



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

August 2005

TO: Schools, Individuals and Organizations Interested in the Education of Students with Disabilities

FROM: Rebecca H. Cort

SUBJECT: Chapter 352 of the Laws of 2005 and requirements of the Individuals with Disabilities Education Act effective July 1, 2005

Beginning July 1, 2005, school districts were required to implement the new requirements of the Individuals with Disabilities Education Act (IDEA) as found in PL 108-446 and applicable federal regulations. In addition, existing State law and regulations must continue to be implemented to the extent consistent with federal requirements.

Summaries of IDEA 2004 requirements by topic can be accessed at the following website: <http://www.ideapartnership.org/whatsnew.cfm>. While the U.S. Department of Education has issued proposed federal regulations to implement IDEA 2004, these proposed rules are not currently in effect and are not expected to be final until late in 2005. A full copy of IDEA 2004 and current Part 300 federal regulations can be accessed at the following web sites: <http://edworkforce.house.gov/issues/108th/education/idea/conferencereport/confrept.htm> or http://www.archives.gov/federal_register/index.html

New York State (NYS) Education Law has been amended, effective July 1, 2005, by Chapter 352 of the Laws of 2005 (attached) to conform to IDEA 2004 relating to:

- discipline procedures for students with disabilities;
- child find requirements;
- a prohibition against mandatory medication;
- responsibility for providing services to students with disabilities enrolled in nonpublic schools by their parents;
- due process procedures;
- membership of the Commissioner's Advisory Panel; and
- mechanisms for disputes between State agencies with education responsibilities and school districts and between municipalities and school districts for preschool students with disabilities.

Further changes to NYS Education Law may be necessary after the final federal regulations are adopted.



The Department has proposed changes to its State regulations to implement IDEA 2004 and Chapter 352 of the Laws of 2005. Revised proposed regulations will be published for a 30-day public comment period and it is anticipated that the regulations will be presented for approval at the September 2005 meeting of the Board of Regents.

The following information is intended as preliminary guidance on the requirements in effect as of July 1, 2005 on selected topics. This information is subject to revision based on receipt of guidance or other information from the U.S. Department of Education. Additional guidance will be issued after the State regulations are adopted in September.

CHILD FIND

Section 4402 of NYS Education Law has been amended to require school districts to identify, locate and evaluate all students with disabilities in the district who are in need of special education, including children with disabilities who are homeless children or are wards of the State. School districts must include in its register any student-specific data required to comply with federal law or regulations.

COMMITTEE ON SPECIAL EDUCATION MEMBERSHIP

There has been no change to NYS Education Law regarding the required participation of members of the Committee on Special Education (CSE), Subcommittee or Committee on Preschool Special Education (CPSE) when conducting meetings of the CSE, Subcommittee or CPSE. Further guidance on whether a school district and a parent may agree that the participation of a CSE or CPSE member is not necessary or that a CSE or CPSE member may be excused from the meeting will be issued upon adoption of final federal regulations.

INDIVIDUAL EVALUATIONS AND ELIGIBILITY DETERMINATIONS

Student with a Disability: Section 4401 of NYS Education Law has been amended to revise the definition of student with a disability to add that lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in the Elementary and Secondary Education Act (ESEA)) can not be a determinant factor in identifying a student as a student with a disability.

Specific Learning Disabilities: As of July 1, 2005, when determining whether a student has a specific learning disability, the State may not require school districts to take into consideration whether a student has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation or mathematical reasoning. The Department will adopt State criteria for determination of a learning disability after adoption of the final federal regulations. Further guidance will be issued at that time.

Timelines to Complete an Initial Evaluation:

For a school age student, the initial evaluation must be completed within 60 calendar days of receipt of the parent's consent for an evaluation. Additionally, NYS regulations continue to require that the individualized education program (IEP) of a school age student with a disability be implemented no later than 60 school days from the date of consent of the parent to evaluate the student.

For a preschool student, the initial evaluation and recommendation to the board of education must be completed within 30 school days of the receipt of parental consent to evaluate the student, consistent with section 200.16(c) and (d) of the Commissioner's Regulations. Section 200.16(e) of the Commissioner's Regulations continues to require that services be provided to the student no later than 30 school days from the recommendation of the CPSE.

Summary Report: For a student whose eligibility terminates because the student graduates from secondary school with a local or Regents diploma or exceeds the age eligibility for a free appropriate public education, the school district must provide the student with a summary of the student's academic achievement and functional performance, including recommendations on how to assist the student in meeting the student's postsecondary goals.

Reevaluations: Section 4402.1(b)(3)(d) of NYS Education Law has been amended to include that a reevaluation may not be conducted more than once a year unless the parent or person in parental relation to the student and the school district otherwise agree.

NYS law and regulations continue to require the reevaluation of a student with a disability at least once every three years. Further guidance on whether a school district and a parent may agree that a three-year reevaluation is not necessary will be issued upon adoption of final federal regulations.

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

IEP Contents: IEPs developed or revised on or after July 1, 2005 must include all the requirements in section 200.4(d) of the Commissioner's Regulations. In addition, to conform to IDEA 2004 IEP requirements, IEPs must also include the following.

- Measurable post-secondary goals in the areas of training, education, employment, and, where appropriate, independent living skills.
- A description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.

- A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child.
- If the CSE determines that the student must take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why the student cannot participate in the regular assessment and why the particular alternate assessment selected for the student is appropriate.

Note:

- In NYS, IEPs must continue to include short-term measurable objectives and benchmarks for all students consistent with the requirements of section 200.4(d) of the Commissioner's Regulations.
- The Department has proposed changes to IEP requirements in its Notice of Proposed Rulemaking, which includes an amendment to repeal the requirement for short-term objectives and benchmarks except for students who take the New York State Alternate Assessment (NYSAA) and preschool students. Further guidance on IEP contents will be issued when State regulations have been adopted.

NYS' sample school age and preschool IEPs will be revised after the proposed changes to State regulations are adopted.

Changes to an IEP: NYS Education Law and Regulations continue to require a meeting of the CSE or CPSE to make any change to a student's IEP. Further guidance will be issued upon adoption of final federal regulations as to whether a school district and a parent may agree to amend the IEP without a meeting if changes to the IEP are needed after the annual review.

RELATED SERVICES

Sections 4001 and 4401 of NYS Education Law have been amended to include interpreting services and to add that the term related services does not include a medical device that is surgically implanted or the replacement of such a device.

TRANSITION SERVICES

Section 4401 of NYS Education Law has been amended to conform to the federal definition of transition services as follows (new language underlined):

Transition services means a coordinated set of activities for a student with a disability, designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate movement from school to post-school activities, including post-secondary education, vocational education, integrated competitive 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, if appropriate, acquisition of daily living skills and functional vocational evaluation.

New York State regulations continue to require transition services on a student's IEP beginning at age 14 for courses of study and age 15 for other transition services.

Note: The Department has proposed changes to its State regulations relating to transition services, including a proposed change to require transition services on a student's IEP beginning with the IEP to be in effect when the student is age 15 and updated annually. Further guidance will be issued when the State regulations are adopted.

PROHIBITION ON MANDATORY MEDICATION

Section 3208 of NYS Education Law has been amended to prohibit a public school district, Charter School, Board of Cooperative Educational Services (BOCES), approved private school, approved provider of preschool special education services, State-operated school, State-supported school, Special Act School District and State Educational Agency from requiring that a child obtain a prescription for medication in order to attend school, receive an evaluation or reevaluation or receive special education programs or services.

Section 4402.1(b)(3)(b) of NYS Education Law has been amended to ensure that a private school's written policy on the use of psychotropic drugs is consistent with the prohibition on the use of mandatory medication in section 3208 of NYS Education Law.

DUE PROCESS PROCEDURES

Effective July 1, 2005, there are new requirements in section 615 of IDEA relating to due process procedures, including, but not limited to, the new requirements for mediation, written due process complaint notices, resolution sessions, impartial hearings and attorney fees.

See: <http://www.ideapartnership.org/osepdocprint.cfm?osepid=15> and <http://www.ideapartnership.org/osepdocprint.cfm?osepid=16>

Chapter 352 of the Laws of 2005 has established a two-year statute of limitations for a request for an impartial hearing.

Due Process Complaint Notice

A revised NYS sample Due Process Complaint Notice can be found at:

<http://www.vesid.nysed.gov/specialed/publications/policy/dueprocess7105.htm>

DISCIPLINE OF STUDENTS WITH DISABILITIES

Effective July 1, 2005, the IDEA 2004 requirements relating to the discipline of students with disabilities must be implemented. Information can be found at:

<http://www.ideapartnership.org/osepdocprint.cfm?osepid=10>

Manifestation Determinations:

Sections 3214(g) and 4402 of NYS Education Law have been amended to establish a Manifestation Team to make manifestation determinations. The Manifestation Team must be comprised of a representative of the school district, the parent or person in parental relation to the student and relevant members of the CSE as determined by the parent or person in parental relation and the school district. The CSE no longer has the responsibility to make a manifestation determination. The Manifestation Team must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the school district's failure to implement the IEP.

Removals for Drugs/Illegal Substances, Weapons or Serious Bodily Injury:

Section 3214 of NYS Education Law has been amended to give school officials authority to remove a student with a disability for up to 45 school days under the circumstances of drugs, illegal substances, weapons and serious bodily injury, regardless of the manifestation determination.

Expedited Due Process Hearings:

Section 201.11(c) of Commissioner's Regulations continues to require an expedited impartial hearing to be completed within 15 business days. The student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period of the suspension or removal, whichever occurs first, unless the parent and the school district agree otherwise.

PARENTAL CONSENT AND SURROGATE PARENTS

The requirements of IDEA 2004 apply, except that there has been no change to State law that would authorize a court-appointed individual to provide consent or to act as a surrogate parent for a student who is a ward of the State. School districts should continue to appoint a surrogate parent for such students in accordance with the requirements and timeline in section 200.5 of the Commissioner's Regulations (within 10 business days of the date the CSE or CPSE determined the student needs a surrogate parent). The federal timelines for appointment of a surrogate parent do not apply in NYS. See: <http://www.ideapartnership.org/osepdocprint.cfm?osepid=14>

PROCEDURAL SAFEGUARDS NOTICE

As of July 1, 2005 and until the State amends its regulations, the procedural safeguards notice must continue to be provided as required in sections 200.5 and 201.7 of the Commissioner's Regulations and as required by IDEA 2004. At a minimum, the procedural safeguards notice must be provided upon:

- initial referral for evaluation and upon parental request for an evaluation;
- each notification of an IEP meeting;
- reevaluation of the student;
- receipt of a written notice requesting an impartial hearing;
- a suspension or removal for disciplinary reasons that constitutes a disciplinary change of placement; and
- request of the parent.

The revised NYS Procedural Safeguards Notice can be found at: <http://www.vesid.nysed.gov/specialed/publications/policy/prosafenot705.htm>. This notice will be revised again when changes to federal and State regulations are adopted.

PERSONNEL DEVELOPMENT PLANS

IDEA 2004 repealed the Comprehensive System of Personnel Development (CSPD) requirement. Therefore, school districts and BOCES will not be required to develop and submit a separate CSPD plan for the 2005-06 and subsequent school years.

Section 613(a)(3) of IDEA 2004 requires school districts to ensure that all special education personnel are appropriately and adequately prepared. Congress intends that personnel development activities for special education personnel be integrated and aligned with plans developed under ESEA. Further guidance on personnel development plans will be issued when changes to the State's regulations are approved.

The Department will issue guidance on the definition of highly qualified special education teachers in a separate memorandum.

PROVISION OF SPECIAL EDUCATION SERVICES TO STUDENTS ENROLLED IN NONPUBLIC SCHOOLS BY THEIR PARENTS

School districts in NYS must comply with section 3602-c of NYS Education Law in providing special education services to students enrolled by their parents in nonpublic schools. Section 3602-c has been amended by Chapter 352 of the Laws of 2005 as follows:

For the 2005-06 school year:

School districts must continue to comply with the requirements in section 3602-c of NYS Education Law for the provision of special education services to students enrolled in nonpublic elementary and secondary schools by their parents that are in effect prior to the 2006-07 school year. This is because school districts will be implementing IEPs

developed prior to the IDEA 2004 effective date of July 1, 2005 and school districts will be acting upon a June 1, 2005 written request by parents for special education services to children parentally placed in nonpublic elementary and secondary schools for the 2005-06 school year.

If a student is first identified as a student with a disability or a student with a disability moves to the school district after July 1, 2005 and the parent requests special education services, the school district of residence must contract with the school district of location for the provision of those IEP services.

Beginning with the 2006-07 school year:

- The school district where the nonpublic elementary or secondary school is located will be responsible for the equitable provision of services, child find and consultation requirements in IDEA 2004. Required consultation relating to 2006-07 services should occur in the 2005-06 year.
- If the school district where the nonpublic school is located determines through its child find process that a student is suspected of having a disability, it must immediately refer the student to the CSE of the student's school district of residence for evaluation and possible identification as a student with a disability by the CSE of the school district of residence.
- The school district of residence must conduct the evaluation and eligibility determination and, for a student determined eligible for special education services, develop the IEP.
- The school district of residence must contract with the school district where the nonpublic school is located to provide special education services to the student.
- The school district where the nonpublic school is located must expend a proportionate amount of its federal funds made available under Part B of IDEA for the provision of services to students with disabilities attending nonpublic schools in the jurisdiction of its public school. Such federal funds may not be used for child find purposes.
- The school district where the nonpublic school is located can recover tuition from the district of residence for special education services provided to nonresident students. Such tuition must exclude costs paid with federal or State funds by the school district where the nonpublic school is located who provided the special education services.
- State and local funds provided by the school district of residence must supplement and in no case supplant the proportionate amount of federal funds required to be expended by the school district in which the nonpublic school attended by the student is located.

School districts where such nonpublic schools are located should prepare for implementation of IDEA 2004 and the amended section 3602-c requirements for the 2006-07 school year, including initiating the process for consultation with the nonpublic school providers located in the jurisdiction of their school district. The IDEA requirements for consultation may be found in 20 U.S.C. section 1412(a)(10)(A)(iii). The proposed IDEA federal regulations would require that consultation occur several months prior to the start of the school year. While these proposed regulations are not in effect

at this time, school districts are advised to proceed with consultation in the 2005-06 school year.

INTERAGENCY DISPUTE MECHANISMS

Section 112 of NYS Education Law has been amended to establish procedures for administrative appeals to resolve interagency disputes between school districts and State Departments or agencies or political subdivisions over responsibility for provision of, or payment for, special education programs or services to students with disabilities in full-time residential care in facilities or homes operated or supervised by such Departments, agencies or political subdivisions. (See attached legislation)

Section 4410 of NYS Education Law has been amended to establish procedures for administrative appeals to resolve interagency disputes between boards of education and municipalities over which entity is responsible to provide or pay for special education programs or services to preschool students with disabilities (see attached legislation).

Questions regarding this memorandum may be directed to Patricia Geary or Lisa Luderman in the Special Education Policy and Partnerships Unit at (518) 473-2878.

Attachment

Chapter 352 of the Laws of 2005: <http://assembly.state.ny.us/leg/?bn=A08936&sh=t>