



**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  
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TO: District Superintendents  
Superintendent of Schools  
Presidents of Boards of Education  
Superintendents of State-Operated and State-Supported Schools  
Executive Directors of Approved Private Schools  
New York City Board of Education  
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  
Impartial Hearing Officers  
Mediators  
Other State Agencies

FROM: James P. DeLorenzo

SUBJECT: New Requirements for Special Education Programs and Services:  
Amendments to State Regulations to Implement the Individuals with Disabilities Education Act of 2004

The Board of Regents, at their December 2005 meeting, approved the permanent adoption of amendments to the Regulations of the Commissioner of Education to conform to the Individuals with Disabilities Education Act (IDEA) of 2004 and Chapter 352 of the Laws of 2005. These regulations, which are currently effective as emergency regulations, become permanently effective on December 29, 2005.

IDEA 2004 represents landmark legislation that focuses on improving the academic and functional outcomes for students with disabilities. New York State (NYS) has taken timely action to ensure that our State laws and regulations are clear regarding school districts' responsibilities to implement the federal law, including its requirements to:

- ensure timely and appropriate evaluations, eligibility determinations and services to students with disabilities, including children who are highly mobile, wards of the State and homeless youth;
- promote the use of high quality, research-based instruction for students with disabilities;



- promote less adversarial mechanisms for dispute resolution;
- focus resources on teaching and learning and provide procedural relief to the committees on special education process; and
- provide procedural protections for students with disabilities subject to discipline.

This memorandum summarizes the amendments to the regulations that were adopted at the December Regents meeting. A copy of the amendments may be found at <http://www.vesid.nysed.gov/specialed/idea/revisedterms905.htm>. Parts 200 and 201 of the Commissioner's Regulations with the amendments incorporated may be found at: <http://www.vesid.nysed.gov/specialed/publications/lawsandregs/coverpage.htm>.

The Office of Vocational and Educational Services for Individuals with Disabilities (VESID) has planned a series of regional information sessions on these new requirements beginning in spring 2006. Additional changes to State law and regulations will be necessary when the federal regulations are adopted. Meanwhile, as additional information or guidance becomes available from the U.S. Department of Education, we will post this information on the Department's web site: <http://www.vesid.nysed.gov/specialed/idea/>.

To ensure dissemination to appropriate individuals within a school district, I ask Superintendents to please share this memorandum with other individuals such as Building Principals, Directors of Special Education, School Psychologists, Committee on Special Education (CSE) and Committee on Preschool Special Education (CPSE) Chairpersons, Guidance Counselors and Directors of Pupil Personnel. Questions regarding this memorandum may be directed to the Special Education Policy and Partnerships 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 PARTS 200 AND 201 OF THE REGULATIONS OF THE  
COMMISSIONER OF EDUCATION TO IMPLEMENT IDEA 2004**

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## SECTION 200.1 - DEFINITIONS

The following amendments were made to section 200.1 of the Regulations of the Commissioner of Education.

### ***Assistive technology device***

Amended to add that such term does not include a medical device that is surgically implanted or the replacement of such a device.

### ***General curriculum***

Amended to mean the same general education curriculum as for students without disabilities.

### ***Homeless youth***

Added to mean the same as the term 'homeless child' as defined in section 100.2(x) of the Commissioner's Regulations.

### ***Impartial hearing officer***

Amended to add that an impartial hearing officer (IHO) must:

- possess knowledge of, and the ability to understand, the provisions of federal and State law and regulations pertaining to IDEA and legal interpretations of such law and regulations by federal and State courts; and
- possess knowledge of, and the ability to conduct hearings in accordance with appropriate, standard legal practice and to render and write decisions in accordance with appropriate standard legal practice.

### ***Limited English proficient student***

Added to mean the same as the term 'pupils with limited English proficiency' as defined in section 154.2(a) of the Commissioner's Regulations.

### ***Mediator***

Amended to add that a mediator must be knowledgeable in laws and regulations relating to the provision of special education services.

### ***Parent***

Amended to mean:

- a birth or adoptive parent, a guardian, a person in parental relationship to the child as defined in section 3212 of Education Law;
- an individual designated as a person in parental relation pursuant to Title 15-A of General Obligations Law including an individual so designated who is acting in place of a birth or adoptive parent (including a grandparent, stepparent or other relative with whom the child resides); or
- a surrogate parent.

The term does not include the State if the student is a ward of the State.

- A foster parent may act as a parent unless State law, regulations or contractual obligations with a State or local entity prohibit the foster parent from acting as a parent.
- When one or more party is qualified to act as a parent, the birth or adoptive parent must be presumed to be the parent unless a judicial decree or order identifies a specific person or persons to act as the parent or make educational decisions on behalf of the parent or the birth or adoptive parent does not have legal authority to make educational decisions.
- If a judicial decree or order identifies a specific person or persons to act as the parent or make educational decisions on behalf of the student, then such person or persons must be determined to be the parent for purposes of IDEA and Part 200 of the Commissioner's Regulations, except that a public agency that provides education or care for the student, or a private agency that contracts with a public agency for such purposes, shall not act as the parent.

### ***Prior notice***

Amended to read "prior written notice."

### ***Related services***

Amended to add interpreting services and the early identification and assessment of disabling conditions in students; and to exclude a medical device that is surgically implanted, or the replacement of such device.

### ***School health services***

Amended to mean nursing services provided by a qualified school nurse or other health services provided by a qualified person designed to enable a student with a disability to receive a free appropriate public education as described in the individualized education program (IEP) of the student.

### ***Special education***

Amended to add "functional performance" to the area of academic achievement and learning characteristics that must be considered in the individual need determinations for a student needing special education.

### ***Student with a learning disability***

Amended to repeal that a student who exhibits a discrepancy of 50 percent or more between expected achievement and actual achievement determined on an individual basis shall be deemed to have a learning disability.

### ***Surrogate parent***

Amended to mean 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, the student is an unaccompanied homeless youth or the student is a ward of the State and does not have a

parent who meets the definition of parent, or the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law.

### ***Transition services***

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 competitive 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 individual student's needs, taking into account the student's strengths, preferences and interests and shall include needed 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 functional vocational evaluation. (Italic emphasis added to highlight changes to the definition.)

### ***Universal design***

Added to mean a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies.

### ***Ward of the State***

Added to mean a child or youth under the age of 21:

- who has been placed or remanded pursuant to section 358-a, 384 or 384-a of 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 Social Services Law (includes voluntary placements, children placed pursuant to an abuse or neglect finding, persons in need of supervision and juvenile delinquents);
- who is in the custody of the Commissioner of Social Services or the Office of Children and Family Services; or
- who is a destitute child under section 398(1) of Social Services Law.

## **SECTION 200.2 – BOARD OF EDUCATION RESPONSIBILITIES**

The following amendments were made to section 200.2 of the Regulations of the Commissioner of Education.

### ***Child find requirements***

Section 200.2(a) has been amended to add that students with disabilities who are homeless or who are wards of the State must be included in the district's census and register of students with disabilities.

### ***Data requirements***

Section 200.2(f) has been amended to require the board of education (BOE) to record data on each student, including other information as required by IDEA and federal regulations, including, but not limited to the student's race, ethnicity, limited English proficiency status, gender and disability category.

### ***Parentally placed nonpublic private elementary and secondary school students with disabilities***

Section 200.2(g)(7) has been amended to require equitable participation of parentally-placed private school students with disabilities in the procedures to locate, identify and evaluate students with disabilities (child find requirements) as follows:

- The child find activities conducted by the school district where a nonpublic school is located must be similar to activities undertaken for students with disabilities in public schools; and be completed in a time period comparable to that for other students attending public schools in the school district.
- The school district where the nonpublic elementary and secondary schools are located must consult with representatives of private schools and representatives of parents of parentally placed private school students with disabilities on the child find process.
- School districts of residence and school districts where nonpublic elementary or secondary schools are located must maintain in their records and report to the Commissioner, in a manner prescribed by the Commissioner, on the number of students enrolled in such private schools by their parents:
  - who are evaluated to determine if they are students with disabilities;
  - the number of such students who are determined to have a disability; and
  - the number who received special education services.

Further information on the requirements for the provision of special education services to parentally placed private school students, as established in §3602-c of the Education Law, will be issued in a separate guidance document.

### ***Written policy – accessibility standard***

Sections 200.2(b)(10) and 200.2(i) require a BOE of a school district and board of educational cooperative educational services (BOCES) to have a plan to ensure that all instructional materials to be used in the schools of the district are available in a usable alternative format, which must meet the National Instructional Materials Accessibility Standard (NIMAS). This requirement becomes effective a reasonable period of time from the date the NIMAS is published. See:

<http://www.ed.gov/legislation/FedRegister/proprule/2005-2/062905a.html>

### ***Written policy – copies of individualized education programs (IEPs)***

Section 200.2(b)(11) requires the BOE to have established practices to ensure that amendments made to an IEP after the annual review meeting are provided to each

general and special education teacher, related service provider and/or other service provider who is responsible for the implementation of a student's IEP.

### ***Written policy – highly qualified personnel***

Sections 200.2(b)(12) and 200.2(i) have been added to require each BOE and BOCES to identify the measurable steps it will take to recruit, hire, train and retain highly qualified personnel to provide special education programs and services.

### ***Written policy – districtwide assessments***

Section 200.2(b)(13) has been added to require the policies of the BOE to describe guidelines for the provision of appropriate accommodations for students with disabilities necessary to measure students' academic achievement and functional performance in the administration of districtwide assessments.

Section 200.2(b)(14) has been added to require the school district to identify how, to the extent feasible, it will use universal design principles in developing and administering any districtwide assessment programs.

### ***BOE approval of services***

Section 200.2(d) requires the BOE to arrange for implementation of the student's IEP upon completion of its review of the recommendation of the Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE), including changes to the CSE or CPSE recommendation made in a meeting after the annual review that amends the IEP without rewriting the IEP.

### ***Personnel development plans***

Sections 100.2(dd) and 200.2(h) repeal the requirement for a local comprehensive system of personnel development (CSPD) plan and require that the BOE and each BOCES develop and implement a plan as part of the professional development plan pursuant to section 100.2(dd) of the Commissioner's Regulations that must include, but is not limited to, a description of the professional development activities provided to all professional staff and supplementary school personnel who work with students with disabilities to assure that they have the skills and knowledge necessary to meet the needs of students with disabilities. These changes are consistent with Congress' intent that personnel development activities for special education personnel be integrated and aligned with plans developed under the Elementary and Secondary Education Act (ESEA).

#### **RECOMMENDED IMPLEMENTATION STEPS**

- ✓ Identify homeless shelters and programs in your school district to establish appropriate child find procedures to identify students with disabilities who are homeless.
- ✓ Establish and initiate the consultation process around child find procedures and the provision of services with the nonpublic elementary and secondary schools and representatives of parents of parentally placed students for nonpublic schools that

are located in your school district.

- ✓ Establish methods to collect and record information on the number of students parentally placed in nonpublic private and elementary school students with disabilities who are evaluated for special education services, who are determined eligible for special education services and who receive special education services.
- ✓ Identify the measurable steps the school district (or BOCES) will take to recruit, hire, train and retain highly qualified personnel to provide special education programs and services.
- ✓ Establish guidelines for the provision of appropriate accommodations for districtwide assessments and the use of universal design principles for districtwide assessments.
- ✓ Include a description of the professional development activities for special education personnel in the school district's (or BOCES') professional development plan.

## **SECTION 200.3 – COMMITTEES ON SPECIAL EDUCATION**

The following amendments were made to section 200.3 of the Regulations of the Commissioner of Education.

### ***General and special education teachers and related service providers***

Sections 200.3(a) and (c) require that *not less than one* general education teacher of the child whenever the child is or may be participating in the general education environment and not less than one special education teacher of the child or, if appropriate, *not less than one* special education provider of the child be required members of the CSE, subcommittee and CPSE. (*Italic emphasis added to highlight revised language*).

### ***Additional parent member on the CSE***

Section 200.3(a) relating to the CSE has been amended to add that the required additional parent member on the CSE 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. (This provision does not apply to the CPSE.)

### **RECOMMENDED IMPLEMENTATION STEPS**

- ✓ Consider the addition of parents of students who have been declassified or who have graduated within the past five years, if necessary, to expand the list of additional parent members on the CSE.

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

The following amendments were made to section 200.4 of the Regulations of the Commissioner of Education.

### ***Individual evaluation***

Section 200.4(b) adds that the individual evaluation and reevaluation must include relevant functional, developmental and *academic* information about the student that may assist in determining whether the student is a student with a disability and the content of the student's IEP. (*Italic emphasis added to highlight new language.*)

### ***Reevaluation***

Section 200.4(b) requires the CSE to arrange for an appropriate reevaluation of each student with a disability:

- if the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or
- if the student's parent or teacher requests a reevaluation; and
- at least once every three years.

The CSE or CPSE is not required to arrange for the reevaluation of a student with a disability more frequently than once a year, unless the parent and the school district representative on the CSE agree otherwise. A reevaluation of a student with a disability is still required at least once every three years.

Section 200.4(b)(4) adds that, to the extent possible, school districts must encourage the consolidation of reevaluation meetings for the student with other CSE meetings for the student.

### ***Determination of needed evaluation data***

Section 200.4(b)(5) adds that the CSE must review the student's local or State assessments results and any observations of the student in his or her classroom as the CSE determines what, if any, additional evaluations are necessary as part of an initial or reevaluation to determine eligibility and IEP needs of a student with a disability.

### ***Evaluation procedures***

Section 200.4(b)(6) was amended to require:

- assessments and other evaluation materials used to assess a student with a disability be provided in the form most likely to yield accurate information on what the student knows and can do academically, developmentally and functionally; and
- the assessments of students with disabilities who transfer from one school district to another school district in the same academic year be coordinated with the student's

prior and subsequent schools, as necessary, and as expeditiously as possible to ensure prompt completion of full evaluations.

### ***Time period to complete the initial evaluation***

Section 200.4(b)(7) requires the initial evaluation and determination of a student's eligibility for special education to be completed within 60 calendar days of receipt of parental consent for the evaluation. The 60-day time period does not apply if:

- a student enrolls in a school served by the school district after the 60-day time period has begun (i.e., the evaluation was initiated but not completed by another school district). In this case, the subsequent school district (district completing the evaluation) must make sufficient progress to ensure a prompt completion of the evaluation, and the parent and the subsequent school district must agree to a specific time when the evaluation will be completed; and
- the parent of the student repeatedly fails or refuses to produce the student for the evaluation.

### ***Screening to determine appropriate instructional strategies***

Section 200.4(b)(8) clarifies that the screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not an evaluation for eligibility for special education (i.e., an evaluation for which parental consent is required).

### ***Prohibition on mandatory medication***

Section 200.4(b)(9) prohibits a school district from requiring a student to obtain a prescription for a drug or other substance identified under the Controlled Substances Act as a condition of receiving an initial or reevaluation for special education services.

### ***Eligibility determinations***

Section 200.4(c) has been revised to state that a student shall not be determined eligible for special education if the determinant factor is:

- lack of *appropriate instruction in reading, including explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills) and reading comprehension strategies;*
- lack of instruction in math; or
- limited English proficiency.

*(Italic emphasis added to highlight new requirements.)*

### ***Summary of performance***

Section 200.4(c)(4) adds that, while 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 (FAPE), *it must provide such student with a summary of the student's academic achievement and functional performance, which must include recommendations on how to assist the student in meeting his or her postsecondary goals.*

*(Italic emphasis added to highlight new requirements)*

## ***Learning disabilities***

Section 200.4(c)(6) states that, in determining if a student has a learning disability:

- the school district may use a process that determines if the student responds to scientific, research-based intervention as part of the evaluation procedures; and
- the school district is not required to consider 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.

Note: State criteria and further guidance relating to determining if a student has a learning disability will be issued upon review of the final federal regulations.

## ***Individualized education program (IEP)***

Section 200.4(d)(2) has been amended to add the following required components of the IEP:

- **Present levels of performance**

The present levels of performance must include a report on the present levels of academic achievement and functional performance.

- **Measurable annual goals**

The IEP must describe how progress toward the annual goal will be measured. Each annual goal must identify the evaluative criteria, evaluation procedures and schedules to be used to measure progress toward meeting the annual goal during the period beginning with placement and ending with the next scheduled review by the committee.

- **Periodic progress reports**

The IEP must identify when periodic reports on the progress the student is making toward the annual goals (such as through the use of quarterly or other periodic reports that are concurrent with the issuance of report cards) will be provided to the student's parents.

- **Short-term instructional objectives and benchmarks**

The IEP must include short-term objectives and benchmarks for:

- all students who would meet the eligibility criteria to take the New York State Alternate Assessment (NYSAA); and
- all preschool students.

- **Special education programs and services**

The recommended special education programs and services must, to the extent practicable, be based on peer-reviewed research.

- **Participation in State and districtwide assessments**

If the student will participate in an alternate assessment on a particular State or districtwide assessment of student achievement, the IEP must state why the student

cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the student.

- **Transition services**

For those students beginning not later than the first IEP to be in effect when the student is age 15 (and at a younger age, if determined appropriate), and updated annually, the IEP must, under the applicable components of the student's IEP, include:

- a statement of the student's transition needs, taking into account the student's strengths, preferences and interests;
- appropriate measurable postsecondary goals based on age appropriate transition assessments relating to training, education, employment and, where appropriate, independent living skills;
- a statement of the transition service needs of the students that focuses on courses of study, such as participation in advanced placement courses or a career and technical program;
- needed activities to facilitate the student's movement from school to post-school activities; and
- a statement of responsibilities of the school district and, when applicable, participating agencies for the provision of transition services.

NYS' sample IEPs, which have been revised to reflect the current regulatory requirements for IEPs, may be found at:

[www.vesid.nysed.gov/specialed/publications/policy/IEP/home.html](http://www.vesid.nysed.gov/specialed/publications/policy/IEP/home.html).

### ***Alternative means of meeting participation***

Section 200.4(d)(4) adds that, when conducting a meeting of the CSE or CPSE, the parent and the representative of the school district appointed to the CSE or CPSE may agree to use alternative means of meeting participation, such as videoconferences and conference telephone calls.

### ***IEP implementation***

Section 200.4(e) adds that the school district must ensure that each student with a disability has an IEP in effect at the beginning of each school year.

### ***Students who transfer school districts within New York State***

Section 200.4(e)(8)(i) requires that, when a student with a disability transfers from one school district to another within the same academic year, the new school district must provide the student with FAPE, including services comparable to those described in the previously held IEP, in consultation with the student's parents, until such time as the new school district adopts the previously held IEP or develops, adopts and implements a new IEP.

### ***Students who transfer from outside of New York State***

Section 200.4(e)(8)(ii) requires that, in the case of a student with a disability who transfers school districts within the same academic year, who enrolls in a new school district and who had an IEP that was in effect in another State, the school district must provide the

student with FAPE, including services comparable to those described in the student's previously held IEP, in consultation with the parents, until such time as the school district conducts an evaluation, if necessary, to determine the student's eligibility in this State and develops a new IEP, if appropriate.

### ***Transmittal of records for transfer students***

Section 200.4(e)(8)(iii) has been added to:

- require a new school district in which the student enrolls to take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to providing special education services to the student, from the school district in which the student was previously enrolled; and
- require the previous school district in which the student was enrolled to take reasonable steps to promptly respond to the request for the student's records.

### ***Prohibition on mandatory medication***

Section 200.4(e)(9) prohibits a school district from requiring a student with a disability to obtain a prescription for a drug or other substance identified under the Controlled Substances Act as a condition of receiving special education services.

### ***Annual review***

Section 200.4(f) adds that the IEP must be reviewed, and if appropriate, revised periodically but not less than annually to determine if the annual goals of the student are being achieved.

### ***Amendments to the IEP after the annual review***

Section 200.4(g) allows the CSE to amend the student's IEP after the annual review by either rewriting the IEP or by developing a written document to amend or modify the student's current IEP. Any recommendations for amendments to the IEP can only be made in a CSE meeting and the parent must receive prior written notice of recommendations for IEP revisions. The parent must receive a copy of the document that amends or modifies the IEP. Upon request, the parent must be provided a revised copy of the entire IEP with the amendments incorporated.

#### **RECOMMENDED IMPLEMENTATION STEPS**

- ✓ Review and revise the school district's procedures for conducting individual evaluations to incorporate the new requirements and timelines.
- ✓ Ensure all initial evaluations and eligibility determinations are completed within 60 calendar days for school age students.
- ✓ Identify the process for providing a student with a disability who is graduating or aging out with a summary of performance that will assist the student in meeting his or her postsecondary goals.
- ✓ Ensure the school's reading instruction includes explicit and systematic instruction

in phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills) and reading comprehension strategies.

- ✓ Establish a process to determine if a student responds to scientific, research-based intervention as part of the evaluation procedures to determine if a student has a learning disability.
- ✓ Revise the IEP form to ensure it includes the new regulatory requirements.
- ✓ Identify through the CSE those students with the most severe disabilities who will require short-term instructional objectives and benchmarks on their IEPs.
- ✓ Ensure that documents used to amend an IEP are understandable in their relationship to the student's IEP, are provided to the BOE as appropriate, and are disseminated to appropriate individuals responsible for implementing the IEP.

## **SECTION 200.5 - PROCEDURAL SAFEGUARDS**

The following amendments were made to definitions relating to special education in section 200.5 of the Regulations of the Commissioner of Education.

### ***Prior written notice and other required notifications***

Section 200.5(a) identifies those notifications that must be provided to the parent that do not need to include all the requirements of prior written notice as specified in section 200.5(a)(3). These other required notifications include:

- notification to the parent that no additional data are needed as part of a reevaluation to determine a student's eligibility or IEP needs and to provide the reasons for such a determination;
- the BOE's notification to the parent that it disagrees with the CSE recommendation and has remanded the recommendation back to the CSE or a new CSE for reconsideration;
- notice to the parent (or student if age 18 or older) pursuant to section 200.4(i) of the date the student will no longer be entitled to receive tuition free educational services for purposes of providing information on procedures to obtain adult services and seeking consent to share educational records for such purpose (i.e., aging out notice);
- notification which provides a parent with information on community support services for a student determined to be at risk of a future residential placement; and
- notification to the parent providing a copy of the approved private school's policy on the use of psychotropic medication.

Section 200.5(a)(7) provides that a parent of a student with a disability may elect to receive prior written notice and other required notifications by an electronic mail (e-mail) communication if the school district makes this option available.

## **Consent**

### **For initial evaluation**

Sections 200.5(b)(1) and (4) states that if a parent refuses consent or fails to respond to a request for consent for an initial evaluation, the BOE may, for a school age student, pursue the initial evaluation of the student by utilizing due process (i.e., mediation or an impartial hearing).

### **For initial special education programs and services**

Section 200.5(b)(5):

- prohibits a school district from using due process procedures (such as mediation or an impartial hearing) to challenge a parent's refusal to consent or failure to respond to a request to provide consent for the initial provision of special education programs and services to the student;
- clarifies that the school district would not be considered in violation of the requirements to provide FAPE to the student when the parent refuses consent or fails to respond to a request for consent for initial services; and
- clarifies that the school district would not be required to convene a CSE meeting or develop an IEP for a student whose parents have refused consent or failed to respond to a request for consent for the initial provision of special education programs and services.

### **For a student who is a ward of the State**

Section 200.5(b)(6) requires that, if the student is a ward of the State and is not residing with the student's parent, the school district must make reasonable efforts to obtain the informed consent from the parent of the student for an initial evaluation and eligibility determination. However, the school district is not required to obtain informed consent from the parent of such student when it cannot locate the parent, despite reasonable efforts to do so, or when the rights of the parents have been terminated or the rights of the parent to make educational decisions have been subrogated by a judge. In such case, the school district must appoint a surrogate parent for the student.

### **Notice of meetings**

Section 200.5(c) adds that the parent may elect to receive the notice of meetings by an electronic mail (e-mail) communication if the school district makes such option available.

### **Parent participation in CSE meetings**

Section 200.5(d) adds that the parent and the school district may agree to use alternative means of participation in a CSE or CPSE meeting, such as videoconferences or conference telephone calls.

### **Procedural safeguards notice**

#### **Copies to parents**

Section 200.5(f)(3) requires the school district to give a copy of the procedural safeguards notice to the student's parent *at a minimum one time per year* and also:

- when a student is first referred for special education *or the parent requests an initial evaluation*;
- upon the *first filing of a due process complaint notice* in a school year to request mediation or an impartial hearing; and
- when the parent requests a copy of the procedural safeguards notice.

Pursuant to Part 201, the parent must also be given a copy of the procedural safeguards notice when a decision is made to suspend or remove a student for more than 10 consecutive or cumulative school days (disciplinary change in placement) in a school year.

### **Content of the procedural safeguards notice**

Section 200.5(f)(4) requires the procedural safeguards notice to include information on:

- the opportunity to present and resolve due process complaints, including the time period in which to request an impartial hearing, the opportunity for the school district to resolve the complaint and the availability of mediation; and
- the time period in which the decision of a State review officer may be appealed for civil action (i.e., court).

A copy of the State mandated procedural safeguards notice may be accessed at:

<http://www.vesid.nysed.gov/specialed/publications/policy/prosafenot705.htm>

### **Electronic access to the procedural safeguards notice**

Sections 200.5(f)(5) and (6) have been added to state that:

- a school district may place a current copy of the procedural safeguards notice on its Internet website if such website exists; and
- a parent may elect to receive the procedural safeguards notice by an electronic mail (e-mail) communication if the school district makes such option available.

### ***Mediation***

Section 200.5(h) has been amended as follows:

#### **Mediation procedures**

Mediation procedures must be established and implemented to allow parties to resolve disputes involving any matter for which an impartial hearing may be brought, including matters arising before requesting an impartial hearing.

#### **Qualifications of the mediator**

The mediation session must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques and who is knowledgeable in laws and regulations relating to special education.

#### **Mediation agreements**

When a resolution to the dispute is reached through mediation:

- the parties must execute a legally binding written agreement that sets forth the resolution and that states that all discussions that occurred during the mediation

process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

- the agreement must be signed by both the parent and a representative of the school district who has the authority to bind the school district;
- the agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States; and
- if the written agreement reached by the parties in mediation is inconsistent with the student's IEP, then the IEP must be immediately amended to be consistent with the mediation agreement.

### **Alternative means of participating in mediation sessions**

When conducting meetings and carrying out administrative matters relating to the mediation process, the parent and the school district may agree to use alternative means of meeting participation, such as video conferences and conference calls.

### ***Due process complaint notification requirements***

Section 200.5(i) establishes the notification requirements for a parent or school district to present a complaint relating to the identification, evaluation or educational placement of a student with a disability or a student suspected of having a disability, or the provision of FAPE to the student. Either the party presenting the complaint, or the attorney representing the party, must provide a written due process complaint notice to the other party.

### **Required content**

The due process complaint notice must include:

- the name of the student;
- the address of the residence of the student (or available contact information in the case of a homeless student);
- the name of the school the student is attending;
- a description of the nature of the problem of the student relating to the proposed initiation or change, including facts relating to the problem; and
- a proposed resolution of the problem to the extent known and available to the party at the time.

NYS has issued a Sample Due Process Complaint Notice, which may be found at <http://www.vesid.nysed.gov/specialed/publications/policy/dueprocess7105.htm>.

### **Right to an impartial hearing**

A party (parent or school district) may not have an impartial due process hearing until the party requesting the impartial hearing, or the attorney representing the party, files a due process complaint notice that includes all of the above information (i.e., is deemed sufficient).

### **School district response to the parent**

If the school district has not sent a prior written notice to the parent regarding the subject matter in the parent's due process complaint notice, then the school district must, within 10

calendar days of receiving the parent's due process complaint notice, send to the parent a response that must include:

- an explanation of why the school district proposed or refused to take the action raised in the complaint;
- a description of other options that the CSE considered and the reasons why those options were rejected;
- a description of each evaluation procedure, assessment record or report the school district used as a basis for the proposed or refused action; and
- a description of the factors that are relevant to the school district's proposal or refusal.

The submission of this information to the parent does not preclude a school district from asserting that the due process complaint notice submitted by the parent was insufficient where appropriate.

### **Other party response**

The party receiving the due process complaint notice (i.e., the noncomplaining party) must, within 10 days of receiving the due process complaint notice, send to the party who submitted the due process complaint notice (i.e., the complaining party) a response that specifically addresses the issues raised in the notice. If the school district is the noncomplaining party and it submitted a prior written notice to the parent after it received the complaint notice as outlined above, then it does not also have to provide the "other party response" under this paragraph.

### **Challenging the sufficiency of a due process complaint notice**

The due process complaint notice is deemed sufficient unless the party receiving the notice notifies the impartial hearing officer (IHO) and the other party in writing within 15 calendar days of receiving the complaint notice that it believes the notice does not meet the required content (i.e., is not sufficient).

Timing:

- If the party receiving the due process complaint notice believes the notice has not met the required contents (i.e., is not sufficient), then it must notify the IHO and the other party in writing within 15 calendar days of receiving the due process complaint notice.

Determination:

- Within five calendar days of receipt of being notified in writing by a party that it believes the due process complaint notice is insufficient, the IHO must make a determination on the face of the notice. The IHO must immediately notify the parties in writing of his or her determination.

If the IHO determines the due process complaint notice is insufficient, the party submitting the complaint must submit a new due process complaint notice.

### **Amending a due process complaint notice**

If a due process complaint notice has been deemed sufficient, but a party wishes to amend (i.e., change) the due process complaint notice, the party may only do so if:

- the other party consents in writing to the amendment and is given the opportunity to resolve the complaint through a resolution session; or
- the IHO grants permission, except that the IHO may only grant permission at any time not later than five calendar days before an impartial due process hearing begins.

The applicable timelines for an impartial due process hearing, including the timelines for a resolution session, start over (recommence) at the time the party files an amended due process complaint notice.

### ***Impartial hearings***

Section 200.5(j) establishes new requirements relating to the timelines for requesting an impartial hearing, the subject matter of an impartial hearing and resolution sessions.

#### **Timelines for requesting an impartial hearing**

The request for an impartial hearing must be submitted within two years of the date the parent or agency knew or should have known about the problem (i.e., the alleged action that forms the basis of the complaint). However, this two year timeline does not apply to a parent if:

- the parent was prevented from requesting an impartial hearing due to specific misrepresentations by the school district that it had resolved the problem forming the basis of the complaint; or
- the school district withheld information from the parent that was required to be provided to the parent under federal or State law and regulations.

#### **Subject matter of the complaint**

The party requesting the impartial hearing is prohibited from raising issues at the impartial hearing that were not raised in the due process complaint notice, unless the other party agrees.

### ***Resolution sessions***

A resolution session is a meeting (or meetings) held prior to the opportunity for an impartial hearing. During the resolution session, the school district and the parent discuss the parent's complaint and the facts that form the basis of the complaint and the school district and parent have an opportunity to resolve the complaint before an impartial hearing is convened.

#### **Timeline to initiate a resolution session**

The school district must convene the resolution session meeting within 15 days of receiving the due process complaint notice.

### **Participants**

The required participants at a resolution session include:

- the parents,
- the relevant member or members of the CSE or CPSE who have specific knowledge of the facts identified in the complaint, and

- a representative of the school district who has decision-making authority on behalf of the school district.

The school district's attorney may not participate in the meeting unless the parent is accompanied by an attorney.

### **Waiver of resolution sessions**

The parent and the school district may agree, in writing, to waive the resolution session and either proceed to an impartial hearing or agree to use mediation to resolve the dispute.

### **Written settlement agreement**

- If the parent and the school district reach an agreement to resolve the complaint at a resolution session, the parties must execute a legally binding agreement that is signed both by the parent and a representative of the school district who has the authority to bind the school district.
- The written settlement agreement reached through a resolution session is enforceable in any State court of competent jurisdiction or in a district court of the United States.
- A party may void the written settlement agreement within three business days of the agreement's execution.

### **Timelines for resolution session**

- If the school district has not resolved the complaint to the satisfaction of the parents within 30 calendar days of the receipt of the due process complaint notice, the impartial hearing may occur, and all the applicable timelines for an impartial due process hearing must commence.

### **Appointment of an IHO**

- The rotational process to select the IHO must be initiated immediately, but not later than two business days after the school district receives the due process complaint notice from the parent or mails a due process complaint notice to the parent.
- The IHO may not accept appointment unless he or she is available:
  - to make a determination of sufficiency of a due process complaint notice within five days of receiving such a request; and
  - to initiate the hearing within the first 14 days of the time period specified below.

### **Commencement of an impartial hearing**

Unless an extension to the timelines is granted, the impartial hearing or prehearing conference must commence within the first 14 days after:

- the date upon which the IHO receives the parties' written waiver of the resolution session; or
- the date upon which the IHO receives the parties' written confirmation that a resolution session was held but no agreement could be reached; or
- the expiration of the 30-day period beginning with the receipt of the due process complaint notice, whichever occurs first.

## **Alternative means of carrying out administrative matters relating to an impartial hearing**

When carrying out administrative matters relating to an impartial hearing, such as scheduling, exchange of witness lists and status conferences, the parent and the school district may agree to use alternative means of meeting participation, such as video conferences and conference calls.

## **Decision of the IHO**

- A decision made by an IHO must be made on substantive grounds based on a determination of whether the student received FAPE.
- In matters alleging a procedural violation, an IHO may find that a student did not receive FAPE only if the procedural inadequacies:
  - impeded the student's right to FAPE,
  - significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child, or
  - caused a deprivation of educational benefits.
- An IHO is not precluded from ordering a school district to comply with procedural requirements.

## ***Surrogate parents***

Section 200.5(n) was amended relating to procedures for the appointment of a surrogate parent to ensure that the rights of a student are protected if:

- no parent can be identified;
- the school district, after reasonable efforts, cannot discover the whereabouts of a parent, or the student is an unaccompanied homeless youth; or
- the student is a ward of the State and does not have a parent as defined in the Commissioner's Regulations or the rights of the parent to make educational decisions on behalf of the student have been subrogated by a judge in accordance with State law.

## **Procedures for assigning surrogates**

- Procedures for assigning a surrogate parent for a student who is known to the school district to be a ward of the State must include consultation with the local social services district or agency responsible for the care of the student to discover the whereabouts of a parent.
- The timelines for appointment of a surrogate parent must begin when a referral for an initial evaluation, reevaluation or services for a student are made.
- The surrogate parent may be appointed by the judge overseeing the child's case, provided that the surrogate parent appointed by the judge meets the requirements of the Commissioner's Regulations. The individual appointed by the judge does not need to be from a list approved by the board of education.

### RECOMMENDED IMPLEMENTATION STEPS

- ✓ Ensure the school district is providing the parent with the most recent copy of the Procedural Safeguards Notice as provided by the Commissioner of Education.
- ✓ Identify steps the CSE or CPSE will take to obtain consent, as appropriate, for a student who is a ward of the State or homeless youth.
- ✓ Establish procedures to respond to due process complaint notices received from parents.
- ✓ Establish procedures to conduct resolution sessions, including the process to inform parents of their right to have a relevant member or members of the CSE or CPSE who have specific knowledge of the facts in the complaint participate in the resolution session.
- ✓ Identify the school district representative(s) to participate in mediation and resolution sessions who have authority to bind the school district.
- ✓ Revise the school district's procedures for the appointment of surrogate parents to include consultation with local social services agencies and timelines for appointment of a surrogate parent.

## SECTION 200.6 - CONTINUUM OF SERVICES

The following amendments were made to definitions relating to special education in section 200.6 of the Regulations of the Commissioner of Education.

### ***Interim alternative educational setting***

Section 200.6(m) requires a school district to:

- include interim alternative educational settings (IAES) on the district's continuum of services that must be available to students who have been suspended or removed from their current placement for more than 10 school days pursuant to Part 201 of the Commissioner's Regulations. An IAES is an educational setting, other than the student's current placement at the time the behavior precipitating an IAES placement occurred.
- Ensure a student placed in an IAES continues to receive educational services so as to:
  - enable the student to continue to participate in the general education curriculum, although in another setting;
  - enable the student to progress toward the goals set out in the student's IEP; and
  - 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 reoccur.

### **RECOMMENDED IMPLEMENTATION STEPS**

- ✓ Identify appropriate educational settings to be used as an IAES that may be recommended by the CSE for students subject to disciplinary removals.

## **SECTION 200.7 - PRIVATE SCHOOLS AND STATE-OPERATED OR STATE-SUPPORTED SCHOOLS**

Section 200.7 has been amended to:

- require the annual progress report on each student developed by the approved private school to describe the student's progress toward meeting the annual goals; and
- align the due process procedures relating to State-operated and State-supported schools with section 200.5 of the Regulations of the Commissioner of Education.

## **SECTION 200.14 - DAY TREATMENT PROGRAMS CERTIFIED BY THE OFFICE OF MENTAL HEALTH**

Technical amendments to section 200.14 of the Regulations of the Commissioner of Education have been made relating to the development of IEPs and to the requirements for annual reviews and reevaluations.

## **SECTION 200.16 - PRESCHOOL STUDENTS WITH DISABILITIES**

Conforming changes to section 200.16 of the Regulations of the Commissioner of Education align the requirements for preschool students consistent with IDEA 2004 relating to:

- evaluations and eligibility determinations,
- IEP development,
- annual reviews,
- procedural safeguards, and
- due process procedures.

## PART 201

### PROCEDURAL SAFEGUARDS FOR STUDENTS WITH DISABILITIES SUBJECT TO DISCIPLINE

The following amendments were made to Part 201 of the Regulations of the Commissioner of Education.

#### ***Definitions***

##### **Interim alternative educational setting (IAES)**

IAES means a temporary educational placement determined by the CSE, other than the student's current placement at the time the behavior precipitating the IAES placement occurred. A student who is placed in an IAES shall:

- continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and
- 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 reoccur.

##### **Serious bodily injury**

Serious bodily injury means bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

##### ***CSE responsibilities for functional behavioral assessments and behavioral intervention plans***

Section 201.3 requires the CSE to conduct a functional behavioral assessment and implement a behavioral intervention plan for the student when a student's conduct is a manifestation of the student's disability (i.e., is related to the disability):

- when a student with a disability is suspended or removed from the student's current placement for more than 10 consecutive school days, or
- when a suspension or removal constitutes a disciplinary change in placement.

If the student already has a behavioral intervention plan, the CSE must meet to review the plan and its implementation and modify the plan and its implementation as necessary to address the behavior that resulted in the change in placement.

## ***Manifestation determinations***

Section 201.4 has been amended relating to individuals who conduct the manifestation determination, the conduct of the review, the determination and resulting actions.

### **Individuals to carry out the review**

The entire CSE is no longer required to conduct the manifestation determination. The manifestation determination must be made by a "manifestation team," which must include:

- a representative of the school district knowledgeable about the student and the interpretation of information about the child's behavior;
- the parent; and
- relevant members of the CSE as determined by the parent and the school district.

### **Notification to the parent**

The parent must receive written notification before any manifestation team meeting to ensure that the parent has an opportunity to attend. The notification must inform the parent of:

- the purpose of the meeting;
- the names of the individuals expected to attend; and
- his or her right to have relevant members of the CSE participate at the parent's request.

### **Conduct of the review**

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.

Upon review of the above information, the manifestation team must 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.

### **Determination**

If the manifestation team determines that the conduct was caused by or had a direct and substantial relationship to the student's disability or the conduct in question was the direct result of the school district's failure to implement the IEP:

- the CSE must conduct a functional behavioral assessment and implement a behavioral intervention plan for the student; and
- except for removals for drugs, weapons or serious bodily injury pursuant to section 201.7, the student must be returned to the placement from which the student was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan.

## ***Students presumed to have a disability for discipline purposes***

Section 201.5 has been amended relating to the basis of knowledge which would lead a student to be considered a student with a disability for discipline purposes.

### **Basis of knowledge**

A school district must be deemed to have knowledge that a student had a disability if, before the time the behavior occurred:

- the parent of the student has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency or to a teacher of the student that the student is in need of special education. The expression of concern may be oral if the parent does not know how to write or has a disability that prevents a written statement;
- the parent of the student has requested an evaluation of the student; or
- a teacher of the student, or other personnel of the school district, has expressed specific concerns about a pattern of behavior demonstrated by the student, directly to the director of special education of the school district or to other supervisory personnel of the school district in accordance with the district's established child find or special education referral system.

### **Exceptions to the basis of knowledge**

A student is not a student presumed to have a disability for discipline purposes if, as a result of receiving the information specified above:

- the parent of the student has refused special education services for his or her child; or
- the CSE had determined that the student is not a student with a disability (i.e., not eligible).

## ***IAES removals for illegal drugs, controlled substances, weapons and serious bodily injury***

### **Serious bodily injury**

Section 201.7 has been amended to add that a student who has inflicted serious bodily injury, as defined in section 201.2(m), upon another person while at school, on school premises or at a school function under the jurisdiction of the educational agency may be removed to an IAES, regardless of the manifestation determination.

### **Length of removal**

The length of time a student may be removed to an IAES for illegal drugs, controlled substances, weapons and serious bodily injury has been changed from up to 45 calendar days to up to 45 school days.

### ***Consideration of unique circumstances***

Section 201.7(f) states that school personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a disciplinary change in placement for a student with a disability who violates a code of student conduct.

## ***Educational services for students with disabilities during suspensions or removals***

### **Removals of more than 10 days in a school year**

A student with a disability who has been suspended or removed for a period of 10 consecutive school days (or a series of removals that in the aggregate total more than 10 school days) in a school year, must be provided with educational services, as determined by the CSE, that are necessary to:

- enable to the student to:
  - continue to participate in the general education curriculum; and
  - progress toward meeting the goals set out in the student's IEP; and
- receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications that are designed to address the behavior violation so it does not recur.

### **Determination of services**

The CSE determines the services and IAES when the removal is a disciplinary change in placement.

### ***Expedited impartial hearings***

#### **Pendency**

If a parent requests an impartial hearing or an appeal regarding the change in placement of his or her child to an IAES or the manifestation determination, the student must remain in his or her IAES pending the decision of the IHO or until expiration of the time period of the removal, whichever occurs first, unless the parents and the school district agree otherwise.

#### **RECOMMENDED IMPLEMENTATION STEPS**

- ✓ Establish new procedures and provide staff development to conduct manifestation reviews.
- ✓ Ensure parents, teachers and other school personnel understand and use the special education referral system to ensure that students suspected of having a disability are appropriately identified.
- ✓ Ensure the CSE understands its role to recommend services and to identify the IAES for students subject to removals or suspensions for more than 10 days in a school year.

## **QUESTIONS AND ANSWERS**

The following questions and answers reflect preliminary guidance on areas of the Commissioner's Regulations that were amended to conform to IDEA 2004. This guidance is subject to revision based on the final federal regulations and guidance.

### ***Child find requirements***

1. ***What steps must a school district take to fulfill its child find obligations for students with disabilities who are homeless?***

At a minimum, school districts should identify the homeless shelters located in their school districts. The school district liaison for homeless youth has a role to assist homeless youth who are suspected of having a disability in coordination with the CSE.

### ***Parent***

2. ***If a child is living with foster parents, must the CSE or CPSE invite the foster parents or the birth or adoptive parents or both to the CSE meeting?***

The party who is the parent must be invited to a meeting of the CSE. The birth or adoptive parent is always presumed to be the parent unless his or her rights have been terminated or subrogated by a judge. Even if the foster parent is not acting as the parent, the foster parent is an individual with knowledge of the student's needs and should be considered a participant in the CSE or CPSE meeting. However, school personnel should be aware of any confidentiality concerns between foster and birth and adoptive parents in determining who must or should participate in the meeting.

3. ***Can a representative of an agency (such as a group home or child care institution) serve as a surrogate parent for a child under the care or education of that agency?***

No.

### ***Alternative Means of Meeting Participation***

4. ***When the parent and the school district agree to use alternative means of meeting participation (e.g., video conferences or conference calls), must the agreement be in writing?***

It is recommended that the school district/agency document that the parent agreed to use alternative means of meeting participation for the CSE or CPSE meeting.

## ***Evaluations and Reevaluations***

5. ***Do the amendments relating to the frequency of reevaluations affect a parent's right to obtain an independent educational evaluation (IEE) and request that the IEE be at public expense?***

There have been no amendments relating to the parent's right to obtain an IEE.

6. ***Can a school district consolidate a CSE or CPSE meeting to review the results of the reevaluation with the annual review meeting if the annual review meeting is not scheduled to occur for several months after the reevaluation is completed?***

In making a determination to consolidate a reevaluation with an annual review meeting, the CSE or CPSE must consider the proximity of the two meetings to the date when the reevaluation is completed. The CSE must conduct a timely review of the results of the reevaluation to consider necessary changes to a student's eligibility and IEP. A review of reevaluation information should not be delayed in order to consolidate it with an annual review meeting that is, for example, scheduled to occur months from the date the reevaluation is completed. The CSE could, however, decide to consolidate the meetings by conducting the annual review earlier, i.e., upon completion of the reevaluation.

7. ***Is a classroom-based observation a requirement for a reevaluation?***

An initial evaluation requires an observation of the student in the current educational placement. The CSE and other qualified staff may determine that a classroom-based observation should be a component of the student's reevaluation.

8. ***Can the school district delay admitting a student with a disability who transfers from another school district outside the State or within the State while it arranges for the CSE/CPSE meeting?***

No. The student must be admitted to school and provided IEP services comparable to those on the student's previous IEP, unless the school district and parent agree otherwise.

9. ***Have the timelines for completing a reevaluation been changed?***

No.

10. ***How does the 60-calendar day timeline to complete the initial evaluation and eligibility determination for a school age student affect the 60 school day timeline for IEP implementation?***

The CSE must complete the initial evaluation and conduct the meeting to determine a school-age student's eligibility for special education within 60 calendar days of receipt

of the parent's consent for the initial evaluation. The school district must ensure that the programs and services are provided to the student not later than 60 school days of receipt of consent for the initial evaluation, or as otherwise allowed in regulation. However, federal regulations require that the IEP of a student be implemented as soon as possible following the meeting to determine eligibility and develop the IEP for the student.

**11. *Does the 60-calendar day timeline to complete the initial evaluation and eligibility determination apply to preschool students?***

No. State law and regulations require the CPSE to provide a recommendation to the board of education within 30 school days of the date of the receipt of consent.

### ***Learning disabilities***

**12. *Can a school district use more than one criterion (e.g., a response-to-intervention process and a discrepancy criteria) to determine if a student has a learning disability?***

The regulations would not preclude a school district from applying more than one criterion for the determination of whether a student has a learning disability. However, school districts should consider the research basis for using discrepancy criteria in relation to particular learning disabilities. Under adoption of final federal regulations, the State will develop criteria for the determination of learning disabilities.

**13. *How would use of a response-to-intervention criterion affect the 60-calendar day timeline to complete the initial evaluation and eligibility determination?***

Until further guidance is available based on the final federal regulations, school districts should ensure that the initial evaluations of students suspected of having a learning disability are completed within the 60 calendar-day time period. If a school uses a response to intervention criterion as part of its evaluation process, it may use the procedures in section 200.4(a) of the Commissioner's Regulations to discuss the referral with the parent to provide additional time for the determination of whether the student is responding to research-based instruction.

### ***Individualized education programs***

**14. *What is meant by "measurable annual goals on the IEP?"***

Annual goals are statements that identify what knowledge, skills and/or behaviors a student is expected to be able to demonstrate within the period of time beginning with the time the IEP is implemented until the next scheduled review. Annual goals must be identified that meet the student's needs, as identified in the present levels of performance. To be measurable, an annual goal should describe the skill, behavior or knowledge the student will demonstrate and the extent to which it will be

demonstrated. Terms such as "will improve...," "will increase...." and "will decrease...." are not specific enough to describe what it is the student is expected to be able to do in one year. To be measurable, a behavior must be observable or able to be counted.

15. ***If the CSE does not determine if a student is eligible to take NYSAA until the year before the State assessment period, what process should be used to determine which students must have short-term instructional objectives and benchmarks on their IEPs?***

The determination of whether a student is a student eligible to take NYSAA should be based on whether the student would meet the criteria as a student with a severe disability. The determination should not be delayed until the annual review before the student is scheduled to take the State assessment. The CSE determines whether or not a student with a disability is eligible to take NYSAA based on the following criteria:

- The student has a severe cognitive disability, significant deficits in communication/language, or significant deficits in adaptive behavior;
- The student requires a highly specialized educational program that facilitates the acquisition, application, and transfer of skills across natural environments (home, school, community, and/or workplace); and
- The student requires educational support systems, such as assistive technology, personal care services, health/medical services, or behavioral intervention.

16. ***If the IEP includes short-term instructional objectives and benchmarks, must the IEP specify the evaluative criteria, evaluation procedures and evaluation schedules for each short-term instructional objective and benchmark as well as for the annual goals?***

No. Only the annual goals require the description of how the student's progress toward the annual goals will be measured.

17. ***If the IEP includes short-term instructional objectives and benchmarks, can these be used to specify how the annual goal is measurable?***

No. The annual goal itself must be written in measurable terms. Short-term instructional objectives and benchmarks indicate those measurable intermediate steps between the student's present level of performance and the measurable annual goal.

18. ***Can the school district include short-term instructional objectives and benchmarks on the IEPs of other students besides those required by regulation?***

Yes. However, the school district must establish and consistently apply criteria for determining which students will have short-term instructional objectives and benchmarks included on their IEPs.

19. ***Can a school district determine what testing accommodations will be allowed on districtwide assessments?***

Yes. Section 200.2 requires a school district to describe the guidelines for the provision of appropriate accommodations necessary to measure the academic achievement and functional performance of the student in the administration of districtwide assessments.

20. ***If transition services must be in effect no later than beginning with the IEP when the student is age 15, when must the CSE begin the planning process for post secondary goals and transition services?***

Transition services must be identified on the IEP that is developed at the annual review before the student turns age 15 (e.g., when the student is age 14) so that services begin with the IEP that will be in effect when the student is age 15.

21. ***Does the requirement for “measurable post-secondary goals” replace the previous requirement for “projected post-school outcomes”?***

Yes. Measurable post-secondary goals identify the student’s long-term goals for living, working and learning as an adult. The IEP must also include measurable annual goals to help the student incrementally develop skills, knowledge, experiences and contacts with resources, as needed, to work toward these desired post-secondary goals.

22. ***What is meant by the requirement that the special education programs and services recommended on the IEP be based, to the extent practicable, on peer-reviewed research?***

Consistent with the No Child Left Behind Act (NCLB), schools should be providing research-based instruction to all students, including students with disabilities. When making recommendations for a special education program or service, the CSE must consider, to the extent practicable, whether these services or programs meet the standard of peer-reviewed research. Consistent with NCLB’s definition of scientifically-based research, peer reviewed research is intended to mean research that has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

***Parent consent***

23. ***May a school district use due process procedures if the parent does not provide consent for the initial evaluation of the student?***

Yes. If a parent does not provide consent for an initial evaluation, the school district may pursue the evaluation by means of a due process procedure, including mediation or an impartial hearing.

24. ***May the school district use due process procedures if the parent does not provide consent for the initial provision of special education services to the student?***

No. If, after being informed about the student's need for special education based on the individual evaluation, a parent refuses or fails to respond to a request for the initial provision of special education services to their child, the school district may not provide the special education services and may not initiate mediation or an impartial hearing to override the parent's refusal of consent. The school district may take steps to meet with the parent to explain the needs of the student to ensure the parent is making a fully informed decision.

In the event that consent is not received because the parent failed to respond, the school district must ensure that it has taken reasonable steps to locate the parent to ensure the parent has received the request for consent and has appointed a surrogate parent, if appropriate, for the student when the birth or adoptive parent cannot be located.

25. ***Can a parent withdraw his or her consent for special education services after the student has been receiving services?***

No. The time period for a parent's withdrawal of consent for the initial provision of services ends once the special education programs and services have been initiated (i.e., are being provided) for a school age student. A parent who wishes to discontinue special education programs and services for his or her child should request declassification through the CSE process or pursue mediation or an impartial hearing.

26. ***If the student is a ward of the State or a homeless youth and the parents cannot be located, can the CSE proceed with an initial evaluation without parental consent?***

If a student is a ward of the State or an unaccompanied homeless youth, the school district must first determine who is legally eligible to act as the parent for purposes of special education. If appropriate, the school district must appoint a surrogate parent for a student who is a ward of the State. The surrogate parent would then be the individual who would provide consent for the initial evaluation.

### ***Procedural safeguards notice***

27. ***If a school district posts the procedural safeguards notice on its web site, is that sufficient to claim that the parent has been given a copy of the notice?***

No. Posting the procedural safeguards notice on the school district's web site is recommended as it would allow any parent to review the notice by viewing the district's internet web site. However, the school district must also provide a copy of the notice to the parent as required in the regulations. The parent may elect to receive the

procedural safeguards notice through an electronic (e-mail) communication if the school district makes such an option available.

### ***Due process complaint notice***

***28. Is the school district obligated to assist the parent in completing the due process complaint notice?***

The school district should provide information and assistance to the parent to ensure the parent understands how to submit the due process complaint notice. Regulations require the school district to provide parents with sources for parents to contact to obtain assistance in understanding the special education process and their rights and protections.

### ***Resolution session***

***29. What is the difference between mediation and a resolution session?***

In the mediation process, the parent and the representative from the school district meet with a trained mediator from the Community Dispute Resolution Center who will facilitate a problem-solving process between the parent and the school. In a resolution session, the school and the parent have the opportunity to resolve the problem through a meeting with school personnel, including relevant members of the CSE or CPSE as determined by the school and the parent. Both mediation and resolution session agreements are legally binding and enforceable in court.

***30. Who determines what members of the CSE or CPSE would participate in a resolution session?***

Consistent with proposed federal regulations, the relevant members who could be instrumental in providing information to resolve the dispute should include all such members as determined both by the parent and by the school district.

***31. If a parent brings his or her attorney to a resolution session, would the attorney's fees be considered for reimbursement if the parent prevails in a subsequent impartial hearing?***

No.

***32. Can a parent bring an advocate to a resolution session?***

Yes.

***33. Must the parent notify the school district in advance if he or she plans to bring his or her attorney to the resolution session?***

Yes. Since the federal law allows the school district to bring an attorney to the meeting only if the parent is bringing his or her attorney, it is expected that the parent inform the school district a reasonable period of time before the meeting when the parent intends to bring his or her attorney to a resolution session. The school district should specify this in the notice to the parent of the resolution session.

**34. *What happens if a parent refuses to participate in a resolution session?***

Federal law requires the school district to convene a resolution session before initiating an impartial hearing. Consistent with proposed federal regulations, except where the parties have jointly agreed to waive the resolution process, or to use mediation, or resolution has not been reached within the 30-day resolution period, the failure of a parent to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

***Impartial hearings***

**35. *If the IHO determines a due process complaint notice is not sufficient, can the parent amend the notice and resubmit it?***

No. If a due process complaint notice is deemed insufficient by the IHO, the party initiating the notice must submit a new due process complaint notice and the timelines recommence.

**36. *Must a new IHO be appointed if the parent submits a new due process complaint notice after a finding that the first notice was insufficient?***

Yes.

**37. *Must a new IHO be appointed if the first due process complaint notice was sufficient but the notice is later amended by agreement of the parties or by the IHO?***

No.

***Discipline procedures for students with disabilities***

**38. *At a manifestation team meeting, is the burden on the parent to prove that his or her child's behavior is a manifestation of the student's disability?***

No. State regulations make it clear that a team makes the determination of a manifestation. The determination must be made based upon a review of the student's IEP, any teacher observations and any relevant information provided by the parents.

**39. *May the CSE continue to function as the manifestation team?***

Yes. The school district and parent may determine that all members of the CSE or CPSE are relevant members that must participate in the manifestation determination.

40. ***How have the requirements for services in an IAES been changed?***

Prior to IDEA 2004, the student's current IEP had to be implemented in an IAES. IDEA 2004 requires the student to receive services to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the IEP, but does not require that such services include all the recommended programs and services on the student's current IEP.