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SPECIAL EDUCATION FIELD ADVISORY

FROM: James P. DeLorenzo *James P. DeLorenzo*

SUBJECT: 2012 Legislative Changes Affecting Special Education

This memorandum provides information on several amendments recently made to New York State Education Law regarding the provision of special education programs and services pursuant to the following Chapters of Law:

- Chapter 74 of the Laws of 2012 relating to the implementation of the federal Individuals with Disabilities Education Improvement Act (IDEA) of 2004;
- Chapter 276 of the Laws of 2012 relating to committee on special education (CSE) membership;
- Chapter 279 of the Laws of 2012 relating to accessing a student's individualized education program (IEP) electronically; and
- Chapter 396 of the Laws of 2012 relating to services to out-of-State school districts by boards of cooperative educational services (BOCES).

Attached is information on each change which includes the legal citation(s), a summary of the changes, an effective date, and the corresponding statutory language.

To ensure dissemination to appropriate individuals within a school district, I ask Superintendents to please share this memorandum with individuals such as Directors of Special Education, School Psychologists, CSE and Committee on Preschool Special Education Chairpersons, Guidance Counselors and Directors of Pupil Personnel and Parent Teacher Associations. Questions regarding this memorandum may be directed to the Special Education Policy Unit at 518-473-2878 or to the Special Education Quality Assurance Office in your region:

Central Regional Office	(315) 428-4556
Eastern Regional Office	(518) 486-6366
Hudson Valley Regional Office	(518) 473-1185
Long Island Regional Office	(631) 952-3352
New York City Regional Office	(718) 722-4544
Western Regional Office	(585) 344-2002
Nondistrict Unit	(518) 473-1185

Attachment

**INDIVIDUALS WITH DISABILITIES EDUCATION ACT
Chapter 74 of the Laws of 2012**

Statute: Chapter 352 of the Laws of 2005, Chapter 430 of the Laws of 2006
and Chapter 378 of the Laws of 2007

Effective Date: June 29, 2012

Summary:

These amendments extend certain provisions of Education Law until June 30, 2015 in order to ensure that New York State continues to be in compliance with requirements of the federal Individuals with Disabilities Education Improvement Act of 2004.

Statute: Chapter 74 of the Laws of 2012

Section 1. Section 22 of chapter 352 of the laws of 2005, amending the education law relating to implementation of the federal individuals with disabilities education improvement act of 2004, as amended by chapter 206 of the laws of 2009, is amended to read as follows:

§ 22. This act shall take effect July 1, 2005, provided, however, if this act shall become a law after such date it shall take effect immediately and shall be deemed to have been in full force and effect on and after July 1, 2005; and provided further, however, that sections one through four and six through twenty-one of this act shall expire and be deemed repealed June 30, [~~2012~~] 2015, and section five of this act shall expire and be deemed repealed June 30, [~~2012~~] 2015.

§ 2. Subdivision (a) of section 8 of chapter 430 of the laws of 2006, amending the education law relating to implementation of the federal individuals with disabilities education improvement act of 2004, as amended by chapter 206 of the laws of 2009, is amended to read as follows:

17 (a) sections one, two, and six of this act shall expire and be deemed repealed June 30, [~~2012~~] 2015;

§ 3. Subdivision d of section 27 of chapter 378 of the laws of 2007, amending the education law relating to implementation of the federal individuals with disabilities education improvement act of 2004, as amended by chapter 206 of the laws of 2009, is amended to read as follows:

d. the provisions of this act shall expire and be deemed repealed June 30, [~~2012~~] 2015.

§ 4. This act shall take effect immediately, provided, however, if this act shall become a law after June 30, 2012 it shall take effect immediately and shall be deemed to have been in full force and effect on and after June 30, 2012.

EXPLANATION--Matter underscored is new; matter in brackets [-] is old law to be omitted.

COMMITTEE ON SPECIAL EDUCATION
Chapter 276 of the Laws of 2012

Statute: Section 4402

Effective Date: August 1, 2012

Summary:

This amendment provides that the additional parent member of the committee on special education (CSE) would be a required member of the CSE meeting if requested by the parent, the student or the district in writing at least 72 hours prior to the meeting. The parents must receive proper written notice of their right to have an additional parent member attend any meeting of the CSE along with a statement, prepared by the New York State Education Department (NYSED), explaining the role of having the additional parent attend the meeting. NYSED has revised the State's required meeting notice form to include this statement (<http://www.p12.nysed.gov/specialed/formsnotices/meetingnotice/CSEmeetform.htm>) and will also be amending State regulations to conform to this requirement.

Please note that the statutory language in section 4410 of the Education Law relating to the required membership of the committee on preschool special education (CPSE) was not amended. Therefore, the additional parent member of the CPSE is a required member unless the parent of the student declines the participation of the additional parent member.

Statute: Chapter 276 of the Laws of 2012

Section 1. Clause (b) of subparagraph 1 of paragraph b of subdivision 1 of section 4402 of the education law, as amended by chapter 378 of the laws of 2007, is amended to read as follows:

(b) In determining the composition of such committee pursuant to clause (a) of this subparagraph, a school district may determine that a member appointed pursuant to one of subclause (ii), (iii), (iv), (v) or (ix) of clause (a) of this subparagraph also fulfills the requirement of subclause (vi) of clause (a) of this subparagraph of a member who is an individual who can interpret the instructional implications of evaluation results where such individuals are determined by the school district to have the knowledge and expertise to do so and/or that a member appointed pursuant to subclause (iii) or (iv) of clause (a) of this subparagraph also fulfills the requirement of subclause (v) of clause (a) of this subparagraph of a member who is a representative of the school district. The regular education teacher of the student shall participate in the development, review and revision of the individualized education program for the student, to the extent required under federal law. The school physician need not be in attendance at any meeting of the committee on special education unless specifically requested in writing, at least seventy-two hours prior to such meeting by the parents or other person in parental relation to the student in question, the student, or a member of the committee on special education. The parents or persons in parental relation of the student in question shall receive proper written notice of their right to have the school physician attend the meetings of the committee on special education upon referral of said student to the committee on special education or

whenever such committee plans to modify or change the identification, evaluation or educational placement of the student [~~and their right to request that an additional parent member not participate at any meeting of the committee regarding the student~~]. The additional parent need not be in attendance at any meeting of the committee on special education unless specifically requested in writing, at least seventy-two hours prior to such meeting by the parents or other person in parental relation to the student in question, the student, or a member of the committee on special education. The parents or persons in parental relation of the student in question shall receive proper written notice of their right to have an additional parent attend any meeting of the committee regarding the student along with a statement, prepared by the department, explaining the role of having the additional parent attend the meeting. The committee shall invite the appropriate professionals most familiar with a student's disability or disabilities to attend any meeting concerning the educational program for such student. Except as otherwise provided in this clause or clause (b-1) or (b-2) of this subparagraph, all members of such committee shall attend meetings of the committee on special education.

§ 2. Clause (b) of subparagraph 1 of paragraph b of subdivision 1 of section 4402 of the education law, as amended by chapter 311 of the laws of 1999, is amended to read as follows:

(b) In determining the composition of such committee pursuant to clause (a) of this subparagraph, a school district may determine that a member appointed pursuant to one of subclause (ii), (iii), (iv), (v) or (ix) of clause (a) of this subparagraph also fulfills the requirement of subclause (vi) of clause (a) of this subparagraph of a member who is an individual who can interpret the instructional implications of evaluation results where such individuals are determined by the school district to have the knowledge and expertise to do so and/or that a member appointed pursuant to subclause (iii) or (iv) of clause (a) of this subparagraph also fulfills the requirement of subclause (v) of clause (a) of this subparagraph of a member who is a representative of the school district. The regular education teacher of the student shall participate in the development, review and revision of the individualized education program for the student, to the extent required under federal law. The school physician need not be in attendance at any meeting of the committee on special education unless specifically requested in writing, at least seventy-two hours prior to such meeting by the parents or other person in parental relationship to the student in question, the student, or a member of the committee on special education. The parents or persons in parental relationship of the student in question shall receive proper written notice of their right to have the school physician attend the meetings of the committee on special education upon referral of said student to the committee on special education or whenever such committee plans to modify or change the identification, evaluation or educational placement of the student [~~and their right to request that an additional parent member not participate at any meeting of the committee regarding the student~~]. The additional parent need not be in attendance at any meeting of the committee on special education unless specifically requested in writing, at least seventy-two hours prior to such meeting by the parents or other person in parental relation to the student in question, the student, or a member of the committee on special education. The parents or persons in parental relation of the student in question shall receive proper written notice of their right to have an additional parent attend any meeting of the committee regarding the student along with a statement, prepared by the department, explaining the role of having the additional parent attend the meeting. The committee shall invite the appropriate professionals most familiar with a student's disability or disabilities to attend any meeting concerning the educational program for such student. Members of such committee shall serve at the pleasure of such board and members who are neither employees

of nor under contract with such district shall serve without compensation except that such members shall be entitled to a per diem to defray expenses incurred in such service, provided, however, that any expense incurred shall be deemed an aidable operating expense for purposes of state aid.

§ 3. This act shall take effect immediately; provided, however, that the amendments to clause (b) of subparagraph 1 of paragraph b of subdivision of section 4402 of the education law made by section one of this act shall be subject to the expiration and reversion of such clause pursuant to subdivision d of section 27 of chapter 378 of the laws of 2007, as amended, when upon such date the provisions of section two of this act shall take effect.

EXPLANATION--Matter underscored is new; matter in brackets [-] is old law to be omitted.

**INDIVIDUALIZED EDUCATION PROGRAM
Chapter 279 of the Laws of 2012**

Statute: Section 4402

Effective Date: August 1, 2012

Summary:

This amendment allows school districts the option of giving teachers, related service providers and other service providers access to a student's individualized education program (IEP) electronically. If the school district's policy provides that a student's IEP is to be accessed electronically, the policy must also ensure that the individuals responsible for the implementation of the IEP are notified and trained on how to access such IEP electronically. NYSED will be amending State regulations to conform to this requirement.

Statute: Chapter 279 of the Laws of 2012

Section 1. Paragraph a of subdivision 7 of section 4402 of the education law, as added by chapter 408 of the laws of 2002, is amended to read as follows:

a. The board of education or trustees of each school district and the board of trustees of each charter school shall adopt a policy to ensure 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 individualized education program shall be given a copy of such student's individualized education program prior to the implementation of such program or shall be able to access such student's individualized education program electronically; provided, however, if the policy provides that the student's individualized education program is to be accessed electronically, then such policy shall also ensure that the individuals responsible for the implementation of a student's individualized education program shall be notified and trained on how to access such individualized education programs electronically.

§ 2. This act shall take effect immediately.

EXPLANATION--Matter underscored is new; matter in brackets [-] is old law to be omitted.

**BOARDS OF COOPERATIVE EDUCATIONAL SERVICES
Chapter 396 of the Laws of 2012**

Statute: Section 1950

Effective Date: August 17, 2012

Summary:

These amendments would allow boards of cooperative educational services (BOCES) to enter into contracts of no more than two years with out-of-State school districts to provide certain services. The Commissioner of Education, in consultation with participating BOCES, must prepare two reports describing the content of the contracts. The Commissioner must submit an interim report to the Board of Regents, the governor and the legislature by no later than April 15, 2013 and a final report by no later than December 15, 2013 with recommendations on whether and under what conditions such contracts should continue to be authorized beyond the July 1, 2014 expiration date.

Statute: Chapter 396 of the Laws of 2012

Section 1. Paragraph h of subdivision 4 of section 1950 of the education law is amended by adding a new subparagraph 10 to read as follows:

10) To enter into contracts of no more than two years and subject to the sunset date of this subparagraph, with out-of-state school districts for special education and/or career and technical education services or for the use of existing products that demonstrate how to map the common core standards to assessments and/or provide access to existing webinars or online courses relating to implementation of the common core standards. Any contract shall be approved by the commissioner, the board of cooperative educational services and the district superintendent of schools, provided such services are made available to any school district within the supervisory district and that the requirements of this subparagraph are met. Contracts must be executed by the board of cooperative educational services and the trustees or boards of education of such out-of-state school districts and shall only authorize out-of-state students to participate in an instructional program if such services are available to all eligible students in New York state schools in the component districts and the number of participating out-of-state students only comprises up to five percent of the total number of the total enrolled students in the instructional program at the board of cooperative educational services and that the board of cooperative educational services spends no more than thirty percent of its employees' time on services to out-of-state districts pursuant to this subparagraph. To be approved by the commissioner, the contract and any business plan, shall demonstrate that any services provided to out-of-state schools pursuant to this subparagraph shall not result in any additional costs being imposed on component school districts and that any payments received by the board of cooperative educational services for services provided in this subparagraph that exceed any cost to the board of cooperative educational services for providing such services shall be applied to reduce the costs of aidable shared services allocated to component school districts pursuant to paragraph d of this subdivision and shall also be applied to reduce the approved cost of services pursuant to subdivision five of this section. Services provided by a board of cooperative educational services to component districts at the time of approval of a contract under this paragraph shall not be reduced or

eliminated solely due to a board of cooperative educational services' performance of services to out-of-state districts pursuant to this paragraph.

§ 2. Subparagraph 2 of paragraph d of subdivision 4 of section 1950 of the education law, as added by chapter 474 of the laws of 1996, is amended to read as follows:

2) Certain services prohibited. Commencing with the nineteen hundred ninety-seven--ninety-eight school year, the commissioner shall not be authorized to approve as an aidable shared service pursuant to this subdivision any cooperative maintenance services or municipal services, including but not limited to, lawn mowing services and heating, ventilation or air conditioning repair or maintenance or trash collection, or any other municipal services as defined by the commissioner. On and after the effective date of this paragraph, the commissioner shall not approve, as an aidable shared service, any new cooperative maintenance or municipal services for the nineteen hundred ninety-six--ninety-seven school year, provided that the commissioner may approve the continuation of such services for one year if provided in the nineteen hundred ninety-five--ninety-six school year. **No service provided to an out-of-state school district pursuant to subparagraph ten of paragraph h of this subdivision shall be eligible for aid.**

§ 3. The commissioner of education, in consultation with participating boards of cooperative educational services, shall prepare two reports describing the content of contracts approved by such commissioner and the district superintendent pursuant to paragraph h of subdivision 4 of section 1950 of the education law, including the names of the parties to the contract, the length of the contract, a description of the services provided under the contract, the percentage of out-of-state students that are in each instructional program in the board of cooperative educational services compared to in-state students, a description of the time spent by board of cooperative educational services employees to perform such services and any expenses and revenues for performing services to out-of-state districts under the contract. The reports shall also include a detailed breakdown of how many additional employees needed to be hired by the board of cooperative educational services to perform such services, any additional resources or materials that needed to be purchased by the board of cooperative educational services and/or any administrative, marketing and/or development costs associated with performing services under paragraph d of subdivision 4 of section 1950 of the education law. If payments received for such services exceed the costs of providing such services, the reports shall also include a description of how the board of cooperative educational services will reduce the costs of aidable shared services to the component districts pursuant to paragraph d of subdivision 4 of section 1950 of the education law and/or how any revenues received by the board of cooperative educational services will reduce the costs of aidable shared services. The commissioner of education shall submit an interim report to the board of regents, the governor and the legislature by no later than April 15, 2013 and a final report by no later than December 15, 2013, with recommendations on whether and under what conditions such contracts should continue to be authorized beyond the expiration date provided herein.

§ 4. This act shall take effect immediately and shall expire and be deemed repealed July 1, 2014.

EXPLANATION--Matter **underscored** is new; matter in brackets [-] is old law to be omitted.