July, September or January starting date, unless such services are recommended by the CPSE less than 30 school days prior to, or after, such appropriate starting date, in which case the services shall be provided no later than 30 school days from the recommendation of the Committee.

For CSE, evaluation and placement shall be completed within 60 school days of receipt of consent to evaluate a student not previously identified as having a disability or within 60 school days of referral for review of a student with a disability. For placement in approved in-state or out-of-state private school placements the Board shall arrange for such programs and services within 30 days of receipt of the recommendation of the Committee on Special Education.

Because the placement of students is often a lengthy process, the Board authorizes the Superintendent of Schools, or designee, to act as its agent in making necessary arrangements to implement the program/services prior to the Board of Education meeting.

If the Board disagrees with the recommendation of the CPSE/CSE, it will set forth in writing a statement of its reasons and send the recommendation back to the Committee, with notice of the need to schedule a timely meeting to review the Board's concerns and to revise the IEP as deemed appropriate. The Board shall provide the parent with a copy of this statement and notice. The Committee shall then submit its revised recommendation to the Board of Education.

## **DECLASSIFICATION OF STUDENTS WITH DISABILITIES**

The recommendation to declassify students with disabilities is the responsibility of the Committee on Preschool Special Education (CPSE) and Committee on Special Education (CSE). As declassification constitutes a significant change of identification and placement, CPSE and the CSE shall reevaluate the child prior to making this recommendation. The CPSE and CSE shall also, provide prior notice, in the native language or other mode of communication of the home, to the child's parent or guardian, that a reevaluation is being sought for the purpose of considering declassification and request written consent for this evaluation. If the initial request for consent for reevaluation is unsuccessful, alternate measures will be taken to obtain consent and will be documented. If reasonable attempts have been made to obtain consent and have been documented but no response is received from the parent or guardian, the CPSE and CSE shall reevaluate the child without consent.

In order to determine the nature of this reevaluation, the school staff including members of the CPSE and CSE and other qualified professionals may review the existing evaluation data on the student including evaluations provided by the parents or guardians, current class assessments, observations by teachers, reports by related services providers and other professionals. This review shall not constitute a CPSE and a CSE meeting. On the basis of this review, the District may decide that no further data is needed. In this case, the CPSE and CSE shall notify the parents or guardians that further assessment has been deemed unnecessary and that they have a right to request further assessment to determine if their child continues to be a student with a disability. If the parent or guardian does not request further assessment, the CPSE and the CSE may meet to review the existing information and to consider declassification. A copy of this informal evaluation report shall be made available to the parent or guardian.

In conducting its review, the CPSE and the CSE will consider the student's ability to participate in instructional programs in regular education, the student's benefit from special education, and the student's continued eligibility to be identified as a child with a disability according to the criteria set forth in IDEA, the Part 200 Commissioner's Regulations and the District's existing policies and procedures. The CSE must also consider the provision of educational and support services to the student upon declassification. Upon declassification, the CPSE and CSE shall identify any declassification support services including the projected date of initiation of such services and the duration of these services. Declassification services shall be provided for no more than a year after the student enters the full-time regular education program. Recommendations for declassification support services and appropriate evaluation information shall be forwarded to the building administrator who shall determine any additional educationally related support services, academic intervention services, or other services that may be appropriate.

## **PROCEDURES FOR ASSESSING LIMITED ENGLISH PROFICIENT (LEP) STUDENTS**

### **SCREENING**

As part of the screening of all new students, the District administers the Home Language Questionnaire (HLQ). Based upon the results of the HLQ, the District may conduct an individual interview and, if the student's home or primary language is other than English, additional screening steps as per the Commissioner's Regulations to determine whether the student is an English Language Learner (ELL). This may include administration of the New York State Identification Test for English Language Learners (NYSITELL) or the current statewide English language proficiency identification assessment. Students who are referred to the Committee on Special Education for a bilingual assessment have usually been in the ESL program for at least two-three years. Traditionally, the referral comes from the ESL teachers who discuss the problem with the building team or guidance counselor and/or the school psychologist regarding the possibility of a disability interfering with acquisition of academic and/or language skills.

Prior to referral, general education supports are attempted to determine if the student can make progress through these interventions.

In all cases, the student's educational, cultural and experiential background will be considered by the Committee to determine if these factors are contributing to the student's learning or behavioral problems. In making a determination of eligibility for special education and related services, a child may not be identified as a child with a disability if the determinant factor for such determination is limited English proficiency.

### **CULTURALLY UNBIASED/NON-DISCRIMINATORY EVALUATION FOR LIMITED ENGLISH PROFICIENT STUDENTS**

The CPSE/CSE is responsible for evaluating students to determine the existence of a disability that may require special education services. In order to safeguard educational opportunities for students, whose native language is other than English, the CSE must ensure that all tests and assessment procedures are administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer.

The procedures for ensuring appropriate and non-discriminatory evaluations for youngsters who are Limited English Proficient will be as follows:

- The CSE referral will indicate the youngster's native language, as determined by the Home Language Survey and other assessments.
- The CSE referral includes a section that must be completed on youngsters who are Limited English Proficient and may also be suspected of having a disability.
- If the student's English proficiency is determined to be insufficient to obtain valid results in English and the home language is not English, the evaluation shall be bilingual.
- If the home language is English but the student is considered limited English proficient, an evaluation will be conducted by a professional familiar with the culture and language dialect of the student.

- If the student is from a culturally and linguistically diverse background and English is the home language and the student is considered to be proficient in English, as determined by an English/Language Assessment, the evaluation may be conducted in English; however, the culture and linguistic background of the student will be taken into consideration.
- If the parents' dominant language is not English, they will receive all notifications in their dominant language. They will also receive the Parent's Guide to Special Education in their native language.

Upon receipt of a referral that indicates that the home language is not English, due process notices will be mailed to parents in the dominant language. At the CPSE/CSE meeting, an interpreter will be present to explain the results of the evaluations and the proposed recommendations.

**The bilingual evaluation will include the following considerations / evaluations:**

- the length of time the youngster has been in the United States;
- the amount of instruction that the youngster has received in the United States as well as his or her home country;
- the length of time the youngster has been receiving ESL instruction;
- attendance in school;
- the youngster's proficiency in his native language as well as English proficiency; The types of general education supports that the youngster has received;
- a bilingual evaluator will be obtained who is knowledgeable about the youngster's geographic area of origin as well as its language and culture;
- BOCES and other agencies may be used for bilingual assessment;
- test instruments in the appropriate languages will be sought that are normed on the same or similar population as the country from which the student has come. If such evaluative tools are not available, the evaluator will state in the report specific concerns regarding the instruments that were used and specific cautions to be observed when interpreting the results;
- if specific sub-tests are not considered appropriate because of cultural disadvantage, the evaluator may prorate the results and explain the reasons for this decision in the report;
- student work samples may be submitted to the CSE to provide an informal portfolio assessment that may indicate functional levels;
- non-verbal assessment batteries will be used to supplement morpho-linguistic based measures;
- age-appropriate adaptive behaviors will also be taken into consideration;
- all areas of suspected disability will be evaluated in the child's native language (e.g. speech);
- the bilingual evaluator will conduct a complete bilingual social history;
- the evaluation report will state the language in which the assessment was administered;
- if the tests normally used are not considered valid for the LEP student, other avenues of data collection including criterion referenced tests may be used and the results will be described in the evaluation report.

**The following procedures will be followed by the CPSE/CSE when reviewing bilingual evaluations:**

- A bilingual professional or translator will be present at the CPSE/CSE meeting and the attendance sheet will indicate the name and language of this interpreter.
- The CSE will consider the role of cultural and/or linguistic factors in relation to the student's behavior and/or academic difficulties before determining if special education services are required.
- In keeping with the doctrine of Least Restrictive Environment, the CPSE/CSE will determine if remedial services and other general education supports can be tried before considering special education services.
- All notices requiring consent and informing parents of CPSE/CSE recommendations will be translated into the parent's dominant language.
- The program or services recommended for the student may consist of a combination of ESL and special education services, as recommended by the CSE.

**New: Commissioner's Regulations Subpart 154-3 related to students with disabilities who are subject to the initial and reentry process and determination of English proficiency pursuant to section 154-2.3(a) of the Part and the exit procedures pursuant to 154-2.3(m) of this Part in programs operated beginning with the 2015-2016 school year and thereafter.**

**154-3.3 Determination of whether a student with a disability shall take the statewide English language proficiency identification assessment:**

(a) For students with disabilities who are subject to the initial and reentry identification process and determination of English language proficiency pursuant to section 154-2.3(a) of this Part, following the administration of Steps 1 and 2 and prior to the administration of Step 4 pursuant to section 154-2.3(a) of this Part, the following provisions shall apply:

- (1) For a student identified as having a disability, a Language Proficiency Team (LPT), as defined in section 154-2.3 of this subpart, shall make a recommendation as to whether there is evidence that the student may have second language acquisition needs.
- (2) In making this recommendation, the LPT shall, in accordance with guidance prescribed by the commissioner, consider evidence of the student's English language development, including, but not limited to:
  - i the results of Steps 1 and 2 in section 154-2.2(a)(1) and (2) of the Part;
  - ii the student's history of language use in school and home or community;
  - iii the individual evaluation of the student conducted in accordance with the procedures in section 200.4(b)(6) of this Title, which shall include assessments administered in the student's home language;
  - iv information provided by the Committee on Special Education (CSE) as to whether the student's disability is the determinant factor affecting whether the student can demonstrate proficiency in English.

- (3) Based on the evidence reviewed in paragraph (2) of this subdivision, the LPT must make a recommendation as to whether the student may have second language acquisition needs or whether the student's disability is the determinant factor affecting whether the student could demonstrate proficiency in English during Step 2 in section 154-2.3(a)(2) of the Part.
- (4) If the LPT recommends that, the student does not have second language acquisition needs and there should not take the English language proficiency identification assessment to identify the student as an English Language learner, such recommendation shall be referred to the school principal for review.
- (5) If upon review, the school principal agrees with the recommendation of the LPT that the student is not an English Language Learner and will not take the English language proficiency identification assessment, the school principal shall inform the parent or person in parental relation of this recommendation, in the language or mode of communication the parent or person in parental relation best understands.
- (6) Upon receipt of a recommendation by the school principal, the Superintendent or his or her designee shall review the school principal's recommendation and make a final determination to accept or reject the school principal's recommendation within ten (10) days of receiving the school principal's recommendation. If the Superintendent determines that the student is not an English Language Learner, notice of such determination shall be provided to the parent or person in parental relation in the language or mode of communication that the parent or person in parental relation best understands within five (5) days of such final determination.
- (7) If the LPT determines that the student with a disability may have second language acquisition needs, the student shall take the initial English language proficiency identification assessment. The CSE shall determine, in accordance with the individualized education program (IEP) developed for such student pursuant to Part 200 of this Title, whether the student shall take the assessment with or without testing accommodations or an alternate assessment as may be prescribed the commission.

#### **154-3.4 Exit Criteria for Students with Disabilities:**

- (a) Each school district will annually determine if a student with a disability who has been identified as an English language learner pursuant to section 154-3.3 of this Subpart will continue to be identified as an English Language Learner.
- (b) Following the initial identification of a student with a disability as an English Language Learner, the CSE shall annually make an individual determination as to which of the following methods of assessment shall be used to determine if such student will continue to be identified as an English Language Learner:
  - (1) the annual English language proficiency assessment without the use of testing accommodations; or
  - (2) the annual English language proficiency assessment with appropriate testing accommodations to be provided in accordance with the individualized education program (IEP) developed for such student pursuant to Part 200 of this Title; or
  - (3) an alternate assessment as may be prescribed by the commissioner.

## **EXTENDED SCHOOL YEAR (CPSE/CSE)**

The Committee on Preschool Special Education (CPSE) or the Committee on Special Education (CSE) will determine whether a student requires a structured learning environment of up to 12 months to prevent substantial regression. “*Substantial regression*”, as defined by Regulations, would be indicated by a student’s inability to maintain developmental levels due to a loss of skill or knowledge during the months of July and August of such severity so as to require an inordinate period of review at the beginning of the school year to reestablish and maintain IEP goals and objectives mastered at the end of the previous school year. A special program or service shall operate for at least 30 days during the months of July and August. In accordance with Section 200.6(k) and 200.16(h) of the Commissioner’s Regulations, students will be considered for twelve-month special services and/or programs to prevent substantial regression if they are:

- preschool students/school age students whose management needs are determined to be highly intensive and require a high degree of individualized attention and intervention and who are placed in special classes;
- preschool students/school age students with severe multiple disabilities, whose programs consist primarily of habilitation and treatment;
- preschool students/school age students who are recommended for home and hospital instruction or students/preschool students whose special education needs are determined to be highly intensive and require a high degree of individualized attention and intervention or who have severe multiple disabilities and require primarily habilitation and treatment;
- preschool students/school age students whose needs are so severe that they can be met only in a seven-day residential program; or
- preschool students/school age students receiving other special education services who, because of their disabilities, exhibit the need for a twelve-month special service and/or program provided in a structured learning environment in order to prevent substantial regression.

Both quantitative and qualitative information will be reviewed by the Committee to substantiate the need for providing such services and programs. A student is eligible for a twelve-month service or program when the period of review or re-teaching required to recoup the skill or knowledge level attained by the end of the prior school year is beyond the time ordinarily reserved for that purpose at the beginning of the school year. The typical period of review or re-teaching ranges between 20 and 40 school days. As a guideline for the purpose of determining eligibility for an extended school year program, a review period of eight weeks or more would indicate that substantial regression has occurred.



## ASSISTIVE TECHNOLOGY DEVICES AND SERVICES

The school district is committed to ensuring that assistive technology devices and/or services are made available to a student with a disability, when appropriate, as part of the student's Individualized Education Program (IEP).

The IEP must describe any specialized equipment and adaptive devices needed for the student to benefit from instruction. IDEA requires each school district to ensure that assistive technology devices and/or services are made available to a preschool or school-age student with a disability as part of the student's special education, related services or supplementary aids or services as described in the IEP. IDEA defines assistive technology devices and assistive technology services, as follows:

1. **"Assistive technology devices"** means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.
2. **"Assistive technology service"** means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:
  - the evaluation of the needs of a student with a disability, including a functional evaluation of the child in the child's customary environment;
  - purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
  - selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing assistive technology devices;
  - coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
  - training or technical assistance for a child with a disability, or if appropriate, that child's family; and
  - training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to employ, or are otherwise substantially involved in the major life functions of that child.

A student's need for assistive technology is determined through the individual evaluation. The district's CPSE/CSE is responsible for this functional evaluation of the student. The need to conduct an assistive technology component of an evaluation must be considered for students on a case-by-case basis:

- Since assistive technology services are provided as part of the student's special education instruction, related service and/or other supplementary aids and services, they must be provided by an appropriately licensed or certified individual in accordance with Section 200.6 of the Regulations of the Commissioner of Education.

## **EXEMPTION FROM FOREIGN LANGUAGE REQUIREMENT**

Students who entered the ninth grade during the 2001 – 2002 school year and thereafter, are required to complete one unit of study in a foreign language other than English before completing the twelfth grade. This requirement is established for all schools in the State by Section 100.2 (d) of the Regulations of the Commissioner of Education.

Students identified as having disabilities may be exempted from this requirement if their Individualized Education program (IEP) indicates that such requirement is inappropriate. Only those students whose disabilities specifically and severely impair receptive and/or expressive language skills, or exhibits other behavioral or learning problems that would impact ability to benefit from foreign language instruction may be exempt from the foreign language requirements, as most youngsters would benefit from exposure to a foreign language. The reasons for any exemption will be specified in the IEP. Therefore, at annual review for all students who are completing sixth, seventh, or eighth grade, the CSE will take the following steps:

School district and State Education Department policies strongly favor fulfillment of the language requirement by all students prior to completion of ninth grade. Only students whose receptive or expressive language is severely impaired will be exempted unless there are specific factors which, in combination with language problems, make exemption necessary.

- Curriculum will be reviewed to determine whether the language requirement has been completed.
- If the language requirement has not been completed, attention will be paid to speech and language levels, learning characteristics, and emotional factors which may be relevant to ability to benefit from language instruction in the following year.
- In determining whether or not exemption is “appropriate”, particular attention will be paid to severity of the speech and language impairment. Exemption may be granted if a student is severely speech and language impaired or if other factors justify such exemption. If the CSE concludes that exemption is warranted, reasons will be provided in a statement accompanying the IEP.
- If a student with a disability is assigned to a language class, a copy of the IEP showing necessary testing modifications and classroom modifications will be made available to the language instructor electronically by the student’s special education teacher.

## **TRANSITION PLANNING**

### **DEFINITION**

“*Transition Services*” are defined in the IDEA and Article 89 as a coordinated set of activities for a student designed within an outcome-oriented process, which promotes movement from school to post-school activities, including but not limited to post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student’s needs, taking into account the student’s strengths, preferences and interests, and shall include instruction, related services, community experiences, the development of employment, and other post-school adult living objectives and, when appropriate, acquisition of daily living skills and functional vocational evaluation (20 U.S.C. (1401 (a) (19))).

### **INDIVIDUALIZED TRANSITION PLAN**

Transition Services planning for secondary students with disabilities is outcome oriented and looks toward adult life. Professionals, students, and parents or other guardians work cooperatively to identify appropriate destination statements and to determine and implement plans for reaching these outcomes. The student’s strengths, interests and needs are kept foremost in the decision-making process.

For those students beginning not later than the first IEP to be in effect when the student is age 15 or older, the coordinated set of activities must address instruction, related services, community experiences, and the development of employment or other post-school adult living objectives. Activities of daily living and functional vocational evaluation activities should also be included when appropriate to the student’s needs.

At all meetings for the purpose of discussing the need for transition services, the student will be invited. In addition, a representative of the agencies likely to provide or pay for transition services will be invited. Other knowledgeable school personnel (e.g., administrators, psychologist, related service provider, general education teacher) may be asked to participate in the process.

### ***The Transition Services IEP contains the following elements:***

- A statement of the student’s transition needs, taking into account the student’s strengths, preferences and interests as they relate to transition from school to post-school activities.
- Appropriate measurable postsecondary goals based upon age-appropriate transition assessments relating to training, education, employment and where appropriate, independent living skills.
- Coordinated set of activities in the areas of instruction; employment/post-secondary activities; community experience; and, if appropriate, activities of daily living and functional vocational evaluation.
- Responsibility for implementation.

## **VOCATIONAL ASSESSMENTS**

### **GOAL OF THE VOCATIONAL ASSESSMENT PROCESS**

The goal of the vocational assessment process is the successful transition of students to post-secondary education or employment. The process serves to help students, parents, and staff focus on long-term planning leading to realistic outcomes. The ultimate goal is for the school, the family and community agencies to work cooperatively to identify appropriate destination statements and to determine and implement plans for reaching these outcomes.

Vocational assessment is an ongoing process involving the systematic collection of information about a student's vocational aptitudes, abilities, expressed interest, and occupational awareness. Based on the age, abilities, interests and needs of each student, an appropriate vocational assessment may include the following:

- review of existing school information
- the completion of informal interviews
- parent questionnaires
- one or more formal vocational evaluations
- job and student performance analysis made in real and/or simulated work settings.

Though the amount and type of information collected on each student may vary, it must be sufficient for the Committee on Special Education to make and substantiate appropriate occupational education program decisions.

### **LEVELS OF VOCATIONAL ASSESSMENT**

Vocational assessment is conducted for special education students starting at age 12 and those referred to special education for the first time who are age 12 or older.

The Level I vocational assessment includes a structured collection of information and analysis of existing information about the student. This assessment involves the participation of the student, the student's parent(s) or guardian(s), a special education teacher, and the student's guidance counselor. Other appropriate professionals may also participate in this assessment.

When a vocational/career assessment raises issues that need clarification or does not provide adequate information for decision making, additional assessments may be recommended by the CSE. The additional assessments are not necessarily given in hierarchical order and a student can be recommended for a more formalized testing from a specialist in vocational assessment and/or a situational work assignment.

Level II vocational assessments are more focused and involves administration of standardized tests which look in further detail at interests, vocational skills, and specific aptitudes and abilities. It builds upon information that was recorded in the Level I assessment. Specialized vocational evaluation instruments, such as a vocational interest inventory, vocational aptitude battery and selected work samples, may be introduced at this level.

The Level III vocational assessment is a situational assessment conducted while a student is actually engaged in real or simulated work related or vocational activities. This may require resources such as those available in a vocational rehabilitation facility, an occupational assessment center or in an actual work setting.

In all cases, the assessments keep the student’s unique interests, needs and desires in the forefront during the evaluation and decision-making process.

## **AGING OUT GUIDELINES FOR STUDENTS WITH SEVERE DISABILITIES**

Students with disabilities are no longer eligible for a free appropriate public education once they reach the age of 21 or attain a high school diploma. The district has a mandated responsibility to implement an aging out process to transition students with severe disabilities from public education to adult services. Aging-out procedures are in addition to the transition planning services previously discussed in this plan.

Aging-out is specifically designed to meet the needs of three groups of students with severe disabilities:

1. **Chapter 544 Students:** Students attending residential out-of-state schools who have attained or will attain the age of 18 prior to June 30 of the current school year.
2. **Chapter 570 Students:** Students attending residential in-state schools who have attained or will attain the age of 18 by June 30 of the current school year.
3. **Chapter 462 Students:** Students attending non-residential, in-state programs 100% of the time, who have intensive management needs and who are likely to require adult services: The process for eligible students begins at the first annual review after the student reaches the age of 15.

*Although the procedures for referral of students in these three groups are not identical, there are certain common overriding steps:*

- Identification of students likely to need adult service based on criteria noted above;
- Notification to parents or students;
- Obtaining consent to release information;
- Referral to agency;
- Submission of reports to the State Education Department.

## **OPPORTUNITIES TO EARN HIGH SCHOOL DIPLOMAS**

The school district will encourage students with special education needs to pursue high school diplomas. Access must be provided to require courses, electives and tests as specified in Part 100 of the Regulations of the Commissioner. The Committee must consider whether the student will seek to attain either a high school diploma or a commencement credential. To assure that students with disabilities are encouraged and assisted to achieve the credits and the skill levels necessary for attaining a diploma or credential, the district adopts the following procedures:

1. The Committee on Special Education (CSE) will annually review the special educational needs of each student with a disability. At each annual review after the student has entered the middle school, the CSE will make an assessment as to whether or not the student's capacities indicate probable success in a course of study leading to a diploma, or whether his or her needs could be better met in an individualized education program designed to culminate in a Skills and Achievement Commencement Credential. Where appropriate, the student will participate in this decision-making process.
2. The decision will be reviewed annually. The CSE will consider the following factors:
  - current levels of achievement;
  - learning rate;
  - preference of student and family.
3. The CSE will consider whether the student's disability is such that s/he is entitled to testing modifications, which will be specified on the IEP.
4. The district will offer appropriate remedial instruction for all students.
5. The CSE will identify and recommend support services and supplementary instruction necessary to assist students to benefit from credit courses.
6. If the student's special educational needs require instruction in small classes from certified special education teachers, the IEP shall so indicate and placement will be made in or outside the district in special classes. In any such case, instruction in the small classes will adapt, as appropriate, to the needs of the student the content, methodology or delivery of instruction to address the unique needs of the student's disability; and to ensure access of the student to the general curriculum, so that he or she can meet the educational standards that apply to all students.
7. In all cases in which a Skills and Achievement Commencement Credential is recommended to be the credential the student is being prepared for, parents will receive written notice that a student is entitled to receive a free, appropriate public education until the end of the school year in which he/she reaches his/her twenty-first (21st) birthday.

## **GUIDELINES FOR ISSUANCE OF A SKILLS AND ACHIEVEMENT COMMENCEMENT CREDENTIAL (SACC)**

The Board of Education and district staff shall comply with all federal and state requirements concerning the education of children with disabilities.

The district subscribes to the concept that all students must be provided with quality instruction and opportunities for academic achievement. In accordance with this, it is expected that students with disabilities will be guided toward a course of study which will lead to the achievement of a high school diploma. It is recognized however that the achievement of this standard may be precluded for some students due to the nature or severity of their disability. The awarding of a SAC credential is authorized for such students under the following conditions:

- No student shall be denied the opportunity to earn a high school diploma as defined by the Commissioner of Education. The IEP of a student of age thirteen or higher shall stipulate the type of diploma/credential which achievement of the goals specified therein will lead.
- Such credential shall be awarded at the end of the school year in which the student reaches age 21 provided that the educational goals in the student's current IEP have been achieved.
- Alternately, upon application of the student or parent, such credential may be awarded upon the completion of twelve years of attendance or its equivalence, excluding kindergarten, provided that the educational goals in the student's current IEP have been achieved.
- Any student under age 21 who is awarded a SACC shall receive written notice of entitlement to attend the district school tuition free until the end of the school year in which that age is reached or a high school diploma is earned.
- SACCs will only be considered for students with severe disabilities.
- The SACC credential document shall be in conformance with the Regulations of the Commissioner of Education.



# ***PROCEDURAL SAFEGUARDS***

## INFORMED CONSENT (CSE AND CPSE)

### DUE PROCESS PROCEDURES

A Revised (April 2014) mandatory procedural safeguards notice has been provided to school districts by the State Education Department. The Procedural Safeguards Notice is available on the Special Education District website: <http://www.p12.nysed.gov/specialed/formsnotices/procedural-safeguards-notice.htm>

The procedural safeguards notice must be provided to parents of a student with a disability, at a minimum one time per year and also upon:

- initial referral or parental request for evaluation; request by a parent;
- the first filing of a due process complaint notice to request mediation or an impartial due process hearing;
- a decision to impose a suspension or removal that constitutes a disciplinary change in placement; and
- receipt of a parent's first State complaint in a school year.

#### ***"Consent" means:***

- the parent has been fully informed, in his or her native language or other mode of communication, of all information relevant to the activity for which consent is sought, and has been notified of the records of the student which will be released and to whom they will be released;
- the parent understands and agrees in writing to the activity for which consent is sought; and
- the parent is made aware that the consent is voluntary on the part of the parent and may be revoked at any time except that, if a parent revokes consent, that revocation is not retroactive, (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

#### **Written parental consent is required prior to:**

□ **Initial Evaluation** - Upon receipt of a referral to the CPSE/CSE of a student who is suspected of having a disability, parental consent for evaluation is requested. The parent is contacted by a representative of the CPSE/CSE. The reason for the referral and the evaluation process are explained. The notice will include a description of the evaluation procedures. The parent is also provided with a copy of their due process rights, information describing the components of a comprehensive evaluation, and A Parent's Guide to Special Education. Translations are provided to the parent as needed. If the parent does not consent, the parent may be invited to a conference to discuss the evaluation process. Outreach efforts will be made, when necessary, to ensure the parent has received and understands the request for consent. If the parent of a school age child for an initial evaluation does not provide consent within 30 days of the date of receipt of referral, the Chairperson will document attempts to obtain parental consent and may request the Board initiate an impartial hearing.

*If the parent of a preschool child does not provide consent for initial evaluation, no further action will be taken by the CPSE until such consent is obtained.*

□ **Initial Provision of Special Education Services** - If the CPSE/CSE determines the student has a disability and recommends special education services, parent consent to initial placement is requested and the parent is provided with a copy of their due process rights. If a parent refuses to give written consent, the district may not deny the parent or child any other services, benefit or activity of the school district, except for the recommended special education services. Translations are provided as necessary. Parents are given the opportunity for further discussion with the Chairperson of the CPSE/CSE or school staff, if needed. Outreach efforts are made, when necessary, to ensure the parent has received and understands the request for consent for placement. If the parent of a school age child for initial provision of special education services within 30 days of notice of recommendation, the Board of Education will initiate an impartial hearing. If the parent of a preschool child does not provide consent for the initial provision of special education services, no further action will be taken by the CPSE until such consent is obtained.

□ **Initial Provision of an Extended School Year (12 Month) Program or Services** - The procedures detailed above apply.

□ **Reevaluation** - Parental consent will be requested prior to conducting a reevaluation of the student; however, the district may proceed with the reevaluation if the parent/guardian does not respond and reasonable measures have been taken to obtain their consent. Reasonable measures are interpreted as:

- a written notice is sent to the parent requesting their consent for the reevaluation; and
- at least one additional attempt is made to notify the parents; this may mean an additional written notice or a telephone call

□ **Requests for Records / Other Communications with Non-District Personnel** - Parent consent is requested for the following:

- Release of CPSE/CSE records to another agency / individual
- Request for copies of reports / evaluations from another agency / individual
- Request for verbal communications with another agency / individual (i.e.; private therapists)
- See section on Special Education Records: Access and Accessibility for further information in this regard

Parent consent is not required before reviewing existing data as part of an evaluation or a reevaluation or administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students. Parental consent is required for a functional behavioral assessment.

## INDEPENDENT EVALUATIONS

At the time of CSE initial or reevaluation, the CSE Office will inform parents regarding their right to an independent evaluation by providing them with a copy of the Procedural Safeguards Notice. When they disagree with the evaluation conducted by the CSE, parents may request an independent evaluation. The school district has a right to initiate an impartial hearing to demonstrate that its evaluation is appropriate or that the evaluation obtained by the parent does not meet school district's criteria. If a hearing officer determines that the district's evaluation was appropriate, or the evaluation obtained by the parent did not meet school district's criteria, the parent is not entitled to reimbursement at district's expense. Any independent evaluation, whether paid for by the parent or by the school district, will be reviewed by the CSE and taken into consideration in its final placement determination.

If parents intend to seek funding for the cost of the evaluation, they must adhere to following criteria:

*The District will permit parents to select any independent evaluator in practice within a 200-mile radius of the District at the time the parent makes the request of the District, as long as the qualified professional selected by the parent is a NYS certified and/or licensed evaluator. The District has also established a list of qualified professionals who are in private practice or employees of other public agencies to who parents may go to secure an IEE. In addition, the District will consider for payment, an evaluation performed by an employee of any other public school district or BOCES within the counties of Westchester, Rockland, or New York City whom the parent chooses to employ as an independent evaluator at the then current hourly rate paid to that NYS licensed or certified individual by his/her respective public school district or BOCES.*

## SURROGATE PARENTS

**“Surrogate parent”** means a person appointed to act in place of parents or guardians when a student's parents or guardians are not known, or when after reasonable efforts, the board of education cannot discover the whereabouts of a parent or, the student is a ward of the State. The Board of Education shall select a surrogate parent from a list of individuals who are eligible and willing to serve as surrogate parents. The list is approved at the annual reorganization meeting of the Board.

## QUALIFICATIONS

Persons selected as surrogate parents:

- cannot be officers, employees or agents of the school district or State Education Department or other agency involved in the education or care of the student;
- shall have no other interest which could conflict with their primary allegiance to the student they would represent; and
- shall have knowledge and skills that ensure adequate representation of the student.

Persons selected as surrogate parents should, to the extent possible:

- be committed to acquaint themselves personally and thoroughly with the student and the student's educational needs; and
- be generally familiar with the educational options available to students with disabilities.

### **PROCEDURES FOR ASSIGNING SURROGATES:**

**Assignment of a surrogate parent to a particular student shall be made in accordance with the following procedures:**

1. Any person whose work involves education or treatment of students who knows of a student who may need special education services, and who knows that the parents or guardians are not known or are unavailable, or that the student is a ward of the State, may file a request for assignment of a surrogate parent, with the Committee on Special Education.
2. The Committee on Special Education shall send notice of the possible need for a surrogate parent to the adult in charge of the student's place of residence and to the parents or guardians at their last known address.
3. The Committee on Special Education shall determine whether the parents or guardians are unknown or unavailable, or whether the student is a ward of the State. This determination shall be completed within a reasonable time following the receipt of the original request for a surrogate parent. If the Committee on Special Education finds that there is a need for a surrogate parent, such assignment shall be made by the Board of Education or other body responsible for the provision of special education programming and services within ten (10) days of the date of determination by the Committee.
4. Once assigned, the surrogate parent shall represent the student for as long as a surrogate parent is required.
5. The foster parent of the student, who otherwise meets the qualifications of a surrogate parent, may be appointed as the surrogate parent of the student without being appointed from a list approved by the Board of Education.

### **SPECIAL EDUCATION MEDIATION**

Special Education mediation is a process in which the parents of a student with a disability and representative of the school district meet with an independent person, a mediator. By asking questions and discussing all information with both parties, the mediator helps the parents and school district representatives to reach a more complete understanding of each other's concerns and to reach an agreement about the special education programs and services that the student will receive. Mediation is voluntary and may not be used to deny or delay a parent's rights to an impartial hearing. The mediators are qualified, impartial and have been trained in effective mediation techniques. A mediator may not have a personal or professional interest which would conflict with his or her objectivity in the mediation process and may not be an employee of a school district or program serving students with disabilities. Mediation

will be scheduled in a timely manner and held in a location convenient to the parties. Mediation occurs at no cost to either the parents or the school district.

If a parent disagrees with the decision of the Committee regarding their student's program or services, they have the option to participate in mediation. Choosing to participate in mediation does not limit other alternatives, such as requesting a meeting with the Committee or requesting an impartial hearing.

Unlike an impartial hearing, at the end of which the impartial hearing officer makes a decision about the kinds of special education programs and services the student will receive, the mediator does not make a decision. At the end of the mediation session, whatever the parents and the school district representative agree should be done is written down. Agreement may be reached on any or all of the concerns or issues which were discussed during the mediation session. Any remaining issues can be discussed further with the CSE or can be reviewed by an impartial hearing officer. Discussions during the mediation session are confidential and may not be used as evidence in any subsequent hearings or proceedings.

### **RESOLUTION SESSIONS**

IDEA '04 requires school district and parents, prior to the commencement of an impartial hearing (unless both parties are in agreement to waive the resolution session or if the parents prefer to pursue mediation), to meet within fifteen days of receipt of the request for an impartial hearing in order to resolve the disagreement. If the district and parent (s)/guardian are unable to reach such an agreement, the impartial hearing request shall go forward. If a resolution session is held and an agreement reached, the resolution agreement may be voided by either party within 3 business days of its execution. The District's representative who attends the session is authorized to bind the district in any agreement. Any agreement must be put in written form and signed by the parties.

### **APPOINTMENT OF IMPARTIAL HEARING OFFICERS**

The Board of Education annually establishes and maintains a list of names and qualifications of all Impartial Hearing Officers available to serve in the school district.

**A certified impartial hearing officer shall, beginning September 1, 2001, be:**

- a New York State attorney in good standing with a minimum of two years' practice and/or experience in the areas of education, special education, disability rights or civil rights; or be independent and not an officer, employee or agent of the school district or of the Board of Cooperative Educational Services (BOCES) of which the school district is a component or an employee of the State Education Department;
- continue to remain qualified as an Impartial Hearing Officer if the individual was certified as an Impartial Hearing Officer prior to September 1, 2001;

- not have been employed by a school district, school or program serving students with disabilities placed there by a school district CSE or an officer, employee or agent of a school district for two years following the termination of such employment;
- have access to the support and equipment necessary to perform the duties of an Impartial Hearing Officer;
- successfully complete a State Education Department training program.

### **Procedures**

1. The selection of an impartial hearing officer must be made from a list of all hearing officers who are certified and available to serve in the school district.
2. The list must be established and maintained in alphabetical order with new appointees being inserted into the alphabetical order of the list.
3. Selection must be made on a rotational basis, beginning with the first name after the hearing officer who last served. If no hearing officer on the list has served, selection must be made beginning with the first name on the list.
4. If a hearing officer declines appointment, or if within 24 hours the Impartial Hearing Officer fails to respond or is unreachable after reasonable efforts by the school district, each successive Impartial Hearing Officer whose name next appears on the list, shall be offered appointment until such appointment is accepted. These attempts will be documented.

***For further information concerning the impartial hearing process, refer to the Notice of Due Process Rights.***

### **GUARDIAN AD LITEM**

In the event the impartial hearing officer determines that the interests of the parent are opposed to or inconsistent with those of the student, or that for any other reason the interests of a student would best be protected by appointment of a *guardian ad litem*, the impartial hearing officer shall appoint a *guardian ad litem*, to protect the interests of the student unless a surrogate parent has previously been assigned. The impartial hearing officer shall ensure that the procedural due process rights afforded to the student’s parent are preserved throughout the hearing whenever a *guardian ad litem* is appointed.

A “*guardian ad litem*” is defined as a person familiar with the provisions of the Part 200 Regulations who is appointed from the list of surrogate parents or who is a pro-bono attorney appointed to represent the interests of a student in an impartial hearing and, where appropriate, to join in an appeal to the State Review Officer initiated by the parent or Board of Education. A *guardian ad litem* shall have the right to fully participate in the impartial hearing to the extent indicated in the Regulations.

# ***RECORDS ACCESS AND CONFIDENTIALITY***



## **NOTICE OF RIGHTS CONCERNING STUDENT RECORDS**

**Following is an explanation of the rights of parents/guardians concerning school records relating to their student pursuant to the Federal “Family Educational Rights and Privacy Act of 1974”:**

- Parents of a student under 18, or a student 18 or older, have a right to inspect and review any and all official records, files and data directly related to their students, including all material that is incorporated into each student’s cumulative record folder, and intended for school use or to be available to parties outside the school or school system, and specifically including, but not necessarily limited to, identifying data, academic work completed, level of achievement (grades, standardized achievement test scores), attendance data, score on standardized intelligence, aptitude, and psychological tests, interest inventory results, health data, family background information, teacher or counselor ratings and observations, and verified report of serious recurrent behavior patterns.
- A parent of a student under 18 years of age or a student 18 years of age or older shall make a request for access to a student’s (their own) school records, in writing, to the Elementary Principal of the building to which such student is assigned or the Guidance Counselor in the Secondary School. Upon receipt of such request, arrangements shall be made to provide access to such records within a reasonable period of time, but in no case, no more than forty-five (45) days after the request has been received. Confidential student records are maintained in the Office for Special Education and Student Services. A parent of a student under 18 years of age or a student 18 years of age or older shall make a request for access to a student’s (their own) school records, in writing, to the Assistant Director of Special Education. Upon receipt of such request, arrangements shall be made to provide access to such records within a reasonable period of time, but in no case, no more than forty-five (45) days after the request has been received.
- Such parents and students are also entitled to an opportunity for a hearing to challenge the content of such records, to ensure that they are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading or otherwise inappropriate data contained therein. Any questions concerning the procedure to be followed in requesting such a hearing should be directed to the Superintendent of Schools.
- Student records and any material contained therein, which is personally identifiable, are confidential and may not be released or made available to persons other than parents or students without the written consent of such parents or student. There are a number of exceptions to this rule, such as other school employees and officials, and certain State and Federal officials who have a legitimate educational need for access to such records in the course of their employment.

***Terms, which are defined in Federal or State law, which are used in this statement, are explained below:***

**Student:** any person who has received educational services or instruction within the District. This includes students who receive preschool services through the district CPSE.

**Eligible Student:** a student or former student who has reached the age of eighteen or who is attending an institution of post-secondary school education. An “eligible student” has full access to his/her own records and is the only person who is authorized to consent to the release of such records. Education records of an eligible student may be disclosed to his/her parent(s), without that student’s consent, where the student is claimed as a dependent by the parent(s) for federal income tax purposes. Such student may also expressly authorize a parent or guardian to exercise access and release rights on his/her behalf, but such authorization must be in writing, and must be signed by the student.

**Parent:** either parent, unless his/her right to access school records has been specifically revoked by court order or a legally binding document and the District has received notice of such court order or document. The term “parent” also includes a guardian who has been appointed by a court or who had demonstrated, to the satisfaction of the principal, that he or she is the actual and only person responsible for the student and for making decisions on the student’s behalf. Non-custodial parents have the same rights concerning access to their student’s educational records as do parents who have custody. Boards may use the 45-day period to inform the custodial parent and afford him or her the opportunity to present a court order or other binding instrument barring the release of the data requested.

**Education Record:** a record which is maintained within the school district which relates to the preschool, elementary, or secondary school education of a student within the district and which is accessible to more than one educator or other professional within the school district.

**Personally Identifiable:** information that includes the name or address of the student, the student’s parent, or other family member, a personal identifier such as the student’s social security or student identification number, or a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

### **Records Kept In The District, Their Location and Custodian**

The student cumulative record is initiated upon the student’s entry into school, and follows the student through his/her school career. By the time the student completes secondary school, the record will include the following kinds of information: personal identification data; attendance records; health history; end-of-the-year development suggestions; academic history including subjects and teachers by semester and year, units of study, summer school credits, subjects and grades failed and subjects dropped, secondary school subject sequences, type of diploma and date of graduation, report cards; standardized tests and follow-through letters regarding remedial services; high school transcript, correspondence which is pertinent to the educational development of the student; accomplishments; records of suspensions or other disciplinary matters; and honors and awards.

Confidential records are maintained in the Office of Special Services and include materials such as referral for educationally-related support services (ERSS), Academic Intervention Support Services, or evaluation for special education; records from family court and student protective services; information relating to drug or alcohol abuse; and any other confidential material.

	Central Administration	CSE Office	Main or Guidance Office	Principal	MS / HS Attendance	Teacher	Nurse	Clinician
Cumulative Academic Health			1				1	
Attendance			1		1	1	1	
Registration		1	1				1	
Standardized Test Records	1	1	1					

**CONFIDENTIAL**

<b><u>PSYCHOLOGICAL</u></b>		1						1
Special Education		1						1
Related Service Evaluations		1						1

**INSPECTION OF SCHOOL DISTRICT RECORDS**

Parent(s), guardian(s) and eligible students may inspect and review the student’s official records, files and data directly related to the student upon compliance with the following conditions:

1. The parent or eligible student should submit to student’s school principal in the elementary schools or guidance counselor in the secondary schools a written request to see the student’s file. If a student’s records are maintained in several locations, the school principal will, upon request, collect the records so that they may be inspected at one site (except for special education records, as described below). Such review will be scheduled promptly after receipt of the written request for access and in no case more than forty-five (45) days from the date of that receipt. For records containing information on more than one student, parent/student access is limited to only the information which pertains to their student:
  - Confidential Records may be obtained upon direct request to the Director of Special Services. Appointments for review of special education records will be made upon a minimum of three days’ notice at the mutual convenience of staff and parent or eligible student.
  - Upon request, record review will be arranged prior to any Committee on Preschool Special Education (CPSE) or Committee on Special Education (CSE) meeting or any discussions regarding an Individualized Education Program.

2. Within five (5) school days of receipt of a written request for a record reasonably described, the principal or guidance counselor shall make such record available, deny such request in writing, or furnish a written acknowledgment of the receipt of the request and a statement of the approximate date when the request will be granted or denied. If access to records is neither granted nor denied within ten (10) business days after the principal or guidance counselor acknowledges receipt of the request, failure to respond may be construed as a denial of access that may be appealed.
3. Any person denied access to a record, within thirty (30) days from receipt of notice of such denial, may appeal the denial, in writing, to the Superintendent of Schools or a designee. It may be appealed in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules.
4. Appropriate school district personnel will be present during record inspection to interpret and explain records. Records may be inspected between 9:00 AM and 3:00 PM. Copies of documents will be made available at a cost of \$.25 per page. Parents may be accompanied by any person in reviewing records or may have an appropriately authorized representative inspect and review only the information relating to their student.

### **RELEASE OF STUDENT RECORDS TO THIRD PARTIES – BOE POLICY 4321.5**

**Release with Consent** - Except under certain limited circumstances set forth in this policy and permitted by the Family Education Rights and Privacy Act, education records will be released to third parties only with the prior written consent of the parent or eligible student.

**Release Without Consent** - *Records may be released without written consent only under the following circumstances:*

1. “Directory Information” may be disclosed, where appropriate, without consent.
2. Educational records concerning a particular student may be released only to staff members who have “responsibility for the student, and then only if it is educationally necessary to consult the records”.
3. Records in the custody of the Department of Special Education will be released to school officials and members of the Committees on Special Education or Preschool Special Education only for purposes set out in the Individuals with Disabilities Education Act (IDEA)<sup>3</sup>, including, but not limited to, identification of a student’s disabling condition and development of an individualized education program.
4. Portions of the cumulative record or current evaluations and IEP from special education records may be released without consent to another school under the circumstances indicated below:
  - where the student is also enrolled or receives services;
  - if the principal of the school maintaining the record has received written notification of the student’s intent or;

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<sup>3</sup> The Individual with Disabilities Education Act (IDEA) was formerly the Education of the Handicapped Act (EHA).

- attempt to enroll there or if the Committee on Special Education has recommended placement in such school:

***Records disclosed pursuant to this provision, without express written consent, will be only those deemed by the Director of Special Services to be essential for the provision of educational services/ planning. The District shall give notice to parents or eligible students when such disclosure is made. They may request and receive a copy of any records released under this provision.***

5. Records may be released without consent to federal and state officials in connection with evaluation of federally supported education programs, or enforcement of federal legal requirements. Persons reviewing records under this provision must sign a written form, to be kept in the student's folder, indicating their interest in the records.
6. With the approval of the Superintendent of Schools, records may be released without consent to organizations, public and private, conducting studies for, or on behalf of, educational agencies or institutions. The District shall require recipients of such information to provide written assurances that personally identifiable information received will be destroyed when no longer needed for the study.
7. Records may be released without consent to accrediting organizations to carry out their accrediting functions.
8. Records may be released without consent to comply with judicial orders or lawfully issued subpoenas. A subpoena will be considered to be "lawfully issued" when it is issued by a court, or when counsel to the school has reviewed it and found it to be lawfully issued. Before making such a disclosure, the District must send written notice to the parent or eligible student.
9. Records may be released without consent in health or safety emergencies, if such disclosure is deemed by the official making the disclosure to be warranted by the seriousness of the threat to the health or safety of the student or other persons, and if the information is necessary to meet the emergency. Such records will be released without written consent only in the event that the person to whom the information is disclosed is qualified to deal with the emergency and time is an important factor in dealing with the emergency.

## **RECORDS OF REQUESTS FOR ACCESS TO EDUCATION RECORDS**

Current special education staff and administration have the right to continuous access to the special education student files. In addition, for all others, the district will maintain a record of all requests for disclosure of information from, or permission for access to, a student's special or general education record and will keep a record of all information disclosed and access permitted. Such record will not include request for access by the parents who have responsibility for the student, the student, persons whose request is accompanied by prior written consent or a party seeking Directory Information. The access record will be kept with the cumulative record, or, in the case of records pertaining to special education, with those records. It will be available only to the record custodian, the eligible student, the parent of the student, or to public officials for the purpose of auditing or enforcing the requirement of federally supported educational programs. The record will include:

- the name of the person or agency that made the request, the interest the person or agency had in the information, the date of the request,
- whether the request was granted, and if so, the date access was permitted;
- such record will be maintained as long as the student's education record is maintained.

### **PROCEDURES FOR MAINTAINING CONFIDENTIALITY OF CPSE AND CSE RECORDS**

Student records and files are kept in locked files in an office that is also locked when left unattended. An electronic alarm system is activated when the building is closed. The CPSE/CSE secretaries monitor access to student files. They acknowledge and are familiar with all staff who have access. Professionals visit the CPSE/CSE office when they need access to a file. The CPSE/CSE secretary obtains the file and the professional proceeds to a designated area where the review can take place. The access log is signed.

When the professional's review is complete, the file is returned to the CPSE/CSE secretary.

Only professionals who are working with the student and parents who are members of the CPSE/CSE are allowed access to the records. Specified support staff is also allowed access to student files in order to complete tasks such as filing, sending and receiving records, etc. The student's original record is not allowed out of the office at any time.

### **PROCEDURES TO SEEK TO CORRECT EDUCATION RECORDS**

***Parents and eligible students have a right to seek to change any part of a student's record which they believe to be inaccurate, misleading or in violation of the student's rights:***

1. The parent or student shall notify the Principal or the Director of Special Services of objections and shall prepare and sign a statement identifying the records believed to be inaccurate, misleading or otherwise in violation of rights together with a reason for challenge. Upon receipt of such statement, the Principal or the Director of Special Services will hold an information conference with the parent or student and, when possible, with the maker of the record. If, after reviewing the record and objections to it, the Principal or Director of Special Services finds no basis for amendment, he or she shall so advise the student or parent in writing and advise them of the right to a hearing.
2. The Principal or the Director of Special Services will also advise the student or parent of the right to place in the education record a statement commenting on the challenged information and/or setting forth any reason for disagreeing with this decision. The district as part of the education record shall maintain an explanation placed in an education record under this paragraph as long as the district maintains the record. The district with the education record will release it whenever the provisions of this policy authorize such release.

## **HEARING PROCESS**

1. A hearing pursuant to paragraph 1 will be held upon request and the parents will receive timely notice of the place, date and time. The hearing officer may be the Superintendent of Schools or a designated school official having no interest in the hearing's outcome. The parents may, at their own expense, be assisted or represented by one or more individuals of their choice, including an attorney, and will be afforded a full and fair opportunity to present evidence.

After taking evidence, the Superintendent or hearing officer shall render a written decision stating the disposition of the challenge and the reasons for the determination. If the Superintendent or hearing officer decides that the record is not accurate or is otherwise in violation of the rights of the student, he/she shall direct the Principal or Director of Special Services to make the appropriate changes. Otherwise, he shall advise the parent of the right to place in the education record a statement commenting on challenged information.

## **SPECIAL PROVISIONS RELATING TO ALCOHOL OR DRUG ABUSE SERVICES AND AIDS**

Effective February 1, 1989, all school personnel are required by law to protect the privacy of students or other people (i.e., family members) identified in student records as having AIDS or having tested positive for exposure to the AIDS virus. Each release of any such information requires the express written consent of the parent, or the student, if over the age of 18. A separate consent is required for each disclosure. A consent for release of information which allowed a school to receive such information does not authorize disclosure by school personnel. Information covered by this provision shall not be included in a student's records unless necessary for the provision of educational services and appropriate care, and, where it must be included, it shall to the greatest extent possible, be recorded separately from other information so as to allow the school to release other information, if authorized, without release of the AIDS-related information.

# ***DISCIPLINE***



## SCHOOL CONDUCT AND DISCIPLINE

In accordance with subpart 201 of the Regulations of the Commissioner of Education, the Kingston City School District has adopted and implemented a Code of Conduct on school conduct and discipline designed to promote responsible student behavior. A copy of the document is on file in each school building and is available for review by any resident of the district.

Students with disabilities who are mainstreamed in the schools of the district are generally expected to meet mainstream standards for school conduct and are subject to the district-wide policy. However, when a student with a disability repeatedly violates school rules, the child may be reevaluated by the Committee on Special Education to determine whether the inappropriate conduct is related to the disability and whether a change in services or placement is appropriate. When the conduct is related to the disability, students with disabilities will be treated in accordance with their individual educational needs.

“Disciplinary change in placement” means a suspension or removal from a student’s current educational placement that is either:

1. for more than 10 consecutive school days; or
2. for a period of 10 consecutive days or less if the student is subjected to a series of suspensions or removals that constitute a pattern because they cumulate to more than 10 school days in a school year; because the student’s behavior is substantially similar to the student’s behavior in previous incidents that resulted in the series of removals; and because of such factors as the length of each suspension or removal, the total amount of time the student is removed and the proximity of the suspensions or removals to one another. The school district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

**Authority of School Personnel** – School Personnel may change the placement of a student with a disability to the extent that such alternatives would be applied to students without disabilities: (1) to an appropriate interim alternative educational setting (IAES), or suspension, for not more than 10 school days; and (2) to an IAES for not more than 45 days if the student brings a weapon, knowingly possesses, uses, sells or solicits illegal drugs while at school or a school function or for serious bodily injury. In case # 2, the Superintendent may order such change in placement of a student with a disability to an IAES, directly or upon recommendation of a hearing officer in the superintendent’s hearing, even where the CSE determines that the student’s behavior is a manifestation of the student’s disability. The setting shall be determined by the CSE.

Either before or not later than 10 school days after taking the disciplinary action described above: (1) the CSE will meet to develop an assessment plan to address that behavior; or (2) if the student already has a behavioral intervention plan, the CSE will review the plan and modify it, as necessary, to address the behavior.

### **Superintendent’s Hearings on Disciplinary Charges Against Students with Disabilities**

Superintendent’s hearings on disciplinary charges against students with disabilities and students presumed to have a disability for discipline purposes shall be bifurcated into a guilt phase and a penalty phase and conducted in accordance with the following procedures:

The Superintendent of Schools or hearing officer in the superintendent’s hearing shall proceed with the guilt phase and determine whether the student is guilty of the alleged misconduct. If it is determined that the student is guilty, the superintendent of schools or hearing officer shall determine whether a suspension or removal in excess of 10 consecutive school days in a school year or a disciplinary change in placement should be considered. If such a suspension or removal is considered, before the superintendent orders or the hearing officer recommends any such removal, the superintendent’s hearing shall be adjourned until a manifestation determination is made by the Manifestation Team, except in cases where an IAES has been ordered. If the superintendent or hearing officer determines that a suspension or removal that would constitute a disciplinary change in placement should not be considered, the hearing shall proceed to the penalty phase.

Upon a determination by the CSE that the behavior of a student with a disability was not a manifestation of the student’s disability, the student may be disciplined in the same manner as a nondisabled student, except that the student shall continue to receive services. Upon receipt of notice of the determination, the superintendent or hearing officer shall proceed with the penalty phase of the hearing. If the CSE determines that the behavior was a manifestation of the student’s disability, the superintendent or hearing officer shall dismiss the superintendent’s hearing, except in cases where an IAES has been ordered. For the penalty phase, the school district will transmit copies of the special education and disciplinary records to the superintendent or hearing officer for consideration.

**Manifestation Determination Review** - If any of the disciplinary actions above are contemplated or if a disciplinary action involving a change in placement for more than 10 days is contemplated for a student with a disability who has engaged in any behavior that violated any rule or code of conduct of the district that applies to all students : (1) not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under this section; and (2) immediately, if possible, but in no case later than 10 school days after the date on which the decision to take, a meeting of the Manifestation Team and other qualified personnel will be scheduled to determine the relationship between the student’s disability and the behavior subject to the disciplinary action.

In carrying out the review, the CSE may determine that the behavior of the student was not a manifestation of such student’s disability only if the CSE first considers, in terms of the behavior subject to disciplinary action, all relevant information, including: evaluation and diagnostic results, including such results and other relevant information supplied by the parents of the student; observations of the student; and the student’s IEP and placement; and ***then determines:***

- **Was the conduct in question a direct result of the school district’s failure to implement the IEP?**
- **Was the conduct in question caused by or substantially and directly related to the child’s disability?**

A special education student may be suspended by a building principal more than once during a school year, but a series of short-term suspensions adding up to more than ten (10) days in the same school year may be considered a change in placement, requiring CSE review. Therefore, building principals, in consultation with the chairperson of the CSE, will monitor the total days and pattern of suspensions with respect to each special education student. If a student has already been suspended on multiple occasions or if his /her behavior suggests that a “revolving door” pattern of suspensions is developing, the principal is expected to consult with the CSE before again suspending a student for disciplinary reasons.

In addition, if a special education student repeatedly violates school rules, any member of the professional staff of a school may ask the CSE to review the student’s placement. The parent is invited to the meeting. The Committee, after reevaluation or review of records, may determine that the student requires a different program, within or outside the district. The CSE may develop a behavior intervention plan of that time or review the existing plan and its implementation to determine if modifications are necessary. The parent has the right to seek an independent evaluation or to appeal. The student’s class setting will not be changed during the course of the review or appeal procedures.

**Determination of Setting** - An interim educational setting in which a student is placed by either school personnel or a hearing officer shall: (1) be selected to enable the student to continue to participate in the general curriculum, although in another setting, that will enable the student to meet the IEP goals; and (2) include services and modifications designed to address the behavior described above so that it does not recur.

**Parental Notice of Disciplinary Removal** – No later than the date on which a decision is made to change the placement of a student with a disability to an IAES, or a decision is to impose a suspension or removal that constitutes a disciplinary change in placement, the parent shall be notified of the decision and shall be provided the procedural safeguards notice.

**Parent Appeal** - If the parent disagrees with a determination that the student’s behavior was not a manifestation of the student’s disability or with any decision regarding placement, the parent may request a hearing.

In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the student’s behavior was not a manifestation of such student’s disability consistent with the requirements of a manifestation determination review. In reviewing to place a student in an IAES, the hearing office shall apply the standards indicated in “Determination of Setting”.

When a parent requests a hearing to challenge the interim alternative educational setting or the manifestation determination, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period discussed in sections “Authority of School Personnel” and “Authority of a Hearing Officer”, whichever occurs first, unless the parent and the district agree otherwise.

If the student is placed in an IAES and school personnel propose to change the student's placement after the expiration of the interim alternative educational placement, during the pendency of any proceeding to challenge the proposed change in placement, the student shall remain in the current placement (the student's placement prior to the interim alternative educational setting), except where the student is again placed in an IAES by an impartial hearing officer in an expedited hearing, described below.

**Authority of an Impartial Hearing Officer**- An impartial hearing officer may order a change in placement of a student with a disability to an appropriate IAES in a dangerous situation for not more than 45 days if the hearing officer: (1) determines that the district has demonstrated substantial evidence that maintaining the current placement is likely to result in injury to the student or to others; (2) considers the appropriateness of the student's current placement; (3) considers whether the district has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and (4) determines that the IAES meets the requirements.

**Expedited Hearing** - If school personnel maintain that it is dangerous for the student to be in the current placement during the pendency of the due process proceedings, the district may request an expedited hearing. An expedited due process hearing shall be completed within 15 business days of receipt of the request for a hearing, provided that the impartial hearing officer may grant specific extensions of time at the request of either the school district or the parent. The impartial hearing officer shall mail a copy of the written, or at the option of the parents, an electronic finding of the facts to the parents, Board of Education, and VESID within 5 business days after the last hearing date, but in no event later than 45 calendar days after receipt of the request for a hearing, without exceptions or extensions. In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards indicated in "Authority of a Hearing Officer".

### **Children Suspected of Having a Disability**

Children not yet determined to be eligible for special education and related services have the protections applicable to the discipline of children with disabilities in cases where the district can be deemed to have had knowledge a child was a child with a disability before the behavior occurred **except if**:

- the child has been evaluated and determined not to be a child with a disability, or
- the child's parent has not allowed the child to be evaluated, or
- the child's parent has refused IDEA services.

The district will be deemed to have had knowledge that a child was a child with a disability before the misconduct occurred **if**:

- the child's parent has expressed concern in writing to **supervisory of administrative** personnel of the school district about the child's need for special education and related services;
- the parent has requested an evaluation of the child;
- the child's teacher or other district personnel has expressed **specific** concerns about **a pattern of behavior demonstrated by the child, directly**, to the Assistant Superintendent of Special Education and Student Services or to other **supervisory** personnel of the district.

**The school district will not be deemed to have knowledge that a child is a child with a disability if:**

- the child’s parent has not allowed the child to be evaluated, or refused IDEA services, or
- the child has been evaluated and determined not to be a child with a disability.

If the district determines that there is no basis for knowledge that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as students without disabilities who engaged in comparable behaviors. If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under section “Authority of School Personnel” or “Authority of Hearing Officer” above, the evaluation shall be conducted in an expedited manner. An expedited evaluation shall be completed no later than 15 school days after receipt of the request for evaluation. The CSE shall make a determination of eligibility of the student held no later than 5 school days after completion of the expedited evaluation. If the student is determined to be a student with a disability, taking into consideration information from the evaluation and information provided by the parents, the district shall provide special education and related services in accordance with the provisions of this part, except that, pending the results of the evaluation, the student shall remain in the education placement determined by the school authorities, which can include suspension.

# ***ACCESSIBILITY***

## **ACCESS TO ACADEMIC AND DISCIPLINARY CONFERENCES**

BOE Policy 4321

Assures access for parents of students with disabilities to school-initiated conferences with respect to educational planning or school discipline. Accordingly, a sign language interpreter will be provided, upon request, to hearing-impaired parents who require such assistance. Parents requiring this or another accommodation (i.e., translators, barrier-free site) to participate in meetings of the Committee on Special Education are requested to notify the Special Education Office.

## **ACCESS TO PROGRAMS AND EXTRA-CURRICULAR ACTIVITIES**

Students with disabilities residing in the school district have the opportunity to participate in all programs and activities administered by the district and available to the students enrolled in district public schools, providing that the students seeking to participate are otherwise qualified to participate in such programs and activities.

## **ACCESS TO EDUCATIONAL OPPORTUNITIES TITLE IX OF THE EDUCATION AMENDMENTS OF 1972**

Employment and educational opportunities, including vocational educational opportunities, are offered by the Kingston City School District to male and female students on an equal basis without discrimination on the basis of sex.

Discrimination on the basis of sex in education programs and activities is prohibited by Title IX. The District official responsible for the coordination of activities relating to non-discrimination is the Deputy Superintendent and Assistant Superintendent for Secondary Education, who serve as the Title IX Coordinator. The Coordinator will provide information, including information on complaint procedures, to any student or employee who feels that the District or its officials may have violated her or his rights under Title IX. The office is at the Administration Building of the Kingston City School District. They can be reached at 339-3000. In addition, any student or employee may make an inquiry or a complaint directly to the Federal Office for Civil Rights or New York State Division for Human Rights.

# ***MISCELLANEOUS***



## **GUIDELINES FOR PROVIDING PUBLIC SCHOOL SERVICES TO STUDENTS IN NON-PUBLIC SCHOOLS**

Chapter 378 of the Laws of 2007 include amendments to section 3602-C of Education Law relating to the education of students with disabilities who are parentally placed in nonpublic elementary and secondary schools. The public-school district where the nonpublic school is located (referred to as the District of Location (DOL) is required to provide students with disabilities enrolled in nonpublic elementary and secondary schools by their parents with special education services.

The school district of location (DOL) is responsible for:

- Child find for students who are parentally placed in nonpublic schools located in their geographic boundaries.
- Consult with the representatives of the nonpublic elementary and secondary schools located within the boundaries of the school district regarding the child find process, provision of special education services, and use of federal funds.
- Conduct a reevaluation at least once every three years of each eligible parentally placed nonpublic school student with a disability even if the student is not currently receiving special education services, unless the parent and district agree otherwise.

Parent consent is required before sharing individual evaluations, IEPs, IESPs (Individualized Education Service Plan) or Services Plans and other special education records between the district of location (DOL) and the district of residence (DOR). There is no federal or State requirement for parental consent to share information between the school district of location and the nonpublic school the student intends to enroll in or is enrolled in.

The parent must request special education services in writing to the school district of location by June 1 preceding the school year for which the request for services is made.

For students who are residents of New York State:

- The CSE of the district of location must develop an IESP for students who are enrolled by their parents in nonpublic elementary and secondary schools located in the geographic boundaries of the public school.
- The IESP must be developed in the same manner and with the same contents as an IEP is developed.
- The CSE of the district of location must ensure that a representative of the nonpublic school where the student attends is included in the meeting where the IESP is developed.
- The manner special education and related services will be provided to students is determined by the district of location.

The student's district of residence (DOR) must:

- Provide a Free and Appropriate Public Education by developing an IEP when requested by the parent.

For out-of-state students with disabilities parentally placed in nonpublic schools located in NYS:

- District of location has child find responsibilities.
- Services provided to out of state students must be documented on a Service Plan that is developed by the CSE of the district of location which provides special education services only to the extent that such service provides the student equitable participation in the services funded with IDEA funds.

For students with disabilities who are residents of New York State and parentally placed in a nonpublic school located in another state:

- The school district of location should be contacted regarding a Service Plan. The student may not be entitled to any or all of the special education services he/she might have received if enrolled in a public or nonpublic school in New York State.

Those regulations do not apply to students with disabilities:

- home schooled by parents (District of Residence responsibility);
- in private daycare or preschool programs (District of Residence responsibility);
- enrolled in a public school outside their district of residence;
- parentally placed in drug rehabilitation centers or hospitals.

## **SPACE ALLOCATION FOR SPECIAL EDUCATION PROGRAMS**

It is the policy and practice of the Board of Education of the district to ensure, to the fullest extent possible, that students with disabilities residing in the District shall be educated within the school district. BOE Policy 4321.3 ensures, to the fullest extent possible, the allocation of appropriate space within the District for special education programs that meet the needs of school-age students with disabilities. Special education services shall not be denied simply because of a lack of appropriate space.

Further, it is the policy and practice of the Board of Education to ensure, to the fullest extent possible, that appropriate space will be available to meet the needs of resident students with disabilities who attend special education programs provided by the Board of Cooperative Educational Services (“BOCES”). At least once per year, a staff member from the district’s Department of Special Education will visit the placement of each resident student who attends a BOCES special education program to assure the appropriateness of the space allocated for that placement.

The district will continue to meet with Ulster BOCES to work toward N.Y. State Education Department’s requirement in developing the regional plan that reduces the number of special education students in center based non-integrated settings. In addition, in an attempt to provide the least restrictive environment for all students, the district will continue to provide space, to the extent available, for school-age students from other school districts who need special programs not available in their home schools. The district will also attempt to provide the Board of Cooperative Educational Services with grade appropriate space for resident and non-resident students if such space is available.

## **PROCEDURES FOR EVALUATING PROGRAM OBJECTIVES**

Through the use of assessment techniques such as staff reports, interviews with faculty, parents and students, site visits, etc., formative data will be gathered relative to the success of the delineated objectives. The data will be analyzed to provide summary information to assist the district in decision-making regarding revisions and modifications for programs, services and procedures.

The goal of the special education program in the district is to provide each youngster with individualized instruction designed to help each student compensate for his or her disability in order to more fully reach his or her potential.

The methods used to evaluate the extent to which the objectives of the special education program have been achieved are:

- ongoing evaluation of student achievement using various standardized diagnostic tests and other teacher made assessments;
- annual reviews of students’ progress and programs, resulting in revised comprehensive IEPs;
- qualitative techniques such as teacher observations and conferences, classroom observations, anecdotal reports, and end-of-year student summaries;
- triennial reevaluation of each student with a disability as outlined in NYSCR 200.4 (f)(4); and
- periodic review of the district plan.

# ***SERVICES AND DISTRICT PROGRAMS***

## **SPEECH & LANGUAGE SERVICES:**

Speech and Language services are provided to students who need this intervention in order to benefit from instruction. Service delivery can be a pull-out model, inclusive model, or consultation model. Articulation services are provided to increase intelligibility of phonemic production.

## **PSYCHOLOGICAL SERVICES:**

Psychologists provide support for all district students. Psychologists complete evaluations as mandated by the Committee on Special Education. The School psychologist will complete functional behavior assessments, behavior intervention plans and provide counseling and emotional support to improve the student's ability to function in the classroom.

School psychologists advise parents, staff, and administrators on a variety of issues dealing with a student's psychological health and how it impacts a student's learning. Behavior scales are administered and characteristics of attentional issues are identified by the school psychologists. The school psychologist is an integral member of each building level Crisis Intervention Team.

## **SOCIAL WORKER SERVICES:**

The role of the social worker is varied and diverse. Services include assisting students with developing appropriate functional behavior assessments/behavior intervention plans, conflict resolution, social skills, and appropriate peer interactions. In addition, the social worker serves as a liaison between the school and community agencies to provide outside supports for students and their families. The social worker supports teachers by observing students in the classroom setting and offering suggestions on how to best provide for these students. The social worker is part of the crisis intervention team, which mobilizes supports for students, families, and staff.

## **OCCUPATIONAL THERAPY:**

Occupational therapy support is provided to enable students to be functional in the school setting in order to benefit from learning. Occupational Therapists provide skills and activities to improve fine and gross motor functioning, as well as sensory integration. Service models include individual pull-out, group therapy, and in class activities, as well as consultation for staff and parents.

## **PHYSICAL THERAPY:**

Physical therapy support is provided in order for physically disabled students to benefit from education or to be maintained in the least restrictive environment. Services are provided to improve strength and endurance, function, motor development, adaptive needs, and consultation with parents and staff when impact on performance is indicated. PT services are partially contracted to a BOCES therapist and by a full-time employee of the district. Service models include individual pull-out, group therapy, and in class activities.

## **TEACHER OF THE DEAF AND HEARING IMPAIRED:**

Services are provided through a district-employed Teacher of the Deaf and Hearing Impaired who offers student training, materials, and equipment.

## **TEACHER OF THE VISUALLY IMPAIRED:**

Services are provided through a district-employed Teacher of the Visually Impaired who offers student training, materials, equipment, Braille materials, sign language and mobility training. These services include training for the staff to better understand the needs and issues facing students whose deafness impairs functioning without support in the classroom setting.

## **CRITERIA FOR SPEECH/LANGUAGE SERVICES**

When a student's communication disorder significantly interferes with ability to make appropriate educational gains, he or she should be referred to the Committee on Special Education (CSE) for evaluation. Students whose educational performance is found not to be adversely affected by a communication disorder, but who seem able to benefit from some form of speech therapy as part of their general education programs should be referred to the Response to Intervention Team.

### ***There are a number of speech and language problems that are not viewed as disabling conditions:***

- exhibiting uneven development in speech or exhibiting language deficits that may correct themselves in a relatively short period of time;
- using speech patterns or communication skills which are below age level but which do not adversely influence classroom performance in relation to social adjustment, general education development and/or academic learning;
- using dialect differences and non-standard sentence construction which may vary from standard English, but which are not significantly deviant; i.e., speaking in linguistically non-standard English, using the double negative construction ("Don't give me no pen."). Dialect differences, while not consistent with the rules of Standard English, are not viewed as a communication disorder and will be addressed within the general education classroom;
- speaking a language other than English.

## **CRITERIA FOR COUNSELING SERVICES**

Counseling as a related service will be recommended by the CSE under the following circumstances:

- An emotional or management difficulty interferes with a student's ability to make appropriate educational gains.
- The difficulty is one which, in the clinical judgment of the evaluation team, can be addressed through school-related counseling with a qualified professional.
- The student does not appear at the present time to require medical intervention or a therapeutic milieu in order to make educational gains.

# ***CONTINUUM OF SERVICES***

## **CONTINUUM OF SERVICES**

The Kingston City School District is committed to providing services to children with and without disabilities within their home school or within the district whenever possible. Programs continue to be reassessed, redesigned and realigned to meet the needs of all students with disabilities in the least restrictive environment.

### **PRESCHOOL PROGRAMS**

The Committee on Preschool Special Education (CPSE) is responsible for identifying and evaluating preschool children (ages 3-4) with disabilities and arranging for the delivery of special education services to eligible children. A broad range of related services and special education programs are available to meet the educational needs of preschool students with disabilities. Many students receive related services (i.e., speech/language therapy, occupational therapy) in their home or mainstream preschool program. Students who are eligible to attend a special education program are placed in state-approved programs located throughout Ulster County.

### **SCHOOL-AGE PROGRAMS**

The school age programs serve students starting at age 5 and can provide services up to the age of 21. Some students with disabilities may require only support services to meet the objectives of their Individualized Education Program (IEP), while others need specialized instruction, special classes or special schools that are not within the district. The program for each student is developed at the Committee on Special Education meeting and is created by the committee chairperson, a special education teacher, a regular education teacher, a parent member, a school psychologist and parent(s)/guardian(s). In some cases, the student may also attend the meeting at the middle school and high school levels.

If a student meets New York State's criteria to be considered a student with a disability, the following continuum of services will be offered: Related Services, Consultant Teacher, Resource Room Program, Special

Class, Integrated Co-Teaching, Adaptive Physical Education and Travel Training. Special Class – out-of-district (which can include BOCES classes), Special Day School Program, Residential School Program and Home/Hospital Instruction.

The district provides support services to a range of students: students with disabilities (CSE), students with 504 accommodation plans, students who are deemed at risk of not meeting the state standards (Response to Intervention Services – RtI), and building level support services.



## **Classified Students with Disabilities: PROGRAMS**

### **CONSULTANT TEACHER**

Classified students receive a minimum of two hours per week of direct and/or indirect Consultant Teacher except that the committee on special education may recommend that a student with a disability who also needs resource room services in addition to consultant teacher services, may receive a combination of such services consistent with the student's IEP for not less than three hours each week. Direct service provides special education teacher support within the mainstream classroom or alternative locations. Indirect service provides consultation services between special education and mainstream teachers for a specific student's needs. This program operates at the K-12 level.

### **RESOURCE ROOM**

Students assigned to the resource room require additional remedial support in order to be successful within the regular education classroom. The Resource Room teacher addresses areas of weakness and provides remedial interventions and strategies to help student's access learning and meet state learner standards. This program operates at the K-12 level. The minimum level of service required by NYSED is three hours per week, unless combined with Consultant Teacher services in which case the combined services may not be less than three hours per week.

### **INTEGRATED CO-TEACHING**

Integrated co-teaching services means the provision of specially designed instruction and academic instruction provided to a group of students with disabilities and nondisabled students. There is a general education teacher and a special education providing the instruction as co-teachers. This program operates at the grade 5-12 level.

### **SPECIAL CLASS**

The Kingston City School District has a number of classes for students who require smaller teacher to student ratio, additional supports and program structure. In the elementary schools the special class ratios provided include 6:1:2, 8:1:1, 12:1:1 and 12:1:2. At the middle schools the special class ratios include 12:1:1, 12:1:2, 15:1 and 15:1:2. At Kingston High School the special class ratios include 12:1:1 and 12:1:2.

### **ADAPTIVE PHYSICAL EDUCATION**

Students who require a specially designed program of developmental activities, games, sports and rhythms suited to the interests, capacities and limitations of students with disabilities who may not safely or successfully engage in unrestricted participation in the activities of the regular physical education program.

### **OUT-OF-DISTRICT PLACEMENT**

Students with disabilities whose needs are too intensive to be addressed appropriately in an in-district special education program, may be placed in one of the following, listed from least restrictive to more restrictive:

- special class operated by another school district
- a BOCES program
- an approved Private School (day)
- 4201 or State Operated school
- an approved Residential Placement

### **HOME AND HOSPITAL INSTRUCTION**

Students with disabilities who are recommended for home and/or hospital instruction by the CSE shall receive instruction as follows:

- instruction for elementary school students will be provided a minimum of 5 hours per week; secondary school students will receive a minimum of 10 hours of instruction per week, preferably 2 hours daily;
- students who are awaiting placement may be assigned, on an interim basis and with their parent's consent, to alternate-site instruction. This instruction is identical to home teaching except that the actual instruction takes place outside the home.

Preschool students by age and recommended setting: 10/6/21

Educational Environment		Age 3	Age 4	Total # of students aged 3-4 October 4, 2019
Attending a regular early childhood program for 10 or more hours a week	and receiving the majority of hours of special education services in the regular early childhood program	2	13	15
Attending a regular early childhood program for 10 or more hours a week	and receiving the majority of hours of special education and related services in some other location	0	4	4
Attending a regular early childhood program for less than 10 hours a week	and receiving the majority of hours of special education services in in the regular early childhood program	13	12	25
Attending a regular early childhood program for less than 10 hours a week	and receiving the majority of hours of special education services in some other location	3	0	3
Separate Class		4	7	11
Separate School		1	2	3
Residential Facility		0	0	0
Home		18	16	34
Service Providers Location		0	0	0
Total		41	54	95

School Age by Disability and Age: 10/6/21

<b>Disability</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>
Autism	1	11	13	13	11	10	8	14	9
Emotional Disturbance	0	0	0	0	2	1	4	2	2
Learning Disability	0	0	1	4	15	23	53	37	54
Intellectual Disability	0	0	0	0	0	1	2	2	3
Deafness	0	0	0	0	0	0	0	0	1
Hearing Impairment	0	0	0	7	0	0	0	0	1
Speech or Language Impairment	8	36	40	37	34	18	12	9	11
Visual Impairment	0	0	0	0	0	0	0	1	0
Orthopedic Impairment	0	0	0	0	0	0	0	0	0
Other Health Impairment	1	11	24	12	21	29	31	26	43
Multiple Disabilities	0	4	6	10	9	2	3	2	8
Deaf-Blindness	0	0	0	0	0	0	0	0	0
Traumatic Brain Injury	0	0	0	0	0	0	0	0	0

## Continued

<b>Disability</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>17</b>	<b>18</b>	<b>19</b>	<b>20</b>	<b>21</b>
Autism	11	9	12	10	11	4	1	1	0
Emotional Disturbance	6	4	3	1	2	5	0	0	0
Learning Disability	59	64	64	72	52	18	0	0	0
Intellectual Disability	2	3	2	2	2	0	0	0	0
Deafness	0	0	0	0	0	0	0	0	0
Speech or Language Impairment	5	5	2	2	1	0	0	0	0
Hearing Impairment	0	0	0	0	1	0	0	0	0
Visual Impairment	2	0	0		0	0	0	0	0
Orthopedic Impairment	0	0	0	0	0	1	0	0	0
Other Health Impairment	38	36	31	34	22	3	2	0	0
Multiple Disabilities	4	7	10	2	4	7	2	4	0
Deaf-Blindness	0	0	0	0	0	1	0	0	0
Traumatic Brain Injury	1	0	0	1	0	0	0	0	0

School Aged Students by Disability and Recommended Setting:

Disability	80% or more inside regular classroom	40%-79% time inside regular classroom	Less than 40% inside regular classroom	Separate School	Residential
Autism	25	28	42	45	4
Emotional Disturbance	8	2	11	5	6
Learning Disabilities	311	167	26	2	0
Intellectual Disabilities	0	13	6	0	0
Deaf	0	1	0	0	0
Hearing Impairment	2	0	1	0	0
Speech Language	134	19	49	1	0
Visual Impairment	2	1	0	0	0
Orthopedic Impairment	0	0	1	0	0
Other Health Impairment	197	75	70	10	6
Multiple Disabilities	4	14	18	44	0
Deaf-Blindness	0	0	0	0	1
Traumatic Brain Injury	1	1	0	0	0

Kingston City School District's Out of District Placements  
SPECIAL DAY/RESIDENTIAL PLACEMENTS 7/2/11

	<b>Age Range</b>	<b>Sp. Day</b>	<b>Res.</b>
Anderson School	5-21	0	2
Abilities First	5-21	1	0
Andrus	5-21	0	0
Astor	5-14	5	0
Brookside	5-21	7	0
Center for Disability Services	5-21	0	1
Center for Discovery	5-21	4	0
Center for Spectrum Services	5-14	40	0
Children's Home Kingston	5-18	4	0
Clark Academy	5-21	1	0
CRC Wrap Around	5-21	33	0
Devereux Red Hook	5-21	8	2
Green Chimneys	5-21	0	8
Greenburg Graham	5-21	4	0
Hawthorne Cedar Knolls	5-21	0	1
Kaplan Career Academy	12-21	1	0
LaSalle School	5-21	0	1
Perkins School	6-21	0	1
Wildwood	5-21	2	1

**BOCES**

77 students attend Ulster BOCES  
7 student attends Dutchess BOCES  
2 + student attends Orange Ulster BOCES

## **SUMMARY AND CONCLUSION**

This plan endeavors to serve as a road map for the programs and services provided by the Special Services Department of the Kingston City School District. Data and ongoing examination of service delivery models will drive decisions for program options for students with special needs. The Kingston City School District strives to align its programs and services with the tenets of the Reauthorization of the Individuals with Disabilities Act of 2004, which specifically states that the regular education program is the foundation for educational options for students with disabilities. The commitment to educating as many students as possible within the confines of the Kingston City School District with opportunities to access the general education program will continue.

The Kingston City School District offers a continuum of services and programs that provide a diverse number of opportunities to effectively and successfully engage students in maximizing their learning potential.

If you require additional information, please contact Beth Lewis Jackson, Director of Special Services at 943-3073, Kim Terwilliger, Assistant Director of Elementary Special Education at 943-3073 or Angela Sterbenz, Assistant Director of Secondary Special Education at 943-3768.



# ***ATTACHMENTS***

## **ATTACHMENT A**

### **A PARENT'S GUIDE TO SPECIAL EDUCATION SERVICES**

#### **BOARD POLICIES RELATED TO SPECIAL EDUCATION**

**INTERPRETERS FOR HEARING IMPAIRED PARENT**

**PROGRAMS FOR SWD UNDER THE IDEA & NEW YORK'S EDUCATION LAW ARTICLE 89**

**PROVISION OF SPECIAL EDUCATION SERVICES IN THE LEAST RESTRICTIVE ENVIRONMENT**

**SCHOOL-WIDE PRE-REFERRAL APPROACHES & INSTRUCTION**

**ALLOCATION OF SPACE FOR SPECIAL EDUCATION PROGRAMS**

**INDEPENDENT EDUCATIONAL EVALUATIONS**

**CONFIDENTIALITY AND ACCESS TO INDIVIDUALIZED EDUCATION PROGRAMS,  
INDIVIDUALIZED EDUCATION SERVICE PROGRAMS AND SERVICE PLANS**

**AVAILABILITY OF ALTERNATIVE FORMAT INSTRUCTIONAL MATERIALS FOR STUDENTS WITH  
DISABILITIES**

**DISTRICTWIDE AND STATEWIDE ASSESSMENTS OF STUDENTS WITH DISABILITIES**

**IMPARTIAL HEARING OFFICER APPOINTMENT AND COMPENSATION**

**DECLASSIFICATION OF STUDENTS WITH DISABILITIES**

**PROGRAMS AND SERVICES FOR PARENTALLY-PLACED NONPUBLIC SCHOOL STUDENTS WITH  
DISABILITIES**

**PUBLIC REPORT ON REVISIONS TO DISTRICT POLICIES, PRACTICES AND PROCEDURES UPON A  
FINDING OF SIGNIFICANT DISPROPORTIONALITY**

**PRESCHOOL SPECIAL EDUCATION**

**SPECIAL EDUCATION PERSONNEL**

**RESPONSE TO INTERVENTION (RtI) ACADEMIC INTERVENTION SERVICES CAIS**

**STUDENTS WITH DISABILITIES PURSUANT TO SECTION 504**

**DISCIPLINE OF STUDENTS WITH DISABILITIES**

**MEDICAID COMPLIANCE**

**\*This document has not been revised to reflect the new requirements of the Individuals with Disabilities Education Act as reauthorized in 2004.**

The University of the State of New York  
The State Education Department  
Vocational and Educational Services for Individuals with Disabilities  
Albany, New York 12234  
May 2002

**THE STATE EDUCATION DEPARTMENT/THE UNIVERSITY OF THE STATE OF NEW YORK/ALBANY, NY 12234  
DEPUTY COMMISSIONER FOR VOCATIONAL AND EDUCATIONAL SERVICES  
FOR INDIVIDUALS WITH DISABILITIES  
Tel. (518) 474-2714 Fax  
(518) 474-8802**

Dear Parents and Families:

Parents and family members are critical partners, along with school district personnel, in the education of their children. Parents provide essential information to teachers and administrators, play an important role in decisions made about their children and can be a key to supporting high expectations for their children during their school years.

The New York State Board of Regents and the State Education Department have set high goals for educational programs and services for students with disabilities in New York. Among them are:

- All students will meet high standards for academic performance and personal behavior and demonstrate the knowledge and skills required by a dynamic world.
- All educational institutions will meet Regents high performance standards.
- The public will be served by qualified, ethical professionals who remain current with best practice in their fields and reflect the diversity of New York State.
- Education, information and cultural resources will be available and accessible to all people. The Office of Vocational and Educational Services for Individuals with Disabilities (VESID) strategic plan is driven by a vision that is based on the belief that individuals with disabilities, given high expectations, opportunities and support when necessary, will live successful adult lives. Children learn to become independent adults, contributing to society and participating in the community through quality educational and social experiences with their peers.

The Rehabilitation Act of 1992 states clearly that disability is a natural part of the human experience and that individuals with disabilities have the right to:

- live independently
- contribute to society
- pursue meaningful careers
- enjoy self-determination
- make choices
- enjoy integration in the economic, political, social, cultural and educational mainstream of American society

This document provides information for parents, guardians and other family members about laws, regulations and policies affecting special education programs and services. However, these protections, rights and opportunities will best help students reach their full potential when parents, families and schools work

collaboratively. Setting high expectations for students and high standards for programs will provide the greatest opportunities for a successful adult life.

Sincerely,  
Lawrence C. Gloeckler

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# Table of Contents

The Special Education Process .....	105
Initial Referral for Special Education Services.....	106
Individual Evaluation Process.....	108
Eligibility for Special Education .....	110
Individualized Education Program (IEP).....	112
Annual Review/Reevaluation .....	116
Your General Rights as a Parent .....	117
Your Child’s Educational Records.....	119
Evaluations .....	121
Notice and Parent Consent.....	122
Reimbursement for Placement Made by Parents in a Private School .....	126
Timelines .....	127
Due Process Rights.....	128
Disciplinary Procedures .....	136
References.....	137
Request for Due Process Proceedings.....	138
Members of Committees .....	140
Resources .....	142
VESID Special Education Quality Assurance Regional Offices.....	143
Parent Centers .....	144
Other Resources .....	146
Agency Resources .....	147
Index .....	149

# *The Special Education Process*

## ***What is Special Education?***

Special education means specially designed individualized or group instruction or special services or programs to meet the unique needs of students with disabilities. Special education services and programs are provided at no cost to the parent.

## ***What are the steps in the Special Education Process?***

### **Step 1: Initial Referral for Special Education Services**

Students suspected of having a disability are referred to a multidisciplinary team called the Committee on Special Education or the Committee on Preschool Special Education.

### **Step 2: Individual Evaluation Process**

The Committee arranges for an evaluation of the student's abilities and needs.

### **Step 3: Determining Eligibility for Special Education Services**

Based on evaluation results, the Committee decides if the student is eligible to receive special education services and programs.

### **Step 4: Individualized Education Program (IEP)**

If the child is eligible to receive special education services, the Committee develops and implements an appropriate IEP, based on evaluation results, to meet the needs of the student. Based on the IEP, the Committee must determine the student's placement, ensuring that services are provided in the least restrictive environment (LRE). Placement must be as close as possible to the student's home, and unless the student's IEP requires some other arrangement, the student must be educated in the school he or she would have attended in not disabled. For more information on least restrictive environment, see page 115.

### **Step 5: Annual Review/Reevaluation**

The IEP is reviewed and, if needed, modified or revised by the Committee at least once a year (annual review). The student has a reevaluation at least once every three years, to review the student's need for special education programs and services and to revise the IEP, as appropriate. A reevaluation may also occur when conditions warrant or when requested by a parent or teacher.

The process occurs sequentially with each step building on the previous one. In this way, comprehensive information about the student is obtained and considered. Timelines are in place so that delays are avoided. Parents are an integral part of this process, and your involvement is encouraged.

## *Initial Referral for Special Education Services*

### ***What should you do if you feel your child needs special education?***

If you have a preschool child and you have noticed that your child is not developing skills such as walking, talking or playing like other young children, you may want to talk to your family doctor. He or she may be able to reassure you that children develop at different rates and your child is within the normal developmental scales. If, however, the doctor is concerned, or you are still not comfortable with your child's progress, you may make a referral to your school district's Committee on Preschool Special Education (CPSE).

If your three-year-old child received services from the Early Intervention Program and is in need of special education services, he or she will need to transition (move) from the Early Intervention Program into the preschool special education program.

The Early Intervention official from your county must give written notice to the CPSE in your local school district that your child may be transitioning from the Early Intervention Program. With your consent, a transition plan must be developed no later than three months before your child's third birthday. If your school-age child is having difficulties in school, first talk to his or her teacher. Many schools offer supports for students within regular education such as psychological services, speech and language improvement services, curriculum and instructional modifications and Academic Intervention Services. If you, the teacher and principal have not been able to help your child, your child may have a disability which affects his or her learning. To find out, you can make a referral to the Committee on Special Education (CSE).

### ***What is a referral for special education?***

A referral is a written statement asking that the school district evaluate your child to determine if he or she needs special education services. This written statement should be addressed to the chairperson of your school district's Committee or your school principal. The referral may result in a request to have your child tested to see if he or she needs special education services. In some cases, you may want to meet with the principal before agreeing to test your child to discuss other ways to assist your child. As a result, the referral may be withdrawn.

### ***Who else can make a referral for special education?***

You, the parent, can always make a referral for your child. Your child's teacher or a professional in your child's school may also make a referral to the Committee. Additional people who may make a referral include doctors, judicial officers (such as a family court judge or a probation officer) or a designated person in a public agency. For a preschool child, any of the people mentioned above may make a referral to the CPSE. In addition, a referral may also be made by someone from an Early Childhood Direction Center, an approved preschool program or an Early Intervention Program that serves children with disabilities from birth to age three. A student over eighteen and younger than 21 who is an emancipated minor may refer him or herself.

### ***What are the Committee on Preschool Special Education (CPSE) and the Committee on Special Education (CSE)?***

Every school district has a CPSE and a CSE that decides a child's special education needs and services. The CPSE is responsible for children with disabilities ages 3-5. The CSE is responsible for children with disabilities ages 5-21. Some school districts also have Subcommittees on Special Education (sometimes called the Sub CSE). In New York City the Subcommittee is sometimes called the School Based Support Team. You are a member of the Committee that will recommend special education services for your child.

You know your child better than anyone else and you have valuable knowledge to bring to Committee discussions. Other members of the Committees are people who have a broad range of experiences planning for and/or working with students with disabilities. Together you will work to make sure that special education programs and services are provided to meet your child's needs.

Throughout this Guide, these Committees will be referred to as the Committee, or in some cases, more specifically as the CSE or CPSE. Members of each of these Committees are listed on page 140.

# *Individual Evaluation Process*

## ***What is an individual evaluation?***

After your child is referred for an evaluation for special education, you will be asked to give your written consent to have your son or daughter evaluated. The results of an evaluation help determine if special education services or programs are needed. An evaluation includes various assessment tools and strategies. These tests determine what your child's learning difficulties may be and how those difficulties affect his or her participation and progress in the general education curriculum. This evaluation is at no cost to you. As a parent, it will be helpful to share with the Committee the important information you have about your child's skills, abilities and needs, including copies of any evaluations you have on your child. The Committee must consider information from parents when making decisions.

## ***What is your role in the individual evaluation process?***

Parents of preschool children will be asked to select an approved evaluator from a list of evaluation sites. If you have concerns about providing consent, you can talk to the Committee chairperson. If you do not provide consent for your preschool child (ages 3-5) to be evaluated, the Committee on Preschool Special Education will take steps to make sure that you have received and understand the request for consent for evaluation of your child but the district may not go forward without your consent. If you have a school-age child, the school district is responsible for providing the evaluation.

As a parent, you have input as to the tests and assessments to be conducted on your child. Before an evaluation is conducted, you will be asked for your suggestions about evaluating your child and be given information about the kinds of tests that will be used. If you have questions about the purpose or type of evaluation proposed, you should discuss them with the chairperson of the Committee.



### ***What is included in an individual evaluation?***

Evaluations must be comprehensive and provide information about your child's unique abilities and needs. Evaluations include information from parents and a group of evaluators, including at least one special education teacher or other person with knowledge of your child's (suspected) disability.

An evaluation will provide information that relates to your child in his or her classroom. It will tell what your child needs to be involved in to participate and progress in general education curriculum.

Tests and assessments, given as part of an evaluation, must be given in your child's language by people who are trained, knowledgeable and/or certified to give the tests. The tests must be fair and not discriminate racially or culturally.

An initial evaluation to determine your child's needs must include:

- a physical examination;
- a psychological evaluation (if determined appropriate for school-age students, but mandatory for preschool children);
- a social history;
- observation of your child in his or her current education setting;
- other tests or assessments that are appropriate for your child (such as a speech and language assessment or a functional behavioral assessment);
- vocational assessments (required at age 12).

The results of the evaluation must be provided to you. This may involve a meeting with the Committee in which the technical language and scoring of individual tests and assessments are explained to you, usually by the professionals who administered the tests or assessments. In addition, you must be given a copy of the evaluation report. You may also bring in evaluation information which the Committee must consider. If you feel that an evaluation conducted by the Committee is not appropriate or if you disagree with the results, you can obtain, and request that the school district pay for, an independent educational evaluation (IEE). For more information about evaluations and independent educational evaluations, see page 121.

# *Eligibility for Special Education*

## ***What happens after the individual evaluation?***

After the evaluation is completed, you will be invited to a meeting, as a member of the Committee, to talk about the results. You should attend this meeting because you have important information to share about your child. If you cannot attend, you have the right to ask the district to change the time or place of the meeting. At the meeting, the Committee will review the evaluation results. Based on that information, and information that you provide, the Committee decides if your child is eligible or ineligible to receive special education programs and/or services.

In order to be eligible, a child must have a disability that affects his or her ability to learn. In New York State, a child ages 3-5, may be identified as a “preschool student with a disability” if the CPSE identifies the child as having a disability because of mental, physical or emotional reasons. Some preschool children may be identified as having autism, deafness, deaf-blindness, hearing impairment, orthopedic impairment, other health impairment, traumatic brain injury or visual impairment.

Preschool students must meet one of the eligibility criteria to be determined eligible as a child with a disability who requires special education. The criteria are described in section 200.1(mm) of the Regulations of the Commissioner of Education.

A student with a disability means a child with a disability, as defined in Education Law; who does not turn 21 before September first; who is entitled to attend public school; who because of mental, physical or emotional reasons, has been identified as having a disability; and who requires special services or programs. Students, ages 5-21, who are identified as having a disability, may have autism, deafness, deaf-blindness, emotional disturbance, hearing impairment, learning disability, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, speech or language impairment, traumatic brain injury or visual impairment (including blindness). These terms are defined in section 200.1 (zz) of the Regulations of the Commissioner of Education.

## ***What happens if your child is ineligible for special education services?***

If you, with the Committee, decide that your child does not require special education services or programs, the Committee will provide you with information indicating why the child is ineligible. If your child is of school-age, the Committee:

- will also send information to the principal of your child’s school. The principal will be able to work with professionals in the school or with your child’s current teacher, the reading teacher, the guidance counselor, or another specialist to help your son or daughter; and
- may make a referral under Section 504 of the Rehabilitation Act of 1973 (a Federal civil rights law) to another multidisciplinary team within the school.

You will receive a written notice that explains the Committee’s decision, and the information on which that decision was based. If you disagree with the decision of the Committee, you may request mediation and/or an impartial hearing to resolve the disagreement. Mediation and impartial hearings are discussed on pages 128-135.

***What happens if your child is eligible for special education services?***

If the Committee decides your child is eligible for special education services, the Committee must identify the one disability category that most appropriately describes your child. The determination of a disability category is used solely for eligibility purposes and does not prescribe the program or services your child will receive. The Committee will develop and implement an individualized education program (IEP) to meet your child’s needs. (See next page.)

You will receive a written notice that explains the Committee’s decision, and the information on which that decision was based. If you disagree with the decision of the Committee, you may request mediation and/or an impartial hearing to resolve the disagreement. Mediation and impartial hearings are discussed on pages 128-135.

***What special education services may my child receive?***

For school-age students, special education services and programs may include specially designed instruction and supplementary services provided in the regular class, consultant teacher services, related services, resource room programs, special classes, home and hospital instruction, placement in an in-State or out-of-State approved private school, and/or 12-month special service and/or program.

For preschool students, special education services and programs may include related services; special education itinerant services; a half-day preschool program; a full-day preschool program; 12-month special service and/or program; or an in-state residential special education program. Before recommending that special education services are provided in a setting which includes only preschool children with disabilities, the CPSE shall first consider providing special education services in a setting where age-appropriate peers without disabilities are typically found.

***Individualized Education Program (IEP)***

If your child is eligible for special education services and/or programs, the Committee must meet to develop a plan to meet your child's unique needs. This plan is called an Individualized Education Program (IEP).

### ***How is an IEP developed?***

The IEP development process must consider:

- your child's strengths;
- your concerns for your child's education;
- the results of your child's individual evaluation;
- the results of any State or districtwide tests or assessments; and
- any unique needs related to your child's disability (such as communication needs, behavior, etc.).

The IEP evolves from a discussion that begins with how your child is doing in school (current level of functioning). From that base, the Committee agrees on the goals your child should be working toward. The Committee then discusses the supports and services and modifications that the child needs to reach those goals. Finally, the Committee determines where those special education services will be provided (location and placement). The location where services will be provided and the student's placement must be in the **least restrictive environment**. For preschool children with disabilities, special education services can be delivered in day care, a regular preschool program or other early childhood program in which you have enrolled your child.

### ***What planning should occur for preschool children as they transition to school-age programs and services?***

If your child has been receiving preschool special education programs or services, you and the Committee will need to discuss your child's school program before he or she enters Kindergarten.

Sometime during the year before your child is eligible to enter school, the Committee will decide if your child continues to have a disability and/or if he or she continues to require special education programs or services. If so, the CPSE will make a referral to the CSE.

If eligible, at age five, your child may be recommended to receive special education services or programs in the district's Kindergarten program or other educational setting. However, you are not required to enroll your child in the district's Kindergarten program. Your child may be recommended to receive special education services at home, or while attending a nursery school, day care center or other early childhood program in which you have enrolled your child at your expense.

***What planning should occur for preschool children as they transition to school-age programs and services?  
continued--***

***What planning should occur for young adults?***

It is also important to plan ahead when your son or daughter becomes a teen-ager so that he or she can prepare for a high school diploma and/or learn skills necessary for employment, postsecondary education and/or community living as an adult. Beginning when your child is age 12, he or she will receive an assessment to determine vocational skills, aptitudes, and interests. By age 14, the Committee will begin discussing your child's goals as an adult, and how he or she can learn the important skills to meet these goals. From this point forward, the IEP will include programs and services to prepare for adult life (transition services) to address your child's hopes and dreams for the future. Transition planning will involve you, your child and the school discussing questions such as:

- What can your child do now to prepare for being an adult? What can you do to help him or her prepare?
- What will your child do after he or she graduates from school? (Or when he or she turns 21 and is no longer eligible to attend school?)
- Will your child go to college? If so, what high school courses should he or she take? What tests will your child take?
- Will your child look for a job right after high school? Will your child need job training while still in school?
- Where will your child live? Does he or she need to learn new skills to live independently?

## **Individualized Education Program (IEP)**

If your child is eligible for special education services and/or programs, the Committee (of which you are a member) must meet to develop a plan to meet your child's unique needs. This plan is called an Individualized Education Program (IEP). Some of the requirements of the IEP are listed below:

- Your child's name and his or her disability.
- Your child's current abilities, needs, and evaluation results.
- Goals and objectives for your child to meet this school year (annual goals).
- Special equipment your child may need in school.
- Information about the special education programs or services your child will receive (what services, how often and how long they will be provided) to help your child meet his or her goals; and support:
  - your preschool child's participation in appropriate activities; or
  - your school-age child's involvement and progress in the general education curriculum.
- Special ways, if any, your child will take tests (such as a longer time to take tests).
- Program modifications for your child.
- Supports for your child's teachers to help implement your child's IEP.
- How and when you will receive reports on your child's progress.
- For teenagers, transition planning and services.
- Where services will be provided to ensure that programs reflect the least restrictive environment. After the consideration of all other IEP components, the Committee determines the recommended placement. Placement may be in a public school, Board of Cooperative Educational Services (BOCES), approved private school, State operated school, State supported school or a Special Act School District. Placement decisions must be based on the child's strengths and needs and reflect consideration of whether the child can achieve his or her IEP goals in a regular class with the use of supplementary aids and services and/or modifications to the curriculum. (The IEP must explain the extent, if any, to which your child will not be in regular education programs.)

## **Least Restrictive Environment**

Your child's education must be in the least restrictive environment or "LRE." LRE means that placement of students with disabilities in special classes, separate schools or other removal from the regular educational environment occurs only when the nature or severity of the disability is such that, even with the use of supplementary aids and services, education cannot be satisfactorily achieved.

In all cases, special education services should be provided in the least restrictive environment.

Each year your child's IEP should be developed to ensure that:

- your child's placement is based on his or her IEP;
- your child's placement is as close as possible to his or her home. Unless your child's IEP requires another arrangement, your child should be educated in the school he or she would have attended if he or she did not have a disability;
- when making a decision about LRE, the Committee considers any possible harmful effect on your child or the quality of the services that he or she needs;
- your child is not removed from education in a regular classroom with other children of the same age only because the general curriculum needs to be modified.

### ***What happens after the IEP is developed?***

The Board of Education is responsible for arranging for appropriate special education programs and services to be provided to your child. Timelines for implementing (starting) your child's IEP are described on page 127. There may be no delay in implementing the IEP while deciding who pays for the special education services. You will receive a copy of the IEP at no cost to you, and your child's teachers and service providers (who are involved in implementing the IEP) will have access to a copy of the IEP. Each teacher and service provider will be informed about his or her specific responsibilities to implement the IEP and specific accommodations, modifications and supports that must be provided to your child.

## *Annual Review/Reevaluation*

### ***How can we be sure my child's program is meeting his or her needs?***

At least once a year, you and other members of the Committee will review your child's IEP. You may request a meeting sooner than that. Together, you will make decisions about any necessary changes to your child's program. This is called an **annual review**. At least once every three years, your school district will reevaluate your child. This is called a reevaluation (formerly called the triennial evaluation). A reevaluation may also occur if conditions warrant one (for example, when a functional behavioral assessment is needed as a result of disciplinary action) or if either you or your child's teacher requests a reevaluation. If additional data are needed as part of this reevaluation, your school district will ask your written consent prior to conducting these tests. A reevaluation must be sufficient to determine your child's individual needs, educational progress and achievement, your child's ability to participate in regular education classes as well as your child's continuing eligibility for special education services.



# *Your General Rights as a Parent*

## **Steps to Resolving Concerns:**

No one knows more about your child than you do. By working together, you and the staff of the school can help your child have a successful school year. If you become concerned about your child's educational programs or special education services, contact your child's teacher immediately and share information about what you see. Informal meetings and phone conferences help you build a partnership with the teacher and school. You may also ask for a meeting with school administrators or the CPSE or CSE to discuss your concerns about your child's education:

- To prepare for the meeting or phone conference, make a list of your questions, concerns, ideas and information about your child. Ask your child if there is anything that you should share.
- During the meeting, discuss your list, take notes and ask to see examples of your child's work, for specific examples of classroom behavior and ways to help your child at home. If you do not understand something, ask for an explanation. Try to arrive at a mutually agreed-upon solution to any problems or concerns.
- After the meeting, talk with your child about the good things that were discussed, the problems that need to be worked on and the steps that will be taken to help your child. Keep working with your child's teacher and if necessary, ask for a follow-up meeting or phone conference.

We encourage you to be an active member of your child's educational planning. We know that children benefit more from their education if their parents are involved and well informed. As a team member, you need to understand the special education process, your rights, and how to become involved in your child's program. Now that you are familiar with the special education process, you will want to know more about your rights and protections under law and regulations.

You must be given opportunities to participate in the discussion and decision-making process about your child's need for special education. You will receive notice at least five school days before meetings of the CSE or CPSE inviting you to participate in the development of the recommendations for your child's educational program.

You have legal due process rights under Federal and State laws to be involved and make sure that your child receives an appropriate education:

- You must receive **written notice** several times during the process of identifying, evaluating, placing your child and providing your child with special education services and/or programs. If your district refuses to do any of these things, you must be notified. See pages 123-125 of this document for more information.
- Certain actions may not be carried out without your written **consent**. See page 122 of this document for more information.
- If you **disagree with decisions** made by the Committee, you may ask for meetings, mediation and/or impartial hearings to resolve (settle) disagreements between you and your school district about your child's evaluations, identification (classification), placement or educational

program (the provision of a free appropriate public education). See pages 128-135 of this document for more information.

## Your Child's Educational Records

You have the right to ask for and read records about your child unless the district has been legally notified in writing that your rights as a parent have been terminated or otherwise limited by a court order. Upon your request, the school district must make your child's records available to you:

1. within a reasonable time;
2. in no case more than 45 calendar days after you ask;
3. before any meeting about your child's individualized education program (IEP);
4. before any due process hearing about your child's special education needs.

You have the right to ask for and receive explanations and interpretations of the records from your school district. You may also ask to receive copies of your child's educational records if that is the only way that you can inspect and review the records. The school district may charge a reasonable cost for copies of the records. However, if you cannot afford the fee, you still have the right to review and receive the records. You may also have your representative inspect and review the records.

When you have questions about your child's records, you have the right to:

1. ask for and read records about your child;
2. ask for and receive explanations and interpretations of the records from your school district;
3. have a person you choose read your child's records;
4. ask for and receive copies of education records. The school district may charge a reasonable cost for copies of records, unless the cost would effectively prevent you from inspecting or reviewing those records. Costs for searching or getting information are not allowed;
5. read only the information about your child. You may not read any information about other children;
6. ask for and receive a list of the educational records held and used by the school district, and to know where the records are kept;
7. be told by the school district when information about your child is no longer needed to provide educational services to your child. Information that is no longer needed must be destroyed at your request;
8. know that a permanent record of your child's name, address, telephone number, grades, attendance, classes attended, grade level completed and year completed may be kept forever.

Records may be needed for other purposes such as obtaining social security benefits. The rights of parents concerning education records are given to the student at age 18 unless you have obtained guardianship.

Your rights to change educational records include the right to:

1. ask the school district to amend (change) information if you believe it is wrong, misleading or violates (harms) the privacy or other rights of your child;

2. receive a decision about your request to change your child's records within a reasonable period of time from the date the school district receives your request;

Your Child's Educational Records – continued -

3. be told if the district will not change the information as you requested and be advised of your right to a hearing. In this case, you must ask for a hearing from your school district to change information in your child's education records if the school district refuses to do so. This request must be in writing. (This should not be confused with an impartial hearing as explained starting on page 129);
  4. request a hearing conducted (run) by any person who does not have a direct interest in the hearing. This could be a school official;
  5. be notified (told) in writing if the hearing officer decides to change your child's educational record. If the hearing officer decides that the records do not need to be changed, you must be notified in writing.
- This notice must tell you of your right to put a written statement (note) in your child's records to explain the information or give reasons why you disagree with the decision.
  - Any written note of explanation you place in the records of your child must be kept by the school district as part of your child's records.
  - If the school district gives a copy of your child's records or the disagreed part to any person, your written note must also be given to that person.

Personal information about your child may not be released without your consent unless it is:

1. given to school officials or teachers with a legitimate educational interest, State and local educational authorities, or certain individuals designated under Federal Law; 2. used to meet a requirement under Federal Law.

Personal information includes the following information:

1. the name of your child, your name, or the names of other family members;
2. the home address of your child;
3. personal information, such as your child's social security number;
4. a description that would make it possible to identify your child.

# *Evaluations*

## **Individual Evaluation**

An individual evaluation means any procedures, tests, or assessments, including observations, given individually to your child to find out whether he or she has a disability and/or to identify his or her special education needs. The term does not include basic tests given to groups of children in a school, grade or class.

The results of the evaluation must be shared with you. When the CSE or CPSE has conducted an evaluation for determining your child's eligibility for special education, you must be provided a copy of the evaluation report and documentation of determination of eligibility. In addition, if you are the parent of a preschool child, the CPSE must also give you a copy of the summary report of the findings of the evaluation. For more information about evaluations, see pages 108-109.

## **Independent Educational Evaluation**

An independent educational evaluation (IEE) of your child means a procedure, test or assessment done by a qualified examiner who does not work for the school district or other public agency responsible for the child's education. You may get an IEE at district expense if you disagree with the evaluation arranged for by the school district. "At district expense" means that the school district pays for the full cost of the test.

If you ask the school district to pay for the IEE, the school district may ask, but not require, you to explain the reason why you object to the district's evaluation. The school district may not unreasonably delay either providing the IEE or initiating an impartial hearing to defend the district's own evaluation.

You have the right to:

1. get an IEE of your child;
2. have the IEE be at district expense if you disagree with the district's evaluation. If you ask for the IEE to be at district expense, the school district may ask for an impartial hearing to show that its evaluation is appropriate. If the impartial hearing officer finds that the district evaluation is appropriate, you have the right to obtain and submit an IEE to the CSE or CPSE, but the district does not have to pay for it;
3. receive information about where an IEE may be obtained, the school district's criteria under which the evaluation is obtained (including the location of the evaluation and the qualifications of the evaluator), and any district criteria regarding the reimbursement of IEE, when you ask your school district to pay for an independent educational evaluation;
4. have an IEE at public expense if the impartial hearing officer asks for this evaluation as part of an impartial hearing;

5. have the results of an IEE considered by the Committee as part of its review and in the development of your child's IEP. The results of the IEE can be used as evidence at an impartial hearing regarding your child.

## *Notice and Parent Consent*

There are many times when the school district must notify (tell) you in writing of its proposed (planned) action and ask for your written consent (permission) to carry out this action. **Consent means that:**

1. You have been informed in the language you speak, or other kind of communication that you understand, of all the information about the activity for which your permission is asked.
2. You understand and agree in writing to the activity for which your permission is needed.
3. Your permission is given freely and may be withdrawn at any time. However, if you withdraw your consent, it is not retroactive (it will not apply to actions already taken by the district).

### **Your consent will be requested when:**

1. Your child will be evaluated for the first time by the Committee to decide if he or she has a disability and needs special education.
2. Your child is recommended to receive special education services and programs for the first time.
3. Your child is recommended to receive twelve-month special education services (programs during July and August) for the first time.
4. Your child will be reevaluated.
5. The school district proposes to use your private insurance. In this case, you must be notified that if you refuse to allow the school district to access (use) your private insurance, the district is still responsible to provide all required services at no cost to you.
6. Another agency other than a school requests to review records about your child. The request for consent will include information about the records that will be released and to whom they will be given.

### **Your consent is not required:**

1. before reviewing existing data (information) as part of an initial evaluation or a reevaluation;
2. administering (giving) a test or other evaluation that is given to all students (unless parents of all students must give consent before the test is given);
3. to conduct a reevaluation if the school district can show that it has taken reasonable measures to get your consent, and you did not respond.

If you, as a parent of a school-age child, do not provide consent for an initial evaluation, the district will inform you that you may ask for an informal meeting with the school district to discuss the evaluation.

You may ask questions about the evaluation and may bring someone to advise you to the meeting. At that meeting, you will meet with the person who made the initial referral for special education and someone who is most familiar with the evaluation. If at the meeting, you and the person who made the referral agree in writing that there is no need for a referral, the referral will be withdrawn.

**Your consent is not required: continued -**

If, within 30 calendar days after the referral is received, you and the school district do not agree to withdraw the referral and you continue to refuse consent, the district must initiate (start) an impartial hearing to decide whether to conduct the evaluation.

For preschool children, the district will take steps to make sure that you have received and understand the request for consent. If you, as a parent of a preschool child, do not provide consent for the evaluation, the district will not take any further action on the referral.

**Notice**

As a parent of a child with a disability or suspected disability, you will receive notices to tell you about proposed special education services, meetings and your rights. There are three kinds of notices that you will receive at various times throughout the special education process:

- prior notice
- notice of meetings
- procedural safeguards notice

Notice is a written statement provided to you in the language you speak or other kind of communication that you understand unless it is clearly not possible to do so. If the language you speak at home (your native language) or other kind of communication you understand is not a written language, the district must take steps to make sure that the notice is translated orally or by other means (such as sign language) so that you understand the notice. You have the right to ask for an interpreter, translator or reader for the meetings. The school district must keep written records that these steps have been taken.

**Prior Notice**

Prior notice is written notice that is given to you a reasonable time before the school district proposes to or refuses to start or change the identification, evaluation or educational placement or the provision of a free appropriate education to your child. It must be provided to you in the language you speak or other kind of communication that you understand unless it is clearly not possible to do so.

Prior notice must include:

1. a description of the action offered or refused by the CSE or CPSE;
2. an explanation of why the school district will or will not take action;
3. a description of any other options (choices) the school district considered and the reasons why those choices were refused;
4. a description of each evaluation, procedure, test, record or report the school district used as a reason to offer or refuse an action;
5. a description of any other factors that are relevant to the district’s decision;
6. a statement that you have protection under the law. This legal protection is called procedural safeguards and they are listed in procedural safeguards notice. If the procedural safeguards notice is not included with the prior notice, the prior notice will describe the ways you can obtain (get) a copy of a description of the procedural safeguards;
7. sources for you to contact to get assistance in understanding the special education process and your rights.

**Prior Notice – continued**

If the prior notice relates to an action by the school district that requires your consent (see pages 122-123), the district will give you notice at the same time they request your consent. You should also receive prior notice before your child graduates from high school with a local or Regents diploma or before he or she receives an Individualized Education Program (IEP) diploma.

**Notice of Meetings**

Whenever the Committee proposes to conduct a meeting to develop or review your child’s IEP or to discuss the provision of a free appropriate public education to your child, you must receive a meeting notice. It must be provided to you in the language you speak or other kind of communication that you understand, unless it is clearly not possible to do so. You must receive a written meeting notice at least five days before the meeting unless you and the school district agree to meet within five days or in certain meetings relating to discipline procedures. If the proposed meeting time or place is not good for you, you may call the school district to ask for a change that is good for both of you.

If you are unable to attend the meeting, the district can use other ways to encourage your participation. They may call you before a meeting occurs to talk about evaluation results and ask you for information, or they may ask you to participate in the meeting by telephone.

Meeting notice must include:

1. the purpose of the meeting and the date, time, location and names and titles of the persons expected to attend the meeting;
2. a statement that you have the right to participate as a member of the Committee;
3. a statement telling you that you may bring anyone to the meeting who has knowledge or special expertise about your child;
4. a statement of your right to ask the school physician to be at the meeting of the CSE (This does not apply to parents of preschool children.) You must do this in writing at least 72 hours before the meeting;
5. a statement that you may request in writing that the additional parent member of the Committee not participate in the meeting of the Committee;
6. if the meeting is a Subcommittee meeting, a statement that you may make a written request to the full Committee if you disagree with the recommendation of a Subcommittee;
7. for students for whom a meeting will be held to consider transition services, a statement that indicates the purpose of the meeting and that the student will be invited and lists any other agencies that will be invited to send a representative;
8. for preschool students, a statement that you have the opportunity to address the Preschool Committee in writing or in person.

School district staff may have informal or unscheduled conversations about issues such as teaching methodology, lesson planning or coordinating your child’s services if those issues are not addressed on the IEP. They may also work together to prepare for the meeting. These activities are not considered “meetings” for which the school is required to send you a “meeting notice.”

## Procedural Safeguards Notice

Procedural safeguards notice provides a full explanation of all your legal rights under law. The school district must make sure that the procedural safeguards notice is provided to you in the language you speak or other kind of communication that you understand, unless clearly not feasible to do so. If necessary, the district must take steps to make sure that the notice is translated orally or by other means so that you understand the notice. The school district must keep written records that these steps have been taken.

Procedural safeguards notice is provided:

- upon initial referral for evaluation of your child;
- with each notice of a CSE or CPSE meeting;
- upon reevaluation of your child;
- when the district receives a letter from you requesting an impartial hearing;
- when a decision is made to suspend or remove your child for discipline reasons that would result in a disciplinary change in placement.

Procedural safeguards notice includes information about:

1. independent educational evaluations (page 121);
2. prior written notice (page 123);
3. notice of meetings (page 124);
4. parental consent (page 122);
5. access to educational records (page 119);
6. opportunities to present complaints to initiate due process hearings (page 134);
7. the student's pendency (where he or she will receive services) during due process proceedings (page 133);
8. procedures for students who are subject to placement in interim alternative educational settings (page 134).
9. requirements for unilateral placement by parents of students in private schools at public expense (page 126);
10. mediation (page 128);
11. due process hearings, including requirements for sharing evaluation results and recommendations (page 129);
12. State-level appeals (page 132);
13. civil actions (page 133);
14. attorney's fees (page 134);
15. State complaint procedures, including information about how to file a complaint and timelines (page 134);
16. the parents' right to receive information upon request about getting free or low-cost legal and other services (page 130);
17. for preschool students, procedural safeguards notice will indicate that, if parents do not provide consent for initial evaluation or initial provision of special education services, no further action will be taken by the district until the parent does provide consent.



## *Reimbursement for Placement Made by Parents in a Private School if the District Fails to Make a Free and Appropriate Public Education Available to the Child*

A school district is not required to pay for the cost of education of your child at a private school or facility if the school district has made a free and appropriate public education (FAPE) available to your child. However, if you place your child in a private school because you and the school district disagree that an appropriate program has been made available for your child, you have the right to request an impartial hearing to seek reimbursement for the private school placement:

1. If you are the parent of a child who previously received a special education program and/or services through the school district and you place your child in a private school without the consent or referral of the school district, you may be entitled to reimbursement for the cost of the private placement if you can prove at an impartial hearing or State-level or court appeal that:
  - the school district did not provide your child with a free appropriate public education in a timely manner prior to that enrollment in private school and;
  - the private placement is appropriate to meet your child’s educational needs. A hearing officer or court may find that a parental placement is appropriate even if it does not meet the State standards that apply to education programs provided by the school district or the State.
2. Your reimbursement may be denied or reduced if you do not:
  - inform the school district at the most recent CSE or CPSE meeting you attend that you are rejecting the placement proposed by the school district and state your concerns and that you will be placing your child at a private school at public expense, or;
  - provide the school district with written notice at least ten business days (including any holidays that occur on a business day) prior to removing your child from the public school. However, the cost of reimbursement may not be reduced or denied because you did not give this notice if you are unable to read and cannot write in English; or if providing notice would likely result in physical or serious emotional harm to your child; or if the school prevented you from providing the notice; or if you did not receive the procedural safeguards notice that tells you about this requirement, then the cost of reimbursement may not be reduced or denied because you did not give this notice.
3. If the school district gave you written notice prior to your removing your child from public school that it wants to evaluate your child, you must make your child available for the evaluation. If you refuse to make your child available, any request for tuition reimbursement may be reduced or denied.
4. If you do not inform the school district or make your child available for the evaluation, or if there are other unreasonable actions on your part, an impartial hearing officer or court may reduce or deny the reimbursement of costs of the private school for your child.

# Timelines

## School-Age Timelines

### A. Initial Evaluation

If your child is being evaluated for the first time to decide whether he or she has a disability, the Board of Education must arrange for appropriate special education programs and services within 60 school days of receiving your consent to evaluate your child. If the recommendation is for placement in an approved in-State or out-of-State private school, then the Board of Education will arrange for such programs and services within 30 school days of the Board receipt of the recommendation from the Committee.

### B. Review

If your child is a child with a disability whose special education programs and services are being reviewed, the Board of Education must arrange for appropriate special education programs and services within 60 school days of the referral for review. The referral for review means the projected date of review as noted on your child's IEP or the date of the request for such review by you, your child's teacher or another appropriate individual. If the recommendation is for placement in an approved in-State or out-of-State private school, then the Board of Education will arrange for such programs and services within 30 school days of the Board receipt of the recommendation from the Committee.

## Preschool Timelines

### A. Initial Evaluation

If your preschool child is being evaluated for the first time to decide whether he or she has a disability, the CPSE must provide a recommendation to the Board of Education within 30 school days of the date the district received your consent for evaluation.

### B. Receiving Special Education Services

The Board of Education must arrange for the preschool student with a disability to receive the recommended special education services or programs starting with the July, September or January starting date of those approved programs or no later than 30 school days from the date the CPSE made its recommendation.

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Note: There may be no delay in implementing a preschool or school-age student's IEP, including any case in which the payment source for providing or paying for special education is being determined.

# Due Process Rights

## A. Informal discussions

If you have concerns about your child's educational program, discuss these concerns with appropriate staff at the school district. If you disagree with evaluation results or other proposed actions of the Committee, such as the recommendation, placement or implementation of the program, you should express your disagreement and dissatisfaction. By clearly sharing your concerns and the reasons for your concerns, you are making sure that the other members of the Committee understand your point of view. Try to work out differences informally with your school district as soon as they happen.

Ask for a meeting to talk in person or schedule a phone conference to discuss your concerns with (a) your child's teacher(s) and/or related service provider(s), (b) principal or assistant principal, (c) Chairperson of the CSE or CPSE or (d) Instructional Support Team. Write down what was discussed at the meeting, staff present and steps identified to resolve your concerns. If necessary, request a follow-up meeting within a reasonable amount of time to revisit your concerns and to ensure that the steps identified above were implemented as planned. If it is not possible to resolve disagreements informally, mediation is a good method to work differences out in a timely way. You also have the right to request an impartial hearing.

## B. Special education mediation

Special education mediation is a voluntary process for you and the school district to work out disagreements about the recommendations of the CSE or CPSE. All school districts must offer mediation to parents. You and a person chosen by the Board of Education meet with a qualified and impartial mediator from the Community Dispute Resolution Center (CDRC) in your county who helps in reaching an agreement about the recommendation for your child.

If you decide to use mediation, you must ask for it by writing to the Board of Education (see form on page 139). If you decide not to use mediation, someone may call you from the CDRC to talk about the benefits of mediation, but this cannot deny or delay your rights to an impartial hearing. Any agreement reached by the parties is set forth in a written mediation agreement. The CSE or CPSE must immediately meet to amend your child's IEP to be consistent with the mediation agreement. Mediation is at no cost to you or the school district.

You have the right to:

1. mediation run by a qualified and impartial mediator from a Community Dispute Resolution Center;
2. mediation held in a timely manner and at a place that is good for you and the school district;
3. have any agreements made during mediation written down. Written agreements may be presented as part of the record at an impartial hearing;
4. have discussions that occur during the mediation process be confidential and not used as evidence in any impartial hearing or civil proceedings. Parties to the mediation process may be required to sign a confidentiality pledge before starting the mediation;
5. request an impartial hearing at any time.

## Benefits of Mediation

Unlike an impartial hearing where the hearing officer makes the final determination as to what is appropriate for your child, a mediator assists you and the district to reach a mutually agreeable determination.

By asking questions and discussing information with you and the school district representative, the mediator helps both parties to have a more complete understanding of each other's concerns and reach an agreement about your child's special education program in a cooperative and timely manner. Of the 375 special education mediation sessions that took place in New York State during 2000-2001, 91% resulted in agreement.

The following comments were made by school district representatives and parents after participating in mediation:

### Parent/Parent Representative Comments:

- At one point I felt pressured by the school district and expressed my concern. I was told I would have as much time as needed to talk and this came true.
- I was pleased and surprised by the results. I also felt that how the mediation was explained and handled made me, as parent, feel more comfortable.
- I didn't expect everything to go as well as it did from past experiences. But, I think everyone that has differences should try mediation.
- This is a peaceful way to resolve issues of any kind.
- The mediation process was very helpful in resolving the difficulties between the school district and the child's services team. The district was far more sensitive to our concerns once the mediation was involved. Thank you.

### School District Representative Comments:

- It was handled calmly and professionally. It allowed all parties to "air" their concerns on neutral grounds. Results were positive and achieved in one session. Both parties were willing participants and interested in finding a solution.
- The experience was pleasant, efficient and all parties were satisfied.
- It helped resolve an issue that could not be resolved at a CSE meeting. It avoided the need for a costly impartial hearing.

## C. Impartial due process hearings

An impartial hearing is a formal proceeding in which disagreements between you and the school district are decided by an impartial hearing officer (see Section G) appointed by the Board of Education. A parent or a school district may initiate a hearing on matters relating to the identification, evaluation or educational placement of a student with a disability, or the provision of a free appropriate public education to the child:

1. Your request for an impartial hearing must be made in writing to the Board of Education.\*  
\* See page 139 for a copy of a form that may be used to request an impartial hearing or mediation.
2. Your written request needs to:
  - describe the facts relating to your concerns;
  - describe a proposed solution;
  - state your child's name and address;
  - name the school your child attends.

3. If you do not give the information stated above, it may result in a reduction of an award of attorneys' fees by a court. However, the school district may not deny or delay your right to an impartial hearing if you do not provide that information.
4. For three- and four-year-old children, the school district may not begin a hearing if you refuse to give consent to initial evaluation or the initial provision of special education to your child. If you do not give consent for an individual evaluation, the CPSE will implement the district's practices and procedures to make sure that you have received and understand the request for consent for evaluation of your child, but the district may not go to a hearing to obtain consent. In addition, if you do not consent to an initial evaluation, you must be notified that you can ask for an informal conference where you can ask questions about the proposed evaluation. If you do not provide consent for the initial evaluation or the initial provision of special education services, no further action will be taken by the CPSE until such consent is obtained.
5. The impartial hearing is at no cost to you. You may have to pay your own attorneys' fees. If requested by you, the school district must provide you with information on free or low-cost legal and other relevant services. If a hearing officer requests an independent educational evaluation as part of the hearing, the cost of the evaluation must be at public expense. Also, see page 134 for information about attorneys' fees.
6. The decision of the hearing officer will be based only on recorded information presented at the hearing and will provide the reasons and facts for the decision. The decision will be binding (final) unless you or the school district appeal to the State Review Officer.

At an impartial due process hearing, you have the right to:

1. have and be advised by an attorney and/or by individuals with special knowledge or training about the education of students with disabilities;
2. present evidence and testimony, and question, cross-examine and require the attendance of witnesses;
3. receive evidence, including evaluations and recommendations, at least five business days before the hearing (or three business days in the case of an expedited due process hearing) and to stop such information from being presented that was not exchanged between both parties on time;
4. receive, at your option, a written or electronic word-for-word record of the hearing and word-for-word findings of fact and the decision of the IHO;
5. have the hearing open to the public;
6. have your child present during the hearing;
7. have an interpreter for the deaf or an interpreter fluent in your native language (the language normally used by you), if necessary, at no cost to you;
8. have an impartial hearing conducted at a time and place that is reasonably convenient for you and your child;
9. receive an expedited due process hearing for certain disciplinary decisions.

**Timelines and location of impartial hearings:**

1. The rotational process to select the IHO must begin immediately, but not later than two business days, when the school receives your written request for an impartial hearing.
2. The IHO must be available to initiate the hearing within 14 days.
3. The findings of fact and decision of an IHO in an impartial hearing must be issued no later than 45 calendar days after the receipt of a request for a hearing for a school-age child, or 30 calendar days for a preschool child. However, the IHO may extend the time for a specific period at the request of you or the school district. If an extension has been granted, the findings of fact and decision must be issued no later than 14 days from the date the record is closed including any post hearing submissions and the transcript is received.
4. The decision of an IHO in an expedited due process hearing for discipline purposes must be completed within 15 business days after the receipt of the request for the hearing, provided that the IHO may grant specific extensions at your or the school district's request. The IHO must mail a copy of the written or, at your option, electronic findings of fact and the decision to the parties within five business days after the last hearing date, but in no event later than 45 calendar days after receipt of the request, without exceptions or extensions.
5. You have the right to have an impartial hearing conducted at a time and place that is reasonably convenient for you and your child.

**Impartial hearing officer**

An impartial hearing officer must be an individual certified by the Commissioner of Education to conduct impartial hearings. An impartial hearing officer must be selected on a rotational basis from a list maintained by the school district that includes their names and statement of qualifications. The impartial hearing officer makes sure that procedures at the hearing meet due process requirements. Impartial hearing officers cannot:

1. be employees, agents or officers of the school district or of the Board of Cooperative Educational Services (BOCES) of which your school district is a member;
2. be an employee of the State Education Department or be an employee of a public agency that has ties to the education or care of your child;
3. be employed by a school district, school or program serving students with disabilities placed by a school district Committee. An individual employed by such schools or programs may not serve as an impartial hearing officer for two years following the end of his or her employment;
4. have an interest that would make it difficult for him or her to be fair in the impartial hearing;
5. have been involved in the development of the recommendation to be reviewed.

If you have a complaint about the conduct or competence of an IHO, you may send a signed written statement and supporting documentation to the State Education Department.

## **D. Guardian ad litem**

A Guardian ad litem is someone who must be appointed by an impartial hearing officer if the hearing officer decides:

- your interests are not the same as or are in conflict with those of your child;
- the interests of your child would be best protected by someone else.

An impartial hearing officer may assign a guardian ad litem to participate fully in the impartial hearing for your child unless a surrogate parent has already been appointed. A guardian ad litem is appointed from the list of surrogate parents or is a pro bono attorney (an attorney who takes cases at no cost). In the event a guardian ad litem is assigned, the impartial hearing officer must make sure that your due process rights are protected throughout the hearing.

## **E. Surrogate parents**

Each school district must try every reasonable way to notify the parents of the child who has been referred or is in need of special education and related services. The Board of Education must appoint a surrogate parent to speak for the child from the list of surrogate parents kept by the Board if:

- the school district, after reasonable efforts, cannot find the parent;
- the child's parents or guardian are not known;
- the child is a ward of the State.

The person selected as a surrogate parent:

- can represent (speak for) the child in all matters about the identification, evaluation, educational placement and the provision of a free appropriate public education to the child;
- must have the knowledge and skills to represent (speak for) the child;
- cannot have any interests which conflict with the interests of the child he or she represents;
- cannot be an officer, agent or employee of the school district, the State Education Department or the agency which is involved in the education or care of the child;
- may be an employee of a nonpublic agency that only provides non-educational care for the child;
- may be the foster parent of the child who meets the above qualifications. A foster parent does not have to be on a list approved by the Board of Education.

The person is not an employee of the agency just because he or she is paid by the agency to serve as a surrogate parent.

## **F. State-Level Appeal of Impartial Hearing Officer Decisions**

The decision made by the impartial hearing officer is final (must be followed by you and the school district) unless you or the school district ask for a review of the decision of the impartial hearing officer (called an appeal) by the State Review Officer. An appeal must be in writing and be received by the State Review Officer within 30 calendar days after you and the school district receive the decision of the impartial hearing

officer. Procedures and timelines for submitting an appeal are specific and must be followed exactly to avoid delay or dismissal. Parents may seek the help of an attorney or advocate to file an appeal.

**F. State-Level Appeal of Impartial Hearing Officer Decisions - continued** The State Review Officer must:

1. make sure that steps taken at the hearing agree with due process requirements;
2. obtain additional spoken testimony or written evidence, if necessary;
3. direct that spoken argument be heard if the State Review Officer decides that such argument is necessary. If a hearing is held, all the parent rights listed under impartial hearings continue. A review involving spoken testimony and/or written evidence (at the discretion of the State Review Officer) must be held at a time and place that is reasonably convenient to the involved parties;
4. make an independent decision after a complete review of the hearing record;
5. make a final decision within 30 calendar days after receiving the request for a review. The State Review Officer may extend the time beyond the 30 days at the request of you or the school district. The extension must be for a specific time. The reason for the extension must be included in the record;
6. mail copies of the written or, at your option, electronic findings of fact and decision to you or your attorney and the Board of Education within the 30-day period.

**G. Court Appeal of State Review Officer Decision**

The decision of the State Review Officer is final unless either you or the school district seek review of the State Review Officer's decision in either State Supreme Court or Federal District Courts within four months from the date of the State Review officer's decision.

**H. Pendency: The student's placement during due process hearings.**

During any hearing or appeal, your child will remain in his or her current educational placement. This is sometimes referred to as "pendency", "stay-put" or "status quo."

1. Preschool child:

Your preschool child will stay in his or her current placement during any hearing or appeal, unless you and the school district agree in writing to other arrangements.

A child who has received early intervention services and is now of preschool age may, during hearings and appeals, receive special education in the same program as the early intervention program if that program is also an approved preschool program.

If your preschool child is currently not receiving special education services and programs, he or she may, during any hearings or appeals, receive special education services and programs if you and the school district agree.

2. School-age child:

During any hearing or appeal, your school-age child will stay in the school placement he or she is in now, unless you and the school district agree in writing to other arrangements. If the disagreement involves initial admission to public school, you have the right to have your school-age child placed in a public school program with your consent until all proceedings are over.

If the due process proceeding concerns consent for an initial evaluation, your child will not be evaluated while the proceeding is pending.



A child who received preschool special education services and is now school-age may, during hearings and appeals, remain in the same program as the preschool program if that program also has an approved school-age special education program.

#### **H. Pendency: The student's placement during due process hearings. -continued**

##### **3. Court Appeal of State Review Officer Decision:**

If you or the school district is appealing a decision of a State Review Officer to a court, pendency is as follows:

- If a State Review Officer issues a placement decision that agrees with the parents, pendency during any subsequent appeal to a court is the placement decided by the State Review Officer.
- If the State Review Officer issues a placement decision that agrees with the school district, pendency during any subsequent appeal to a court is your child's current educational placement.

##### **4. Interim alternative educational setting (IAES) for discipline purposes**

If your child is receiving services in an IAES for discipline purposes, he or she must remain in that IAES until an impartial hearing officer makes a determination about placement or until the end of the time period of the removal (but not more than 45 calendar days), whichever occurs first, unless you and the school district otherwise agree:

- however, if the Committee proposes to change the placement at the end of the IAES and you challenge the proposed change in placement, after the term of the IAES expires, pendency for your child will be the current educational placement (placement prior to removal to the IAES);
- a hearing officer may place your child in an IAES again because the school district believes that it is dangerous for the student to stay in his or her current educational placement.

#### **I. Attorneys' fees**

A court may award reasonable attorneys' fees to the parents or guardian of a child with a disability if they are the party who wins the hearing.

Attorneys' fees may be lowered if you unreasonably delay an agreement or a decision in the case; if the fees, time spent or services of your attorney exceed reasonable rates; or if you failed to provide the information required (on the sample form on page 139) in your request for a hearing. However, attorneys' fees will not be reduced if a court finds that the State or school district unreasonably delayed the final resolution of the action or proceeding or there was a violation of your child's due process rights. Attorneys' fees may not be awarded:

- relating to any meeting of the CSE or CPSE unless the meeting is held as a result of an administrative proceeding or court action;
- for mediation that is conducted prior to the filing of a request for an impartial hearing;
- if a written offer of settlement is made by the school district within ten calendar days prior to the proceeding, you do not accept the offer within ten calendar days and the court or hearing officer finds that the decision is not more favorable to the parents than the offer of settlement.

## **J. Opportunity to present complaints**

You have the right to submit a written complaint to the New York State Education Department if you believe that your school district has violated procedures under State or Federal special education laws and regulations. Your complaint must include a statement that the school district has violated special education laws or regulations and include the facts on which you base your statement. The alleged violation must have occurred not more than one year prior to the date of the complaint:

- unless a longer period is necessary because the alleged violation is continuing; or
- the complaint is requesting compensation services. This only applies to alleged violations that occurred not more than three years prior to the date of the written complaint.

You must send the original signed written complaint to:

Coordinator, Statewide Special Education Quality Assurance  
Office of Vocational and Educational Services for Individuals with Disabilities  
One Commerce Plaza, Room 1624  
Albany, New York, 12234

You will receive a letter stating that your complaint has been received and telling you about your right to submit additional information about the complaint either orally or in writing.

Your complaint will be investigated. A determination must be made within 60 calendar days of when your complaint was received unless exceptional circumstances exist with respect to a specific complaint.

You will receive a written, final decision that addresses each claim you raise and contains the findings of fact, and the reasons for the final decision. Any part of the complaint that is currently being addressed in an impartial hearing cannot be investigated.

# Disciplinary Procedures

The procedures for the discipline of students with disabilities must be in accordance with section 3214 of the Education Law and Part 201 of the Regulations of the Commissioner of Education. While the school has the authority to suspend or remove your child for violating the school's code of conduct, you and your child have certain rights throughout the process.

You have the right:

1. to be notified immediately by telephone, if possible, and to receive written notice within 24 hours of a proposed suspension of five school days or less. The notice should describe the incident, proposed suspension and your child's rights. You also have the right to request an informal conference with the school principal prior to the suspension unless your child's presence in school poses a danger;
2. to receive written notice of your opportunity for a superintendent's hearing, if the suspension is for more than five consecutive school days, which describes your child's rights to counsel and to question and present witnesses;
3. for your child to receive alternative instruction during the first ten days of any suspension or removal to the same extent as nondisabled students, if your child is of compulsory school age;
4. for your child to receive education services necessary to enable your child to progress in the general education curriculum and appropriately advance toward achieving his or her IEP goals if your child is suspended or removed for more than ten school days in a school year;
5. for your child also to have services to address the behavior that resulted in the disciplinary action if your child is removed to an interim alternative educational setting;
6. to have the CSE develop or review and implement a behavioral intervention plan for your child that is based on the results of a functional behavioral assessment, if your child is suspended or removed for more than ten school days in a school year;
7. to a CSE meeting to determine whether your child's behavior which led to the disciplinary action is related to his or her disability (manifestation determination) when the suspension or removals results in your child being suspended or removed for more than ten school days in a school year (disciplinary change in placement);
8. for your child not to be suspended or removed for behaviors that are determined to be related to your child's disability, except for suspensions or removals ten school days or less in a school year and for removals to interim alternative educational settings;
9. to challenge, in an expedited due process hearing before an impartial hearing officer, the decision of the CSE regarding the relationship between your child's behavior that resulted in a disciplinary action and his or her disability (manifestation determination);
10. to challenge, in an expedited due process hearing before an impartial hearing officer, any placement decision related to discipline.

If you have additional questions about disciplinary procedures, you can contact your Regional Associate at VESID's Special Education Quality Assurance Regional Office. Those offices are listed on page 144.

# References

The information in this Guide was taken from the following Federal and State laws and regulations:

- Individuals with Disabilities Education Act (IDEA)
- Family Educational Rights and Privacy Act of 1974 (FERPA/ Buckley Amendment)
- Part 300 of the Code of Federal Regulations
- Article 89 and Section 3214 of the New York State Education Law
- Parts 200 and 201 Regulations of the Commissioner of Education

You should refer to these laws and regulations for specific rules and requirements. In addition to the teachers and administrators in your school district, many other people can assist you in understanding the information in this Guide. These include individuals at your local Special Education Training and Resource Center, Parent Centers and Networks and the Quality Assurance Regional Office of Vocational and Educational Services for Individuals with Disabilities of the New York State Education Department. Information on how to contact these individuals, including website addresses, is listed on pages 144-149.

# Request for Due Process Proceedings

Federal law requires that a parent or attorney representing a child provide notice to the school district if the parents have a disagreement regarding the referral, evaluation, or placement of their child or regarding the provision of special education services. (This notice will remain confidential.) This form has been developed to assist you in describing your disagreement and accessing the due process procedures to which you are entitled. Please complete the entire form and return it to your school district. Failure to do so may result in it being returned for additional information. According to Federal law, failure to provide information may result in a reduction in the award of any attorneys' fees.

Student's Name \_\_\_\_\_ Date of Birth: \_\_\_\_\_

\_\_\_\_\_  
Parent  
or Legal Guardian:

\_\_\_\_\_  
Legal Residence: Street

\_\_\_\_\_  
City or Town

\_\_\_\_\_  
Zip Code

Telephone: (\_\_\_\_\_) \_\_\_\_\_

\_\_\_\_\_  
Current School:

\_\_\_\_\_  
Address: Street

\_\_\_\_\_  
City or Town

\_\_\_\_\_  
Zip

Code \_\_\_\_\_

School District of attendance, if different from district of residence:

\_\_\_\_\_  
Fully describe the nature of the problem including all specific facts relating to the disagreement. (Attach additional pages or documents as necessary.):

\_\_\_\_\_  
\_\_\_\_\_

**Request for Due Process Proceedings - continued**

State your proposed solution to the problem or the reason why you are unable to suggest a solution at this time. (Attach additional pages or documents as necessary.):

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Upon receipt of this form, you will be contacted to establish a mutually agreeable time to participate in mediation with an outside mediator and representative(s) of the district to attempt to resolve this disagreement. If mediation is unsuccessful, an impartial hearing will be conducted unless you inform the district in writing that you do not wish to proceed with a hearing. Participation in mediation will not delay or preclude your right to a due process hearing.

If you do not wish to attempt to resolve this problem through mediation prior to a hearing, please check the box below:

I do not wish to participate in mediation and request that the district schedule an impartial hearing at this time. (Please note: You may be requested to participate in a meeting to discuss the benefits of mediation.)

Name of Person Completing this Form: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Relationship to Student:  Parent  Legal Guardian  
 Surrogate Parent  Attorney

Date of Receipt of Form: \_\_\_\_\_

Return this form to: \_\_\_\_\_ (To be completed by school district) \_\_\_\_\_

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# *Members of Committees*

A Committee on Special Education includes:

- Parent(s) of the student.
- Regular education teacher of the student whenever the student is or may be participating in the regular education environment.
- Special education teacher of the student, or if appropriate, special education provider of the student.
- School district representative who is qualified to provide or supervise special education and is knowledgeable about the general curriculum and the availability of resources of the school district. (This person may also be the special education teacher/provider or school psychologist.)
- An individual who understands and can talk about the evaluation results and how these results affect instruction. (This person may also be the special education teacher/provider, regular education teacher, school psychologist, school district representative or someone that the school district determines has knowledge or special expertise regarding the student.)
- School psychologist.
- School physician (upon request).
- Parent member (unless the parent requests that the parent member not participate).
- Other people that have knowledge or special expertise regarding the student, including related services personnel as appropriate (as requested by the parent or school district).
- The student, if appropriate.

A Subcommittee on Special Education includes:

- Parent(s) of the student.
- Regular education teacher of the student whenever the student is or may be participating in the regular education environment.
- Special education teacher of the student or, if appropriate, special education provider of the student.
- School district representative who is qualified to provide, administer or supervise special education and is knowledgeable about the general curriculum and the availability of resources of the school district. (This person may also be the special education teacher/provider or school psychologist.)
- An individual who understands and can talk about the evaluation results and how these results effect instruction. (This person may also be the special education teacher/provider, regular education teacher, school psychologist or school district representative.)
- School psychologist (under certain circumstances).
- Other people that have knowledge or special expertise regarding the student, including related services personnel as appropriate (as requested by the parent or school district).
- The student, if appropriate.

A Committee on Preschool Special Education includes:

- parent(s) of the student;
- regular education teacher of the child whenever the child is or may be participating in the regular education environment;
- special education teacher of the child or, if appropriate, special education provider of the child;
- school district representative who is qualified to provide or supervise special education and is knowledgeable about the general curriculum and the availability of preschool special education programs and services and other resources of the school district and the municipality (This person is the Chairperson of the Committee.);
- an individual who understands and can talk about the evaluation results and how these results effect instruction (This person may also be the special education teacher/provider, regular education teacher, school psychologist, school district representative or someone that the school district determines has knowledge or special expertise regarding the student.);
- parent member (unless the parent requests that the parent member not participate.);
- a licensed or certified professional from the Department of Health's Early Intervention Program (for a child in transition from the Early Intervention Program.);
- other people that have knowledge or special expertise regarding the child, including related services personnel as appropriate (as requested by the parent or school district.);
- a county representative (A certified or licensed preschool representative from the municipality must be notified of scheduled meetings; however the CPSE meeting can be held whether or not the municipal representative attends.);



## *Resources*

This Guide, other publications of interest, answers to frequently asked questions and other resources are available on the Internet at the Office of Vocational and Educational Services for Individuals with Disabilities (VESID) Special Education website, at <http://www.vesid.nysed.gov/specialed>. This site also links parents to a variety of State and federal resources. You can access the Internet from a computer at home or at your local library. You may contact your VESID Special Education Regional Associate if you would like additional information or if you have questions about:

- the information in this Guide
  
- the special education process
  
- your child's education program; or
  
- your legal rights as a parent

The phone numbers and locations of the five Special Education Quality Assurance Offices are listed on the next page. You should ask to speak to the Regional Associate responsible for your school district.

**Vocational and Educational Services for Individuals with Disabilities  
(VESID) Special Education Quality Assurance Regional Offices**

Rebecca H. Cort, Statewide Special Education  
Quality Assurance Coordinator  
(718) 722-4544

Daniel H. Johnson, Upstate Regional Coordinator (518) 473-1185

Patricia Shubert, New York City Regional Coordinator (718) 722-4544

The VESID Special Education Regional Offices are responsible for monitoring special education services through a collaborative Quality Assurance system and providing technical assistance to schools and residents of their regions. To locate the Special Education Quality Assurance Office nearest you, refer to VESID's website, <http://www.vesid.nysed.gov/specialed/quality/qaoffices.htm> for a map of New York State by BOCES and New York City Supervisory Region.

Eastern Regional Office  
NYS Education Department  
Special Education Quality Assurance  
One Commerce Plaza, Room 1623  
Albany, NY 12234  
(518) 486-6366  
(518) 486-7693 (fax)  
Hudson Valley Regional Office  
NYS Education Department  
Special Education Quality Assurance  
1950 Edgewater Street  
Yorktown Heights, NY 10598  
(914) 245-0010  
(914) 245-2952 (fax)  
Central Regional Office  
NYS Education Department  
Special Education Quality Assurance  
State Tower Building  
109 Warren Street, Suite 304  
Syracuse, NY 13202  
(315) 471-4796  
(315) 471-4795 (fax)  
Long Island Regional Office NYS Education  
Department  
Special Education Quality Assurance  
The Kellum Educational Center  
887 Kellum Street  
Lindenhurst, NY 11757  
(631) 884-8530  
(631) 884-8540 (fax)  
New York City Office  
NYS Education Department  
Special Education Quality Assurance  
55 Hanson Place, Room 545  
Brooklyn, NY 11217-1580  
(718) 722-4544  
(718) 722-2032 (fax)  
Western Regional Office  
NYS Education Department  
Special Education Quality Assurance  
2A Richmond Avenue  
Batavia, NY 14020  
(585) 344-2112 Ext. 420  
(585) 343-2660 (fax)

## **Parent Centers**

Parent Training and Information Centers (PTIC), Community Parent Resource Centers (CPRC), and Parent Centers are funded by State and Federal grants. These centers provide workshops on parent rights, necessary services, advocacy and other relevant presentations for parents of children with disabilities. Call them for information and/or assistance.

### **PARENT TO PARENT NYS**

500 Balltown Road

Schenectady, NY 12304

(518) 381-4350

1-800-305-8817 FAX: (518) 382-1959

e-mail: [info@parenttoparentnys.org](mailto:info@parenttoparentnys.org)

website: [www.parentoparent.org](http://www.parentoparent.org)

(A statewide organization, based in Schenectady, but serving all of New York State)

### **ADVOCATES FOR CHILDREN OF NEW YORK, INC.**

151 West 30th Street, 5th Floor

New York, NY 10001 (212) 947-9779

FAX: (212) 947-9790

(Serving the five boroughs of New York City)

### **THE ADVOCACY CENTER**

277 Alexander Street, Suite 500

Rochester, New York 14607

(585) 546-1700

1-800-650-4967 (NY only)

Spanish: (585)797-0032

FAX (585) 546-7069

e-mail: [advocacy@frontiernet.net](mailto:advocacy@frontiernet.net)

[www.advocacycenter.com](http://www.advocacycenter.com)

(Serving New York State, except for New York City)

### **RESOURCES FOR CHILDREN WITH SPECIAL NEEDS, INC.**

200 Park Avenue South, Suite 816

New York, NY 10003 (212) 677-4650

FAX: (212) 254-4070 (Serving New York City)

### **SINERGIA, INC.**

Metropolitan Parent Center

15 West 65th Street, 6th Floor

New York, NY 10023 (212) 496-1300

FAX: (212) 496-5608

(Serving New York City)

**Parent Centers - continued**

**UNITED WE STAND OF NEW YORK**

728 Driggs Avenue  
Brooklyn, NY 11211  
(718) 302-4313  
FAX: (718) 302-4315  
e-mail: uwsofny@aol.com

**PARENT TO PARENT NEW YORK, INC.**

1050 Forest Hill Road  
Staten Island, NY 10314  
(718) 494-5122  
FAX: (718) 494-0837  
(Serving New York City)

**LONG ISLAND PARENT CENTER**

Kellum Street Learning Center 887 Kellum St.  
Lindenhurst, NY 11757  
(631) 884-1848  
FAX: (631) 884-1830

**PARENT CENTER OF WESTERN NEW YORK**

Parent Network of WNY at the Wilson Parent Center 1000 Main St.  
Buffalo, NY 14202  
(716) 332-4173  
FAX: (716) 886-0221  
website: [www.expage.com/parentnetworkwny](http://www.expage.com/parentnetworkwny)

## Other Resources

### **Early Childhood Direction Centers**

The network of Early Childhood Direction Centers (ECDCs), administered by the New York State Education Department, is a resource for professionals and parents of children with disabilities, birth through five years of age. ECDCs provide information about programs and services available in the community and referral assistance in accessing these services. For information about the ECDC in your region, refer to NYSED's website:

<http://www.p12.nysed.gov/specialed/techassist/ecdc/locations.htm>

### **Independent Living Centers**

Independent Living Centers are private, community-based programs which provide a variety of services to people with disabilities. These nonresidential, nonmedical service centers provide education and awareness activities within their communities to break down barriers, allowing people with disabilities to participate fully in community life. Services provided by centers include: peer counseling; information and referral; advocacy; housing assistance; transportation; services referral (interpreters, readers, attendants); independent living skill counseling and training; architectural barrier consultation; equipment maintenance; repair and loan; and TTY relay. For information about the Independent Living Center in your region, refer to:

<http://www.acces.nysed.gov/vr/independent-living-centers>

### **Special Education Training and Resource Centers (SETRC)**

The SETRC network, administered by VESID, provides local information, training and resources related to the education of students with disabilities. SETRC training specialists provide parents, school district staff and administrators, agency representatives and other interested individuals with resources, consultation and training programs based on local needs and statewide goals. For information about the SETRC office in your region, refer to:

<http://www.p12.nysed.gov/specialed/publications/persprep/RegSETRC.pdf>

### **Adult Career and Continuing Education Services-Vocational Rehabilitation**

ACCES-VR provides services to individuals with disabilities to prepare them for employment. Services include: physical and/or psychological examinations; vocational evaluation; guidance and counseling; medical services (to improve ability to work); job and work adjustment training; meal allowances, books, tools and transportation for on-the-job support; other goods and services needed to obtain a job; job coaching; supported employment services; training in job seeking; job placement services and follow-up services. For information about the ACCES-VR, refer to:

<http://www.acces.nysed.gov/vr>

## Other Agency Resources

### **Commission for the Blind and Visually Handicapped**

Located within the Office of Children and Family Services, CBVH is responsible for the administration of programs and services to legally blind individuals to enhance independence and facilitate opportunities to participate in the community. CBVH provides a range of services for individuals who are legally blind through the independent living and vocational rehabilitation provisions of the Federal Rehabilitation Act, as well as through programs serving children and older individuals who are blind. For information about CBVH, call 1-866-871-3000 (TTY: 1-866-871-6000) or refer to: <https://ocfs.ny.gov/main/cb/>

### **Commissioner for Quality Care**

The Commission on Quality of Care's Advocacy Services Bureau coordinates a statewide protection and advocacy program for people with disabilities and their families. The Bureau offers training programs to help parents understand special education laws and regulations. These programs are cosponsored by local groups. For information about the Advocacy Services Bureau, call (518) 388-2892.

### **Coordinated Children Services Initiative**

The Coordinated Children Services Initiative (CCSI) is a multi-agency initiative that assists localities in providing children with emotional and behavioral disabilities at risk of residential placement with services in their homes, schools and communities. The goal of CCSI is to reduce residential placements by developing a local infrastructure that brings together child serving systems to provide a comprehensive and integrated system of care that supports families in staying together. For more information contact VESID at (518) 473-9307.

### **Office of Advocate for Persons with Disabilities**

The Office of Advocate for Persons with Disabilities (OAPWD) is a systems advocacy agency for people with disabilities. Its primary mission is to ensure that people with disabilities have every opportunity to be productive and participating citizens through: full access to emerging technology; access to up-to-date, comprehensive information on and referral to programs and services available to people with disabilities and their families; and implementation of progressive legislation protecting the equal rights of people with disabilities. For information about OAPWD, call (800) 5224369 or (518) 473-6005, (voice, TTY and Spanish call (518) 473-4129 (within NYS), (518) 474-5567 (outside NYS), electronic BBS call (800) 943-2323.

## Other Agency Resources - continued

### **Office of Mental Health**

The Office of Mental Health (OMH) is responsible for developing plans, programs and services for the care, treatment, rehabilitation, education and training of individuals with mental illness. The Office provides direct services at nineteen adult, six children's and three forensic psychiatric centers and provides fund allocation and certification of non-State-operated mental health programs. For more information contact the Bureau of Children and Family Services at (518) 4748394 or visit the OMH web site at <https://www.omh.ny.gov/>.

### **Office of Children and Family Services**

The Office of Children and Family Services (OCFS) provides operational support and policy direction to local social services districts and youth bureaus across the State and is responsible for the operation of 48 statewide residential and day placement facilities for youth. Programs and services provided through OCFS include child and adult protective, child welfare, domestic violence, pregnancy prevention; family services, youth development and delinquency prevention; juvenile justice; and after care programs. For more information contact (518) 473-7793 or visit the OCFS website at <https://ocfs.ny.gov/main/>.

### **Office of Alcoholism and Substance Abuse Services**

The Office of Alcoholism and Substance Abuse Services (OASAS) administers a comprehensive program of prevention, intervention and treatment services for persons addicted to alcohol and other drugs. OASAS plans, develops and regulates the State's system of alcoholism and substance abuse treatment agencies; operates 13 Alcoholism Treatment Centers; licenses and regulates local, community-based providers of inpatient, outpatient and residential services; and monitors programs to ensure quality of care and compliance with State and national standards. For more information contact (518) 473-3460 or visit the OASAS web site at <https://www.oasas.ny.gov/>.

# Index

Annual Review .....	116
Attorneys' Fees .....	134
Court Appeals .....	133
Committee on Preschool Special Education .....	107, 141
Committee on Special Education .....	107, 140
Complaints.....	134
Consent.....	122
Disabilities.....	110
Disciplinary Procedures.....	136
Due Process Rights.....	128
Educational Records.....	119
Eligibility .....	110
Evaluation .....	108, 121
Guardian ad litem.....	132
Impartial Hearings.....	129
Impartial Hearing Officer.....	131
Interim Alternative Educational Setting.....	134, 136
Independent Educational Evaluation.....	121
Individualized Education Program (IEP).....	114
Individuals with Disabilities Education Act.....	137
Least Restrictive Environment .....	112, 114, 115
Manifestation Determination .....	136
Mediation.....	128
Notice .....	123
Parent Centers.....	144
Pendency .....	133
Planning Ahead .....	112, 113
Reevaluation .....	116
References.....	137
Referral .....	106
Reimbursement for Private School Placement.....	126
Resources.....	142, 146-148
School Based Support .....	107
Special Education Training Resource Centers (SETRC).....	146
State Review Officer.....	132, 133
Subcommittee on Special Education .....	107, 140
Surrogate Parents.....	132
Timelines.....	127
Transition Services.....	113
VESID Special Education Regional Offices.....	143



**(X) Required**

( ) Local

( ) Notice

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

The Board of Education shall make available to all students with disabilities who reside within its district and are eligible under the Individuals with Disabilities Education Act and Article 89 of New York's Education Law, and their implementing regulations, a free appropriate public education in the least restrictive environment appropriate to meet their individual needs.

The Board acknowledges its responsibility to offer, at public expense, special education and related services which are designed to provide educational benefits to students with disabilities in conformity with the individualized education program (IEP). 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 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 are placed by their parents in a nonpublic school within district boundaries because of a disagreement between the parents and the school district over the provision of a free appropriate public education. 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 school 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 school district and assistance in making outside employment available). Each eligible student with a disability will be informed by a teacher, guidance counselor, or administrator of the district, of the availability of co-curricular and extracurricular activities and his/her eligibility to participate.

In providing a free appropriate public education to students with disabilities eligible under the IDEA and Article 89, the Board 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, but it is also the parents responsibility to check the District website for this information.

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 earlier of the end of the school year in which they turn 21 and the year they receive a local high school or Regents 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. School district staff will take steps to locate, identify, evaluate and maintain information about all children with disabilities within the district, including homeless children and children who are wards of the state, and children attending non-public schools 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, and/or alternative program options to address a student's performance before referring the student to the Committee on Special Education (CSE). The Child Study Team will develop, implement and evaluate pre-referral intervention strategies (4321.2, School-wide Pre-referral Approaches and Interventions).
3. School district staff will refer for evaluation a student who has not made adequate progress after an appropriate period of time when provided instruction under a response to intervention program.

4. The Board 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.
5. The Board will arrange for special education programs and services based upon the recommendation of the CSE or CSE subcommittee.
6. The Superintendent 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.
7. The Superintendent 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.
8. The Superintendent will establish a process for ensuring that district staff understand the rights 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

The district will conduct an annual census to 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 homeless or wards of the State. The census shall be conducted, and the registry maintained, in accordance with the requirements established in Commissioner's regulations.

The Superintendent will determine what other activities might be appropriate to help locate and identify students with disabilities. These may include, but are not limited to, the mailing of letters to all district residents regarding the availability of special education programs and services and their right to access such services, and/or the publication of a similar notice in school newsletters and other publications.

(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 information regarding how to locate and identify nonpublic school students with disabilities).

#### 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 an appropriate evaluation of the student in accordance within legally prescribed timelines. As set forth in Commissioner's regulations, the initial evaluation will include, at least, a physical examination or completion of a district physical examination form by the child's personal physician, 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 or 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, in writing to the Director of Special Services, 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 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. They also will keep a detailed record of those attempts and their results, including phone calls and correspondence, visits to the parent's home 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 will 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. If the district cannot document its efforts to obtain consent, the Board will commence due process proceedings to conduct a reevaluation without parental consent.
3. If district staff is unable to obtain consent for the initial evaluation or reevaluation of a home schooled or a parentally-placed non-public school student, the Board 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. Included in this are parent-provided information, 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 (as applicable) 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 language and 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 parents of any determination that no additional data is needed and the reasons for such a determination. It will also inform the parent of his or her right to request an assessment, notwithstanding that determination.

### Eligibility Determination

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

The CSE committee 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.

### Committee on Special Education

The members of the CSE committees will include those individuals identified in applicable law and regulations, and their attendance at CSE committee 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 committee members and as such has a right to participate in CSE committee 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 committee 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 days' notice of the time and place of a CSE committee 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 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 committee 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 committee 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.

### Provision of Services

The Board will arrange for appropriate special education and related services recommended by the CSE committee 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 non-public 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 acknowledges that parental consent for 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

Adoption date: March 10, 2011

First Reading: February 10, 2011

Second Reading: March 3, 2011



The University of the State of New York  
New York State Education Department  
Office of Special Education

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## **Part B** PROCEDURAL SAFEGUARDS NOTICE

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### **New York State Education Department PROCEDURAL SAFEGUARDS NOTICE July 2017**

#### **Rights for Parents of Children with Disabilities, Ages 3-21**

As a parent, you are a vital member of the Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE) in New York State. The CSE/CPSE is responsible for developing recommendations for special education programs and services for your child. You must be given opportunities to participate in the CSE/CPSE discussion and decision-making process about your child's needs for special education. The following information concerns procedural safeguards that are your legal rights under federal and State laws to be informed about and involved in the special education process and to make sure that your child receives a free appropriate public education (FAPE).

A copy of this procedural safeguards notice must be provided to you one time a year and:

- upon initial referral or your request for an evaluation of your child.
- whenever you request a copy.
- upon receipt of the first due process complaint in a school year requesting mediation or an impartial hearing.
- the first time in a school year when the school district receives a copy of a State complaint that you submitted to the New York State Education Department (NYSED).

- when a decision is made to suspend or remove your child for discipline reasons that would result in a disciplinary change in placement.

The Procedural Safeguards Notice has been adapted from the model form developed by the United States Department of Education (USDOE). Information was added regarding New York State's requirements.



## Table of Contents

<b>General Information</b> .....	1
Prior Written Notice (Notice of Recommendation) .....	1
Native Language.....	2
Electronic Mail .....	2
Parental Consent - Definition .....	3
Parental Consent.....	3
Independent Educational Evaluations.....	6
<b>Confidentiality of Information</b> .....	8
Definitions.....	8
Personally Identifiable.....	8
Notice to Parents .....	8
Access Rights.....	9
Record of Access.....	9
Records on More Than One Child .....	11
List of Types and Locations of Information .....	11
Fees.....	11
Amendment of Records at Parent’s Request.....	11
Opportunity for a Hearing .....	12
Hearing Procedures.....	12
Result of Hearing .....	12
Consent For Disclosure of Personally Identifiable Information.....	13
Safeguards .....	13
Destruction of Information.....	13
<b>State Complaint Procedures</b> .....	15

Difference Between Due Process Hearing Complaint and State Complaint Procedures .....	13
Adoption of State Complaint Procedures .....	13
Minimum State Complaint Procedures .....	14
Filing a Complaint.....	15
<b>Due Process Complaint Procedures .....</b>	<b>16</b>
Filing a Due Process Complaint .....	16
Due Process Complaint .....	16
Model Forms .....	18
Mediation .....	18
The Child's Placement While the Due Process Complaint and Hearing are Pending (Pendency) .....	20
Resolution Process .....	20
<b>Hearings on Due Process Complaints .....</b>	<b>23</b>
Impartial Due Process Hearing .....	23
Hearing Rights .....	24
Hearing Decisions .....	25
<b>Appeals .....</b>	<b>26</b>
Finality of Decision; Appeal; Impartial Review .....	26
Timelines and Convenience of Hearings and Reviews .....	27
Civil Actions, Including the Time Period in Which to File Those Actions .....	27
Attorneys' Fees .....	28
<b>Procedures When Disciplining Children with Disabilities .....</b>	<b>30</b>
Authority of School Personnel .....	30
Change of Placement Because of Disciplinary Removals .....	33
Determination of Setting .....	34
Appeal .....	34
Placement During Appeals .....	35
Protections for Children Not Yet Eligible for Special Education and Related Services .....	35

Referral to and Action by Law Enforcement and Judicial Authorities .....	37
<b>Use of Public and Private Benefits/Insurance .....</b>	<b>38</b>
Children with disabilities covered by public insurance .....	38
Children with disabilities covered by private insurance .....	39

**Part B** **Procedural Safeguards Notice**

New York State Education Department

iii

<b>Requirements for Unilateral Placement by Parents of Children in Private Schools at Public Expense .....</b>	<b>40</b>
General .....	40
Resources .....	41

**GENERAL INFORMATION****PRIOR WRITTEN NOTICE (NOTICE OF RECOMMENDATION)****34 CFR section 300.503; 8 NYCRR section 200.5(a) and (c)****Notice**

Your school district must give you written notice (provide you certain information in writing), whenever it:

1. proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; **or**
2. refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.

If the prior written notice relates to an action by the school district that requires parental consent, the district will give notice at the same time they request such consent.

**Content of notice**

The written notice must:

1. describe the action that your school district proposes or refuses to take;
2. explain why your school district is proposing or refusing to take the action;
3. describe each evaluation procedure, assessment, record, or report your school district used in deciding to propose or refuse the action;
4. include a statement that you have protections under the procedural safeguards provisions in Part B of the Individuals with Disabilities Education Act (IDEA);
5. tell you how you can obtain a description of the procedural safeguards notice if the action that your school district is proposing, or refusing is not an initial referral for evaluation;
6. include resources for you to contact for help in understanding Part B of the Individuals with Disabilities Education Act (IDEA);
7. describe any other choices that your child's Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE), considered and the reasons why those choices were rejected; **and**
8. provide a description of other reasons why your school district proposed or refused the action.

**Notice in understandable language**

The notice must be written in language understandable to the general public and be provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

If your native language or other mode of communication is not a written language, your school district must ensure that:

1. the notice is translated for you orally by other means in your native language or other mode of communication;
2. you understand the content of the notice; **and**
3. there is written evidence that 1 and 2 have been met.

**NATIVE LANGUAGE**

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**34 CFR section 300.29; 8 NYCRR section 200.1(ff)**

*Native language*, when used with an individual who has limited English proficiency, means the following:

1. The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
2. In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

For a person with deafness or blindness, or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

**ELECTRONIC MAIL**

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**34 CFR section 300.505; 8 NYCRR section 200.5(a), (f), and (i)**

If your school district offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail: 1. prior written notice (notice of recommendation);

2. procedural safeguards notice; **and**
3. notices related to a due process complaint.

## PARENTAL CONSENT - DEFINITION

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### 34 CFR section 300.9; 8 NYCRR section 200.1(l)

#### Consent

*Consent* means:

1. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent;
2. You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; **and**
3. You understand that the consent is voluntary on your part and you may withdraw your consent at any time.

Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew it.

## PARENTAL CONSENT

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### 34 CFR section 300.300; 8 NYCRR sections 200.5(a) and (b)

#### Consent for initial evaluation

Your school district cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and without obtaining your consent as described under the heading ***Parental Consent***.

Your school district must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for the school district to start providing special education and related services to your child.

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation and your child is school-age, your school district may, but is not required to, seek to conduct an initial evaluation of your child by utilizing mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. Your school district will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances and your child can not receive special education services even if he/she would have been eligible.

**Special rules for initial evaluation of wards of the State**

If a child is a ward of the State and is not living with his/her parent, the school district does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. despite reasonable efforts to do so, the school district cannot find the child's parent;
2. the rights of the parents have been terminated in accordance with State law; **or**
3. a judge has assigned the right to make educational decisions and to consent for an initial evaluation to an individual other than the parent.

In New York State, ward of the state means a child or youth under the age of twenty-one:

1. who has been placed or remanded pursuant to section 358-a, 384 or 384-a of the Social Services Law, or article 3, 7, or 10 of the Family Court Act, or freed for adoption pursuant to section 383-c, 384, or 384-b of the Social Services Law; or
2. who is in the custody of the Commissioner of Social Services or the Office of Children and Family Services; or
3. who is a destitute child under section 398(1) of the Social Services Law

**Parental consent for services** Your school district must obtain your informed consent before providing special education and related services to your child for the first time. The school district must make reasonable efforts to obtain your informed consent before providing special education and related services to your child for the first time.

If you do not respond to a request to provide your consent for your child to receive special education and related services for the first time, or if you refuse to give such consent, your school district may not use due process procedures (i.e., mediation, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's CSE or CPSE) may be provided to your child without your consent.

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent and the school district does not provide your child with the special education and related services for which it sought your consent, your school district:

1. is not in violation of the requirement to make FAPE available to your child for its failure to provide those services to your child; **and**
2. is not required to have an IEP meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

### Revocation of parental consent

If you inform the school district in writing that you revoke (take back) your consent for your school district to provide special education and related services to your child, your school district:

1. may not continue to provide special education and related services to your child;
2. may not use due process procedures (i.e., mediation, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the services may be provided to your child;
3. is not in violation of the requirement to make FAPE available to your child for its failure to provide further special education and related services to your child;
4. is not required to have an IEP meeting or develop an IEP for your child for the further provision of special education and related services; **and**
5. is not required to amend your child's education records to remove any reference to your child's receipt of special education and related services because of the revocation of consent.

### Parental consent for reevaluations

Your school district must obtain your informed consent before it reevaluates your child, unless your school district can demonstrate that:

1. it took reasonable steps to obtain your consent for your child's reevaluation; **and**
2. you did not respond.

If you refuse to consent to your child's reevaluation, the school district may, but is not required to, pursue your child's reevaluation by using mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, your school district does not violate its obligations under Part B of IDEA if it declines to pursue the reevaluation in this manner.

### Documentation of reasonable efforts to obtain parental consent

Your school must maintain documentation of reasonable efforts to obtain parental consent for initial evaluations and reevaluations, to provide special education and related services for the first time, and to locate parents of wards of the State for initial evaluations. The documentation must include a record of the school district's attempts in these areas, such as:

1. detailed records of telephone calls made or attempted and the results of those calls;
2. copies of correspondence sent to the parents and any responses received; **and**
3. detailed records of visits made to the parent's home or place of employment and the results of those visits.



### Parental consent for insurance access

Parent consent is required prior to the school district accessing a parent's private or public insurance proceeds as described under the heading of ***Use of Public and Private Benefits/Insurance***.

### Consent for Parentally-Placed and Home-Instructioned Students

If you have enrolled your child in a private school at your own expense or if you are home schooling your child, and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the school district may not use its consent override procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to parentally-placed private school children with disabilities).

### Other consent requirements

Your consent is not required before your school district may:

1. review existing data as part of your child's evaluation or a reevaluation; **or**
2. give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from all parents of all children.

Your school district may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

The school district must develop and implement procedures to ensure that your refusal to consent to any of these other services and activities does not result in a failure to provide your child with FAPE.

## INDEPENDENT EDUCATIONAL EVALUATIONS

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### 34 CFR section 300.502; 8 NYCRR section 200.5(g)

#### General

As described below, you have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was obtained by your school district.

If you request an IEE, the school district must provide you with information about where you may obtain one and about the school district's criteria that apply to IEEs.

#### Definitions

*Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of your child.

*Public expense* means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of Part B of IDEA, which allow each state to use whatever State, local, federal and private sources of support are available in the State to meet the requirements of Part B of IDEA.

### **Parent right to evaluation at public expense**

You have the right to an IEE of your child at public expense if you disagree with an evaluation of your child obtained by your school district, subject to the following conditions:

1. If you request an IEE of your child at public expense, your school district must, without unnecessary delay, either: (a) file a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or (b) provide an IEE at public expense, unless the school district demonstrates in a hearing that the evaluation of your child that you obtained did not meet the school district's criteria.
2. If your school district requests a hearing and the final decision is that your school district's evaluation of your child is appropriate, you still have the right to an IEE, but not at public expense.
3. If you request an IEE of your child, the school district may ask why you object to the evaluation of your child obtained by your school district. However, your school district may not require an explanation and may not unreasonably delay either providing the IEE of your child at public expense or filing a due process complaint to request a due process hearing to defend the school district's evaluation of your child.

You are entitled to only one IEE of your child at public expense each time your school district conducts an evaluation of your child with which you disagree.

### **Parent-initiated evaluations**

If you obtain an IEE of your child at public expense or you choose to share with the school district an evaluation of your child that you obtained at private expense:

1. Your school district must consider the results of the evaluation of your child, if it meets the school district's criteria for IEE, in any decision made with respect to the provision of FAPE to your child; **and**
2. You or your school district may present the evaluation as evidence at a due process hearing regarding your child.

### **Requests for evaluations by impartial hearing officers**

If an impartial hearing officer requests an IEE of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

### **School district criteria**

If an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be

the same as the criteria that the school district uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an IEE).

Except for the criteria described above, a school district may not impose conditions or timelines related to obtaining an IEE at public expense.

## CONFIDENTIALITY OF INFORMATION

### DEFINITIONS

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#### 34 CFR section 300.611

As used under the heading **Confidentiality of Information**:

*Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

*Education records* means the type of records covered under the definition of “education records” in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

*Participating agency* means any school district, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of IDEA.

### PERSONALLY IDENTIFIABLE

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#### 34 CFR section 300.32; 8 NYCRR section 200.5(e)

*Personally identifiable* means information that has:

- (a) your child's name, your name as the parent, or the name of another family member;
- (b) your child's address;
- (c) a personal identifier, such as your child's social security number or student number;  
or
- (d) a list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

### NOTICE TO PARENTS

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#### 34 CFR section 300.612

When the New York State Education Department (NYSED) and school districts maintain personally identifiable information, notice must be given that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

1. a description of the extent to which the notice is given in the native languages of the various population groups in the State;
2. a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods used in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
3. a summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; **and**
4. a description of all of the rights of parents and children regarding this information, including the rights under FERPA and its implementing regulations in 34 CFR Part 99. Before any major identification, location, or evaluation activity (also known as “child find”), the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents of the activity to locate, identify, and evaluate children in need of special education and related services.

## **ACCESS RIGHTS**

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### **34 CFR section 300.613; 8 NYCRR sections 200.2(b)(6) and 200.5(d)(6)**

The participating agency must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by your school district under Part B of IDEA. The participating agency must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an IEP, or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

1. a response from the participating agency to your reasonable requests for explanations and interpretations of the records;
2. a request that the participating agency provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; **and**
3. to have your representative inspect and review the records.

The participating agency may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable State law governing such matters as guardianship, or separation and divorce.

## **RECORD OF ACCESS**

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### **34 CFR section 300.614**

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

## RECORDS ON MORE THAN ONE CHILD

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### 34 CFR section 300.615

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

## LIST OF TYPES AND LOCATIONS OF INFORMATION

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### 34 CFR section 300.616

On request, each participating agency must provide you with a list of the types and locations of education records collected, maintained, or used by the agency.

## FEES

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### 34 CFR section 300.617

Each participating agency may charge a fee for copies of records that are made for you under Part B of IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records.

A participating agency may not charge a fee to search for or to retrieve information under Part B of IDEA.

## AMENDMENT OF RECORDS AT PARENT'S REQUEST

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### 34 CFR section 300.618

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the participating agency that maintains the information to change the information.

The participating agency must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

If the participating agency refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing for this purpose as described under the heading ***Opportunity For a Hearing***.

## **OPPORTUNITY FOR A HEARING**

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### **34 CFR section 300.619**

The participating agency must, on request, provide you an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

## **HEARING PROCEDURES**

### **34 CFR section 300.621**

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under FERPA.

## **RESULT OF HEARING**

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### **34 CFR section 300.620**

If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must change the information accordingly and inform you in writing.

If, as a result of the hearing, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the participating agency.

Such an explanation placed in the records of your child must:

1. be maintained by the participating agency as part of the records of your child as long as the record or contested portion is maintained by the participating agency; **and**
2. if the participating agency discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to that party.

## CONSENT FOR DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION

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### 34 CFR section 300.622; 8 NYCRR section 200.5(b)

Unless the information is contained in education records, and the disclosure is authorized without parental consent under FERPA, your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of IDEA.

Your consent, or consent of an eligible child who has reached the age of majority under

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State law (age 18), must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If your child is in, or is going to go to, a private school that is not located in the same school district you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

## SAFEGUARDS

### 34 CFR section 300.623

Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding New York State's policies and procedures regarding confidentiality under Part B of IDEA and FERPA.

Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

## DESTRUCTION OF INFORMATION

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### 34 CFR section 300.624

Your school district must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child.



The information must be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

## **STATE COMPLAINT PROCEDURES**

### **DIFFERENCE BETWEEN DUE PROCESS HEARING COMPLAINT AND STATE COMPLAINT PROCEDURES**

The regulations for Part B of IDEA set forth separate procedures for State complaints and for due process complaints and hearings. As explained below, any individual or organization may file a State complaint alleging a violation of any Part B requirement by a school district, NYSED, or any other public agency. Only you or a school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child. NYSED staff generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended. An impartial due process hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45 calendar days for school-age students and 30 calendar days for preschool students after the end of the resolution period, (as described in this document under the heading Resolution Process) unless the hearing officer grants a specific extension of the timeline. Such an extension would be at your request or the school district's request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below.

### **ADOPTION OF STATE COMPLAINT PROCEDURES**

#### **34 CFR section 300.151; 8 NYCRR section 200.5(l)**

##### **General**

NYSED must have written procedures for:

1. resolving any complaint, including a complaint filed by an organization or individual from another State;
2. the filing of a complaint with NYSED. State complaints may be sent to:  
Statewide Coordinator for Special Education  
New York State Education Department  
Office of Special Education  
89 Washington Avenue, Room 309 EB Albany, NY  
12234
3. widely disseminating the State complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

##### **Remedies for denial of appropriate services**

In resolving a State complaint in which NYSED has found a failure to provide appropriate services, NYSED must address:

1. the failure to provide appropriate services, including corrective action appropriate to address the needs of the child; **and**
2. appropriate future provision of services for all children with disabilities.

## **MINIMUM STATE COMPLAINT PROCEDURES**

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### **34 CFR section 300.152; 8 NYCRR section 200.5(l)**

#### **Time limit; minimum procedures**

NYSED must include in its State complaint procedures a time limit of 60 calendar days after a complaint is filed to:

1. carry out an independent on-site investigation, if NYSED determines that an investigation is necessary;
2. give the complainant (the person submitting the complaint) the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. provide the school district or other public agency with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the agency, a proposal to resolve the complaint; **and** (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation;
4. review all relevant information and make an independent determination as to whether the school district or other public agency is violating a requirement of Part B of IDEA; **and**
5. issue a written decision to the complainant that addresses each allegation in the complaint and contains: (a) findings of fact and conclusions; **and** (b) the reasons for NYSED's final decision.

#### **Time extension; final decision; implementation NYSED's**

procedures described above also must:

1. permit an extension of the 60 calendar-day time limit only if: (a) exceptional circumstances exist with respect to a particular State complaint; **or** (b) the parent and the school district or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation.
2. include procedures for effective implementation of NYSED's final decision, if needed, including: (a) technical assistance activities; (b) negotiations; **and** (c) corrective actions to achieve compliance.

NYSED's decision rendered for the complaint is final and is not subject to appeal. While a school district and a parent have the right to initiate an impartial hearing to address the same issues raised in the complaint, the impartial hearing cannot be used as an appeal to a State complaint decision.

#### **State complaints and due process hearings**

If a written State complaint is received that is also the subject of a due process hearing as described below under the heading **Filing a Due Process Complaint**, or the State

complaint contains multiple issues of which one or more are part of such a hearing, NYSED must set aside the State complaint, or any part of the State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (you and the school district), then the due process hearing decision is binding on that issue and NYSED must inform the complainant that the decision is binding.

A complaint alleging a school district's or other public agency's failure to implement a due process hearing decision must be resolved by NYSED.

## **FILING A COMPLAINT**

### **34 CFR section 300.153; 8 NYCRR section 200.5(l)**

An organization or individual may file a signed written State complaint under the procedures described above. The State complaint must include:

1. a statement that a school district or other public agency has violated a requirement of Part B of IDEA or its regulations;
2. the facts on which the statement is based;
3. the signature and contact information for the complainant; and
4. if alleging violations regarding a specific child:
  - (a) the name of the child and address of the residence of the child;
  - (b) the name of the school the child is attending;
  - (c) in the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
  - (d) a description of the nature of the problem of the child, including facts relating to the problem; **and**
  - (e) a proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading ***Adoption of State Complaint Procedures***.

The party filing the State complaint must forward a copy of the complaint to the school district or other public agency serving the child at the same time the party files the complaint with NYSED.

## **DUE PROCESS COMPLAINT PROCEDURES**

### **FILING A DUE PROCESS COMPLAINT**

#### **34 CFR section 300.507; 8 NYCRR section 200.5(i) and section 200.5(j)**

##### **General**

You or the school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of FAPE to your child.

The due process complaint must allege a violation that happened not more than two years before you or the school district knew or should have known about the alleged action that forms the basis of the due process complaint.

The above timeline does not apply to you if you could not file a due process complaint within the timeline because:

1. the school district specifically misrepresented that it had resolved the issues identified in the complaint; **or**
2. the school district withheld information from you that it was required to provide you under Part B of IDEA.

##### **Information for parents**

The school district must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, **or** if you or the school district file a due process complaint.

### **DUE PROCESS COMPLAINT**

#### **34 CFR section 300.508; 8 NYCRR section 200.5(i) and (j)**

##### **General**

In order to request a hearing, you or the school district (or your attorney or the school district's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

You or the school district, whichever one filed the complaint, must also provide NYSED with a copy of the complaint.

##### **Content of the complaint**

The due process complaint must include:

1. the name of the child;

2. the address of the child's residence;
3. the name of the child's school;
4. if the child is a homeless child or youth, the child's contact information and the name of the child's school;
5. a description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. a proposed resolution of the problem to the extent known and available to you or the school district at the time.

**Notice required before a hearing on a due process complaint**

You or the school district may not have a due process hearing until you or the school district (or your attorney or the school district's attorney), files a due process complaint that includes the information listed above.

**Sufficiency of complaint**

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the school district) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification the receiving party (you or the school district) considers a due process complaint insufficient, the impartial hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and the school district in writing immediately.

**Complaint amendment**

You or the school district may make changes to the complaint only if:

1. the other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described below; **or**
2. by no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party (you or the school district) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

**Local educational agency (LEA) or school district response to a due process complaint**

If the school district has not sent a prior written notice to you, as described under the heading **Prior Written Notice**, regarding the subject matter contained in your due process

complaint, the school district must, within 10 calendar days of receiving the due process complaint, send a response to you that includes:

1. an explanation of why the school district proposed or refused to take the action raised in the due process complaint;
2. a description of other options that your child's CSE or CPSE considered and the reasons why those options were rejected;
3. a description of each evaluation procedure, assessment, record, or report the school district used as the basis for the proposed or refused action; **and**
4. a description of the other factors that are relevant to the school district's proposed or refused action.

Providing the information in items 1-4 above does not prevent the school district from asserting that your due process complaint was insufficient.

#### **Other party response to a due process complaint**

Except as stated under the sub-heading immediately above, ***LEA or school district response to a due process complaint***, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

## **MODEL FORMS**

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### **34 CFR section 300.509**

NYSED must develop model forms to help you file a State complaint and a due process complaint. However, NYSED or the school district may not require you to use these model forms. You can use the State's model form or another appropriate form, so long as it contains the required information for filing a due process complaint or a State complaint. The State's model forms may be found at <http://www.p12.nysed.gov/specialed/>. Copies of the forms will be provided to you by the school district or by contacting NYSED, Office of Special Education at 518-473-2878.

## **MEDIATION**

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### **34 CFR section 300.506; 8 NYCRR section 200.5(h)**

#### **General**

The school district must make mediation available to allow you and the school district to resolve disagreements involving any matter under Part B of IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of IDEA, whether or not you have filed a due process complaint to request a due process hearing as described under the heading ***Filing a Due Process Complaint***.

## Requirements

The procedures must ensure that the mediation process:

1. is voluntary on your part and the school district's part;
2. is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under Part B of IDEA; **and**
3. is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The school district may develop procedures that offer parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with a disinterested party:

1. who is under contract with the Community Dispute Resolution Center (CDRC); **and**
2. who would explain the benefits and encourage the use of the mediation process to you.

New York State uses qualified mediators trained by CDRC who know the laws and regulations relating to the provision of special education and related services. Mediators are selected by CDRCs on a random, rotational, or other impartial basis.

## Arranging mediation

Mediation is arranged through the school district with CDRCs. The State is responsible for the cost of the mediation process, including the costs of meetings.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the school district.

## Mediation agreements

If you and the school district resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and:

1. states that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; **and**
2. is signed by both you and a representative of the school district who has the authority to bind the school district.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any federal court or State court of a State receiving assistance under Part B of IDEA.

## Impartiality of mediator

The mediator:



1. may not be an employee of a State educational agency or school that is involved in the education or care of your child; **and**
2. must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a school district or State agency solely because he or she is paid by the agency or school district to serve as a mediator.

## **THE CHILD'S PLACEMENT WHILE THE DUE PROCESS COMPLAINT AND HEARING ARE PENDING (PENDENCY)**

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### **34 CFR section 300.518; 8 NYCRR section 200.5(m)**

Except as provided below under the heading ***PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES***, once a due process complaint is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and your school district or you and the State Review Officer agree otherwise, your child must remain in his or her current educational placement.

If the due process proceeding concerns consent for an initial evaluation, your child will not be evaluated while the proceeding is pending.

If the due process complaint involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all such proceedings.

A child who received preschool special education services and is now school-age may, during hearings and appeals, remain in the same programs as the preschool program if that program also has an approved school-age special education program.

If your preschool child is currently not receiving special education services and programs, he or she may, during any hearings or appeals, receive special education services and programs if you and the school district agree.

If the due process complaint involves an application for initial services under Part B of IDEA for a child who is transitioning from being served under Part C of IDEA (Early Intervention Services) to Part B of IDEA (Preschool Special Education Services) and who is no longer eligible for Part C services because the child has turned three, the school district is not required to provide the Part C services that the child has been receiving. If the child is found eligible under Part B of IDEA and you consent for the child to receive special education and related services for the first time, then, pending the outcome of the

proceedings, the school district must provide those special education and related services that are not in dispute (those which you and the school district both agree upon).

A child who has received early intervention services and is not of preschool age may, during hearings and appeals, receive special education in the same program as the early intervention program if that program is also an approved preschool program.

## RESOLUTION PROCESS

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34 CFR section 300.510; 8 NYCRR section 200.5(j)

### Resolution meeting

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the school district must convene a meeting with you and the relevant member or members of the CSE or CPSE who have specific knowledge of the facts identified in your due process complaint. The meeting:

1. must include a representative of the school district who has decision-making authority on behalf of the school district; and may not include an attorney of the school district unless you are accompanied by an attorney.

You and the school district determine the relevant members of the CSE or CPSE to attend the meeting.

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that the school district has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

1. you and the school district agree in writing to waive the meeting; **or**
2. you and the school district agree to use the mediation process, as described under the heading **Mediation**.

A school district must make reasonable efforts to obtain your participation in the resolution meeting.

### Resolution period

If the school district has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar-day timeline for school-age students or 30-calendar-day timeline for preschool students for issuing a final decision begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Except where you and the school district have both agreed to waive the resolution process or to use mediation, **your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting.** If you decide not to attend the resolution meeting, your impartial hearing may be dismissed by an impartial hearing officer.

If after making reasonable efforts and documenting such efforts, the school district is not able to obtain your participation in the resolution meeting, the school district may, at the end of the 30-calendar-day resolution period, request that an impartial hearing officer dismiss your due process complaint. Documentation of such efforts must include a record of the school district's attempts to arrange a mutually agreed upon time and place, such as:

1. detailed records of telephone calls made or attempted and the results of those calls;
2. copies of correspondence sent to you and any responses received; and
3. detailed records of visits made to your home or place of employment and the results of those visits.

If the school district fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint **or** fails to participate in the resolution meeting, you may ask a hearing officer to order that the 45-calendar-day due process hearing timeline for school-age students (or the 30-calendar-day due process hearing timeline for preschool) begin.

### **Adjustments to the 30-calendar-day resolution period**

If you and the school district agree in writing to waive the resolution meeting, then the 45-calendar-day for school-age (or 30 calendar day for preschool) timeline for the due process hearing starts the next calendar day.

After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if you and the school district agree in writing that no agreement is possible, then the 45 calendar day for school-age students or 30 calendar day for preschool timeline for the due process hearing starts the next calendar day.

If you and the school district agree to use the mediation process, at the end of the 30-calendar-day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached. However, if either you or the school district withdraws from

the mediation process, then the 45-calendar-day or 30-calendar-day timeline for the due process hearing starts the next calendar day.

### **Written agreement**

If a resolution to the dispute is reached at the resolution meeting, you and the school district must enter into a legally binding agreement that is:

1. signed by you and a representative of the school district who has the authority to bind the school district; **and**
2. enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States.

### **Agreement review period**

If you and the school district enter into an agreement as a result of a resolution meeting, either party (you or the school district) may void the agreement within three business days of the time that both you and the school district signed the agreement.

## **HEARINGS ON DUE PROCESS COMPLAINTS**

### **IMPARTIAL DUE PROCESS HEARING**

**34 CFR section 300.511; 8 NYCRR sections 200.1(x), 200.5(i) and (j)**

#### **General**

Whenever a due process complaint is filed, you or the school district involved in the dispute must have an opportunity for an impartial due process hearing, as described in the ***Due Process Complaint*** and ***Resolution Process*** sections. The school district appoints the impartial hearing officer from the rotational list. The impartial hearing officer convenes the impartial hearing.

#### **Impartial hearing officer (IHO)**

At a minimum, an IHO must:

1. not be an employee of a State educational agency or school that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer;
2. not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;

3. be knowledgeable and understand the provisions of IDEA, and federal and New York State regulations pertaining to IDEA, and legal interpretations of IDEA by federal and State courts; **and**
4. have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

Each school district must keep a list of those persons who serve as IHOs.

### **Subject matter of due process hearing**

The party (you or the school district) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint notice, unless the other party agrees.

### **Timeline for requesting a hearing**

You or the school district must request an impartial hearing on a due process complaint within two years of the date you or the school district knew or should have known about the issue addressed in the complaint.

### **Exceptions to the timeline**

The above timeline does not apply to you if you could not file a due process complaint because:

1. the school district specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; **or**
2. the school district withheld information from you that it was required to provide to you under Part B of IDEA.

## **HEARING RIGHTS**

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### **34 CFR section 300.512; 8 NYCRR section 200.5(j)**

#### **General**

Any party to a due process hearing (including a hearing relating to disciplinary procedures) or an appeal, as described under the sub-heading ***Appeal of decisions; impartial review*** has the right to:

1. be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of children with disabilities;
2. present evidence and confront, cross-examine, and require the attendance of witnesses;

3. prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five business days before the hearing;
4. obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**
5. obtain written, or, at your option, electronic findings of fact and decisions.

**Additional disclosure of information**

At least five business days prior to a due process hearing, you and the school district must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the school district intend to use at the hearing.

An IHO may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

**Parental rights at hearings**

You must be given the right to:

1. have your child present;
2. open the hearing to the public;
3. have the record of the hearing, the findings of fact and decisions provided to you at no cost; **and**
4. have an interpreter for the deaf or an interpreter fluent in your native language, if necessary, at no cost to you.

**HEARING DECISIONS**

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**34 CFR section 300.513; 8 NYCRR section 200.5(j)****Decision of hearing officer**

An IHO's decision on whether your child received FAPE must be based on substantive grounds.

In matters alleging a procedural violation, an IHO may find that your child did not receive FAPE only if the procedural inadequacies:

1. interfered with your child's right to FAPE;

2. significantly interfered with your opportunity to participate in the decision-making process regarding the provision of FAPE to your child; or
3. caused a deprivation of an educational benefit.

### Construction clause

None of the provisions described above can be interpreted to prevent an IHO from ordering a school district to comply with the requirements in the procedural safeguards section of the federal regulations under Part B of IDEA (34 CFR sections 300.500 through 300.536).

None of the provisions under the headings: ***Filing a Due Process Complaint; Due Process Complaint; Model Forms; Resolution Process; Impartial Due Process Hearing; Hearing Rights; and Hearing Decisions*** (34 CFR sections 300.507 through 300.513), can affect your right to file an appeal of the due process hearing decision with the State Review Officer (SRO) (see heading **Appeals - Finality of Decision**).

### Separate request for a due process hearing

Nothing in the procedural safeguards section of the federal regulations under Part B of IDEA (34 CFR sections 300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

## APPEALS

### FINALITY OF DECISION; APPEAL; IMPARTIAL REVIEW

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#### 34 CFR section 300.514; 8NYCRR section 200.5(k)

#### Finality of hearing decision

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the school district) may appeal the decision to NYSED, Office of State Review.

#### State-level appeals of IHO decisions

The decision made by the IHO is final unless you or the school district ask for a review of the decision of the IHO (called a request for review) by a State Review Officer (SRO). If you want to appeal the IHO decision to an SRO, a Notice of Intention to Seek Review (Form A) must be served on the school district **within 25 days from the date of the IHO's decision**. The notice of request for review (Form B) and request for review must be served by hand-delivery on the school district **within 40 days from the date of the IHO's decision**. The SRO will:

1. Make a final decision within 30 calendar days. The SRO may extend the time beyond the 30 days upon good cause shown at the timely written request of you or the school district. The extension must be for a specific time.
2. Mail copies of the written or, at your option, electronic findings of fact and the decision to you or your attorney and the board of education (BOE) within the 30day period or time period as extended by the SRO as set forth above

The rules for filing an appeal to the SRO can be found at: <http://www.sro.nysed.gov>.

If there is an appeal, the SRO must conduct an impartial review of the findings and decision appealed. The official conducting the review must:

1. examine the entire hearing record;
2. ensure that the procedures at the hearing were consistent with the requirements of due process;
3. seek additional evidence if necessary. If a hearing is held to receive additional evidence, the hearing rights described above under the heading **Hearing Rights** apply;
4. give the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
5. make an independent decision on completion of the review; **and**
6. give you and the school district a copy of the written, or, at your option, electronic findings of fact and decisions.

#### **Finality of review decision**

The decision made by the SRO is final unless you or the school district brings a civil action, as described below.

## **TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS**

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### **34 CFR section 300.515; 8 NYCRR sections 200.5(j) and 200.16(h)**

The school district must ensure that, not later than 45 calendar days for school-age students or 30 calendar days for preschool students, after the expiration of the 30 calendar day period for resolution meetings **or**, as described under the sub-heading **Adjustments to the 30-calendar-day resolution period**, not later than 45 calendar days for school-age students or 30 calendar days for preschool students after the expiration of the adjusted time period:

1. a final decision is reached in the hearing; **and**
2. a copy of the decision is mailed to you and the school district.



The SRO must ensure that not later than 30 calendar days after the receipt of a request for review or such time as extended by the SRO:

1. a final decision is reached in the review; **and**
2. a copy of the decision is mailed to you and the school district.

An IHO or a SRO may grant specific extensions of time beyond the periods described above (45-calendar-day for school-age or 30-calendar-day for preschool hearing decision timeline and 30-calendar-day SRO decision timeline) if you or the school district make a request for a specific extension of the timeline.

Each hearing and review involving oral arguments must be conducted at a time and place that is reasonably convenient to you and your child.

## **CIVIL ACTIONS, INCLUDING THE TIME PERIOD IN WHICH TO FILE THOSE ACTIONS**

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### **34 CFR section 300.516; 8 NYCRR section 200.5(k)**

#### **General**

Any party (you or the school district) who does not agree with the findings and decision in the State-level review has the right to bring a civil action with respect to the matter that was the subject of the due process hearing (including a hearing relating to disciplinary procedures). The action may be brought in a State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

#### **Time limitation**

The party (you or the school district) bringing the action have four months from the date of the decision of the SRO to file a civil action.

#### **Additional procedures**

In any civil action, the court:

1. receives the records of the administrative proceedings;
2. hears additional evidence at your request or at the school district's request; **and**
3. bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

#### **Jurisdiction of district courts**

The district courts of the United States have authority to rule on actions brought under Part B of IDEA without regard to the amount in dispute.

### **Rule of construction**

Nothing in Part B of IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other federal laws protecting the rights of children with disabilities. However, before filing a civil action under these laws seeking relief that is also available under Part B of IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part B of IDEA. This means that you may have remedies available under other laws that overlap with those available under IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under IDEA (i.e., the due process complaint, resolution meeting, and impartial due process hearing procedures) before going directly into court.

## **ATTORNEYS' FEES**

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### **34 CFR section 300.517**

#### **General**

In any action or proceeding brought under Part B of IDEA, if you prevail, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you.

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing school district, or NYSED to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; **or** (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation. **or**

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing state educational agency (SEA) or school district, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding.

#### **Award of fees**

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or hearing began for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

2. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of IDEA for services performed after a written offer of settlement to you if:
  - a. the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;
  - b. the offer is not accepted within 10 calendar days; **and**
  - c. the court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.

3. Fees may not be awarded relating to any meeting of the CSE or CPSE unless the meeting is held as a result of an administrative proceeding or court action. *Fees also may not be awarded for a mediation as described under the heading Mediation.*

A resolution meeting, as described under the heading **Resolution meeting**, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

The court reduces, as appropriate, the amount of the attorneys' fees awarded under Part B of IDEA, if the court finds that:

1. you, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. the time spent and legal services furnished were excessive considering the nature of the action or proceeding; **or**
4. the attorney representing you did not provide to the school district the appropriate information in the due process request notice as described under the heading **Due Process Complaint**.

However, the court may not reduce fees if the court finds that the State or school district unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of IDEA.

## PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES

### AUTHORITY OF SCHOOL PERSONNEL

#### 34 CFR section 300.530; 8 NYCRR sections 201.2 - 201.7

##### Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis, when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

##### General

The procedures for the discipline of students with disabilities must be in accordance with section 3214 of the Education Law and Part 201 of the Regulations of the Commissioner of Education. While the school has the authority to suspend or remove your child for violating the school's code of conduct, you and your child have certain rights throughout the process.

##### Rights that apply to all students

1. To be notified immediately by telephone, if possible, and to receive written notice within 24 hours of a proposed suspension of five school days or less. The notice should describe the incident, proposed suspension and your child's rights. You also have the right to request an informal conference with the school principal, which will be held before the suspension unless your child's presence in school poses a danger (in which case the informal conference can occur after your child is suspended).
2. To receive written notice of your opportunity for a superintendent's hearing, if the suspension is for more than five consecutive school days, which describes your child's rights to counsel and to question and present witnesses.
3. For your child to receive alternative instruction during the first ten days of any suspension or removal to the same extent as nondisabled students, if your child is of compulsory school age.

##### Rights that apply to students with disabilities

To the extent that they also take such action for children without disabilities, school personnel may, for not more than **10 school days** in a row, remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting (IAES) which must be determined by the child's CSE or CPSE, another setting, or suspension. School personnel may also impose additional removals of the child of not more than **10 school days** in a row in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement (see ***Change of Placement Because of Disciplinary Removals*** for the definition, below).

Once a child with a disability has been removed from his or her current placement for a total of **10 school days** in the same school year, the school district must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading **Services**.

### **Additional authority**

If the behavior that violated the student code of conduct was not a manifestation of the child's disability (see **Manifestation determination**, below) and the disciplinary change of placement would exceed **10 school days** in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under **Services**. The child's CSE or CPSE determines the IAES for such services.

### **Services**

The services that must be provided to a child with a disability who has been removed from the child's current placement may be provided in an IAES.

A school district is only required to provide services to a child with a disability who has been removed from his or her current placement for **10 school days or less** in that school year, if it provides services to a child without disabilities who has been similarly removed.

In New York State, the school district must provide alternative instruction to a student with a disability who has been suspended for less than 10 days in a school year if the student is of compulsory school age. If the student is not of compulsory school age, alternative instruction must be provided if these services are provided to nondisabled students.

The education service requirements for students with disabilities during the first 10 days of suspension in a school year are the same as they are for nondisabled students. In New York State, alternative instruction must be provided for a minimum of one hour daily for an elementary student and two hours daily for a secondary student. If a student who is not of compulsory school age is suspended, the school district is not required to provide the student with the alternative instruction unless they provide this instruction to nondisabled students.

A child with a disability who is removed from the child's current placement for **more than 10 school days** must:

1. continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; **and**
2. receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not happen again.

After a child with a disability has been removed from his or her current placement for **10 school days** in that same school year, and **if** the current removal is for **10 school days** in a row or less **and** if the removal is not a change of placement (see definition below), **then** school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

If the removal is a change of placement (see definition below), the child's CSE or CPSE determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

### **Manifestation determination**

Within **10 school days** of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for **10 school days** in a row or less and not a change of placement), the school district, the parent, and relevant members of the CSE or CPSE (as determined by the parent and the school district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

1. if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; **or**
2. if the conduct in question was the direct result of the school district's failure to implement the child's IEP.

If the school district, the parent, and relevant members of the child's CSE or CPSE determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

If the school district, the parent, and relevant members of the child's CSE or CPSE determine that the conduct in question was the direct result of the school district's failure to implement the IEP, the school district must take immediate action to remedy those deficiencies.

### **Determination that behavior was a manifestation of the child's disability**

If the school district, the parent, and relevant members of the CSE or CPSE determine that the conduct was a manifestation of the child's disability, the CSE or CPSE must either:

1. conduct a functional behavioral assessment, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; **or**
2. if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

Except as described below under the sub-heading ***Special circumstances***, the school district must return the child to the placement from which the child was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan. **Special circumstances**

Whether or not the behavior was a manifestation of the child's disability, school personnel may remove a student to an IAES (determined by the child's CSE or CPSE) for up to 45 school days, if the child:

1. carries a weapon (see the definition below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of NYSED or a school district;
2. knowingly has or uses illegal drugs (see the definition below), or sells or solicits the sale of a controlled substance, (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of NYSED or a school district;  
**or**
3. has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of NYSED or a school district.

### Definitions

*Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)). *Illegal drug* means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of federal law.

*Serious bodily injury* has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

*Weapon* has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

### Notification

On the date it makes the decision to make a removal that is a change of placement of the child because of a violation of a code of student conduct, the school district must notify the parents of that decision, and provide the parents with a procedural safeguards notice.

## CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS

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### 34 CFR section 300.536; 8 NYCRR section 201.2

A removal of a child with a disability from the child's current educational placement is a **change of placement** if:

1. the removal is for more than 10 school days in a row; **or**
2. the child has been subjected to a series of removals that constitute a pattern because:
  - a. the series of removals total more than 10 school days in a school year;
  - b. the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
  - c. of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the school district and, if challenged, is subject to review through due process and judicial proceedings.

## DETERMINATION OF SETTING

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### 34 CFR section 300.531; 8 NYCRR section 201.10

The CSE or CPSE must determine the IAES for removals that are **changes of placement**, and removals under the headings ***Additional authority*** and ***Special circumstances***, above.

## APPEAL

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### 34 CFR section 300.532; 8 NYCRR section 201.11

#### General

The parent of a child with a disability may file a due process complaint (see above) to request a due process hearing if he or she disagrees with:

1. any decision regarding placement made under these discipline provisions; **or**
2. the manifestation determination described above.

The school district may file a due process complaint (see above) to request a due process hearing if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.



### Authority of impartial hearing officer

A hearing officer that meets the requirements described under the sub-heading ***Impartial Hearing Officer*** must conduct the due process hearing and make a decision. The hearing officer may:

1. return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of the requirements described under the heading ***Authority of School Personnel***, or that the child's behavior was a manifestation of the child's disability; **or**
2. order a change of placement of the child with a disability to an appropriate IAES for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

These hearing procedures may be repeated, if the school district believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

Whenever a parent or a school district files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the headings ***Due Process Complaint Procedures, Hearings on Due Process Complaints***, and ***Appeal of decisions; impartial review*** except as follows:

1. The school district must arrange for an expedited due process hearing, which must occur within **20** school days of the date the hearing is requested and must result in a determination within **10** school days after the hearing.
2. Unless the parents and the school district agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **seven** calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of receipt of the due process complaint.

A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings (see ***Appeals***, above).

## PLACEMENT DURING APPEALS

### **34 CFR section 300.533; 8 NYCRR section 201.10**

When, as described above, the parent or school district has filed a due process complaint related to disciplinary matters, the child must (unless the parent and NYSED or school district agree otherwise) remain in IAES pending the decision of the IHO, or until the expiration of the time period of removal as provided for and described under the heading ***Authority of School Personnel***, whichever occurs first.

## PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

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### 34 CFR section 300.534; 8 NYCRR section 201.5

#### General

If a child has not been determined eligible for special education and related services and violates a code of student conduct, but the school district had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that the child was a child with a disability, then the child may assert any of the protections described in this notice.

#### Basis of knowledge for disciplinary matters

A school district must be deemed to have knowledge that a child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

1. the parent of the child expressed concern in writing that the child is in need of special education and related services to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child;
2. the parent requested an evaluation related to eligibility for special education and related services under Part B of IDEA; or
3. the child's teacher, or other school district personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the school district's director of special education or to other supervisory personnel of the school district.

#### Exception

A school district would not be deemed to have such knowledge if:

1. the child's parent has not allowed an evaluation of the child or refused special education services; or
2. the child has been evaluated and determined to not be a child with a disability under Part B of IDEA.

#### Conditions that apply if there is no basis of knowledge

If prior to taking disciplinary measures against the child, a school district does not have knowledge that a child is a child with a disability, as described above under the subheadings ***Basis of knowledge for disciplinary matters*** and ***Exception***, the child may be subjected to the disciplinary measures that are applied to children without disabilities who engaged in comparable behaviors.

However, if a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district, and information provided by the parents, the school district must provide special education and related services in accordance with Part B of IDEA, including the disciplinary requirements described above.

## **REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES 34 CFR section 300.535**

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Part B of IDEA does not:

1. prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; **or**
2. prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and State law to crimes committed by a child with a disability.

### **Transmittal of records**

If a school district reports a crime committed by a child with a disability, the school district:

1. must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; **and**
2. may transmit copies of the child's special education and disciplinary records only to the extent permitted by FERPA.

## **USE OF PUBLIC AND PRIVATE BENEFITS/INSURANCE**

### **CHILDREN WITH DISABILITIES COVERED BY PUBLIC INSURANCE**

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#### **34 CFR section 300.154(d); 8 NYCRR sections 200.5(b)(8)**

A school district may use the parent's or child's public benefits or insurance programs (such as Medicaid) to provide or pay for special education and related services. In order to bill public benefits or insurance programs, the school district must:

1. obtain your written consent (consistent with the section under the heading **Parental Consent – Definition**) before accessing your or your child’s public benefits or insurance for the first time; and
2. provide you with a written notification before accessing your or your child’s public benefits or insurance for the first time and annually thereafter. This written notification must inform you that:
  - a) you are not required to sign up for or enroll in public benefits in order for your child to receive FAPE;
  - b) you are not required to incur an out-of-pocket expense, such as the payment of a deductible or co-pay amount incurred in filing a claim for services;
  - c) the district may not use your child’s benefits under a public benefits or insurance program if that use would:
    - decrease available lifetime coverage or other insured benefit;
    - result in your family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for your child outside of the time your child is in school;
    - increase premiums or lead to the discontinuation of benefits or insurance; or
    - risk loss of eligibility for home and community-based waivers, based aggregate health-related expenditures.
  - d) your refusal or withdrawal of consent to allow access to your public benefits or insurance does not relieve the school district of its responsibility to ensure that all IEP services are provided at no cost to you; and
  - e) you may withdraw your consent at any time.

**CHILDREN WITH DISABILITIES COVERED BY PRIVATE INSURANCE**  
**34 CFR section 300.154(e); 8 NYCRR sections 200.5(b)(9)**

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With regard to services required to provide FAPE to your child, the school district may access your private insurance proceeds only if you provide consent consistent with the section under the heading **Parental Consent - Definition**

- Each time the school district proposes to access your private insurance proceeds, it must:
- obtain your consent; and
  - inform you that your refusal to permit the school district to access your private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to you.

The school district may use its Part B IDEA funds to pay the costs that you might otherwise have to pay to use your benefits or insurance (e.g., the deductible or co-pay).

**REQUIREMENTS FOR UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE**

**GENERAL**

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**34 CFR section 300.148**

Part B of IDEA does not require a school district to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the school district made FAPE available to your child and you choose to place the child in a private school or facility. However, the school district where the private school is located must include your child in the population whose needs are addressed under the Part B provisions regarding children who have been placed by their parents in a private school under 34 CFR sections 300.131 through 300.144.

**Reimbursement for private school placement**

If your child previously received special education and related services under the authority of a school district, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the school district, a court or a hearing officer may require the agency to reimburse you for the cost of that enrollment if the court or an IHO finds that the agency had not made FAPE available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. An IHO or court may find your placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by NYSED and school districts.

**Limitation on reimbursement**

The cost of reimbursement described in the paragraph above may be reduced or denied:

1. if: (a) At the most recent CSE or CPSE meeting that you attended prior to your removal of your child from the public school, you did not inform the CSE or CPSE that you were rejecting the placement proposed by the school district to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or (b) At least 10 business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the school district of that information;
2. if, prior to your removal of your child from the public school, the school district provided prior written notice to you, of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make the child available for the evaluation; **or**
3. upon a court's finding that your actions were unreasonable. However, the cost of reimbursement:
  1. must not be reduced or denied for failure to provide the notice if: (a) the school prevented you from providing the notice; (b) you had not received notice of your responsibility to provide the notice described above; or (c) compliance with the requirements above would likely result in physical harm to your child; **and**
  2. may, in the discretion of the court or an IHO, not be reduced or denied for the parents' failure to provide the required notice if: (a) the parent is not literate or cannot write in English; or (b) compliance with the above requirement would likely result in serious emotional harm to the child.

**RESOURCES**

**USDOE - IDEA Site** - (includes Part 300 of the Code of Federal Regulations)  
<http://idea.ed.gov/>

**New York State Education Department** - <http://www.nysed.gov/>

**Office of Special Education** - <http://www.p12.nysed.gov/specialed/>

**Parts 200 and 201 of the Regulations of the Commissioner of Education** -  
<http://www.p12.nysed.gov/specialed/lawsregs/part200.htm>

**Office of Special Education updates** - <http://www.p12.nysed.gov/specialed/timely.htm>

**Special Education Quality Assurance Regional Offices –**

General Information - <http://www.p12.nysed.gov/specialed/quality/home.html>

Location of Offices - <http://www.p12.nysed.gov/specialed/quality/qaoffices.htm> (also listed on next page)

**Central**

NYS Education Department  
Special Education Quality Assurance  
Hughes State Office Building  
333 E. Washington Street, Suite 210  
Syracuse, NY 13202  
**(315) 428-4556**  
(315) 428-4555 (fax)

**New York City**

NYS Education Department  
Special Education Quality Assurance  
55 Hanson Place, Room 545  
Brooklyn, NY 11217-1580  
**(718) 722-4544**  
(718) 722-2032 (fax)

**Eastern**

NYS Education Department  
Special Education Quality Assurance  
89 Washington Avenue, Room 309 EB  
Albany, NY 12234  
**(518) 486-6366**  
(518) 486-7693 (fax)

**Long Island**

NYS Education Department  
Special Education Quality Assurance  
Perry B. Duryea, Jr. State Office  
Building  
Room # 2A-5  
Hauppauge, NY 11788  
**(631) 952-3352**  
(631) 952-3834 (fax)

**Hudson Valley Albany Site**

NYS Education Department  
Special Education Quality Assurance  
89 Washington Avenue, Room 309 EB

Albany, NY 12234  
**(518) 473-1185**  
(518) 402-3582 (fax)

**Peekskill Site**

NYS Education Department  
Special Education Quality Assurance  
1 Park Place, 3<sup>rd</sup> Floor  
Peekskill, NY 10566  
**(914) 940-2900**  
402-2180 (fax)

2A Richmond Avenue  
Batavia, NY 14020  
**(585) 344-2002**  
(585) 344-2422 (fax)

**Non-district Unit**

**Albany Site**

NYS Education Department  
Special Education Quality Assurance  
89 Washington Avenue, Room 309 EB  
Albany, NY 12234  
**(518) 473-1185**  
(518) 486-7693 (fax)

**Peekskill Site**

NYS Education Department  
Special Education Quality Assurance  
Regional Offices:  
1 Park Place, 3<sup>rd</sup> Floor  
Peekskill, NY 10566  
**(914) 940-2900**  
(914) 402-2180 (fax)

**Western**

(NYS School for the Blind)  
NYS Education Department  
Special Education Quality Assurance

***BOARD POLICIES RELATED TO  
SPECIAL EDUCATION***



## INTERPRETERS FOR HEARING-IMPAIRED PARENTS

The Board of Education recognizes that those district parents with hearing impairments which prevent meaningful participation in their child's educational program must be afforded an opportunity equal to that afforded other parents to participate in meetings or activities pertaining to the academic and/or disciplinary aspects of their child's education. Accordingly, and pursuant to law, the school district will provide an interpreter for hearing-impaired parents for school-initiated academic and/or disciplinary meetings or activities including, but not limited to:

- Parent/teacher conferences
- Child/study or building level team meetings
- Planning meetings with school counselors regarding educational progress
- Career planning
- Suspension hearings or other conferences with school officials relating to disciplinary actions

The school district will provide an interpreter for the hearing-impaired parent if a written request for the service has been submitted to and received by the district within five working days prior to the scheduled meeting or activity. If an interpreter is unavailable, the district will then make other reasonable accommodations which are satisfactory to the parents (e.g., notetaker, transcript, decoder, or telecommunication device for the deaf). These services will be made available by the district at no cost to the parents.

The Board directs the Superintendent of Schools to maintain a list of available interpreters and to develop procedures to notify parents of the availability of interpreter services, the time limitation for requesting these services, and of the requirement to make other reasonable accommodations satisfactory to the parents should an interpreter not be available.

Hearing-impaired parents are requested to submit the attached form to request accommodation of their disability.

Ref: Americans with Disabilities Act of 1990, 42 U.S.C. §§12131-12134  
Rehabilitation Act of 1973, 29 U.S.C. §794  
Education Law §3230  
8 NYCRR §100.2(aa)

*Rothschild v. Grottenthaler*, 907 F.2d 286 (2d Cir. 1990)

## INTERPRETERS FOR HEARING-IMPAIRED PARENTS

### Accommodation Request

Parents in need of interpreter services are asked to complete this form:

To: Superintendent of Schools  
Kingston School District

From: \_\_\_\_\_  
Name  
\_\_\_\_\_  
Address

Please identify the type of interpreter needed:

\_\_\_\_\_ Interpreter for the Hearing Impaired: ( ) American Sign ( ) Pidgin Sign ( ) Signed English

In the event an interpreter is not available, please identify the type of alternative service preferred:

- \_\_\_\_\_ Written Communication
- \_\_\_\_\_ Transcripts
- \_\_\_\_\_ Decoder
- \_\_\_\_\_ Telecommunication Device for the Deaf (TDD)
- \_\_\_\_\_ Other (please specify) \_\_\_\_\_

Adoption date:

Policy No. 4321

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

The Board of Education shall make available a free appropriate public education 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 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 program (IEP) 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 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 are placed by their parents in a nonpublic school within district boundaries because of a disagreement between the parents and the school district over the provision of a free appropriate public education. 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 school 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 school 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 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.

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 Regents diploma.

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

1. School district staff will take steps to locate, identify, evaluate and maintain information about all children with disabilities within the district, including homeless 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, and/or alternative program options to address a student's performance before referring the student to the Committee on Special Education (CSE). The School Intervention Team will develop, implement and evaluate pre-referral intervention strategies (4321.2, School-wide Pre-referral Approaches and Interventions).
3. School district staff will initiate a request for evaluation of a student who has not made adequate progress after an appropriate period of time when provided instruction under a response to intervention program. In making the request the staff person will describe in writing intervention services, programs and methodologies used to remediate the student's performance prior to referral. In addition, the extent of parental contact will be described as well.
4. The Board 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.
5. The Board will arrange for special education programs and services based upon the recommendation of the CSE or CSE subcommittee.
6. The Superintendent 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.
7. The Superintendent 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.

8. The Superintendent will establish a process for ensuring that district staff understand the right of students with disabilities to access and participate in the same academic, cocurricular 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.

Students with disabilities may or may not be on medication, and medication is not a requirement for receiving a free appropriate public education under the IDEA and New York's Education Law Article 89.

#### Locate and Identify Students with Disabilities

The district will conduct an annual census to 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 homeless or wards of the State. The census shall be conducted, and the registry maintained, in accordance with the requirements established in Commissioner's regulations.

The Superintendent will determine what other activities might be appropriate to help locate and identify students with disabilities. These may include, but are not limited to, the mailing of letters to all district residents regarding the availability of special education programs and services and their right to access such services, and/or the publication of a similar notice in school newsletters and other publications.

(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 information regarding how to locate and identify nonpublic school students with disabilities).

#### 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 or 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 service 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 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. They also will keep a detailed record of those attempts and their results, including phone calls and correspondence, visits to the parent's home 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 will commence due process proceedings to conduct an initial evaluation without parental consent within the time lines 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. If the district cannot document its efforts to obtain consent, the Board will commence due process proceedings to conduct a reevaluation without parental consent.
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 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 language and 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 or 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.

### 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-day 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 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.

### Provision of Services

The Board 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 acknowledges that parental consent for 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.

### Transition Service and Diploma/Credential Options

In accordance with law and regulation, the Board will ensure the provision of transition services, which are a coordinated set of activities for students with disabilities that facilitates movement from school to postschool activities, which may include but are not limited to postsecondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living or community participation.

The Board of Education is committed to supporting all students so they are college and career ready upon graduation.

In accordance with law and regulation, beginning no later than the school year when a student turns age 15, the student's IEP must include transition goals and services and will also include undertaking activities in the following areas:

- Instruction



- Related services
- Community experiences
- The development of employment and other post-school adult living objectives; and
- When appropriate, acquisition of daily living skills and provision of a functional vocational evaluation

In developing the plan for transition services, students and parents will be made aware of diploma and credential options available and the requirements associated with each option.

The Committee on Special Education (CSE), which includes parents/guardians, will work with students with disabilities to attain the appropriate diploma or credential based on their individualized Education Plan (IEP).

#### Regents Diploma or Regents Diploma with Advanced Designation

Students with disabilities are encouraged to work toward the completion of requirements for a Regents diploma or Regents diploma with an advanced designation, as established by New York State and the Board.

#### Local Diploma

Students with disabilities may work toward completion of the requirements of a local diploma. The local diploma may be earned by meeting the standards set forth in state regulations.

#### Career Development and Occupational Studies Commencement Credential

Students with disabilities, who are not students with severe disabilities under Commissioner's Regulations, may be issued a New York State Career Development and Occupational Studies Commencement Credential (CDOS), pursuant to the requirements of those regulations. The student may pursue a CDOS either in addition to or instead of a high school diploma. The district shall ensure that such students have been provided with appropriate opportunities to earn a high school diploma.

Cross ref: 1900: School/Family/Community Partnership  
 5500: Student Records  
 6700: Purchasing  
 9700: Staff Development

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

**1<sup>st</sup> Reading: 01/08/14; Adoption date: 01/22/14**

**1<sup>st</sup> Reading of Amendment: 08/20/14; Adoption Date: 09/03/14**

**Policy No. 4321.1**

## **PROVISION OF SPECIAL EDUCATION SERVICES IN THE LEAST RESTRICTIVE ENVIRONMENT**

The Board of Education recognizes its responsibility to ensure that students with disabilities eligible for special education programs and services under the IDEA and Article 89 of New York's Education Law receive those services in the least restrictive environment appropriate to meet their individual educational needs.

Therefore, the district will not place students with disabilities in special classes or separate schools, or otherwise remove them from the regular educational environment unless the nature or severity of their disability is such that their education cannot be achieved satisfactorily in regular classes, even with the use of supplementary aids and services. In addition, the district will provide special services or programs to enable students with disabilities to be involved in and progress in the general curriculum, to the extent appropriate to their needs.

To fulfill its responsibility to educate students with disabilities in the least restrictive environment, the district will implement the provisions of section 200.6 of commissioner's regulations.

Furthermore, and pursuant to those provisions, students with disabilities placed together for purposes of receiving special education will be grouped by similarity of individual needs including their range of academic achievement, functional performance and learning characteristics; social and physical development, and management needs.

The Superintendent, or his/her designee, will establish a process for ensuring that the CSE or CSE subcommittee Chairperson, as appropriate, obtains an up-to-date copy of those provisions at the beginning of each school year, and copies of any amendments that become effective during the school year.

The Board also recognizes that the least restrictive environment requirements established by applicable law and regulations also extend to nonacademic settings. Therefore, the district will provide students with disabilities the opportunity to participate with non-disabled students in school-sponsored co-curricular and extracurricular activities, to the maximum extent appropriate to each individual student's needs. The district also will provide students with disabilities with supplementary aids and services the CSE or CSE subcommittee, as applicable, determines to be appropriate and necessary for the students to participate in such activities.

Ref: Individuals with Disabilities Education Act (IDEA) 20 USC §§1400 *et seq.*  
8 NYCRR §§ 200.2(b)(4); 200.6

**Adoption date: August 20, 2008**

**Policy No. 4321.2**

### **SCHOOL-WIDE PRE-REFERRAL APPROACHES AND INTERVENTIONS**

The Board of Education recognizes that the provision of academic and behavioral supports and targeted interventions for students who are not making academic progress at expected levels in the general curriculum may improve a student's performance, and help avert the need for referral for possible classification as a student with a disability. Therefore, the district will implement on a school-wide basis practices appropriate to enable all of the district's students to succeed in the general education environment.

The Superintendent, or his/her designee, will identify and take steps to implement a variety of practices appropriate to comply with this policy. Consistent with applicable law and regulation, those practices may include, for example:

1. Providing early intervention services with funds available under the IDEA and which may be coordinated with similar activities conducted under the Elementary and Secondary Education Act. Such services would be made available to students not currently identified as needing special education and related services, but who need additional support to succeed in a general education setting. This may include professional development that enables teachers and other staff to deliver scientifically based academic instruction and behavioral interventions, such as scientifically based literacy instruction and, where appropriate, instruction on the use of adaptive and instructional software. It also may include educational and behavioral evaluations, services and supports.
2. Implementation of a response to intervention (RTI) program that includes the minimum requirements established by commissioner's regulations, and allows teachers and other staff to determine whether a student responds to scientific, research-based instruction or requires interventions beyond those provided to all students in the general education classroom.

3. Implementation of a positive behavioral intervention and support (PBIS) system that reduces school and classroom behavioral problems, and creates and maintains a safe and positive learning environment by promoting positive behavior in all students.

District implementation of any of the above practices will not impede or delay the appropriate evaluation of a student suspected of having a disability, and the student's right to a free appropriate public education.

Cross-ref: 4325, Academic Intervention Services

Ref: Individuals with Disabilities Education Act §§ 1413(f); 1414(b)(6)(B)  
34 CFR §§ 300.226; 300.307(a)(2)  
8 NYCRR §§ 100.2(ii); 200.2(b)(7)

**Adoption Date: August 20, 2008**

**Policy No. 4321.3**

### **ALLOCATION OF SPACE FOR SPECIAL EDUCATION PROGRAMS**

The Board of Education recognizes its responsibility to ensure that appropriate space is available for:

1. Special programs and services provided to meet the needs of students and preschool students with disabilities both within its own facilities, and in programs provided by the board of cooperative educational services (BOCES) and attended by district residents; and
2. Serving students with disabilities in settings with non-disabled peers, as well.

The district will address such space allocation needs as part of its annual budget cycle, during the annual or any more frequent re-evaluation of its long-range educational facilities plan, and as part of the district's special education services plan.

Through the Superintendent, the district also will share with the BOCES District Superintendent information relevant for the BOCES to determine the regional space needs for serving the district's resident students and preschool students with disabilities.

As part of the process for ensuring the allocation of appropriate space for special education programs and services and serving students with disabilities in settings with non-disabled peers, the Superintendent, in consultation with appropriate school personnel will, at a minimum:

1. Periodically gather information regarding the number of students and preschool students with disabilities presently participating and anticipated to continue to participate in the district's special education programs and services, the type of programming they presently receive and may receive in the future, as well as the setting in which those services are and/or will be provided.

2. Review the results of the district's latest census, and other district child find efforts, including child find activities conducted with respect to parentally-placed nonpublic school students with disabilities.
3. Anticipate any projected increase in the number of students and preschool students with disabilities the district will be responsible for providing special education programs and services to, the anticipated type of services they will be receiving and the settings in which those services will be provided.
4. Based on the above information, review current space capacity, and identify any additional space requirements to meet both current and future needs.

Cross-ref: 4321 Programs and Services for Students with Disabilities under the IDEA and New York's Education Law Article 89  
4321.10 Programs and Services for Parentally-Placed Nonpublic School Students with Disabilities under the IDEA and New York's Education Law Article 89

Ref: Individuals with Disabilities Education Act (IDEA) 20 USC  
N.Y. Education Law §§3602(10)  
8 NYCRR §§155.1(a); 200.2(c)(iv),(v); 200.2(g)

**Adoption date: 04/16/08**

**1<sup>st</sup> Reading of Revision: 04/23/14**

**Adoption Date: 05/07/14**

**Policy No. 4321.4**

## **INDEPENDENT EDUCATIONAL EVALUATIONS**

The Board of Education recognizes the right of parents or guardians of a student who has or is thought to have a disability to receive an independent evaluation at public expense if they disagree with the evaluation obtained by the Committee on Special Education (CSE) or the Committee on Preschool Special Education (CPSE).

The independent examination shall be conducted by a qualified examiner who is not employed by the school district responsible for the child's education. Upon request, parents will be provided with a list of public and private agencies and professional resources where independent evaluations may be obtained. These publicly-funded independent evaluations shall be limited to the same geographic and fiscal limitations as used by the district when it initiates an evaluation.

The district has the right to initiate an impartial hearing to demonstrate that its evaluation is appropriate. If the hearing officer determines that the district's evaluation was appropriate, a parent or guardian is not entitled to reimbursement at public expense.

The Board directs the Superintendent of Schools to develop regulations establishing maximum allowable fees for specific tests, the geographic area in which such evaluations may take place, minimum qualifications of the professionals who administer and interpret various tests, and a reasonable timeline for seeking reimbursement.

Cross-ref: 4321, Programs for Students with Disabilities

Ref: 20 USC §1415(d)(2)(A)  
34 CFR §300.502  
8 NYCRR §§200.1(z); 200.5(a); 200.5(b); 200.5(c); 200.5(g)

**Adoption date: 4/16/08**

**Policy No. 4321.5 Page 1 of 2**

**CONFIDENTIALITY AND ACCESS TO INDIVIDUALIZED EDUCATION PROGRAMS,  
INDIVIDUALIZED EDUCATION SERVICES PROGRAMS AND SERVICE PLANS**

The Board of Education recognizes the importance of ensuring the confidentiality of personally identifiable data pertaining to a student with a disability. Personally identifiable data will not be disclosed by any school district employee or member of a CSE/CPSE to any person (other than the parent of such student), organization or agency unless the parent or guardian of the child provides written consent, there is a valid court order for such information, or disclosure is permitted by law.

Personally identifiable data is defined in the policy on Student Records.

The Board of Education, while acknowledging the confidentiality requirement, believes that in order for each student with disabilities to receive the full benefit of his/her Individualized Education Program (IEP), Individualized Education Services Program (IESP) or Service Plan (SP), individuals responsible for implementing the program or plan must, prior to the implementation, fully understand the scope of their responsibility and the specific accommodations, modifications and supports to be provided.

To this end, this policy establishes procedures to ensure that any person having both direct contact with a student with an IEP, IESP or SP and a responsibility to provide a service, accommodation or program modification for the student in accordance with that student's IEP, IESP or SP shall be informed of his/her

responsibilities under the IEP, and shall receive or have access to a copy of the student's IEP, IESP or SP as specified below.

I. IEP, IESP or SP Copies

At a CSE, CSE Subcommittee or CPSE meeting for each student, a determination will be made as to which general education teachers, special education teachers, related service providers and other service providers have responsibility to implement the recommendations on the student's IEP, IESP or

SP. "Other service provider" means a representative of another public school district, charter school, BOCES program, child care institution school, Special Act school district, State-supported school, approved private in- state or out-of-state school and an approved preschool provider where the student receives or will receive IEP, IESP or SP services.

The CSE, CSE Subcommittee and CPSE Chairpersons shall ensure that a paper or electronic copy of each student's IEP, IESP or SP is provided to each regular education teacher, special education teacher, related service provider and/or other service provider who is responsible for implementation of the program or plan. These individuals responsible for implementing an IEP, IESP or SP shall, in turn, ensure that all paraprofessionals (teacher aides and teacher assistants) and other providers responsible for assisting in implementation are given the opportunity to review their copy of the IEP, IESP or SP prior to program implementation as well as have ongoing access to such copy.

II. Notification of Responsibilities

In addition to disseminating copies of a student's IEP, IESP or SP, CSE, CSE subcommittee and CPSE Chairpersons must designate one or more professional employees of the district with knowledge of the student's disability and program to inform each regular education teacher, special education teacher, related service provider, other Policy No. 4321.5 Page 1 of 2 service provider, paraprofessional, and other provider and support staff person of his or her responsibility to provide specific accommodations, program modifications, supports and/or services for the student in accordance with the IEP, IESP or SP. In selecting the professional staff person(s), the chairperson could select him/herself for this responsibility, another administrator, or a teacher, related service provider or other professional, as appropriate.

III. Confidentiality

All copies of a student's IEP, IESP or SP provided or made accessible under this policy must remain confidential, and shall not be redisclosed to any other person, except in accordance with the Individuals with Disabilities Education Act (IDEA) and the Family Educational Rights and Privacy Act (FERPA). To ensure such confidentiality, the CSE and CPSE Chairpersons shall include with each IEP, IESP or SP copy provided or made accessible under this policy, a copy of the Board's policy on student records. All IEP, IESP or SP copies must remain in a secure location on school grounds at all times. If IEP copies are transmitted and/or provided electronically, security systems (e.g., password protect a file or folder) must be implemented to prevent unauthorized internal and external access to the student's IEP, IESP or SP.

#### IV. Documentation

The designated professional employee(s) defined in section II above shall obtain the signature of each person covered by this policy, indicating that he or she:

1. has received either a copy of the student's IEP, IESP or SP or the opportunity to review the IEP, IESP or SP prior to its implementation, as required under state law and regulation;
2. has been informed of their responsibilities for implementation;
3. has knowledge of where the IEP, IESP or SP is to be maintained; and
4. has an understanding of the confidentiality requirements.

At the end of the school year or whenever the IEP has been revised, it is the responsibility of the CSE and CPSE Chairpersons to ensure that all IEP copies and electronic copies are destroyed.

Cross-ref: 4321 Programs for Students with Disabilities Under the IDEA and New York's Education Law Article 89 5500 Student Records

Ref: Individuals with Disabilities Education Act (IDEA), 20 USC §§1400 et seq. Family Educational

Rights and Privacy Act (FERPA), 20 USC §1232g; 34 CFR Part 99  
Education Law §4402(7)

8 NYCRR §§200.2(b)(11); 200.4(e)(3); 200.16(e)(6)

New York State Education Department, Vocational and Educational Services for  
Individuals with

Disabilities (VESID), SED Guidance Document, Providing copies of the IEPs for Students  
with Disabilities, May 13, 2003

<http://vesid.nysed.gov/specialed/publications/policy/chap408final.htm>

**Adoption date: August 20, 2008**

**Policy No. 4321.6**

**Page**

**1 of 2**

**AVAILABILITY OF ALTERNATIVE FORMAT INSTRUCTIONAL MATERIALS FOR STUDENTS  
WITH DISABILITIES**



The Board of Education recognizes its responsibility to ensure that all the instructional materials used in the district's schools are made available in a usable alternative format for students with disabilities in accordance with their individual educational needs and course selection at the same time as those materials are available to non-disabled students. In accordance with applicable law and regulations, any such alternative format procured by the district will meet the National Instructional Materials Accessibility Standard.

For purposes of this policy, alternative format will mean any medium or format for the presentation of instructional materials, other than a traditional print textbook, that is needed as an accommodation for a student with a disability enrolled in the school district, including but not limited to Braille, large print, open and closed captioned, audio, or an electronic file. An electronic file must be compatible with at least one alternative format conversion software program.

The Superintendent, or his/her designee, will develop a plan to ensure the availability of alternative format materials in accordance with the timeliness requirements of this policy. Such a plan will provide for:

1. Preference to vendors who agree to provide instructional materials in alternative formats, and to reflect this requirement in the bidding specifications used for the procurement of instructional materials. The same preference will be given to vendors of instructional materials ordered for the school library.
2. Consultation with appropriate school personnel regarding how students will access electronic files. The district's technology staff will be notified of any need to convert electronic files into an accessible format such as Braille, large print, audio, or alternative display.
3. The availability of hardware and/or software a student with disabilities in need of alternative format materials might require to access the instructional material.
4. The yearly review of the district's ordering timelines for the purchase of instructional materials to ensure sufficient lead time for obtaining needed alternative format materials.
5. Notification to appropriate school personnel by the CSE, CSE subcommittee, CPSE and Section 504 Committee Chairperson whenever it is determined that a student needs instructional materials in alternative format. Such notice also will identify the particular alternative format needed, and any assistive technology devices or services the student might need to access the alternative format materials.
6. Notification by classroom teachers of the books they will be using in class and any list of required readings with sufficient lead time in anticipation of the district's timelines for the purchase of instructional materials.

7. Consultation with the school librarian to make sure that specific library resources required by a student in need of alternative format materials to participate and progress in his or her selected courses are made available to the student in an accessible format.
8. Timely request of state assessments in alternative format.

Cross-ref: 6700, Purchasing

Ref: Individuals with Disabilities Education Act (IDEA), 20 USC §§1474(e)(3)(B) N.Y. Education Law §§1604(29-a); 1709(4-a) 1950(4-a); 2503(7-a); 2554(7-a); 3602(10)(b)

8 NYCRR §§ 200.2(b)(10)

State Education Department, Office of Vocational and Educational Services for Individuals with Disabilities (VESID), Policy 02-05 Amendment to Section 200.2 of the Regulations of the Commissioner Implementing Chapter 377 of the Laws of 2001: Plans to Provide Instructional Materials in Alternative Formats for Students with Disabilities, May 2002, (available electronically from the VESID website at:

<http://www.vesid.nysed.gov/specialed/publications/policy/alterformat502.htm>).

**Adoption date: August 20, 2008**

**Policy No. 4321.7**

**Page 1 of 2**

## **DISTRICTWIDE AND STATEWIDE ASSESSMENTS OF STUDENTS WITH DISABILITIES**

The Board of Education recognizes the importance of offering access and appropriate testing accommodations to eligible students so that they can participate in assessment programs on an equal basis with their non-disabled peers. Two elements that contribute to an effective assessment program are proper use of accommodations and use of universal design principles in developing and administering tests.

### Testing Accommodations

Testing accommodations provide an opportunity for students with disabilities to:

- Participate in the instructional and assessment program;
- Demonstrate their strengths, knowledge and skills without being restricted by their disability; and

- Provide an accurate measure of the standards being assessed so that appropriate instruction and services can be provided.

Testing accommodations are changes made in the administration of the test in order to remove obstacles to the test-taking process that are presented by the disability without changing the constructs being tested. Examples of testing accommodations are: Flexibility in scheduling/timing; flexibility in the setting for the administration of the test; changes in the method of presentation and changes in the method of response. Testing accommodations are neither intended nor permitted to: Alter the construct being measured or invalidate the results, provide an unfair advantage for students with disabilities over students taking the test under standard conditions or substitute for knowledge or abilities that the student has not attained.

The Committee on Special Education, the Subcommittee on Special Education or the Committee on Preschool Special Education is responsible for recommending the appropriate test accommodations and including those recommendations on the student's Individualized Education Program (IEP), Individualized Education Services Program (IESP) or Service Plan (SP). If it is determined that a student should participate in alternative assessments instead of the standard statewide or district wide tests, the CSE must indicate the reasons for doing so on the IEP, IESP or SP. The 504 Committee, will include the appropriate test accommodations as part the 504 plan.

The recommendations will be reviewed annually by the CSE, CSE subcommittee, CPSE or 504 team. The Board acknowledges the importance of integrating the assessment program with the instructional program and, to that end, encourages effective communication among district staff so that implementation is consistent and fair. The goal is to provide effective assessments that allow students to benefit from their educational program.

**Policy No. 4321.7**

**Page 2 of 2**

In some situations, a building principal may authorize the use of testing accommodations in accordance with this policy. Those instances are limited to cases where a regular education student incurs a disability, such as, but not limited to, a broken arm, without sufficient time for the CSE, CPSE and/or Section 504 Committee to make a recommendation prior to a test. They do not include cases where the student is already being evaluated to determine his or her eligibility for status as a student with a disability. In exercising this authority, the building principal will rely on his or her professional judgment. He or she also may confer with CSE, CPSE and/or Section 504 Committee members.

#### Universal Design Principles in District Wide Assessments

The Board of Education recognizes the benefits of using the principles of universal design to further the goal of ensuring equal access to district wide assessments and to ensure the most accurate measure of the performance of all students. The Board directs the Superintendent, or his/her designee, in consultation with appropriate school staff, to examine how universal design principles can be incorporated into the district's assessment program, and to facilitate its use to the extent feasible. Any steps taken in this regard will be consistent with this policy and applicable State Education Department policy and/or guidance on the use of universal design principles.

At a minimum, the Superintendent, or his/her designee, will explore how district assessments can be:

1. Made more usable by students with diverse abilities.
2. Designed to better accommodate a wide range of individual preferences and abilities.
3. Made more understandable.
4. Made to communicate necessary information to students more effectively.
5. Designed to minimize adverse consequences of accidental or unintended actions.
6. Used more efficiently and comfortably and with a minimum of student fatigue.

Cross-ref: 4321, Programs for Students with Disabilities

4321.5, Confidentiality and Distribution of IEP, IESP and SP

5020.3 Students with Disabilities and Section 504

Ref: Individuals with Disabilities Education Act (IDEA), 20 USC §§ 1401(35);

1412(a)(16)(E);

34 CFR §§ 300.44

Assistive Technology Act, 29 USC 3002(19)

8 NYCRR §§ 200.1(jjj); 200.2(b)(13,14); 200.4(d)(2)(vi)

Adoption date: **August 20, 2008**

**Policy No. 4321.8**

**Page 1 of 3**

## **IMPARTIAL HEARING OFFICER APPOINTMENT AND COMPENSATION**

The Board of Education will appoint impartial hearing officers (IHO), as needed, to hear complaints regarding the identification, evaluation, or placement of students with disabilities, or the provision of a free appropriate public education to such a student, in accordance with the rotational selection process and other applicable procedures described in Commissioner's regulations.

### **Selection**

The updated list of certified IHOs for this county, promulgated by the New York State Education Department, will be used in connection with requests for impartial hearings. The list shall also include the names of those

other certified IHOs whose names appear on the state list and who have indicated to the district their interest in serving as an IHO in the district.

Upon receipt of a request for an impartial hearing, the rotational selection process for the IHO shall be initiated immediately and always within two (2) business days after receipt by the district of such written request. Should an IHO decline appointment, or if within 24 hours the IHO fails to respond, or is unreachable after reasonable efforts by the District Clerk or designee, such efforts will be documented through independently verifiable efforts. The district representative shall then proceed through the list to determine availability of the next successive IHO.

□ The District Clerk or other person so designated, under the direction of the Board President, shall initiate the selection process by contacting the impartial hearing officer whose name first appears after the impartial hearing officer who last served. The District Clerk or designee shall canvass the list in alphabetical order as prescribed by the Regulations of the Commissioner of Education until an appointment is accepted. Pursuant to the Regulations of the Commissioner of Education, if an impartial hearing is currently pending for the same student when a new hearing request is received, the district will appoint the same IHO, if available, who will determine whether or not to consolidate the hearings. Additionally, if the new hearing request concerns an issue which had been previously withdrawn in the twelve months prior, the district shall appoint the same IHO, if available. An IHO on the district's rotational list may not accept appointment unless he or she is available to:

1. Make a determination on the sufficiency of the due process complaint that will be heard at the hearing within five days of receiving such a request; and
2. Initiate the hearing within the first 14 days after either:
  - The date on which he or she receives written notice that the parents and the district waived their right to hold a resolution meeting to resolve their differences prior to commencement of the hearing, or met but were unable to reach agreement; or Policy
  - The expiration of the 30-day period beginning with the receipt of the due process complaint, whichever occurs first.

**Policy No. 4321.8**

**Page 2 of 3**

## **Appointment**

The Board President, or in his or her absence or inability the Vice President, will appoint an IHO immediately after the IHO selected from the rotational list indicates he or she is available. The President and/or Vice President of the Board of Education are hereby delegated with the authority to immediately appoint impartial hearing officers who are selected in accordance with the procedures in this policy.

The Board will rescind the appointment of an IHO and appoint a new one, if the parties to the hearing mutually agree that the IHO is either incapacitated or otherwise unavailable, or unwilling to continue the hearing or

issue a decision. The appointment of a new IHO in such an instance will be made in accordance with the selection and appointment procedures established by this policy.

## **Compensation**

The district shall compensate an impartial hearing officer for his or her services as follows:

1. A statement for fees and expenses shall be submitted at the conclusion of the hearing and receipt of the IHO's final decision or other determination having the effect of terminating the IHO's involvement in the hearing.
2. All statements for fees and expenses shall separately list each individual item of service or expense, the date it occurred and the time spent, by hour or fraction thereof in increments of one-tenth of an hour (e.g., .1, .2, .3, ...). Time charges must be appropriate. The district reserves the right to request additional information concerning the appropriateness of any time charges and to withhold payment for time charges deemed to be inappropriate and/or inconsistent with applicable Board policy. All statements for fees and expenses shall be submitted by the IHO within 30 days of the performance of services.
3. Compensation will be made at the maximum rate established for such purpose by the Director of the Division of the Budget for authorized activities.
4. The district will not reimburse IHOs for administrative assistance, secretarial or other overhead expenses, except for mailing costs associated with the hearing.
5. The district will upon review and approval of properly submitted receipts reimburse IHOs for automobile travel for up to 100 miles one-way, at the I.R.S. approved rate, and for tolls reasonably and necessarily incurred as a result of the hearing. In no event will the district reimburse the IHO for travel time.

**Policy No. 4321.8**

**Page 3 of 3**

6. In addition to hearing time itself, the Board will reimburse, at the hourly rate, for time actually expended by the IHO for:

- a. Scheduling the hearing;
- b. Pre-hearing conference calls (if necessary);
- c. Scheduling letters;
- d. For time necessarily and actually spent preparing the Decision, including any Interim Decisions.

7. Absent extraordinary circumstances, as determined in advance by the district, IHOs will not be reimbursed for any other expenses associated with their appointment and service as impartial hearing officer.

## **Cancellation**

The district shall attempt to provide an Impartial Hearing Officer with two (2) business days' advance notice of the cancellation or re-scheduling of an impartial hearing. Should the district request the cancellation or re-scheduling of a hearing date and fail to provide an Impartial Hearing Officer with two (2) business days notice, the district agrees to pay the Impartial Hearing Officer a cancellation fee of \$100. The district shall not be responsible for costs associated with a parent or guardian's cancellation or adjournment of a hearing.

A copy of this policy will be forwarded to the impartial hearing officer at the time of appointment.

Records relating to the IHO process including, but not limited to, the request for initiation and completion of each impartial hearing will be maintained by the district and such information will be reported to the Office of Vocational and Educational Services for Individuals with Disabilities of SED as required by Commissioner's regulations.

Ref: 8 NYCRR  
§§200.2; 200.5;  
200.21

**Adoption date: August 20, 2008,**

**Revised: May 6, 2009,**

**Revised: April 6, 2011**

**1st Reading of Revision: April 23, 2014**

**Adoption Date: May 7, 2014**

**Policy No. 4321.9**

**Page 1 of 2**

## **DECLASSIFICATION OF STUDENTS WITH DISABILITIES**

The Board of Education recognizes that it may be appropriate to declassify some students with disabilities. A student may mature and develop skills such that they no longer require the special program, support services or accommodations offered by an Individualized Education Program (IEP), Individualized Education Services Program

(IESP) or Services Plan (SP). The Committee on Special Education (CSE), the CSE Subcommittee or, the Committee on Preschool Special Education (CPSE), as applicable, is responsible for making this judgment, while adhering to the requirements of federal and state law and regulation.

## Reevaluation

Prior to determining that a student is no longer eligible for special education services and should be placed in a fulltime regular education program, the CSE, CSE subcommittee, or CPSE, as applicable, will conduct a declassification evaluation of the student in accordance with the process and procedures prescribed for the evaluation and reevaluation of students with disabilities, by applicable law and regulations. However, the CSE, CSE subcommittee, or CPSE members may determine after reviewing existing evaluation data that no additional information is needed to determine the student's continued eligibility for services.

When a determination is made that no additional data is needed for reviewing a student's continued eligibility for special education services, the CSE, CSE subcommittee, or CPSE Chairperson, as applicable, will notify the student's parents/guardian of that determination and the reasons for it, and of their right to nonetheless request an assessment. Unless the student's parents make such a request, the district will not conduct any further assessments.

The district will provide the student's parents/guardian with a copy of the reevaluation report and documentation regarding the eligibility determination.

Consistent with applicable law and regulation, the district will not conduct a declassification evaluation if the reason why a student is determined to be ineligible for special education services is that he or she has either: 1. Graduated with a regular high school or Regents diploma; or

2. Exceeded the age of eligibility for services.

However, in such an instance the district will provide the student with a summary of his or her academic achievement and functional performance that also includes recommendations on how to assist the student in meeting his or her post-secondary goals.

**Policy No. 4321.9**

**Page 2 of 2**

**Declassification Support Services** It is the goal of the Board of Education to provide an opportunity for the student to succeed in the transition to the regular education program. In order to facilitate that success, the CSE/CPSE may offer educational and support services for a period of time, not to exceed one year.

Declassification support services may include:

1. For the student: Psychological services, social work services, speech and language improvement services, noncareer counseling, and other appropriate support services.
2. For the student's teachers: The assistance of a teacher aide or a teaching assistant, and consultation with appropriate personnel.

The CSE/CPSE will ensure that the appropriate teachers and service providers are informed of the need for the transition services, and will specify the nature and duration of those services.

Cross-ref: 4321, Programs for Students with Disabilities



Adoption date: **August 20, 2008**

**Policy No. 4321.10**  
**Page 1 of 4**

## **PROGRAMS AND SERVICES FOR PARENTALLY-PLACED NONPUBLIC SCHOOL STUDENTS WITH DISABILITIES**

The Board of Education recognizes its responsibility to provide special education services to eligible students with disabilities enrolled by their parents in nonpublic schools located within its district, regardless of whether such students are residents of the district. The scope of that responsibility affects:

1. The district's child find activities for locating, identifying, and evaluating parentally-placed nonpublic school students with disabilities;
2. CSE and CSE subcommittee responsibilities for the development of an individualized education services program (IESP), or a services plan (SP), in the case of an out of state resident, for any such student determined to be eligible for special education services under the IDEA and Article 89;
3. The provision of services to such students;
4. The relationship between the district and nonpublic school officials and nonpublic school parents of students with disabilities, with whom the district is required to consult;
5. The district's data collection and reporting responsibilities; and
6. The district's use of federal funds available under the IDEA. (Refer to policy 4321, Programs for Students with Disabilities under the IDEA and Article 89 for more information regarding the provision of special education services to students with disabilities enrolled in the district's public schools).

Consistent with applicable law and regulations, this policy does not apply to resident students with disabilities enrolled by their parents in a nonpublic school located within the district's boundaries because of a dispute over the provision of a free appropriate public education. Neither does it apply to charter school students, or to students placed in or referred to private schools by public agencies such as school district placements in approved private schools, Special Act school districts, and state-supported or state-operated schools.

District staff will obtain prior consent from the parent of a parentally-placed nonpublic school student with disabilities, or the student if the student is 18 years or older, for the release of personally identifiable information about the student from records collected or maintained pursuant to the IDEA between the district and the student's district of residence.

**Policy No. 4321.10**  
**Page 2 of 4**

**Location, Identification and Evaluation of Parentally-placed Nonpublic School Students with Disabilities:**

The district's activities for locating and identifying parentally-placed nonpublic school students with disabilities will be comparable to those undertaken for students attending the district's public schools, and will be completed in a comparable time period, as well. However, district staff will consult with nonpublic school representatives and representatives of parents of parentally-placed students with disabilities regarding these activities, in order to ensure the equitable participation and an accurate count of such students.

The district will use the same procedures that apply to the evaluation of the district's public school students to evaluate and reevaluate parentally-placed nonpublic school students with disabilities. (Refer to policy 4321, Programs for Students with Disabilities under the IDEA and Article 89, for more information on those procedures).

CSE Responsibilities: Once a parentally-placed nonpublic school student with disabilities is determined to be eligible for special education services under the IDEA and Article 89, the CSE or CSE subcommittee will develop an IESP or SP for the student in accordance with the following:

1. If the student is a New York State resident, the CSE or CSE subcommittee will develop an IESP based on the student's individual needs in the same manner and with the same contents as an individualized education program prepared for a public school student.
2. If the student is an out-of-state resident, the CSE or CSE subcommittee will develop an SP for the student in accordance with the IDEA and its implementing regulations.

**Provision of Services:**

Parents of nonpublic school students with disabilities eligible for special education services under this policy must submit to the Board a written request for such services on or before June 1 preceding the school year for which they want the district to provide services. However, if the student has not been first identified as a student with a disability until after June 1, the parent may submit the written request for services within 30 days after the identification, and the student will be entitled to services during the current year if the request is submitted before April 1.

The district will provide special education programs and services to parentally placed nonpublic school students with disabilities with an IESP on an equitable basis, as compared to special education programs and services provided to other students with disabilities attending public and nonpublic schools within the district.

The district will provide special education programs and services to parentally placed nonpublic school students with disabilities with an SP to the extent required by the IDEA and its implementing regulations, and in consultation with nonpublic school officials and representatives of parents of parentally-placed nonpublic school students with disabilities. In this regard, the district will expend a proportionate amount of the federal funds it receives under the IDEA to provide such services.

The district will provide parentally-placed nonpublic school students with disabilities only services, including materials and equipment that are secular, neutral, and non-ideological.

**Consultation:**

The district will consult in a timely and meaningful manner with nonpublic school officials and representatives of parents of parentally-placed nonpublic school students with disabilities regarding the following issues:

1. The process that will be used to locate and identify parentally-placed nonpublic school students with disabilities, including which parents, teachers, and nonpublic school officials will be informed of the process, and how the process will work throughout the school year to ensure that the students can participate in special education and related services.
2. How, where and by whom special education and related services will be provided to such students, and with respect to students with an SP, the types of services that will be provided.
3. With respect to students with an SP, how a proportionate share of the federal funds the district receives under the IDEA will be spent on special education services to such students.
4. The determination of the proportionate amount of the district's IDEA funds available to serve parentally-placed private school students with disabilities, including how that amount was calculated.
5. How services will be apportioned if the proportionate amount of the district's available IDEA funds is not sufficient to serve all parentally-placed nonpublic school students with an SP, and how and when these decisions will be made.

Notwithstanding, the district will provide services to students with an IESP, regardless of the apportionment of such federal funds.

The Superintendent, or his/her designee, will establish a process for obtaining from nonpublic school officials a written affirmation of their participation in the consultation process. If that affirmation is not secured within a reasonable time, the Superintendent will submit to the State Education Department documentation of the consultation process.

**Data Collection and Reporting:**

The Superintendent, or his/her designee, will establish a process for maintaining records and report to the commissioner of education on the number of parentally-placed nonpublic school students who are evaluated, and determined to have a disability, and receive special education services from the district.

Cross-ref: 4321, Programs for Students with Disabilities under the IDEA and New York's Education Law Article 89

Ref: The Individuals with Disabilities Education Act (IDEA), 20 USC § 612 (a)(10)(A); 34 CFR \*\*\* Education Law §§3602-c NYCRR §2002.2 (a)(7)

**Adoption date: August 20, 2008**

**Policy No. 4321.11**

**PUBLIC REPORT ON REVISIONS TO DISTRICT POLICIES, PRACTICES AND PROCEDURES  
UPON A FINDING OF SIGNIFICANT DISPROPORTIONALITY**

The Board of Education recognizes that, despite the district's best efforts, there may be times when there might be a disproportionate representation of racial and ethnic groups in its special education programs and services, and/or with respect to the suspension of students with disabilities. To minimize the risk of such an occurrence, the Board has endeavored to adopt policies, practices and procedures for the district that are consistent with the IDEA and Article 89 of New York's Education Law, and their implementing regulations.

Nonetheless, upon learning of a significant disproportionality either in the suspension, identification, classification and/or placement of the district's students with disabilities, the Board will immediately review the district's policies, practices and procedures to determine whether they are fully compliant with the

requirements of the IDEA and Article 89, or require revisions. If changes are needed, the Board will take immediate steps to adopt and implement any and all necessary revisions.

The Board will inform the public of any revisions to the district's policies, practices and procedures undertaken as a result of a finding of significant disproportionality. The Superintendent, or his/her designee, will notify school personnel responsible for implementing the revisions.

Cross-ref: 4321 et seq. as appropriate.

Ref: Individuals with Disabilities Education Act, §§ 1412(a)(24); 1418(d); 34 CFR §§ 300.173;

300.646 8 NYCRR §§ 200.2(b)(15).

**Adoption date: August 20, 2008**

**Policy No. 4321.13**

**Page 1 of 2**

### **PRESCHOOL SPECIAL EDUCATION**

The Board of Education recognizes the value of early intervention to address the needs of preschool children with disabilities. The Board further recognizes its responsibility to ensure that all resident preschool children with disabilities have the opportunity to participate in preschool programs, approved by the Commissioner of Education, from which they may benefit educationally. The Board authorizes the Superintendent, or his/her designee, of Schools to establish administrative practices and procedures which shall include:

1. locating, identifying, evaluating, referring and placing all preschool children (generally ages three and four) with disabilities. The register of children eligible to attend a preschool program is to be maintained by the County of Ulster Preschool Early Intervention Services. The register will be communicated to the district CPSE, who will make the appropriate recommendations to the Board of Education.
2. ensuring that the parent(s)/guardian(s) of preschool age children with disabilities have received and understand the request for consent for evaluation of their child;
3. developing an individualized education program (IEP) for each preschool age child with a disability;
4. appointing and training appropriately qualified personnel, including the members of the CPSE; and/or ensuring that preschool education providers with whom the district contracts have appropriately trained and qualified personnel.
5. maintaining lists of impartial hearing officers and of State Education Department approved special education programs within the county and adjacent counties in which the district is located;

6. preparing and keeping on file summary reports of student data including the number of preschool students with disabilities served, as well as students referred but not served and the reasons why they are not served; and
7. reporting to the State Education Department the data on preschool children with disabilities as required, on a form prescribed by the Commissioner.

The duties described above will be carried out within the timeframes established by statute and regulation.

The Board of Education hereby establishes the CPSE as required under the Education Law. Its responsibilities will include the evaluation and recommendation for placement in appropriate approved programs and the provision of appropriate special education programs and services for each preschool child with a disability. The CPSE shall review, at least annually, the status of each preschool child with a disability. It is ultimately the responsibility of the Board to arrange for the appropriate approved preschool program and services for the district's children. Should the Board disagree with the CPSE's recommendations, it shall send the recommendation back to the CPSE so that they may schedule a timely meeting to review the Board's concerns and to revise the IEP, as deemed appropriate.

**Policy 4321.13**

**Page 2 of 2**

In the event that a parent/guardian files a due process complaint, a meeting must be convened between the parent/guardian and representatives of the district to try and resolve the complaint within 15 days of receiving the notice, and before the initiation of an impartial hearing. Parents/guardians and the district will jointly determine who should be present at this meeting.

If an agreement cannot be reached, parent/guardians shall be offered mediation to resolve complaints regarding the education of preschool children with disabilities at the same time notice of the availability of an impartial hearing is provided.

The Board directs the Superintendent, or his/her designee, to develop and maintain a plan which incorporates information concerning the provision of services for preschool children with disabilities, pursuant to the Regulations of the Commissioner of Education.

Cross-ref: 4321 Programs for Students with Disabilities under the IDEA and New York Education Law  
Article 89 4321.3 Allocation of Space for Special Education Programs

4321.4 Independent Educational Evaluations

4321.5 Confidentiality And Access To Individualized Education Programs, Individualized Education Services Programs And Service Plans

4321.8 Hearing Officer Appointment and Compensation

4321.14, Special Education Personnel

Ref: Individuals with Disabilities Education Act, 20 U.S.C. §§1400 et seq.

34 CFR §§300.12; 300.503

Education Law §4410

8 NYCRR Part 200, 200.2, 200.5, 200.16

**Adoption Date: December 1, 2010**

**Policy No. 4321.14**

## **SPECIAL EDUCATION PERSONNEL**

The Board acknowledges its responsibility to recruit, hire, train and retain highly qualified personnel, as defined in the federal Individuals with Disabilities Education Act (IDEA) and its accompanying regulations and in Article 89 of New York State Education law and its accompanying regulations, to provide special education programs and services. In addition, the Board is committed to appointing appropriately qualified personnel to the Committee (and subcommittee) on Special Education (CSE) and Committee (and subcommittee) on Preschool Special Education (CPSE).

The Board will fulfill its obligation with regard to special education personnel by taking measurable steps including, but not limited to the following:

1. Actively recruit personnel who possess prior experience working with students with disabilities.
2. Solicit resumes from graduates of institutions of higher education that offer programs in special education.
3. Seek candidates for teaching positions who are dually certified, to the extent possible.
4. Ensure that every member of the professional staff participates in annual professional performance reviews and professional development plans.
5. Provide appropriate on-going training and professional development to CSE and CPSE members, and other special education program and service providers to ensure their continuing awareness of their obligations and responsibilities under the law.

The Superintendent is responsible for ensuring that the professional staff is appropriately certified, licensed and trained, and that they meet the "highly qualified" standard established in federal and state law. In the event that highly qualified individuals are not available, despite the best efforts of the administration, the Board recognizes its responsibilities to meet the alternative standards established by the State Education Department.

Cross-ref: 4321, Programs for Students with Disabilities under IDEA and New York's Education Law Article 89 9240, Recruiting and Hiring

9700, Staff Development

Ref: Individual with Disabilities Education Act, 20 USC §§ 1412(a)(14), 1413(a)(3)

34 CFR §§ 300.156, 300.207

Education Law §4410

8 NYCRR § 200.2(b)(3,12)

**Adoption Date: December 1, 2010**

**Policy No. 4325**

**Page 1 of 2**

## **Response to Intervention (RtI)/Academic Intervention Services (AIS)**

The Board of Education is committed to providing appropriate academic intervention services to students at risk of not meeting the state learning standards. As prescribed in Commissioner's Regulations, the Kingston City School District will apply the RtI model where additional instruction is needed to support improved academic performance for students. When needed, student support services such as guidance, counseling, attendance tracking, study skills, and other AIS strategies will be employed to supplement the RtI program to achieve its defined academic objectives.

Eligibility for RtI/AIS will be determined based on a student's performance on state assessment exams and/or in accordance with the uniformly applied district-developed, district adopted procedures.

Eligible students will receive services consistent with law and regulations which shall commence no later than the beginning of the semester following a determination that a student is eligible for such services.

### **Parent/Guardian Notification and Involvement**

**Notification on Commencement of Services.** The District shall distribute to district parents in writing a description of the district-developed procedures for determining which students are eligible for academic intervention services, as specified in state regulations.

**Notification on Ending of Services.** The Principal will notify the parent/guardian in writing when RtI/AIS is no longer needed. Such notification will include:

- the criteria for ending services; and
- the performance levels obtained on district selected assessments, if appropriate.

In addition, the district/schools will provide for ongoing communication with parents/guardians which must include opportunities to consult with teachers and other professional staff, regular reports on the



student's progress, and information on ways to monitor and work with educators to improve the student's performance.

All parent/guardian notifications and communications will be done in English and translated, when appropriate, into the native language or mode of communication of the parents/guardians.

**Policy No. 4325**  
**Page 2 of 2**

Description and Review of Rtl/AIS

The Superintendent of Schools, in consultation with each Building Principal, shall maintain a description of Rtl, AIS and/or student support services for each school. This description will include any variations in services in schools within the district and will specifically delineate:

- the district-wide procedures used to determine the need for Rtl/AIS;
- the Rtl/AIS and/or support services to be provided;
- whether the Rtl/AIS and/or support services are offered during the regular school day or during an extended school day or year; and
- the criteria for ending services, including, if appropriate, performance levels that students must obtain on district-selected assessments.

Beginning July 1, 2002 and every two years thereafter, the Superintendent shall review and revise the description of academic intervention strategies based upon student performance results and present such revised description to the Board for approval.

Ref: 8 NYCRR §§100.1(g); 100.2(r), (ee); 100.4(b)(4), (d) (Academic Intervention Services)

**Adoption Date: April 16, 2008**  
**First Reading: October 17, 2012**  
**First reading of revision: May 17, 2017**

**Adoption date: November 7, 2012**  
**Adoption Date: June 7, 2017**



## DISCIPLINE OF STUDENTS WITH DISABILITIES

The Board of Education recognizes that it may be necessary to suspend, remove or otherwise discipline students with disabilities who violate the district's student code of conduct, and/or to temporarily remove a student with disabilities from his or her current placement because maintaining the student in that placement is substantially likely to result in injury to the student or to others. The Board also recognizes that students with disabilities deemed eligible for special education services under the IDEA and Article 89 of New York's Education Law enjoy certain procedural protections that school authorities must observe when they decide to suspend or remove them. Under certain conditions those protections extend, as well, to students not currently deemed to be a student with a disability but determined to be a student presumed to have a disability for discipline purposes.

Therefore, the Board is committed to ensuring that the district follows suspension and removal procedures that are consistent with those protections. The code of conduct for students is intended to afford students with disabilities and students presumed to have a disability for discipline purposes the express rights they enjoy under applicable law and regulations.

### *Definitions*

For purposes of this portion of the code of conduct, and consistent with applicable law and regulations, the following definitions will apply:

1. *Behavioral intervention plan* (BIP) means a plan that is based on the results of a functional behavioral assessment and that, at a minimum, includes a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs, and intervention strategies that include positive behavioral supports and services to address the behavior.
2. *Controlled substance* means a drug or other substance abuse identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC § 812(c)).
3. *Disciplinary change in placement* means a suspension or removal from a student's current educational placement that is either:
  - a. for more than 10 consecutive school days; or
  - b. for a period of 10 consecutive school days or less if the student is subjected to a series of suspensions or removals that constitute a pattern because they cumulate to more than 10 school days in a school year, because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals, and because of such additional factors as the length of each suspension or removal, the total amount of time the student has been removed and the proximity of the suspensions or removals to one another.

4. *Illegal drug* means a controlled substance, but does not include a controlled substance legally possessed or used under the supervision of a licensed healthcare professional, or a substance that is otherwise legally possessed or used under the authority of the Controlled Substances Act or under any other provision of federal law.
5. *Interim alternative educational setting (IAES)* means a temporary educational placement, other than the student's current placement at the time of the behavior precipitating the IAES placement. An IAES must allow a student to continue to receive educational services that enable him or her to continue to participate in the general curriculum and progress toward meeting the goals set out in the student's individualized education program; as well as to receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur.
6. *Manifestation review* means a review of the relationship between the student's disability and the behavior subject to disciplinary action required when the disciplinary action results in a disciplinary change of placement, and conducted in accordance with requirements set forth later in this policy.
7. *Manifestation team* means a district representative knowledgeable about the student and the interpretation of information about child behavior, the parent/guardian, and relevant members of the committee on special education as determined by the parent/guardian and the district.
8. *Removal* means a removal of a student with a disability for disciplinary reasons from his or her current educational placement, other than a suspension; and a change in the placement of a student with a disability to an IAES.
9. *School day* means any day, including a partial day, that students are in attendance at school for instructional purposes.
10. *Serious bodily injury* means bodily injury which involves a substantial risk of death, extreme physical pain, protracted obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

11. *Student presumed to have a disability for discipline purposes* means a student who, under the conditions set forth later in this policy, the district is deemed to have had knowledge was a student with a disability before the behavior that precipitated the disciplinary action.
12. *Suspension* means a suspension pursuant to §3214 of New York's Education Law.
13. *Weapon* means the same as the term "dangerous weapon" under 18 USC §930(g)(2) which includes a weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury.

#### *Authority of School Personnel to Suspend or Remove Students with Disabilities*

The Board, District Superintendent, Superintendent of Schools or a Building Principal with authority to suspend students under the Education Law may order the placement of a student with a disability into an IAES, another setting or suspension for a period not to exceed five consecutive school days.

The Superintendent may, directly or upon the recommendation of a designated hearing officer, order the placement of a student with a disability into an IAES, another setting or suspension for a period not to exceed ten consecutive school days inclusive of any period in which the student has been suspended or removed for the same behavior pursuant to the above paragraph, if the Superintendent determines that the student's behavior warrants the suspension. The Superintendent also may order additional suspensions of not more than ten consecutive school days in the same school year for separate incidents of misconduct, as long as the suspensions do not constitute a disciplinary change of placement.

In addition, the Superintendent may order the placement of a student with a disability into an IAES, another setting or suspension for a period in excess of ten consecutive school days if the manifestation team determines that the student's behavior was not a manifestation of the student's disability. In such an instance, the Superintendent may discipline the student in the same manner and for the same duration as a non-disabled student.

Furthermore, the Superintendent may, directly or upon the recommendation of a designated hearing officer, order the placement of a student with a disability to an IAES to be determined by the committee on special education for a period of up to 45 school days if the student either:

1. carries or possesses a weapon to or at school, on school premises or to a school function, or;
2. knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises or at a school function under the district's jurisdiction, or;
3. has inflicted serious bodily injury upon another person while at school, on school premises or at a school function under the district's jurisdiction.

The Superintendent may order the placement of a student with a disability to an IAES under such circumstances, whether or not the student's behavior is a manifestation of the student's disability. However, the committee on special education will determine the IAES.

*Procedures for the Suspension or Removal of Students with Disabilities by School Personnel:*

1. In cases involving the suspension or removal of a student with a disability for a period of five consecutive school days or less, the student's parent or persons in parental relation to the student will be notified of the suspension and given an opportunity for an informal conference in accordance with the same procedures that apply to such short-term suspensions of non-disabled students.
2. The suspension of students with disabilities for a period in excess of five school days will be subject to the same due process procedures applicable to nondisabled students, except that the student disciplinary hearing conducted by the Superintendent or a designated hearing officer shall be bifurcated into a guilt phase and a penalty phase. Upon a finding of guilt, the Superintendent or the designated hearing officer will await notification of the determination by the manifestation team as to whether the student's behavior was a manifestation of his or her disability. The penalty phase of the hearing may proceed after receipt of that notification. If the manifestation team determined that the behavior was not a manifestation of the student's disability, the student may be disciplined in the same manner as a non-disabled student, except that he or she will continue to receive services as set forth below. However, if the behavior was deemed a manifestation of the student's disability, the hearing will be dismissed, unless the behavior involved concerned weapons, illegal drugs or controlled substances, or the infliction of serious bodily injury, in which case the student may still be placed in an IAES.

*Limitation on Authority of School Personnel to Suspend or Remove Students with Disabilities*

The imposition of a suspension or removal by authorized school personnel may not result in a disciplinary change of placement of a student with a disability that is based on a pattern of suspensions or removals as set forth above in the *Definitions* section of this policy, unless:

1. the manifestation team determines that the student's behavior was not a manifestation of the student's disability, or;
2. the student is removed to an IAES for behavior involving weapons, illegal drugs or controlled substances, or the infliction of serious bodily injury as set forth above.

School personnel will consider any unique circumstances on a case-by-case basis when determining whether a disciplinary change in placement is appropriate for a student with a disability who violates the district's code of conduct.

In addition, school personnel may not suspend or remove a disabled student in excess of the amount of time that a non-disabled student would be suspended for the same behavior.

*Parent/Guardian Notification of a Disciplinary Change of Placement*

The district will provide the parent/guardian of a student with a disability notice of any decision to make a removal that constitutes a disciplinary change of placement because of a violation of the student code of conduct. Such notice will be accompanied by a copy of the procedural safeguards notice.

*Authority of an Impartial Hearing Officer to Remove a Student with a Disability*

An impartial hearing officer may order the placement of a student with a disability to an IAES for up to 45 school days at a time if he or she determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others. This authority applies whether or not the student's behavior is a manifestation of the student's disability.

*Manifestation Review*

A review of the relationship between a student's disability and the behavior subject to disciplinary action to determine if the conduct is a manifestation of the student's disability will be made by the manifestation team immediately, if possible, but in no case later than 10 school days after a decision is made by:

1. the Superintendent to change the placement of a student to an IAES;
2. an impartial hearing officer to place a student in an IAES; or
3. the Board, the Superintendent, or Building Principal to impose a suspension that constitutes a disciplinary change in placement.

The manifestation team must determine that the student's conduct was a manifestation of the student's disability if it concludes that the conduct in question was either:

1. caused by or had a direct or substantial relationship to the student's disability, or
2. the direct result of the district's failure to implement the student's individualized education program.

The manifestation team must base its determination on a review of all relevant information in the student's file including the student's individualized education program, any teacher observations, and any relevant information provided by the parent/guardian.

**Policy No. 5300.50**  
**Page 6 of 9**

If the manifestation team determines that the student's conduct is a manifestation of the student's disability, the district will:

1. Have the committee on special education conduct a functional behavioral assessment of the student and implement a behavioral intervention plan, unless the district had already done so prior to the behavior that resulted in the disciplinary change of placement. However, if the student already has a behavioral intervention plan, the CSE will review the plan and its implementation, and modify it as necessary to address the behavior.
2. Return the student to the placement from which he or she was removed, unless the change in placement was to an IAES for conduct involving weapons, illegal drugs or controlled substances or the infliction of serious bodily injury, or the parent/guardian and the district agree to a change in placement as part of the modification of the behavioral intervention plan.

If the manifestation team determines that the conduct in question was the direct result of the district's failure to implement the student's individualized education program, the district will take immediate steps to remedy those deficiencies.

#### *Services for Students with Disabilities during Periods of Suspension or Removal*

Students with disabilities who are suspended or removed from their current educational setting in accordance with the provisions of this policy and applicable law and regulation will continue to receive services as follows:

1. During suspensions or removals of up to 10 school days in a school year that do not constitute a disciplinary change in placement, the district will provide alternative instruction to students with disabilities of compulsory attendance age on the same basis as non-disabled students. Students with disabilities who are not of compulsory attendance age will receive services during such periods of suspension or removal only to the same extent as non-disabled students of the same age would if similarly suspended.
2. During subsequent suspensions or removals of up to 10 school days that in the aggregate total more than 10 school days in a school year but do not constitute a disciplinary change in placement, the district will provide students with disabilities services necessary to enable them to



continue to participate in the general education curriculum and to progress toward meeting the goals set out in their respective individualized education program. School personnel, in consultation with at least one of the student's teachers, will determine the extent to which services are needed to comply with this requirement.

**Policy No. 5300.50**

**Page 7 of 9**

In addition, during such periods of suspension or removal the district will also provide students with disabilities services necessary for them to receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur.

3. During suspensions or removals in excess of 10 school days in a school year that constitute a disciplinary change in placement, including placement in an IAES for behavior involving weapons, illegal drugs or controlled substances, or the infliction of serious bodily injury, the district will provide students with disabilities services necessary to enable them to continue to participate in the general curriculum, to progress toward meeting the goals set out in their respective individualized education program, and to receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications designed to address the behavior violation so it does not recur. In such an instance, the committee on special education will determine the appropriate services to be provided.

#### *Students Presumed to Have a Disability for Discipline Purposes*

The parent/guardian of a student who is facing disciplinary action but who was not identified as a student with a disability at the time of misconduct has the right to invoke any of the protections set forth in this policy in accordance with applicable law and regulations, if the district is deemed to have had knowledge that the student was a student with a disability before the behavior precipitating disciplinary action occurred and the student is therefore a student presumed to have a disability for discipline purposes.

If it is claimed that the district had such knowledge, it will be the responsibility of the Superintendent, Building Principal or other authorized school official imposing the suspension or removal in question for determining whether the student is a student presumed to have a disability for discipline purposes. The district will be deemed to have had such knowledge if:

1. the student's parent/guardian expressed concern in writing to supervisory or administrative personnel, or to a teacher of the student that the student is in need of special education. Such expression may be oral if the parent/guardian does not know how to write or has a disability that prevents a written statement; or

2. the student's parent/guardian has requested an evaluation of the student; or
3. a teacher of the student or other school personnel has expressed specific concerns about a pattern of behavior demonstrated by the student directly to the district's director of special education or other supervisory personnel.

**Policy No. 5300.50**

**Page 8 of 9**

Nonetheless, a student will not be considered a student presumed to have a disability for discipline purposes if notwithstanding the district's receipt of information supporting a claim that it had knowledge the student has a disability:

1. the student's parent/guardian has not allowed an evaluation of the student; or
2. the student's parent/guardian has refused services; or
3. the District conducted an evaluation of the student and determined that the student is not a student with a disability.

If there is no basis for knowledge that the student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as any other non-disabled student who engaged in comparable behaviors. However, if the district receives a request for an individual evaluation while the student is subjected to a disciplinary removal, the district will conduct an expedited evaluation of the student in accordance with applicable law and regulations. Until the expedited evaluation is completed, the student shall remain in the educational placement determined by the district which can include suspension.

#### *Expedited Due Process Hearings*

The district will arrange for an expedited due process hearing upon receipt of or filing of a due process complaint notice for such a hearing by:

1. the district to obtain an order of an impartial hearing officer placing a student with a disability in an IAES where school personnel maintain that it is dangerous for the student to be in his or her current educational placement;
2. the district during the pendency of due process hearings where school personnel maintain that it is dangerous for the student to be in his or her current educational placement during such proceedings;
3. the student's parent/guardian regarding a determination that the student's behavior was not a manifestation of the student's disability; or

4. the student's parent/guardian relating to any decision regarding placement, including but not limited to, any decision to place the student in an IAES.

The district will arrange for, and an impartial hearing officer will conduct, an expedited due process hearing in accordance with the procedures established in Commissioner's regulations. Those procedures include but are not limited to convening a resolution meeting, and initiating and completing the hearing within the timelines specified in those regulations.

**Policy No. 5300.50**

**Page 9 of 9**

When an expedited due process hearing has been requested because of a disciplinary change in placement, a manifestation determination, or because the district believes that maintaining the student in the current placement is likely to result in injury to the student or others, the student will remain in the IAES pending the decision of the impartial hearing officer or until the expiration of the period of removal, whichever occurs first, unless the student's parent/guardian and the district agree otherwise.

#### *Referral to Law Enforcement and Judicial Authorities*

Consistent with its authority under applicable law and regulations, the district will report a crime committed by a student with a disability to appropriate law enforcement and judicial authorities. In such an instance, The Superintendent will ensure that copies of the special education and disciplinary records of the student are transmitted for consideration to the appropriate authorities to whom the crime is reported, to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA).

Cross-ref: 5500, Student Records

Ref: Individuals with Disabilities Education Act, 20 USC §1415(k); 34 CFR § 300.530 *et seq.*

Adopted: October 1, 2008

KHS JEFFERSON STUDENT CODE OF CONDUCT

\* revised 06/21/17 Policy No. 5305

KHS JEFFERSON STUDENT CODE OF CONDUCT

\* revised **04/22/15**

Policy No. 5305

LEVEL	OFFENSE	HEARING APPEAL PROCESS	RANGE OF CONSEQUENCES PER LEVEL (most severe punishment)
I	<ol style="list-style-type: none"> <li>unexcused tardiness to school/class</li> <li>foul or offensive language or gesture</li> <li>wearing attire or displaying symbols that interfere with the rights of others or will cause a substantial disturbance or interfere with the educational process (wearing clothing that will insult a person or group or otherwise not be proper for school) (Refer: Educational Community Standard of dress)</li> <li>inappropriate affectionate behavior in a public place</li> <li>using items which interfere with the rights of others or will cause a disturbance, compromise safety, or interfere with the educational process during regular school hours</li> <li>disruptive behavior on school property or at a school sponsored activity</li> <li>causing minor damage to school property</li> <li>littering</li> <li>loitering</li> <li>eating or drinking in prohibited areas</li> <li>failure to wear the district issued identification badge</li> <li>The use of electronic devices that causes a minor disturbance (such as, but not limited to, audio, text, photo, etc.)</li> </ol>	<p>Informal hearing before the person imposing the disciplinary consequences and/or mediation</p>	<p>Verbal reprimand and/or short-term detention            Voluntary alternative consequences may include community service            Less severe consequences may be substituted by Administration            Consequences issued by KHS Peer Court</p> <p><u>OTHER CONSEQUENCES</u>            Confiscated items will be returned to parent/guardian</p>
II	<ol style="list-style-type: none"> <li>insubordinate absence from class/school</li> <li>misrepresentation of a signature (forgery)</li> <li>being disrespectful to staff</li> <li>use of and/or possession of tobacco, nicotine and/or paraphernalia (such as, but not limited to, an electronic vapor device) on school premises or during school-sponsored activities (Public Health Law &amp; District Policy)</li> <li>intentional misuse or unauthorized use of school district property</li> <li>possession, distribution, or use of unauthorized medicines (including over-the-counter medicines)</li> <li>unauthorized sale or vending on school property</li> <li>continuing or repeating Level I offenses after prior corrective measures have been taken</li> </ol>	<p>Informal hearing before the assistant principal, vice principal or their designee and/or mediation</p>	<p>Same as Level I and parents are notified (Exception #4 – mandatory detention)            Detention over five days            Up to three days assignment to the in-school suspension program            Consequences issued by KHS Peer Court</p> <p><u>OTHER CONSEQUENCES:</u>            Offense #1 potential PINS petition (Family Court Action) and Confiscation</p>
III	<ol style="list-style-type: none"> <li>action, verbal assault and/or abuse based on differences (e.g. racial, ethnic, religious, political, social, life-style differences, or gender expression, etc.)</li> <li>foul or offensive language or gestures used in a confrontational manner</li> <li>insubordination (deliberate and/or defiant refusal to follow a reasonable rule and/or request)</li> <li>intentional plagiarism (using someone else's work and claiming it as your own)</li> <li>giving, requesting or obtaining test information (cheating on tests)</li> <li>behavior which interferes with the operation of a school bus</li> <li>confrontations involving physical contact</li> <li>stealing</li> <li>reckless or intentional conduct or unauthorized use of school district property which causes significant damage</li> <li>gambling</li> <li>extortion (a threatening demand for goods or services)</li> <li>student-to-person threat, bullying and/or harassment</li> <li>giving false information concerning school-related offenses (lying)</li> <li>lewd or sexual behavior on school premises or during school-sponsored activities</li> <li>reckless or intentional conduct which could cause physical injury</li> <li>intentional misuse of any school district computer hardware/software in any fraudulent or destructive manner, including but not limited to sending a harmful or threatening message, unauthorized entry into a file, altering software programs vandalizing hardware or software components. (Refer District Computer &amp; Internet Use)</li> <li>forcing someone to commit a dangerous or demeaning act (hazing including initiations) (District Code of Conduct)</li> <li>Willful action or language that substantially disrupts the normal operations of school</li> <li>aiding and/or abetting in any level three offense</li> <li>defacement of ID badges which alters photo, student name student number, and/or barcode</li> <li>vandalism</li> <li>The use of electronic devices and/or social media that causes a substantial disturbance and/or compromises safety (such as, but not limited to, audio, video, text, photo, etc.)</li> <li>Willful and deliberate attempt to leave or actually leaving the KHS campus.</li> <li>continuing or repeating Level II offenses after prior corrective measures have been taken</li> </ol>	<p>Expanded informal administrative hearing and/or mediation</p> <p>Superintendent's hearing as provided by law where there is a potential for criminal charges</p>	<p>Up to 5 days suspension or preferable 5 days assignment to the in-school suspension program and/or loss of privileges.  <b>*Consequences Issued by KHS Peer Court</b></p> <p><u>OTHER CONSEQUENCES</u>            Offense #5 – If the exam is a Regents exam, student may be barred from future Regents exams</p> <p>Potential criminal and/or civil lawsuits</p> <p>Financial restitution (paying for damages)</p> <p>Confiscation</p> <p>Expulsion and/or longer suspension as authorized by the laws of New York State and/or more than five days assignment to the in-school suspension program</p>
IV	<ol style="list-style-type: none"> <li>bringing and/or possessing unauthorized weapons or explosives to school or a school-sponsored activity</li> <li>making a bomb scare/false alarm</li> <li>burglary</li> <li>the willful or reckless setting of a fire</li> <li>distribution, sale or manufacture of controlled substances, illegal substances, synthetic substances ("designer drugs"), or the inappropriate use of prescriptions and/or over-the-counter medicines on school property or at a school-sponsored activity</li> <li>falsification of official school documents (any document bearing the official school seal, such as, but not limited to, transcripts, diplomas, or attendance records)</li> <li>assault or reckless conduct which causes physical emotional, psychological injury (assault – verbal sexual, physical confrontation causing serious injury)</li> <li>upon investigation by school officials, there is a serious and validated student to staff threat</li> <li>possession, use, or being under the influence of a controlled substance, illegal substance, synthetic substance (designer drug) inappropriately used prescription and/or over-the-counter medicine, alcohol, or in possession of drug paraphernalia on school property or at a school-sponsored activity</li> <li>aiding and/or abetting in any level four offense</li> <li>conduct so serious that it requires more than Level III consequences</li> </ol>	<p>Superintendent's hearing as provided by law</p>	<p>Expulsion and/or longer suspension as authorized by the laws of New York State and/or more than five days assignment to the in-school suspension program</p> <p><u>OTHER CONSEQUENCES</u>            Offenses # 1-9 – potential criminal charges, juvenile delinquency petitions            Possible removal from class            Loss of library/computer privileges            Confiscation</p>

KHS JEFFERSON STUDENT CODE OF CONDUCT

\* revised **04/22/15**

Policy No. 5305

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## MEDICAID COMPLIANCE

The Board of Education recognizes its obligation to put a plan and program in place to prevent or otherwise detect fraud, waste and abuse in the Medicaid program. In general, the Board expects that its officers and employees will operate with integrity and in conformance with its adopted code of ethics (policy 2160). The Board directs the Superintendent and the internal auditor to ensure that the following program elements are in place and are implemented effectively:

1. **Written procedures:** Accompanying this policy, and the cross-referenced policies listed below, are more detailed procedures and descriptions of how each element of the compliance program will be implemented. Written procedures will address how the district will accomplish the following:
  - a. **Keep informed regarding Medicaid coverage:** The Assistant Superintendent for Student Services will keep abreast of services that are covered by Medicaid so that the district files compliant claims. The Board expects that district staff and/or contractors and agents will avoid filing false claims which would subject the district to civil and criminal liability.
  - b. **Prohibit use of "excluded" providers:** Ensure that the district does not hire or contract with service providers who have been excluded from Medicare or the Medicaid program. The Assistant Superintendent for Student Services will check the credential of the provider before the district engages their services. District employees will be required to sign an agreement that said employee will inform the Compliance Officer and the Assistant Superintendent for Personnel and Administration upon receipt of any notification or knowledge that the individual's license has been suspended, revoked or lapsed, or if they have been excluded from participation in the Medicaid program. Upon notice by the employee, the district will take remedial steps as soon as possible. Contracts with outside providers will include provisions to address this requirement.
  - c. **Review of Providers:** The Assistant Superintendent for Personnel and Administration will check the list of excluded providers routinely to determine if any district employees who deliver Medicaid-covered services, or if any contractors, have been added to the list or have been reinstated. If any have been excluded, it will be reported immediately to the Superintendent who will initiate remedial action.

2. **Appoint a Compliance Officer, who is an employee, vested with responsibility for the day-to-day operation of the program:** The Board will appoint a Medicaid Compliance Officer at its annual organization meeting. The role of the Compliance Officer shall be:
  - to monitor the day-to-day operation of school supportive health services programs (SSHSPs) for compliance with mandatory reporting and credentialing requirements;
  - to receive, investigate, and respond to any and all reports of non-compliance;
  - to develop a method by which he/she may receive anonymous and confidential reports or suspected violations;
  - to supervise all internal and external audits of the school district's SSHSPs;
  - to develop and provide compliance training to the Board as well as to all school employees, contractors and agents who provide or oversee the provision of SSHSPs to students;
  - to recommend modification to the plan on an as needed basis to the Board; and
  - to report quarterly to the Board's Audit and Finance Committee, which in turn will report to the full Board, on the school district's Medicaid compliance activities.
3. **Training and education of officers and employees:** All employees involved in Medicaid covered services, as well as those responsible for oversight, will receive annual training in accordance with state and federal requirements. Board members will also receive appropriate training so that they can fulfill their responsibilities. The district will keep appropriate records documenting the training program.
4. **Lines of communication:** The district will work towards ensuring that its culture encourages communication among all parties involved in the Medicaid compliance program. The New York State Education Department and Health Department outlined the requirements of a disclosure mechanism that enables employees to report anonymously any practice or billing procedure that the employee deems inappropriate to the district's Compliance Officer and/or the State's Compliance Officer. The district will inform employees of this mechanism in conformance with that policy.
5. **Disciplinary consequences for school employees:** Failure of district employees to comply with this policy, and the reporting requirements pursuant to policy 9645, may result in a range of disciplinary actions, up to and including termination, in conformance with applicable laws and collective bargaining agreements.
6. **A system to routinely identify compliance risk areas:** Medicaid claims will be included as part of the district's risk assessment. The claims will be reviewed annually as part of the district's risk assessment or as directed by the Audit and Finance Committee or Board of Education. In addition, the Medicaid claims function will be tested and reviewed as part of the district's internal audit plan routinely, or as directed by the Audit and Finance Committee or Board of Education. When the internal audit reveals weaknesses, a corrective action plan will be initiated by the Superintendent.

7. **Non-Retaliation**: The Compliance Officer and Board is charged with responsibility for enforcing district policy 9645, Disclosure of Wrongful Conduct, which protects individuals who, in good faith, report or investigate suspected cases of fraud, waste or abuse in the district's Medicaid program from retaliation or intimidation.

The Medicaid Compliance Program is part of a comprehensive effort to manage all of the district's resources and is in conformance with the Five Point Plan which was enacted by Chapter 263 of the Laws of 2005 and includes the following elements:

1. Claims Auditor – (policy 6650) – establishes that the Board will either act as claims auditor for the district, or appoint one. The claims auditor is responsible for examining, allowing or rejecting all charges, claims or demands against the district.

**Policy 6685**

**Page 3 of 3**

2. Independent/External Audits – (policy 6660) – establishes that the district will obtain an annual audit of its records by an independent public accountant.
3. Internal Audit Function – (policy 6680) – establishes an internal audit function to develop an annual risk assessment and provide reports to the Board at least annually, or upon request.
4. Audit and Finance Committee – (policy 6690) – establishes the composition and charge of the audit committee. The committee shall recommend internal and external audit plans to the Board, as well as receive and review audit reports.
5. Orienting/Training New Board Members – (policy 2510) – Board members will be trained on their fiscal oversight, accountability and fiduciary responsibilities.

The ongoing review and implementation of these policies address Medicaid compliance, as well.

The Superintendent is responsible for developing regulations which will further detail the procedures associated with this policy. The Board will periodically review and update this policy and the associated plan.

#### Dissemination of Policy

The Board directs the Superintendent to ensure that this policy, as well as the cross-referenced policies, are disseminated to employees as well as those entities providing Medicaid covered services, with particular attention to those employees involved in administering the programs and services associated with Medicaid and their billing.

Cross-ref: 2160, School District Officer and Employee Code of Ethics  
2210, Board Organizational Meeting  
2520, Orienting/Training New Board Members  
6650, Claims Auditor  
6660, Independent/External Audits



6680, Internal Audit Function  
6690, Audit and Finance Committee  
9645, Disclosure of Wrongful Conduct  
9700, Staff Development

Ref: False Claims Act, 31 U.S.C. §3729, et seq.  
State Finance Law §§187 et seq. (New York False Claims Act)  
Social Services Law §§145-b (False Statements); 145-c (Sanctions);  
363-d (Provider Compliance Program)  
Labor Law §740 (Prohibits Retaliation)  
18 NYCRR §§521.1 et seq. (Provider Compliance Program regulations)

**1<sup>st</sup> Reading for Revision:            November 16, 2011**

**Adoption Date:                            December 7, 2011**