



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

OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES
STATEWIDE COORDINATOR FOR SPECIAL EDUCATION
Room 1624 One Commerce Plaza • Albany, NY 12234
www.vesid.nysed.gov/specialed/

Telephone (518) 402-3353 Fax: (518) 473-5769

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TO: District Superintendents
Superintendent of Schools
Presidents of Boards of Education
Directors of Special Education
Superintendents of State-Operated and State-Supported Schools
Executive Directors of Approved Private Schools
New York City Board of Education
Principals of Public Schools
Directors of Pupil Personnel Services
Organizations, Parents and Individuals Concerned with Special Education
Commissioner's Advisory Panel for Special Education Services
SETRC Project Directors and Professional Development Specialists
Regional School Support Centers
Other State Agencies

FROM: James P. DeLorenzo

SUBJECT: New Requirements for Special Education Programs and Services:
Amendments to State Regulations Relating to Chapter 378 of the Laws of
2007 and the 2004 Reauthorization of the Individuals with Disabilities
Education Act of 2004

This is to inform you that the Board of Regents has approved for permanent adoption regulations to conform the Regulations of the Commissioner of Education to New York State (NYS) Education Law, as amended by Chapter 378 of the Laws of 2007, IDEA 2004, and 34 Code of Federal Regulations (CFR) Part 300. The amended regulations relate to:

- the provision of special education services to parentally-placed students in nonpublic schools;
- definitions of "school health and school nurse services" and "transition services";
- the qualifications and role of the chairperson of the Committee on Special Education (CSE);
- participation of a representative from Early Intervention (EI) in the Committee on



Preschool Special Education (CPSE) meeting of a child transitioning from EI to preschool special education;

- agreements between school districts and parents regarding:
 - attendance of CSE or CPSE members;
 - the three-year reevaluation of a student; and
 - changes to an individualized education program (IEP) after the annual review without a meeting;
- the parties that can make a referral for an initial evaluation of a student suspected of having a disability;
- the parties that can make a written request that a school district or agency refer a student for an initial evaluation and the actions the school district must take upon receipt of a written request for a referral of a student suspected of having a disability; and
- timelines for provision of services to preschool students.

The effective date of the amendment to regulations is August 21, 2008. However, except for the requirements relating to the chairperson of the CSE and procedures for “requests for referrals”, these requirements have been in effect since June 30, 2007 pursuant to NYS law. Attached is a summary of the changes to NYS regulations that were adopted at the July Regents meeting with suggested school district action implementation steps. A copy of the amended regulations may be found at www.regents.nysed.gov/2008Meetings/July2008/0708vesida1.doc.

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 CPSE 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) 428-3287
Eastern Regional Office	(518) 486-6366
Hudson Valley Regional Office	(914) 245-0010
Long Island Regional Office	(631) 884-8530
New York City Regional Office	(718) 722-4544
Western Regional Office	(585) 344-2002

Attachment

Amendments to State Regulations Relating to Chapter 378 of the Laws of 2007 and the 2004 Reauthorization of the Individuals with Disabilities Education Act of 2004

Effective August 28, 2008

The following is a summary of the new regulatory requirements. A copy of the regulations, as amended, can be found at www.regents.nysed.gov/2008Meetings/July2008/0708vesida1.doc.

SECTION 177.1 SERVICES TO PUPILS ATTENDING NONPUBLIC SCHOOLS

Nonpublic school students – section 177.1

The parent of a student parentally placed in a nonpublic school must request services from the school district responsible for providing such services in accordance with section 3602-c(2) of the Education Law.

SECTION 200.1 DEFINITIONS

Related Services - section 200.1(qq)

The definition of related services was amended to include school nurse services.

School health services – section 200.1(ss)

- ***School health services*** was amended to mean health services, provided by either a qualified school nurse or other qualified person, that are designed to enable a student with a disability to receive a free appropriate public education (FAPE) as described in the individualized education program (IEP) of the student.
- ***School nurse services*** was added to mean services, provided by a qualified school nurse pursuant to section 902(2)(b) of the Education Law, that are designed to enable a student with a disability to receive FAPE as described in the IEP of the student.

Transition services – section 200.1(fff)

The definition of transition services was amended to mean "a coordinated set of activities for a student with a disability, designed within a results-oriented process, that

is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities, including, but not limited to, post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based on the student's strengths, preferences and interests, and shall include needed activities in the following areas: (1) instruction; (2) related services; (3) community experiences; (4) the development of employment and other post-school adult living objectives; and (5) when appropriate, acquisition of daily living skills and provision of a functional vocational evaluation."

SECTION 200.3 COMMITTEES ON SPECIAL EDUCATION (CSE)

Chairperson of the CSE and Subcommittee on Special Education – sections 200.3(a)(1)(v) and 200.3(c)(2)(iv)

Sections 200.3(a)(1)(v) and 200.3(c)(2)(iv) of the Regulations have been amended to require that the representative of the school district serve as the chairperson of the CSE and the subcommittee.

Note: *The representative of the school district member of the committee is an individual who is qualified to provide or supervise special education and who is knowledgeable about the general education curriculum and the availability of resources of the school district. An individual who meets these qualifications may also be the same individual appointed as the special education teacher or the special education provider of the student or the school psychologist. Current regulations require the Committee on Preschool Special Education (CPSE) chairperson to also be the school district representative on the CPSE [section 200.3(a)(2)(iv)].*

Role and Responsibilities of the Committee Chairperson – section 200.3(e)

The chairperson of the CSE, CPSE, and subcommittee on special education must:

- preside over a meeting of such committee; and
- carry out the functions of a chairperson identified in Part 200 of the Regulations of the Commissioner of Education relating to students with disabilities and in Education Law, including but not limited to:
 - designating for each student a professional employee of the school district with knowledge of the student's disability and education program to inform each teacher, assistant and support staff person of his or her responsibility to implement the recommendations on a student's IEP;
 - carrying out responsibilities related to referrals and requests for referrals such as:
 - forwarding a copy of a referral to the building administrators within five days of its receipt;

- notifying parents when a referral or request for referral has been received;
- documenting attempts to obtain parental consent to an initial evaluation;
- informing a parent that does not grant consent for an initial evaluation, that upon request, the parent will be given an opportunity to attend an informal conference to ask questions regarding the proposed evaluation; and
- providing a parent and a referring person a copy of an agreement to withdraw a referral.
- determining the location of any meeting held to review or evaluate a preschool child; and
- participating in a transition planning conference for a child transitioning from early intervention (EI) services to preschool special education and services to review the child's program options and establish a transition plan (or designating another individual to participate in this meeting).

Committees on Preschool Special Education – section 200.3(a)(2)(viii)

For a child in transition from EI programs and services, the school district must, **at the request of the parent**, invite an EI service coordinator or other representative of the EI system to participate in the initial CPSE meeting.

Committee member attendance – sections 200.3(f) and 200.7(d)(1)(i)(c)

The parent and the school district may agree that the attendance of a member of the CSE, CPSE or subcommittee on special education is not necessary or that a member may be excused in accordance with the following procedures:

- **Member's attendance not necessary:** A member of the committee or subcommittee is not required to attend a meeting of the committee, in whole or in part, if the parent and the school district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting.
- **Excusal of member:** A member of the committee may be excused from attending a meeting of the committee or subcommittee, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services if:
 - the parent and the school district consent, in writing, to the excusal; and
 - the excused member submits to the parent and the committee, written input into the development of the IEP, and in particular written input with respect to their area of curriculum or related services prior to the meeting.
- The request to excuse a member or to agree that a member's attendance at a meeting is not necessary, and the written input into the development of the IEP from the member proposed to be excused must be provided not less than five calendar days prior to the meeting date, in order to afford the parent a reasonable time to review and consider the request. The parent retains the right to request and/or agree

with the school district to excuse a member at any time, including where the member is unable to attend because of an emergency or unavoidable scheduling conflict, and the school district submits the written input for review and consideration by the parent within a reasonable time prior to the meeting and prior to obtaining parental consent to the excusal.

- Requests for excusals do not apply to the parent of the student for whom the meeting is to be held or the appointee of the municipality in the case of a CPSE.

Note: *In the Analysis of Comments and Changes to the federal regulations to implement IDEA, the United States Education Department (USED) provided the following guidance on committee member attendance: “An LEA (local educational agency) may not routinely or unilaterally excuse IEP Team members from attending IEP Team meetings as parent agreement or consent is required in each instance. We encourage LEAs to carefully consider, based on the individual needs of the child and the issues that need to be addressed at the IEP Team meeting whether it makes sense to offer to hold the IEP Team meeting without a particular IEP Team member in attendance or whether it would be better to reschedule the meeting so that person could attend and participate in the discussion.” (Page 46674 of Volume 71, No. 156 of the Federal Register dated August 14, 2006).*

ACTION IMPLEMENTATION STEPS

- ✓ Establish procedures to ensure the EI representative is invited to a CPSE meeting at the request of the parent.
- ✓ Ensure that each meeting of the CSE or subcommittee is chaired by the school district representative.
- ✓ Establish procedures for district and parent agreements to excuse a member or to agree that the attendance of a member is not necessary consistent with the above requirements.

SECTION 200.4 PROCEDURES FOR REFERRAL, EVALUATION, ELIGIBILITY DETERMINATIONS, IEP DEVELOPMENT, PLACEMENT AND REVIEW

Referral for an initial evaluation – section 200.4(a)(1)

A student suspected of having a disability may be referred for an initial evaluation by the:

- student's parent (defined in section 200.1(ii) of the Regulations of the Commissioner of Education);
- designee of the school district in which the student resides or the public school district the student legally attends or is eligible to attend;

- commissioner or designee of a public agency with responsibility for the education of the student; and/or
- designee of an education program affiliated with a child care institution with CSE responsibility.

Note: While only a referral by a parent or school district initiates the procedures to conduct an initial evaluation to determine if the student is a student with a disability, a school district must, in its child find procedures, consider a "request for referral" from the following individuals consistent with the procedures described below.

Request for referral for an initial evaluation – section 200.4(a)(2)

- A written request that the school district or agency refer the student for 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;
 - licensed physician;
 - judicial officer;
 - professional staff member of a public agency with responsibility for welfare, health or education of children; or
 - student who is 18 years of age or older, or an emancipated minor, who is eligible to attend the public schools of the district.
- The written request for referral must:
 - state the reasons for the referral and include any test results, records or reports upon which the referral is based that may be in the possession of the person submitting the referral;
 - describe in writing, intervention services, programs or instructional methodologies used to remediate the student's performance prior to referral, including any supplementary aids or support services provided for this purpose, or state the reasons why no such attempts were made; and
 - describe the extent of parental contact or involvement prior to the referral.

Procedures for request for referral – section 200.4(a)(2) and 200.4(a)(9)

- When a written request for referral for an initial evaluation made to the school where the student resides or legally attends or is eligible to attend is received by the building administrator or any other employee of the school, it must be forwarded to the committee chairperson immediately upon its receipt.
- Upon receiving a request for referral, a school district must within 10 school days, either:
 - request parent consent to initiate the evaluation; or
 - provide the parent with a copy of a request for referral; and

- inform the parent of his/her right to refer the student for an initial evaluation; and
- offer the parent the opportunity to meet to discuss the request for referral and, as appropriate, the availability of appropriate general education support services for the student, with:
 - the building administrator or other designee of the school district authorized to make a referral;
 - the party making the request for referral if a professional staff member of the school district; and
 - upon request of the parent or school district, any other person making a request for referral must have the opportunity to attend such meeting.
- A professional staff member of the school district who made a request for referral that results in a parent referral for special education, must attend any meeting requested by a building administrator to determine whether the student would benefit from additional general education support services as an alternative to special education and receive a copy of any agreement to withdraw the referral.

Reevaluation – section 200.4(b)(4)

The parent and the school district may agree in writing that a three-year reevaluation is unnecessary.

Amendments to the IEP after the annual review – section 200.4(g)

- After an IEP has been developed at the annual review meeting, a parent and the school district may agree not to convene a meeting of the CSE to make changes to a student's IEP, and instead may develop a written document to amend the student's IEP under the following circumstances:
 - the parent makes a request to the school district for an amendment to the IEP and the parent and the district agree in writing; or
 - the school district provides the parent with a written proposal to amend a provision or provisions of the IEP that:
 - is conveyed in language understandable to the parent (native language or other dominate mode of communication), and
 - informs and allows the parent the opportunity to consult with the appropriate personnel or related service providers concerning the proposed changes.
 - the parent must agree in writing to such amendments.
- The parent must be provided prior written notice (notice of recommendation) of the changes to the IEP.
- The CSE must be notified of any changes made to the IEP.

- The parent must also receive, either a:
 - rewritten IEP; or
 - document that amends or modifies the IEP (or, upon parent request, a revised copy of the entire IEP with the amendments incorporated).
- Amendments made to an IEP without a meeting do not affect the requirement that the CSE must review the IEP at the annual meeting, or more often if necessary.

ACTION IMPLEMENTATION STEPS
<ul style="list-style-type: none"> ✓ Identify individual(s) who are authorized as the designee(s) of the school district who may refer a student for an initial evaluation. ✓ Establish procedures for when a request for referral is received by the school district. ✓ Ensure that each student has an annual review meeting. Establish procedures for parent and school district agreements to amend an IEP without a meeting. ✓ Ensure that documents used to amend an IEP are provided to the parent and to the CSE and are disseminated to appropriate individuals responsible for implementing the IEP.

SECTION 200.5 PROCEDURAL SAFEGUARDS

Notice of meetings – section 200.5(c)(2)(viii)

The meeting notice must, in the case of a child who was previously served under Part C EI services, inform the parent of his/her right to request that the EI service coordinator or other representatives of the EI system be invited to an initial CPSE meeting .

Mediation – section 200.5(h)(1)(v)

Repealed that the parties to the mediation process may be required to sign a confidentiality agreement.

ACTION IMPLEMENTATION STEP
<ul style="list-style-type: none"> ✓ Revise the school district’s meeting notice for preschool students transitioning from EI to include information on the parent's right to request the EI representative attend the meeting to assist in the smooth transition of the child from EI to preschool special education.

SECTION 200.16 PRESCHOOL STUDENTS WITH DISABILITIES

Referral – section 200.16(b)(1)

Establishes the parties who can make a referral of a preschool student suspected of having a disability consistent with Education law and section 200.4(a)(1) of the Regulations of the Commissioner of Education. (See pages 4-6)

Provision of services – section 200.16(f)(1)

Requires the board of education to arrange for the preschool student with a disability to receive programs and services commencing with the July, September or January starting date, unless such services are recommended by the CPSE less than 30 days prior to, or after, the starting date for a program, in which case such services must be provided ***as soon as possible following development of the IEP***, but no later than 30 school days from the recommendation of the CPSE. (*Bolded language is new*)

ACTION IMPLEMENTATION STEPS

- ✓ See pages 7 for Action Implementation Steps relating to referrals and request for referrals.