



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

DEPUTY COMMISSIONER FOR VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES

March 1995

TO: District Superintendents
Presidents of Boards of Education
Superintendents of Schools
Superintendents of State-Operated and State-Supported Schools
New York City Board of Education
Principals of Public and Nonpublic Schools
Executive Directors of Approved Private Schools
Directors of Special Education
Pupil Personnel Services - Directors
Chairpersons of Committees on Special Education
Chairpersons of Committees on Preschool Special Education
Directors of Approved Preschool Programs and Preschool Educators
Early Childhood Direction Centers
Impartial Hearing Officers
Commissioner's Advisory Panel on Special Education Services
Preschool Special Education Advisory Committee
SETRC Project Directors and Training Specialists
Student and Parent Advocacy Networks
State and Local Representatives of Teacher Associations
Head Start Directors
State Agency Personnel
Family Court Designees
Other Interested Parties

FROM: Lawrence C. Gloeckler 

SUBJECT: Implementation of Chapter 600 of the Laws of 1994 Regarding Students with Disabilities At Risk Of or In Residential School Placements

This memorandum provides information and assistance to school districts on the requirements of Section 4402 of Education Law as amended by Chapter 600 of the Laws of 1994 regarding children at risk of or in residential school placements.

This new legislation reaffirms the State's policy on the provision of educational services in the least restrictive environment and addresses the roles of school districts and local and State agencies in identifying needed support services that may help families maintain children in their own homes and communities as long as possible. The law recognizes that a single system cannot meet all of the needs of children with disabilities and their families. Increasingly, the child serving systems advocate that collaboration is a major factor in successfully meeting the needs of children and families. Given the number of students eligible to receive community-based treatment and support services from a wide array of agencies, school districts can play an important role in working with the other child serving systems to collaboratively address the needs of children and their families.

OVERVIEW OF CHAPTER 600 OF THE LAWS OF 1994

Chapter 600 of the Laws of 1994 amended Education, Social Services and Mental Hygiene Law and is intended to:

- **Reduce Residential Placements Through Improved Coordination Among Schools, Parents and Community Service Providers.** The law establishes a connection between families of children at risk of residential school placements and community support services providers by requiring that Committees on Special Education (CSE) provide families with information about the community support services that may be available to the family, including an assessment of the family's community support services needs.
- **Enhance Movement of Young Adults from Residential Schools to Adult Placements.** The law ensures that State agencies:
 - Engage in early planning for the adult service needs of individuals in residential care in response to school districts' aging out referrals.
 - By July 1, 1996, phase out new placements into transitional care. Transitional care is the temporary care of young adults who, at age 21 are no longer eligible for children's residential placements.
 - Promote appropriate, timely and cost-effective transfer of young adults from child care residential programs to adult placements.

REDUCING RESIDENTIAL PLACEMENTS THROUGH IMPROVED COORDINATION AMONG SCHOOLS, PARENTS AND COMMUNITY SERVICES PROVIDERS

Responsibilities of Committees on Special Education:

Chapter 600 of the Laws of 1994 and conforming changes to Part 200 of the Regulations of the Commissioner of Education (effective December 20, 1994) specify the responsibilities of Committees on Special Education to improve coordination among schools, parents and community services providers when students are at risk of residential placement.

Attachment 1 provides the "Considerations for Determining That A Child is At Risk of Residential School Placement," and Attachment 2 provides the "Amendments to Part 200 of the Regulations of the Commissioner of Education." Committees on Special Education are required to:

- (1) Provide written notification to parents/guardians of students who are at risk of a residential school placement that the students are not entitled to receive free educational services or to remain in a residential educational program after the age of 21 or the receipt of a high school diploma. Parents/guardians should be made aware of the need to provide districts with consent to release information to other State agencies in order to access adult services for their child in a timely manner.
- (2) Provide parents/guardians of students who are at risk of residential school placements with available information about community support services for children and families. Early involvement will help to identify in-home and community supports that could prevent the need for a more restrictive school placement. This information should include the name and address of agencies that can perform an assessment of the family's support services needs.
- (3) Notify the local social services district when the Committee on Special Education (CSE) determines that a child who is receiving foster care is at risk of a future placement in a residential school. For children in foster care, school districts are responsible to ensure the provision of an appropriate program in a day setting. The participation of the local social services district representatives in CSE proceedings when children in foster care are at risk of needing a more restrictive placement is essential to ensure that the residential and educational needs are collaboratively addressed by the Department of Social Services and the school district. While the involvement of Social Services District representatives is very important, they are not mandated members of the CSE for purposes of decision making.
- (4) Request in writing that a designee of the appropriate county or State agency participate in any proceedings of the CSE when a student is at risk of a residential school placement. The designee can participate in the meeting for purposes of making recommendations concerning the appropriateness of residential school placement and other program and placement alternatives, including support services that may be available to assist the child and family. While the involvement of these individuals is very important in order to obtain an understanding of the resources available and in accessing these resources, these individuals are not mandated members of the CSE for purposes of decision making.

An "appropriate county or State agency" may include, but is not limited to, the following (see Attachment 3, "County or State Agency Contacts"):

- a) a local interagency body capable of performing a multidisciplinary assessment of the family's community support needs;
 - b) any county agency receiving State Coordinated Children's Services Initiative (CCSI) funding (list attached);
 - c) the Developmental Disabilities Services Office (DDSO) when the primary reason the child is at risk of a placement relates to mental retardation or developmental disability (list attached);
 - d) the local mental health agency when the primary reason the child is at risk of placement relates to a mental disability other than mental retardation or developmental disability.
- (5) Forward a copy of the written request for a designee of the appropriate county or State agency to participate in any proceedings of the CSE when a student is at risk of a residential school placement to the Office of Mental Health (OMH) and Office of Mental Retardation and Developmental Disabilities (OMRDD).
 - (6) With the consent of the parent or guardian, confer with other appropriate providers of services to identify any services that may be of benefit to the family based on the family's identification of, or the CSE's observation of, family services needs.

A request by the school district to the appropriate county or State agency to participate in proceedings of the CSE when a student may be at risk of a residential school placement and provide parents/guardians with available information about community support services for a child or family does not constitute an entitlement to or a determination of eligibility for such assessment or services. School districts are not required to pay for the assessments or services and such services should not be described in the student's IEP. However, school districts are not to limit educational services made available to the children or justify denial, reduction or delay of educational services for the children because of recommendations or referrals to other agencies for support services.

Responsibilities of the State Education Department:

Chapter 600 requires that the State Education Department (SED) develop guidelines that CSEs can use to determine when a student is at risk of a future residential school placement. In order to accomplish this, SED convened a Task Force composed of representatives from school districts, residential school programs, parents and other State agencies. This Task Force outlined descriptive factors that will assist school district CSEs in making individual determinations on when to involve other appropriate county or State agencies in a student's planning and when to link families with community support services in an effort to prevent a future residential school placement. Based on the Task Force's

guidance, Attachment 1 provides the "Considerations for Determining that a Child is at Risk of Residential School Placement."

ENHANCE MOVEMENT OF YOUNG ADULTS FROM RESIDENTIAL SCHOOLS TO ADULT PLACEMENTS

Responsibilities of School Districts:

Committees on Special Education are required to provide written notification to parents/guardians of students who are in residential school programs that the students are not entitled to receive free educational services or to remain in a residential educational program after the age of 21 or the receipt of a high school diploma. Parents/guardians should be made aware of the need to provide districts with consent to release information to other State agencies in order to access adult services for their child in a timely manner.

Responsibilities of Other Agencies/Systems:

The Office of Mental Health (OMH) and the Office of Mental Retardation and Developmental Disabilities (OMRDD) are required to:

- (1) engage in early planning for the adult service needs of individuals placed in residential programs by school districts;
- (2) provide assistance in locating appropriate and available placements within the adult care system; and
- (3) in appropriate circumstances, work with the individual, the parents, guardians, or other family members to help determine what services would be necessary to enable the family to provide care for the person at home or in an independent community setting and provide or assist in arranging for those services.

To assist in this early planning process, representatives of the appropriate systems are given the opportunity to participate in the transition planning process for children age 15 and older placed in residential school programs by the CSE. All students age 15 and older must have transition programs and services to prepare them to live, learn and work in the community incorporated into their IEP, regardless of their placement.

Responsibilities of Residential Schools:

No new placements of individuals over the age of 21 in transitional care placements in residential schools will be approved after July 1, 1996. While the obligation to inform the family of this information lies with the CSE, it is recommended that a residential school provider also assure that parents/guardians understand that the residential school placement will end at the age of 21 or the receipt of a high school diploma, whichever comes first, and encourage the parents/guardians to provide consent to release information to other State

agencies to ensure the timely placement of their child in an appropriate adult setting. Early transition planning with the CSE and the involvement of other State agencies for students in residential school placements is very important to ensure that students aging out of a residential school placement have a smooth transfer to appropriate adult services.

When an individual receiving transitional care is about to be transferred from a residential school to another facility, a transfer plan must be prepared and forwarded to the receiving facility, the individual and, unless the individual objects, the parents, guardians or other family members, prior to the transfer. The plan must include any information that will facilitate a safe transfer.

In the event an individual receiving transitional care at a residential school is considered to adversely affect the health, safety or welfare of children residing in the facility, notification may be made by the residential school to the State Education Department special education regional staff to determine the need to discontinue the transitional placement.

AVAILABLE SOURCES OF INFORMATION REGARDING SUPPORT SERVICES FOR CHILDREN AND FAMILIES

New York State currently offers a wide array of services through many State agencies, including respite, case management, specialized recreation programs, medical assistance, peer tutors/positive role models and family support programs. A copy of the New York State Catalogue of Family Support and Empowerment Services, which provides contacts for information and referral services, caregiver assistance programs and family-focused service models in New York State may be obtained by contacting the Council on Children and Families, Empire State Plaza, Corning Tower - 28th Floor, Albany New York 12223. Using this catalogue as a guide, localities can compile a list of the specific services as well as the providers' names and addresses for the services that are available for families in the area. In addition, information on services available in a locality is available by contacting 1-800-345-KIDS.

Questions regarding this memorandum may be directed to your regional special education staff or the Office for Special Education Services at (518) 473-2878.

Attachments

CONSIDERATIONS FOR DETERMINING THAT A CHILD IS AT RISK OF RESIDENTIAL SCHOOL PLACEMENT

LEAST RESTRICTIVE ENVIRONMENT

Discussions regarding children being at risk of future residential school placements should be part of discussions regarding least restrictive environment. Based upon the underpinnings of A New Compact for Learning, the Least Restrictive Environment Implementation Policy Paper sets forth the principle that "efforts will be made to access and coordinate with other available services within a local school district, BOCES or agency program before a student fails in his or her current education placement."

A CSE must consider specific factors when determining a child's placement in the least restrictive environment. Beyond the school environment, factors related to the child's family and community may significantly impact upon the child's functioning in school. School personnel should be aware of these issues and take steps to assist the family in obtaining necessary support.

The determination that a residential school placement is the least restrictive environment, thus removing a child from his/her home and community, must come only after a CSE has made the least restrictive environment considerations required for all placement recommendations which include:

- Has the student received a comprehensive, nonbiased, individual evaluation in the student's dominant language or other mode of communication to determine his/her educational needs?
- Has the student's educational program been developed with meaningful involvement of the student's parent(s) or guardian(s) and teacher(s), and the student when appropriate, and included persons knowledgeable about the student, the meaning of the evaluation information and the continuum of alternative placement options?
- Has the CSE ensured that the appropriateness of the resources of the education programs in less restrictive settings has been considered and determined that a student's education cannot be satisfactorily achieved in these settings even with the use of supplementary aids and services?
- Has the CSE indicated expected benefits from a residential placement in addressing the full range of the student's needs in the areas of academic or educational achievement and learning characteristics, social development, physical development and management needs?

In addition, for students recommended for residential school placements, a CSE must consider:

- Has the district informed families of community support services that they could access for additional support?

and

- Has the district involved other agencies in the planning for a student who may be at risk of a residential school placement?

SCHOOL, HOME AND COMMUNITY FACTORS THAT MAY INDICATE THAT STUDENTS ARE AT RISK OF A FUTURE RESIDENTIAL SCHOOL PLACEMENT

In determining whether a student's parent/guardian should be provided information on where to obtain a family assessment by a human service agency, the CSE must determine if the child is at risk of the need for residential placement at some point in the future. Home and community factors alone would not warrant a residential school placement. However, such factors in combination with school factors may indicate that the student is at risk of a residential school placement. In those instances, it is the CSE's responsibility to provide the family or guardian with a list of community support services that may be available, including the name and address where the parent/guardian can obtain an assessment of their support needs.

Many of the factors listed below are indicative that a child may require treatment or support services beyond the supplementary supports and services an education agency can provide. It is the district's responsibility to contact other agencies, when parent permission has been received, in order to engage them in assisting the school and family to provide supports and services in an effort to prevent more restrictive educational placements, including the need for a future residential school placement.

The need for a child to be placed in a residential school program is often precipitated by a combination of the following factors demonstrated in the school, home and community setting:

School factors:

- Chronic lack of or inconsistent progress in meeting IEP goals and an increasing need for supplementary supports and services; or underachievement in many school settings.
- Frequent and escalating problems with behaviors that are dangerous to self or others and, even with the use of supplementary supports and services, behaviors that are becoming increasingly difficult to address in less restrictive settings. These behaviors may include self-abusive behavior, violent or aggressive behaviors, frequent unexplained absences, pervasive lack of

motivation or effort, substance or alcohol abuse, depression, withdrawal, phobias, suicide ideation or suicide attempts.

- Multiple referrals to the CSE to increase the levels of related services.
- Limitations and disabilities which require specialized supports and services and/or medical interventions.

Home factors:

- The primary caregiver is spending an inordinate amount of time caring for the child, thus negatively impacting upon the care of the other members of the family.
- Multiple crises that impact upon the stability of the family structure.
- Abuse or neglect in the home.
- Child unable to take care of himself/herself (i.e., hygiene, eating, avoiding injuries).
- Family does not have the skills or resources to meet the child's specialized or chronic medical or behavioral needs.
- Child is showing dangerous behaviors at home and the safety of family members or the child himself/herself is at risk. High risk behaviors demonstrated at home may include fire setting, sexual acting out towards others, suicide, self-abuse, and running away.
- Inconsistent care that is detrimental to the child's functioning.
- The family functioning is such that a child with limited capacity for self-care and self-direction is unprotected.

Community factors:

- Child unable to function in social situations or participate in recreational or after school programs (i.e., establishing and maintaining friends; interacting with peers, classmates and neighbors; making appropriate and safe use of leisure time).
- Court involvement, such as a person in need of supervision (PINS) or a juvenile delinquent.
- Violence directed by the child or toward the child in the community, particularly children who are abusing younger children.

- Involvement with a gang or involvement in gang-like activities.
- Lack of a consistent home environment (e.g., homeless or transient).
- Other agency supports have become fragmented or not well coordinated.
- The family expresses a lack of trust in accessing community resources or the family expresses a concern that resources are not available or responsive to the family's needs.
- The community tolerance of the child's differences is creating additional stressors for the child and family.
- Community supports are moving from lesser to more restrictive options.

This list of factors is not exhaustive and is intended only as a guide for districts. There may be additional factors that, in combination, may lead CSEs to determine that a student is at risk of a future residential school placement.

AMENDMENT TO REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 4402 and 4403 of the Education Law and sections 4, 5 and 6 of Chapter 600 of the Laws of 1994.

1. Paragraph (3) of subdivision (c) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective December 20, 1994, as follows:

(3) Such recommendations shall be developed in meetings of the committee on special education. The student's parent and, where appropriate, the student shall be given an opportunity to attend the meeting. Meeting locations must be physically accessible. The committee shall ensure that the parent understands the proceedings of the meeting and shall arrange for the presence of an interpreter, if necessary. Placement shall be based on the student's individualized education program and determined at least annually. Unless the student's individualized education program requires some other

arrangement, the student shall be educated in the school he or she would have attended if not disabled. If the recommended placement is to be in a school operated by an agency or school other than the school district in which the student would normally attend if the student did not have a disability or if the education of a student residing in a facility operated or supervised by a State department or agency is the responsibility of the school district, a representative of that agency or school shall be given the opportunity to attend. Where a child is determined to be at risk of a future placement in a residential school, the committee must request in writing that a designee of the appropriate county or State agency participate in any proceeding of the committee to make recommendations concerning the appropriateness of residential placement and other programs and placement alternatives, including but not limited to, community support services that may be available to the family. The committee must notify the local social services district when a student who is in a foster care placement is at risk of a

future placement in a residential school. A copy of such request
must be forwarded to the Office of Mental Health and the Office
of Mental Retardation and Developmental Disabilities. In the
event that such persons are unable to attend such meetings, the
committee shall attempt alternative means allowing for their
participation, such as individual or conference telephone
discussions, and such attempts shall be documented. For a
student with a disability who has been evaluated for the first
time, the committee shall ensure the participation of a person
knowledgeable about the individual evaluation conducted and the
evaluation results.

2. Subparagraph (xiii) of paragraph (1) of
subdivision (a) of section 200.5 of the Regulations of the
Commissioner of Education is added, effective December 20, 1994,
to read as follows:

(xiii) indicate for students at risk of future
residential placement that information on community support
services may be available to the family, including the name and

address of agencies which can perform an assessment of a family's community support needs, where such list has been made available to the committee.

3. Paragraph (5) of subdivision (a) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective December 20, 1994 as follows:

The board of education shall notify the parents of its approval of the recommendation of the committee and arrange for placement of the student within 30 days of the committee's recommendation except that if such recommendation is for placement in an approved in-state or out-of-state private school, the board shall arrange for such programs and services within 60 days. Such notice shall also state the due process rights described in this subdivision [.] and, for students recommended for residential placement, indicate that the student is not entitled to receive free educational services or to remain in a residential educational program after the end of the school year in which the student reaches the age of 21 or the receipt of a

high school diploma.

4. Paragraph (5) of subdivision (c) of section 200.7 of the Regulations of the Commissioner of Education is added, effective December 20, 1994, to read as follows:

(5) Residential schools may provide temporary care for persons over the age of 21 who are receiving transitional care pursuant to section 4402(1)(b)(4)(e) of the Education Law. When an individual receiving transitional care is about to be transferred from a residential school to an adult placement, a transfer plan shall be prepared by the residential school and forwarded to the receiving facility, the individual, and unless the individual objects, the parents, guardian or other family members prior to the transfer. The transfer plan shall include any information necessary to facilitate a safe transfer such as specific problems, a schedule for administering medications and behavior unique to the individual. In the event an individual receiving transitional care at a residential school is considered to adversely affect the health, safety or welfare

of children residing in the facility, notification may be made by
the residential school to the State Education Department to
determine the need to discontinue the transitional placement.

Appropriate County or State Agencies

Local Interagency Body: Many localities have developed local interagency committees that can perform multidisciplinary assessments of children and families. Examples of local interagency bodies include Regional Councils for Educational Services (funded by the State Education Department) or other local or regional interagency groups; Tier One teams of county mental health departments who have received training through the Child and Adolescent Service System Program (CASSP); and Designated Assessment Services Teams (PINS Diversion).

Coordinated Children's Services Initiative (CCSI): CCSI is a State initiative that assists localities to collaboratively provide community-based support services for children with emotional disabilities and their families. CCSIs incorporate two-tiered systems. Tier 1, composed of direct care staff, assesses the needs of the children and families and develops collaborative service plans. Tier 2, composed of county and education systems administrators, addresses barriers to local coordination and provides recommendations to the State level coordinating group. The State level coordinating group is charged with addressing major systemic issues that are barriers to community-based services for children and families. Information on counties that receive CCSI funding may be obtained by contacting the Office of Mental Health, Bureau of Children and Families at (518) 474-8394.

Developmental Disabilities Services Office (DDSO): The address and phone number for the appropriate DDSO in your region may be obtained by calling the Office of Mental Retardation and Developmental Disabilities at (518) 474-3558.

Local Mental Health Agency: Contact the county mental health department.

Local Social Services District: Contact the county department of social services.

State Office of Mental Health:
Office of Mental Health
Bureau of Children and Families
44 Holland Avenue
Albany, New York 12229-0001
(518) 474-8394

State Office of Mental Retardation:
Office of Mental Retardation and Developmental
Disabilities
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