Updated October 2016

The University of the State of New York
THE STATE EDUCATION DEPARTMENT
Office of P-12 Education
Office of Special Education
Albany, New York 12234

REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Sections 207, 3214, 4403, 4404 and 4410 of the Education Law

PART 200

Students with Disabilit4s2-TRT1 0 0 TJ I

Updated October 2016

5 1/2 hours of instruction for students whose chronological ages are equivalent to those of students in grades 7 through 12.

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special education may serve as an impartial hearing officer and no individual employed by such schools or programs may serve as an impartial hearing officer for two years following the termination of such employment, provided that a person who otherwise qualifies to conduct a hearing under this section shall not be deemed an employee of the school district, school or program serving students with disabilities solely because he or she is paid by such schools or programs to serve as an impartial hearing officer. An impartial hearing officer shall:

(1) be an individual admitted to the practice of law in the State of New York who is currently in good standing and who has a minimum of two years practice and/or experience in the areas of education, special education, disability rights or civil rights; or be an individual certified by the State of New York as an impartial hearing officer on September 1, 2001;

(2) have access to the support and equipment necessary to perform the duties of an impartial hearing officer;

(3) be independent, shall not be an officer, employee or agent of the school district or of the board of cooperative educational services of which such school district is a component, or an employee of the Education Department, shall not have a personal or professional interest which would conflict with his or her objectivity in the hearing, and shall not have participated in any manner in the formulation of the recommendation sought to be reviewed; and

(4) be certified by the commissioner as an impartial hearing officer eligible to conduct hearings pursuant to Education Law, section 4404(1) and subject to suspension or revocation of such certification by the commissioner for good cause in accordance with the provisions of section 200.21 of this Part. In order to obtain and retain such a certificate, an individual shall:

(i) successfully complete a training program, conducted by the department, which program provides information regarding State and Federal laws and regulations relating to the education of students with disabilities, the needs of such students, and the procedures involved in conducting a hearing, and in reaching and writing a decision;

(ii) attend such periodic update programs as may be scheduled by the commissioner;

(iii) annually submit, in a format and by a date prescribed by the commissioner, a certification that the impartial hearing officer meets the requirements of paragraphs (1), (2) and (3) of this subdivision;

(iv)

direct contact with a student (including evaluation of the student), native language means the language normally used by the student in the home or learning environment; and

(2) for an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

(gg) Occupational therapy means the functional evaluation of the student and the

(jj) Participating agency means a State or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(kk) Parent counseling and training means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's individualized education program**.**

(ll) Physical therapy means a related service provided in accordance with section 6731(a) of the Education Law.

(mm) Preschool student with a disability is a preschool child as defined in section 4410(1)(i) of Education Law who is eligible to receive preschool programs and services, is not entitled to attend the public schools of the school district of residence pursuant to section 3202 of the Education Law and who, because of mental, physical, or emotional reasons, has been identified as having a disability and can receive appropriate educational opportunities from special programs and services approved by the department. Eligibility as a preschool student with a disability shall be based on the results of an individual evaluation which is provided in the student's native language, not dependent on a single procedure, and administered by a multidisciplinary team in accordance with all other requirements as described in section 200.4 (b) (1) through (5) of this Part.

(1) Commencing July 1, 1993, to be identified as having a disability a preschool student shall either:

(i) exhibit a significant delay or disorder in one or more functional areas related to cognitive, language and communicative, adaptive, socio-emotional or motor development which adversely affects the student's ability to learn. Such delay or disorder shall be documented by the results of the individual evaluation which includes but is not limited to information in all functional areas obtained from a structured observation of a student's performance and behavior, a parental interview and other individually administered assessment procedures, and, when reviewed in combination and compared to accepted milestones for child development, indicate:

(a) a 12-month delay in one or more functional area(s); or

(b) a 33 percent delay in one functional area, or a 25 percent delay in each of two functional areas; or

(c) if appropriate standardized instruments are individually administered in the evaluation process, a score of 2.0 standard

deviations below the mean in one functional area, or a score of 1.5 standard deviations below the mean in each of two functional areas; or

(ii) meet the criteria set forth in paragraphs (1), (2), (3), (5), (9), (10), (12) or (13) of subdivision (zz) of this section.

(2) Commencing July 1, 1991, in the calendar year in which such preschool student becomes three years of age, a student shall be first eligible for preschool programs and services on January 2nd of such calendar year, if the student's birthday falls before July 1st, otherwise a student shall be first eligible on July 1st of the calendar year; except that a student who, as of his or her third birthday, is already receiving services pursuant to section 236 of the Family Court Act or its successor, or section 4204-a of the Education Law, may, if the parent so chooses, continue to receive such services through August 31st of the calendar year in which the student first becomes eligible to receive services pursuant to section 4410 of the Education Law. A student shall be deemed to be a preschool student with a disability through the month of August of the school year in which the student first becomes eligible to attend school pursuant to section 3202 of the Education Law.

(nn) Preschool program means a special education program approved pursuant to section 4410 of the Education Law to provide special education programs and services, from the continuum of services set forth in section 200.16(i) of this Part, and to conduct evaluations of preschool students with disabilities if such program has a multidisciplinary evaluation component.

(oo) Prior written notice means written statements developed in accordance with section 200.5(a) of this Part, and provided to the parents of a student with a

student is not receiving instruction from one or more regular education teachers, a teacher qualified to provide regular education in the type of program in which the student may be placed may serve as the preschool V W X G H Q W ¶ V U H J X O D U H G X F D W L R Q W H D F K H U

(qq) Related services means developmental, corrective, and other supportive services as are required to assist a student with a disability and includes speech-language pathology, audiology services, interpreting services, psychological services, physical therapy, occupational therapy, counseling services, including rehabilitation counseling services, orientation and mobility services, medical services as defined in this section, parent counseling and training, school health services, school nurse services, school social work, assistive technology services, appropriate access to recreation, including therapeutic recreation, other appropriate developmental or corrective support services, and other appropriate support services and includes the early identification and assessment of disabling conditions in students.

(1) Services that apply to children with surgically implanted devices, including cochlear implants. Related services do not include a medical device that is V X U J L F D O O \ L P S O D Q W H G W K H R S W L P L] D W L R Q R I W mapping), maintenance of that device, or the replacement of that device, provided that nothing in this paragraph:

(i) limits the right of a student with a surgically implanted device to receive related services that are determined by the CSE or CPSE to be necessary for the student to receive a free appropriate public education; or

(ii) limits the responsibility of a school district to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school; or

(iii) prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

(rr) Resource room program means a spec005Cm21(sp)-3(e)-3(c005Cm21(sp)-.6t19-3(e)6(n)-JET

provide special education in the type of program in which the student may be placed may serve as the student's special education teacher.

(zz) Student with a disability means a student with a disability as defined in section 4401(1) of the Education Law, who has not attained the age of 21 prior to September 1st and who is entitled to attend public schools pursuant to section 3202 of the Education Law and who, because of mental, physical or emotional reasons, has been identified as having a disability and who requires special services and programs approved by the department. The terms used in this definition are defined as follows:

(1) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disturbance as defined in paragraph (4) of this subdivision. A student who manifests the characteristics of autism after age 3 could be diagnosed as having autism if the criteria in this paragraph are otherwise satisfied.

(2) Deafness means a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a student's educational performance.

(3) Deaf-blindness

(ddd) Transitional support services means those temporary services, specified in a student's individualized education program, provided to a regular or special education teacher to aid in the provision of appropriate services to a student with a disability transferring to a regular program or to a program or service in a less restrictive environment.

(eee) Twelve-month special service and/or program means a special education service and/or program provided on a year-round basis, for students determined to be eligible in accordance with sections 200.6(k)(1) and 200.16(i)(3)(v) of this Part whose disabilities require a structured learning environment of up to 12 months duration to prevent substantial regression. A special service and/or program shall operate for at least 30 school days during the months of July and August, inclusive of legal holidays, except that a program consisting solely of related service(s) shall be provided with the frequency and duration specified in the student's individualized education program.

(fff) Transition Services means 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 sh7ETBTa results

(hhh) Homeless youth means the same as the term homeless child as defined in section 100.2(x) of this Title.

(iii) Limited English proficient student means the same as the term pupils with limited English proficiency as defined in section 154.2(a) of this Title.

(jjj) Universal design means 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.

(kkk) Ward of the State means a child or youth under the age of 21:

(1) who has been placed or remanded pursuant to section 358-a, 384 or 384-a of the 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 the Social Services Law; or

(2) who is in the custody of the Commissioner of Social Services or the Office of Children and Family Services; or

(3) who is a destitute child under section 398(1) of the Social Services Law.

(lll) Aversive intervention means the same as such term is defined in section 19.5(b)(2) of this Title.

(mmm) Behavioral intervention plan means a plan that is based on the results of a functional behavioral assessment and, at a minimum, includes a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs and intervention strategies that include positive behavioral supports and services to address the behavior.

(nnn) Interpreting services means oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services and transcription services, such as communication access real-time translation (CART), C-Print and TypeWell for students who are deaf or hard of hearing; and special interpreting services for students who are deaf-blind.

(ooo) Declassification support services means those services provided by persons appropriately certified or licensed pursuant to Part 80 of this Title in the DSSURSULDWH DUHD RI VHUYLFH WR D VWXGHQW RU VXFK VWXGHQW¶V WUDQVLWLRQ from Regular Education, including:

(1) for the student, psychological services, social work services, speech and language services, counseling (other than career counseling), and other appropriate support services; ar

public schools and must be completed in a time period comparable to that for other students attending public schools in the school district. The school district shall consult with representatives of private schools and representatives of parents of parentally placed private school students with disabilities on the child find process.

(i) If a student is parentally-placed, or is going to be parentally-placed in a private elementary or secondary school that is not located in the VWXGHQW¶V VFKRRO GLVWULFW RI UHVLGHQFH student 18 years of age or older, must be obtained before any personally identifiable information about the student is released between officials in the district where the private school is located and RIILFLDOV LQ WKH SDUHQW¶V GLVWULFW RI UHVL

(ii) The school district shall maintain in its 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 of such students who received special education services under this Part.

(b) Written policy. Each board of education or board of trustees shall adopt written policy that establishes administrative practices and procedures:

(1) to ensure that students with disabilities residing in the district have the opportunity to participate in school district programs, to the maximum extent appropriate to the needs of the student including nonacademic and extracurricular programs and activities, which are available to all other students enrolled in the public schools of the district, which may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with disabilities and employment of students, including both employment by the school district and assistance in making outside employment available;

(2) to ensure that each preschool student with a disability residing in the district has the opportunity to participate in preschool programs, including timely evaluation and placement;

(3) for appointing and training appropriately qualified personnel, including the members and chairpersons of the committee on special education and the committee on preschool special education, to carry out the functions identified in this Part;

Accessibility Standard; in accordance with appendix C to part 300 of title 34 of the Code of Federal Regulations (Code of Federal Regulations, 2009 edition, title 34, part 300, appendix C, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 - available at the Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234), for each student with a disability in accordance with the student's educational needs and course selections at the same time that such materials are available to nondisabled students. For purposes of this paragraph, alternative format is defined as any medium or format for the presentation of instructional materials, other than a traditional print textbook, that is needed as an accommodation for a student with a disability enrolled in the school district, including but not limited to Braille, large print, open and closed captioned, audio, or an electronic file. An electronic file must be compatible with at least one alternative format conversion software program n a

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IEP, made pursuant to section 200.4(g) of this Part, prior to the implementation of such program or shall be able to access such VWXGHQW¶V ,(3 HOHFWURQLFDOO\ZKHQVXFK,(3V¶SRVH
are to be accessed electronically, then such policy shall also ensure that the individuals responsible for the implementation of a student's IEP shall be notified and trained on how to access such IEPs electronically:

(a) for purposes of this paragraph, other service provider means a representative of another public school district, charter school, Board of Cooperative Educational Services (BOCES), or school enumerated in article 81, 85 or 89 of the Education Law where the student receives or will receive IEP services;

(ii) DQ\ FRS\ RI D VWXGHQW¶V ,(3 SURYLGHG SXUVXD
remain confidential and shall not be disclosed to any other person, in accordance with paragraph (6) of this subdivision; an

(iii) the chairperson of the committee on special education designates for each student one, or as appropriate, more than one professional

(14) that identify how the district, to the extent feasible, will use universal design principles in developing and administering any district-wide assessment programs; and

(15) to ensure that the school district publicly reports on revisions to its policies, procedures and/or practices upon a finding by the Department that the district has inappropriate policies, procedures or practices resulting in a significant disproportionality by race/ethnicity in the suspension, identification, classification and/or placement of students with disabilities.

(c) District plans. (1) Each board of education which receives an apportionment for eligible students with disabilities, pursuant to section 3602 of the Education Law, or preschool students with disabilities pursuant to section 4410 of the Education Law shall use such apportionments for special education programs and services which are in accordance with the provisions of this Part. Each board of education which receives such apportionment shall keep on file and make available for public inspection and review by the commissioner an acceptable plan as required by subdivision 8(b) of section 3602 of the Education Law.

(2) Each such plan shall include, but need not be limited to, the following:

(i) a description of the nature and scope of special education programs and services currently available to students and preschool students residing in the district, including but not limited to descriptions of the district's resource room programs and each special class program provided by the district in terms of group size and composition;

(ii) identification of the number and age span of students and preschool students to be served by type of disability, and recommended setting;

(iii) the method to be used to evaluate the extent to which the objectives of the program have been achieved;

(iv) a description of the policies and practices of the board of education to ensure the continual allocation of appropriate space within the district for special education programs that meet the needs of students and preschool students with disabilities;

(v) a description of the policies and practices of the board of education to ensure that appropriate space will be continually available to meet the needs of resident students and preschool students with disabilities who attend special education programs provided by boards of cooperative educational services;

(vi) a description of how the district intends to ensure that all instructional materials to be used in the schools of the district will be made

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who agree to provide such instructional materials in alternative formats;

(ii) specify, when an electronic file is provided, how the format will be accessed by students and/or how the BOCES will convert to an accessible format;

(iii) specify the process to be used when ordering materials to identify the needs of students enrolled in the programs of the BOCES for alternative format materials;

(iv) specify ordering timelines to ensure that alternative format materials are available at the same time as regular format materials are available; and

(v) include procedures so that when students with disabilities enroll in a program of the BOCES during the school year, the process to obtain needed materials in alternative format is initiated without delay.

(2) Responsibility to identify and take measurable steps to recruit, hire, train and retain highly qualified personnel. Each BOCES shall identify and take steps to recruit, hire, train and retain highly qualified personnel to provide special education programs and services to students with disabilities served by the BOCES.

200.3 Committee on special education and committee on preschool special education.

(a) Each board of education or board of trustees shall appoint:

(1) committees on special education in accordance with the provisions of Education Law, section 4402, as necessary to ensure timely evaluation and placement of students. The membership of each committee shall include, but not be limited to:

(i) the parents or persons in parental relationship to the student;

(ii) not less than one regular education teacher of the student whenever the student is or may be participating in the regular education environment;

(iii) not less than one special education teacher of the student, or, if appropriate, not less than one special education provider of the student;

(iv) a school psychologist;

(i) the parents of the preschool child;

(ii) not less than one regular education teacher of the child whenever the child is or may be participating in the regular education environment;

(iii) not less than one special education teacher of the child, or, if appropriate, not less than one special education provider of the child;

(iv) a representative of the school district who is qualified to provide or supervise special education and who is knowledgeable about the general education curriculum and the availability of preschool special education programs and services and other resources of the school district and the municipality. The representative of the school district shall serve as the chairperson of the committee;

(v) an additional parent member of a child with a disability residing in the school district or a neighboring school district and whose child is enrolled in a preschool or elementary level education program, if specifically requested in writing by the parent of the student or by a member of the committee at least 72 hours prior to the meeting;

(vi) an individual who can interpret the instructional implications of evaluation results, provided that such individual may also be the individual appointed as the regular education teacher, the special education teacher or special education provider, the school psychologist, the representative of the school district or a person having knowledge or special expertise regarding the student when such member is determined by the school district to have the knowledge and expertise to fulfill this role on the committee;

(vii) other persons having knowledge or special expertise regarding the

(b) Each child care institution, as defined in Education Law, section 4001,

(vii) such other persons having knowledge or special expertise regarding the student, including related services personnel as appropriate, as the committee or the parent shall designate. The determination of knowledge or special expertise of such person shall be made by the party (parents or school district) who invited the individual to be a member of the subcommittee on special education; and

(viii) the student, if appropriate.

(3) Each subcommittee may perform the functions of the committee on special education pursuant to the provisions of Education Law, section 4402, except as specified in paragraphs (4) and (5) of this subdivision.

(4) The subcommittee may perform the functions of the committee on special education pursuant to the provisions of Education Law, section 4402, except when a student is considered for initial placement in:

(i) a special class; or

(ii) a special class outside of the student's school of attendance; or

(iii) a school primarily serving students with disabilities or a school outside of the student's district.

(5) Upon receipt of a written request from the parent or legal guardian of a student, the subcommittee shall immediately refer to the committee for its review any recommendation of the subcommittee concerning the identification, evaluation, educational placement or provision of a free appropriate public education to a student that is not acceptable to the parent or person in parental relationship to such student.

(6) Each subcommittee shall report annually the status of each student with a disability within its jurisdiction to the committee on special education.

(d) The regular education teacher of the student with a disability must, to the extent appropriate, participate (d)6((l)-369(p)-3(.(il)4)ca(tio)64 n, n of o surehulipatenT1 0 0 1 108.02

(e) Role of the chairperson of the committee. The chairperson of the committee on special education, committee on preschool special education and subcommittee

(e) a student who is 18 years of age or older, or an emancipated minor, who is eligible to attend the public schools of the district.

(ii) A written request for referral of a student for an initial evaluation made to the school where the student resides or legally attends or is eligible to attend shall, if received by the building administrator or any other employee of the school, be forwarded to the committee chairperson immediately upon its receipt.

(iii) A written request for referral submitted by persons other than the student or a judicial officer shall:

(a) state the reasons for the referral and include any test results, records or reports upon which the referral is based that may be in the possession of the person submitting the referral;

(b) describe in writing, intervention services, programs or instructional methodologies used to remediate the student's performance prior to referral, including any supplementary aids or support services provided for this purpose, or state the reasons why no such attempts were made; and

(c) describe the extent of parental contact or involvement prior to the referral.

(iv) Upon receipt of a request for a referral that meets the requirements of subparagraph (iii) of this paragraph, the school district shall, within 10 school days, either:

(a) request parent consent to initiate the evaluation; or

(b) provide the parent with a copy of such request for referral; and

(1) inform the parent of his or her right to refer the student for an initial evaluation for special education programs and/or services; and

(2) offer the parent the opportunity to meet to discuss the request for referral and, as appropriate, the availability of appropriate general education support services for the student, with the building administrator or other designee of the school district authorized to make a referral pursuant to paragraph (1) of this subdivision, and the party making the request for referral if a professional staff member of the school district. Upon request of the parent or school

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enabling the student to participate and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities). The individual evaluation must be at no cost to the parent, and the initial evaluation must include at least:

(i) a physical examination in accordance with the provisions of sections 903, 904 and 905 of the Education Law;

(ii) an individual psychological evaluation, except when a school psychologist determines after an assessment of a school-age student,

(c) whether the student needs special education, or, in the case of a reevaluation of a student, whether the student continues to need special education; and

(d) whether any additions or modifications to the special education services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general curriculum.

(iii) The school district shall administer tests and other evaluation materials as may be needed to produce the data identified under subparagraph (ii) of the section.

(iv) If additional data are not needed, the school district must notify the parents of that determination and the reasons for it and of the right of the parents to request an assessment to determine whether, for purposes of services under this Part, the student continues to be a VWXGHQW ZLWK D GLVDELOLW\ DQG WR GHWHUI needs. The school district is not required to conduct the assessment XQOHVV UHTXHVWHG WR GR VR E\ WKH VWXGHQW

(6) School districts shall ensure that:

(i) assessments and other evaluation materials used to assess a student under this section:

(a) are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally and functionally, unless it is clearly not feasible to so provide or administer;

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(xii) the results of the evaluation are provided to the parents in their native language or mode of communication unless it is clearly not feasible to do so;

(xiii) for purposes of eligibility and continuing eligibility determinations, a copy of the evaluation report and the documentation of determination of eligibility are provided at no cost to the parent;

(xiv) the procedures for evaluating students suspected of having a learning disability are in accordance with subdivision (j) of this section;

(xv) the procedures for conducting expedited evaluations are conducted pursuant to section 201.6 of this Title;

(xvi) materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measure the student's English language skills; and

(xvii) assessments of students with disabilities who transfer from one school district to another school district in the same school year are coordinated with such student's prior and subsequent schools, as necessary, and as expeditiously as possible to ensure prompt completion of full evaluations.

(7) The initial evaluation to determine if a student is a student with a disability must be completed within 60 days of receiving parental consent for the evaluation. The 60-day timeframe shall not apply if:

(i) a student enrolls in a school served by the school district after the relevant timeframe in this paragraph has begun and prior to a determination by the student's previous school district as to whether the student is a student with a disability, but only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree in writing to a specific time when the evaluation will be completed; or

(ii) the parent of a student repeatedly fails or refuses to produce the student for the evaluation.

(8) The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education.

(9) No student shall be required to obtain a prescription for a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812) as a condition of receiving an evaluation under this Part (United States Code, 2006 edition, volume 13; Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001; 2008 - available at the Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234).

(c) Eligibility Determinations. (1) In interpreting evaluation data for the purpose of determining if a student is a student with a disability, as defined in sections 200.1(mm) or (zz) of this Part, and determining the educational needs of the student, the committee on special education and other qualified individuals must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as L Q I R U P D W L R Q D E R X W W K H V W X G H Q W ¶ V S K \ V L F D OV£± %À D

services, provided that such services shall not continue for more than one year after the student enters the full-time regular education program.

(viii) Participation in regular class. The IEP shall provide:

(a) an explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in the activities described in subparagraph (v) of this paragraph; or

(b) for preschool students, an explanation of the extent, if any, to which the student will not participate in appropriate activities with age-appropriate nondisabled peers;

(c) identify if the provision of IEP services for a preschool child with a disability will be in a setting with no regular contact with age-appropriate peers without disabilities; and

(d) if a student is not participating in a regular physical education program, the extent to which the student will participate in specially-designed instruction in physical education, including adapted physical education.

(ix) Transition services. (a) 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 , (3 V K D O O X Q G H U W K H D S S O L F D E O H F R P S R Q H C include:

(1) X Q G H U W K H V W X G H Q W ¶ V S U H V H Q W O H Y H V W D W H P H Q W R I W K H V W X G H Q W ¶ V Q H H G V V W X G H Q W ¶ V V W U H Q J W K V S U H I H U H Q F H V relate to transition from school to post-school activities as defined in section 200.1(fff) of this Part;

(2) appropriate measurable postsecondary goals based upon age appropriate transition assessments relating to training, education, employment and, where appropriate, independent living skills;

(3) a statement of the transition service needs of the student W K D W I R F X V H V R Q W K H V W X G H Q W ¶ V F R X participation in advanced-placement courses or a vocational education program;

(4) Q H H G H G D F W L Y L W L H V W R I D F L O L W D W H W K school to post-school activities, including 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; and

(5) a statement of the responsibilities of the school district and, when applicable, participating agencies for the provision of such services and activities that promote movement from school to post-school opportunities, or both, before the student leaves the school setting.

(b) To ensure appropriate transition planning for the student, the development of transition goals and services pursuant to subclause (a) of this clause, shall include a discussion with the parents of

(1) the graduation requirements that apply to the student depending upon the year in which he or she first enters grade nine;
(2) how the student is progressing toward receipt of a diploma including:

(i) the courses the student has passed and the number of credits the student has earned as required for graduation;

(ii) the assessments required for graduation that the student has taken and passed; and

(3) the appeal, safety net and superintendent determination pathway options that may be available to 6cb stude Tm[(g)6(rad)-4

(x) Twelve-month services. For students eligible for 12-month service and/or program, the IEP shal02 708.96 Tm[( )] TJET828.96 TmindETica3(ateces.)-

(vi)

W K H L P S O H P H Q W D W L R Q R I W K H V W X G H Q W ¶ V program.

Nothing in this subparagraph shall be construed to prohibit or limit the assignment of shared one-to-one aides at the discretion of the school to meet the individualized needs of students whose IEPs include the recommendation for one-to one aides. The duties of a teacher aide or teaching assistant providing individualized support to a student with a disability shall be consistent with the duties prescribed pursuant to section 80-5.6 of this Title.

(4) Such recommendations shall:

(i) be developed in meetings of the committee on special education.

(a) 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, the school district must ensure that a representative of that agency or school attends. If the private school or facility representative cannot attend, the school district must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(b) where a child is determined to be at risk of a future placement in a residential school, the committee must, with parental consent or consent of a student 18 years of age or older, request

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(c) if the purpose of the meeting is to consider the postsecondary goals for the student and the transition services needed to assist

(e) IEP Implementation. (1) Within 60 school days of the receipt of consent to evaluate for a student not previously identified as having a disability, or within 60 school days of the referral for review of the student with a disability, the board of education shall arrange for appropriate special programs and services, except

supplementary school personnel as defined in section 200.1(hh) of this Part, and other provider and support staff person has been informed, prior to the implementation of the IEP, of his or her responsibility to implement the recommendations on the student's IEP, including the responsibility to provide specific accommodations, program modifications, supports and/or services for the student in accordance with the IEP; and

(iv) HQVXULQJ WKDW D FRS\ RI WKH ,(3 LV SURYLGH LQFOXGLQJ D UHYLVHG FRS\ RI WKH ,(3 DW WKH amendments developed pursuant to subdivision (g) of this section LQFRUSRUDWHG DW QR FRVW WR WKH VWXGHQW

(4) If the student's parent, teacher or an administrator of the school or agency believes that the program or placement recommended in the IEP is no longer appropriate, such party may refer the student to the committee on special education for review, provided that the student shall remain in the current placement pending a new recommendation of the committee on special education, unless the board and parent otherwise agree.

(5) When consultant teacher services are specified in a student's IEP, the regular education teachers of the student for whom the service will be provided shall be given the opportunity to participate in the instructional

school district shall provide such student with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents, until such time as the school district adopts the previously held IEP or develops, adopts and implements a new IEP that is consistent with Federal and State law and regulations.

(ii) Transfer from outside New York State. In the case of a student with a disability who transfers school districts within the same school year, who enrolls in a new school district and who had an IEP that was in effect in another State, the school district shall provide such student with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents, until such time as the school district conducts an evaluation pursuant to this section, if determined to be necessary by such school district, and develops a new IEP, if appropriate, that is consistent with Federal and State law and regulation.

(iii) Transmittal of Records. (a) To facilitate the transition for a student described in this paragraph, the new school district in which the student enrolls shall take reasonable steps to promptly obtain the VWXGHQW¶V UHFRUGV LQFOXGLQJ WKH ,(3 DQG any other records relating to the provision of special education services to the student, from the previous school in which the student was enrolled pursuant to 34 C.F.R. section 99.31(a)(2) (Code of Federal Regulations, 2009 edition, Superintendent of Documents,

(f) Annual review. The individualized education program (IEP) of each student with a disability shall be reviewed and, if appropriate, revised, periodically but not less than annually to determine if the annual goals for the student are being achieved. Any meeting to develop, review or revise the IEP of each student with a disability to be conducted by the committee on special education or subcommittee thereof, pursuant to section 4402(1)(b)(2) of the Education Law, shall be based upon review of a student's IEP and other current information pertaining to the student's performance.

(1) Such review shall consider the following factors:

(i) the strengths of the student;

(ii) the concerns of the parents for enhancing the education of their child;

(iii) the results of the initial or most recent evaluation of the student;

(iv) as appropriate, the results of the student's performance on any general State or district-wide assessment programs;

(v) the academic, developmental and functional needs of the student;

(vi) the special factors described in paragraph (d)(3) of this section; and

(vii) the educational progress and achievement of the student with a disability and

(3)

(h) Requests to the committee on special education pursuant to section 4005 of the Education Law. (1) If, pursuant to section 4005 of the Education Law, a committee on special education receives a written request for evaluative information and program recommendations for a student from a Family Court judge, a probation department, a social services district, the Office of Children and Family Services, or a preadmission certification committee established pursuant to section 9.51(d) of the Mental Hygiene Law, the committee shall, with parental consent or consent of a student 18 years of age or older, provide such information and recommendation to the requesting agency within 42 days of the date of receipt of such a request, provided that the committee on special

educational services by reason of receipt of a high school diploma or in accordance with Education Law, section 4402(5), whichever is earlier.

(1) The notice shall be provided:

(i) by November 1st of the school year within which a student who is placed in an in-state or out-of-state residential school program in accordance with article 81 or 89 of the Education Law will attain the age of 18 or, if such student is over the age of 18 when placed in such a residential program, at the time of placement; and

(ii) upon the first annual review after attaining the age of 15 for a student who is receiving nonresidential special services or programs in accordance with article 89 of the Education Law, or is receiving special services or programs in a day program at the Henry Viscardi School, and who:

(a) is receiving such special services or programs 100 percent of the school day;

(b) is receiving individualized attention or intervention because of intensive management needs or a severe disability; and

(c) may need adult services as determined by the committee on special education or multidisciplinary team following appropriate review of the student's physical, mental, emotional and educational history.

(2) The notice, which shall be in a form prescribed by the Commissioner of Education, shall:

(i) describe in detail the opportunity and procedure for obtaining from a State agency specified in Education Law, section 4402(1)(b)(5)(a), at least six months before such student attains the age of 21, a determination hafall bB

(ii) provide that:

(a) (1) within 20 days of receipt of notice by a student 18 years of age or older, the committee on special education or multidisciplinary team shall give the student the opportunity to consent or withhold consent to the release of relevant information as such term is defined in section 4402(1)(b)(5)(a) of the Education Law; or

(2) within 20 days of receipt of notice by the parent or guardian of a student less than 18 years of age, the committee on special education or multidisciplinary team shall give the parent or guardian the opportunity to consent or withhold consent to the release of relevant information; or

(3) within 30 days after receipt of notice by a student over the age of 18 years, if such student exercises neither option set forth in subclause (1) of this clause and a designated staff member of the staff of the educational facility has reason to believe that the student may not be able to understand the purpose of the form, the committee on special education or the multidisciplinary team shall give the parent or guardian the opportunity to consent or withhold consent to the release of relevant information;

(b) the committee on special education or multidisciplinary team, upon receipt of consent, shall forward the student's name and other relevant information in a report to the Commissioner of Mental Health, Commissioner of the Office for People With Developmental Disabilities, Commissioner of Social Services or Commissioner of Education or their designees. The committee on special education or multidisciplinary team shall determine which commissioner shall receive the report; and

(c) such information shall be released to the Council on Children and Families if there is a dispute as to the appropriate agency;

(iii) state that:

(a) within 10 school days of the date of receipt of consent, the committee on special education or multidisciplinary team shall forward the report, including all relevant information in its possession, to the commissioner of the appropriate agency or such commissioner's designee; and

(b) in the event that the committee on special education or multidisciplinary team is notified by the commissioner of the State agency receiving the report that such agency is not responsible for determining the need for and recommending adult services for the student, the committee on special education or multidisciplinary team shall forward the report to another of the commissioners identified in clause (ii)(b) of this paragraph, or, if there exists a dispute as to which agency may be responsible, shall forward the report to the Council on Children and Families for resolution of the dispute; and

(iv) state that in the event that consent is withheld, the notice shall be renewed each year until consent is granted or until the student is no longer eligible for tuition-free educational services.

(3)

D G H T X D W H O \ I R U W K H V W X G H Qapproved grade-level W R P H
standards in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading fluency skills, reading comprehension, mathematics calculation, mathematics

200.5 Due process procedures.

(a) Prior written notice (notice of recommendation) and other written notifications. (1) Prior written notice (notice of recommendation) that meets the requirements of section 200.1(oo) of this Part must be given to the parents of a student with a disability a reasonable time before the school district proposes to or refuses to initiate or change the identification, evaluation, educational placement of the student or the provision of a free appropriate public education to the student. Prior written notices issued during the 2011-12 school year, and thereafter, shall be on a form prescribed by the commissioner.

(2) If the prior written notice relates to an action proposed by the school district that also requires parental consent under subdivision (b) of this section, the district must give notice at the same time it requests parent consent.

(3) The prior written notice must include:

(i) a description of the action proposed or refused by the district;

(ii) an explanation of why the district proposes or refuses to take the action;

(iii) a description of other options that the CSE considered and the reasons why those options were rejected;

(iv) a description of each evaluation procedure, assessment, record, or report the CSE used as a basis for the proposed or refused action;

(v) D G H V F U L S W L R Q R I R W K H U I D F W R U V W K D W D U H or refusal;

(vi) a statement that the parents of a student with a -3(ti)10(f)-11(ic)12(a)] TJ8lv(

his or her native language or other mode of communication; that the parent understands the content of the notice; and that there is written evidence that the requirements of this section have been met.

(5) In addition to the requirements of paragraphs (3) and (4) of this subdivision:

(i) Upon receipt of a referral for initial evaluation or prior to conducting a reevaluation, such prior written notice shall include a description of the proposed evaluation or reevaluation and the uses to be made of the information and indicate that the parent may submit evaluation information which, if submitted, shall be considered by the committee on special education as part of its evaluation or review.

(ii) 3 U L R U W R W K H V W X G H Q W ¶ V J U D G X D W L R Q Z L W K diploma, such prior written notice must indicate that the student is not eligible to receive a free appropriate public education after graduation with the receipt of the local high school or Regents diploma.

(iii) 3 U L R U W R W K H V W X G H Q W ¶ V J U D G X D W L R Q Z L W K

indicate that the recommendation will be sent back to committee, with notice of the need to schedule a timely meeting W R U H Y L H Z W K H E R D concerns and to revise the IEP as deemed appropriate.

(iii) For students described in section 200.4(i)(1), notice must be provided to the parent and, beginning at age 18 to the student, in accordance with section 200.4(i)(2) and (3) of this Part.

(iv) For a student whom the committee on special education has determined to be at risk of a future residential placement, information must be provided to the parent on community support services that may be available to the family, including the name and address of D J H Q F L H V Z K L F K F D Q S H U I R U P D Q D V V H V V P H Q W support needs, where such list has been made available to the committee.

(v) For students recommended for an approved private school, a copy of the approved S U L Y D W H V F K R R O ¶ V S R O L F \ R Q W K H P H G L F D W L R Q P X V W E H S U R Y L G H G W R W K H V W X uses psychotropic medication.

(7) 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.

(b) Consent. (1) The school district must make reasonable efforts to obtain written informed consent of the parent, as such term is defined in section 200.1(l) of this Part, and must have a detailed record of its attempts, and the results of those attempts. Written consent of the parent is required:

(i) prior to conducting an initial evaluation or reevaluation, except that:

(a) parental consent is not required before reviewing existing data

education programs and services to the student and shall not use the due process procedures described in subdivisions (h) through (k) of this section to challenge the parent's refusal to consent.

(i) the school district shall not be considered to be in violation of the requirements to make available a free appropriate public education to the student because of the failure to provide such student with the special education program and services for which the parent refuses to or fails to provide consent; and

(ii) the school district shall not be required to convene a meeting of the committee on special education or develop an IEP under section 200.4 of this Part for the student.

(5) If, at any time subsequent to the initial provision of special education programs and services, the parent of a student revokes consent in writing for the continued provision of special education programs and services, the school district;

(i) shall not continue to provide any special education programs and services to the student, but must provide prior written notice in accordance with subdivision (a) of this section before ceasing the provision of special education programs and services;

(ii) shall not use the due process procedures described in subdivisions (h) through (k) of this section to obtain agreement or a ruling that the services may be provided to the student;

(iii) shall not be considered to be in violation of the requirement to make available a free appropriate public education to the student because of the failure to provide the student with further special education programs and services;

(iv) is not required to convene

informed consent from the parent of a student, as defined in section 200.1(ii) of this Part, for an initial evaluation to determine eligibility for special education services if:

(i) despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the student; or

(ii) the rights of the parents of the student have been terminated in accordance with State law; or

(iii) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student.

(7) Consent for a student who is home instructed, pursuant to section 100.10 of this Title, or placed in a private school by parents at their own expense. If a parent of student who is home instructed or placed in a private school by their parents at their own expense does not provide consent for an initial evaluation or reevaluation, or the parent fails to respond to a request to provide consent, the school district may not continue to pursue those evaluations by using the due process procedures described in this section; and the school district is not required to consider the student as eligible for special education services.

(8) Students with disabilities who are covered by public benefits or insurance.

(i) Consent prior to accessing a student's or parent's insurance for the first time after July 1, 2012. With regard to parents consistent with subparagraph (ii) of this paragraph, the school district must obtain the written consent of the parent, consistent with the confidentiality requirements of sections 99.30 and 300.622 of the Code of Federal Regulations (Code of Federal Regulations, 2013 edition, title 34, sections 99.30 and 300.622, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2013 - available at the Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234), which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular student), the purpose of the disclosure (e.g., billing for special education services), and the agency to which the disclosure may be made (i.e., the State's public benefits or insurance program such as Medicaid or Supplemental Security Insurance); and specify that the parent understands and agrees that the public agency may

D F F H V V W K H S D U H Q W ¶ V R U V W X G H Q W ¶ V for S X E O L F services under this Part.

(ii) 1 R W L I L F D W L R Q 3 U L R U W R D F F H V V L Q J D V W X G H Q or insurance for the first time, and annually thereafter, the school district must provide the student's parents with written notification, consistent with the requirements of subdivision (a)(4) of this section, that includes:

(a) a statement of the parental consent provisions in subparagraph (i) of this paragraph;

(b) a statement that the parents are not required to sign up for or enroll in public benefits or insurance programs in order for their child to receive a free appropriate public education under Part B of the Individuals with Disabilities Education Act;

(c) a statement that the parents are not required to incur an out-of-pocket expense, such as the payment of a deductible or co-pay amount, incurred in filing a claim for services pursuant to this Part;

(d) a statement that the school district may not use the student's benefits under a public benefits or insurance program if that use would:

(1) decrease available lifetime coverage or any other insured benefit;

(2) result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that childcdcdc33(th5n)-3(y)1(dc.[024 322.49 Tm13(o)-3(r)13( )-81(co)] T

(f)

(i)

(3) A copy of such notice must be given to the parents of a student with a disability, at a minimum one time per year and also:

(i) upon initial referral or parental request for evaluation;

(ii) upon the first filing of a due process complaint notice to request mediation or an impartial hearing as described in subdivisions (h) and (j) of this section;

(iii) upon request by a parent;

(iv) upon a decision to impose a suspension or removal that constitutes a

process hearing under this section if the parent elects not to participate in this meeting.

(3) If the written agreement reached by the parties in mediation is inconsistent Z L W K W K H V V, W3X W G H Q W ¶ W K H V W X G H Q W ¶ V , (3 P X V W E H to be consistent with the mediation agreement.

(4) Mediation, including meetings with the parent(s) described in paragraph (2) of this subdivision, shall be provided by community dispute resolution centers through a contract with the State Education Department.

(5) When conducting meetings and carrying out administrative matters under this subdivision, the parent and the school district may agree to use alternative means of meeting participation, such as video conferences and conference calls.

(i) Due process complaint notification requirements. (1) A parent or school district may file a due process complaint with respect to any matter 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 a free appropriate public education to such student. The party presenting the complaint, or the attorney representing such party, shall provide a written due

(iii) The school district shall inform the parent in writing of the availability of mediation and of any free or low-cost legal and other relevant services, such as parent centers, available in the area:

(a) when an impartial due process hearing is requested; or

(b) D W W K H S D U H Q W ¶ V U H T X H V W

(2) Resolution process. (i) Resolution meeting. Prior to the opportunity for an impartial due process hearing under paragraph (1) of this subdivision, the school district shall, within 15 days of receiving the due process complaint notice from the parent, convene a meeting with the parents and the relevant

(v) Resolution period. If the school district has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint notice, the impartial due process hearing may occur consistent with the time period provided in section 200.5(j)(3)(iii) of this Part.

(vi) Failure to convene or participate. Except where the parties have jointly agreed to waive the resolution process or use mediation, the failure of a parent filing a due process complaint to participate in the

(i) WKH SRWHQWLDO QHJDWLYH HIIHFW
educational interests or well-being which may result from the consolidation;

(ii) any adverse financial or other detrimental consequence which may result from the consolidation of the due process complaints; and

(iii) whether consolidation would:

(a) LPSHGH DSDUW\¶V ULJKW WR SD
resolution process prescribed in paragraph (2) of this subdivision;

(b) prevent a party from receiving a reasonable opportunity to present its case in accordance with subparagraph (xiii) of this paragraph; or

(c) prevent the impartial hearing officer from timely rendering a decision pursuant to paragraph (5) of this subdivision.

(5) If the due process complaints are consolidated, the timeline for issuance of a decision in the earliest pending due process complaint shall apply.

(6) Nothing in this section shall be construed to preclude a parent from filing a due process complaint on an issue separate from a due process complaint already filed.

(iii) Timeline for commencing the hearing or pre-hearing conference. Unless an extension is granted pursuant to subparagraph (5)(i) of this subdivision:

(a) when a school district files a due process complaint notice, the hearing or pre-hearing conference shall commence within the first 14 days after the date upon which the impartial hearing officer is appointed.

(b) when a parent files a due process complaint notice, the hearing or a pre-hearing conference shall commence within the first 14 days after:

(1) the date upon which the impartial hearing officer receives WKH SDUWLHV¶ ZULWWHQ ZDLYHU RI WKH U

(2) WKH LPSDUWLDO KHDULQJ RIILFHU UHFHL
confirmation that a mediation or resolution meeting was held but no agreement could be reached; or

(3) the expiration of the 30-day resolution period, whichever shall occur first, unless

(4) the parties agree in writing to continue mediation at the end of the 30-day resolution period, in which case, the hearing or pre-hearing conference shall commence within the first 14 days after the impartial hearing officer is notified in writing that either party withdrew from mediation.

(iv) The impartial hearing officer shall be authorized to administer oaths and to issue subpoenas in connection with the administrative proceedings before him/her.

(v) A written or, at the option of the parents, electronic verbatim record of the proceedings before the impartial hearing officer shall be maintained and made available to the parties.

(vi) At all stages of the proceeding, where required, interpreters of the GHDI RU LQWHUSUHWHUV IOXHQW LQ WKH QDW
parent, shall be provided at district expense.

(vii) The parties to the proceeding may be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities. At all stages of the proceeding, the impartial hearing officer may assist an unrepresented party by providing information relating only to the hearing process. Nothing contained in this subparagraph shall be construed to impair or limit the authority of an impartial hearing officer to ask questions of counsel or witnesses for the purpose of clarification or completeness of the record.

(viii) In the event the impartial hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(ix) In the event the impartial hearing officer determines that the interests of the parent are opposed to or are inconsistent with those of the student, or that for any other reason the interests of the student would best be protected by appointment of a guardian ad litem, the impartial hearing officer shall appoint a guardian ad litem to protect the interests of such student, unless a surrogate parent shall have previously been assigned. The impartial hearing officer shall ensure that the

procedural due process rights D I I R U G H G W R W K H V W X G H Q

(c) The impartial hearing officer may receive any oral, documentary or tangible evidence except that the impartial hearing officer shall exclude evidence that he or she determines to be irrelevant, immaterial, unreliable or unduly repetitious. The impartial hearing officer may receive testimony by telephone, provided that such testimony shall be made under oath and shall be subject to cross-examination.

(d) The impartial hearing officer may limit examination of a witness by either party whose testimony the impartial hearing officer determines to be irrelevant, immaterial or unduly repetitious.

(e) The impartial hearing officer may limit the number of additional witnesses to avoid unduly repetitious testimony.

(f) The impartial hearing officer may take direct testimony by affidavit in lieu of in-hearing testimony, provided that the witness giving such testimony shall be made available for cross-examination.

(g) The impartial hearing officer may receive memoranda of law from the parties not to exceed 30 pages in length, with typed material in minimum 12-point type (f6eocT82

Department in a format and at an interval prescribed by the commissioner.

(xvii) When carrying out administrative matters relating to an impartial due process 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.

(4) Decision of the impartial hearing officer. (i) In general. Subject to subparagraph (ii), a decision made by an impartial hearing officer shall be made on substantive grounds based on a determination of whether the student received a free appropriate public education.

(ii) Procedural issues. In matters alleging a procedural violation, an impartial hearing officer may find that a student did not receive a free appropriate public education only if the procedural inadequacies L P S H G H G W K H V W X G H Q W ¶ V U L J K W W R D I U H H D V L J Q L I L F D Q W O \ L P S H G H G W K H S D U H Q W ¶ V R S S R decision-making process regarding the provision of a free appropriate S X E O L F H G X F D W L R Q W R W K H S D U H Q W ¶ V F K L O G educational benefits. Nothing in this paragraph shall be construed to preclude an impartial hearing officer from ordering a school district to comply with procedural requirements under this Part and Part 201 of this Title.

(iii) Settlement agreements. An impartial hearing officer shall not issue a so-ordered decision on the terms of a settlement agreement reached by the parties in other matters not before the impartial hearing officer in the due process complaint or amended due process complaint. Nothing in this subdivision shall preclude a party from seeking to admit a settlement agreement or administrative decision into evidence.

(5) Timeline to render a decision. Except as provided in section 200.16(h)(9) of this Part and section 201.11 of this Title,

(i)

(vi) shall issue the decision in subdivision (v) of this paragraph within 60 days of receipt of the complaint except:

(a) where exceptional circumstances exist with respect to a particular complaint; or

(b) when the parent and school district or other public agency involved agree to extend the time to engage in mediation pursuant to

(iii) shall have knowledge and skills that ensure adequate representation of the student.

(3) Procedures for assigning surrogates. Assignment of a surrogate parent to a particular student shall be made in accordance with the following procedures:

(i) Any person whose work involves education or treatment of students and who knows of a student who may need special education services, and who knows that the student meets the criteria in paragraph (1) of this subdivision, may file a request for assignment of a surrogate parent to the student with the committee on special education to which the student may be appropriately referred.

(ii) The committee on special education shall send notice of the possible QHHG IRU D VXUURJDWH SDUHQW WR WKH DGXC place of residence and to the parents at their last known address.

(iii) The committee on special education shall determine whether the VWXGHQW¶V SDUHQWV FDQ EH LGHQWLILHG RU C is a ward of the State, consistent with paragraph (1) of this subdivision. Where the student is known to the school district to be a

(vi) The surrogate parent alternatively may be appointed by the judge RYHUVHHLQJ WKH FKLOG¶V FDVH SURYLGHG WKH the requirements in paragraph (2) of this subdivision. The individual appointed by the judge need not be appointed from a list approved by the board of education.

(vii) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (2) of this section, until a surrogate can be appointed that meets the appropriate qualifications.

200.6 Continuum of services.

(a) A student with a disability shall be provided with appropriate special education.

(1) Students with disabilities shall be provided special education in the least restrictive environment, as defined in section 200.1(cc) of this Part. To enable students with disabilities to be educated with nondisabled students to the maximum extent appropriate, specially designed instruction and supplementary services may be provided in the regular class, including, as appropriate, providing related services, resource room programs and special class programs within the general education classroom.

(2) A student with a disability shall be provided the special education specified RQ WKH VWXGHQW¶V ,(3 WR PHHW WKH VWXGHQW¶V XQLTXH QHHGV\ WR PHHW

(3) Students with disabilities placed together for purposes of special education shall be grouped by similarity of individual needs as defined in section 200.1(ww) of this Part, in accordance with the following:

(i) The range of academic or educational achievement of such students shall be limited to assure that instruction provides each student appropriate opportunities to achieve his or her annual goals. The learning characteristics of students in the group shall be sufficiently similar to assure that this range of academic or educational achievement is at least maintained.

(ii) The social development of each student shall be considered prior to placement in any instructional group nTv47o ass4823(in) EMC /P0

(iii) The levels of physical development of such students may vary, provided that each student is provided appropriate opportunities to benefit from such instruction. Physical needs shall be considered prior to determining placement to assure access to appropriate programs. The physical needs of the student shall not be the sole basis for determining placement.

(iv) The management needs of such students may vary, provided that environmental modifications, adaptations, or, human or material r

(c) Transitional support services prescribed in the individualized education program (IEP) shall be provided for a teacher upon the recommendation of the committee on special education, and shall be specified in the student's IEP. When the provision of a transitional support service is under consideration by a committee on special education, the teachers of the student for whom the service is being considered shall be given the opportunity to participate in the meeting of the committee for the purpose of advising the committee of the extent to which such services are needed.

(d) Consultant teacher services. Consultant teacher services, as defined in section 200.1(m) of this Part, shall be for the purpose of providing direct and/or indirect services to students with disabilities who attend regular education classes, including career and technical education teachers. Such services shall be recommended by the committee on special education to meet specific needs of such students and the student's individualized education program (IEP) shall indicate the regular education classes in which the student will receive consultant teacher services. Consultant teacher services shall be provided in accordance with the following provisions:

(1) The total number of students with disabilities assigned to a consultant teacher shall not exceed 20.

(2) Each student with a disability requiring consultant teacher services shall receive direct and/or indirect services consistent with the student's IEP for a minimum of two hours each week, except that the committee on special education may recommend that a student with a disability who also needs resource room services in addition to consultant teacher services, may receive a combination of such services consisting of not less than three hours each week.

(3) Upon application and documented educational justification to the commissioner, approval may be granted for a variance for the number of students with disabilities assigned to a consultant teacher as specified in paragraph (1) of this subdivision.

(e) Related services shall be recommended by the committee on special education to meet specific needs of a student with a disability as set forth in the individualized education program (IEP).

(1) The frequency, duration and location of each such service shall be in the

(3) When a related service is provided to a number of students at the same time, the number of students in the group shall not exceed five students per teacher or specialist except that, in the city school district of the city of New York, the commissioner shall allow a variance of up to 50 percent rounded up to the nearest whole number from the maximum of five students per teacher or specialist.

(4) A student with a disability may be provided with more than one such service in accordance with the need of the student.

(5) Related services may be provided in conjunction with a regular education program or with other special education programs and services.

(f) Resource room programs. Resource room programs shall be for the purpose of supplementing the regular or special classroom instruction of students with disabilities who are in need of such supplemental programs.

(1) Each student with a disability requiring a resource room program shall receive not less than three hours of instruction per week in such program except that the committee on special education may recommend that for a student with a disability who also needs consultant teacher services in addition to resource room services may receive a combination of such V H U Y L F H V F R Q V L V W H Q W Z L W K W K H V W X G H Q W ¶ V , (3 week.

(2) Students shall not spend more than 50 percent of their time during the day in the resource room program.

(3) An instructional group which includes students with disabilities in a resource room program shall not exceed five students per teacher except that, in the city school district of the city of New York, the commissioner shall allow a variance of up to 50 percent rounded up to the nearest whole number from the maximum of five students per teacher.

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(iv) the management needs of the students in the classroom.

(5) The total number of students with a disability assigned to a resource room teacher shall not exceed 20 students or, for the city school district of the city of New York, the commissioner shall allow a variance of up to 50 percent rounded up to the nearest whole number from the maximum of 20 students per teacher; except that the total number of students with a disability assigned to a resource room teacher who serves students enrolled in grades seven through twelve or a multi-level middle school program operating on a period basis shall not exceed 25 students or, for the city school district of the city of New York, the commissioner shall allow a variance of up to 50 percent rounded up to the nearest whole number from the maximum of 25 students per teacher.

(6) Upon application and documented educational justification to the commissioner, approval may be granted for a variance from the size of an instructional group and the total number of students assigned to a resource room teacher as specified in paragraphs (3) and (5) of this subdivision.

(g) A school district may include integrated co-teaching services in its continuum of services. Integrated co-teaching services means the provision of specially designed instruction and academic instruction provided to a group of students with disabilities and nondisabled students.

(1) The maximum number of students with disabilities receiving integrated co-teaching services in a class shall be determined in accordance with W K H V W X G H Q W V ¶ L Q G L Y L G X D O Q H H G V D V U H F R P P H Q

A district providing such a description shall also inform the parent of each student in such class that, upon request, the parent shall be afforded the opportunity to discuss the description with an appropriate representative of the district. A copy of such description shall also be included in the district plan required by section 200.2(c) of this Part.

(8) For parents of students placed in special classes describe(classe)-5(s)3a(cla

(2) Criteria for approval. No contract for the placement of a student with a disability shall be approved for purposes of State reimbursement unless:

(i) the application for reimbursement contains the documentation required in paragraph (1) of this subdivision; and

(ii) such placement will be in a private school approved by the commissioner for the education of students with disabilities; and

(iii) the proposed placement offers the instruction and services recommended in the student's IEP.

(3) Procedure for approval for reimbursement. (i) In order to obtain a timely determination, an application for State reimbursement shall be received by the department within six business days of the recommendation by the committee on special education that the student be placed in a private school. An annual re-application for reimbursement in a subsequent year shall be submitted prior to June 1st preceding the school year for which funding is sought.

(ii) Initial agency determination. Within 15 business days of receipt of an application for State reimbursement, the commissioner's designee shall give notice to the board of education orally or by facsimile machine, and in writing by mail of the approval or initial denial of the application. Written notice of the denial of an application shall be accompanied by a statement of reasons for denial, including specific findings of deficiencies in the application, a statement of additional documentation or information requested and notice to the board of education of the opportunity to cure deficiencies in its application and of the a o995etiu of administrative review of the denial.

(iii) Opportunity to cure deficiencies. Within 20 business days after written notice of the denial of an application is sent pursuant to subparagraph (ii) of this paragraph, the board of education may submit a revised application which addresses any deficiencies in its initial application identified in the statement of reasons for the denial. Within 10 business days of receipt of a revised application, the commissioner's designee shall send notice to the board of education orally or by facsimile machine, and in writing by mail, of the action taken on the revised application. Written notice of a denial of a revised application shall be accompanied by a statem

(a) No later than 40 days after written notice of the initial denial of an application for reimbursement is sent pursuant to subparagraph (ii) of this paragraph, the board of education may request

intervention who are placed in classes in accordance with subparagraph (h)(4)(ii) of this section;

(ii) students with severe multiple disabilities, whose programs consist primarily of habilitation and treatment and are placed in special

advance of the proposed starting date of the program. Such application shall be in a form prescribed by the commissioner.

(2) Except as otherwise provided in paragraph (3) of this subdivision, any district, school, or agency granted a waiver shall submit an annual report to the commissioner regarding the operation and evaluation of the program no later than 30 days after the end of each school year for which a waiver is granted.

(3) Any district, school or other agency granted a waiver for three consecutive school years may be granted a permanent waiver, upon a finding by the commissioner that the program has resulted in improved student achievement or enhanced opportunities for placement in regular classes and is consistent with State law and Federal requirements and all other sections of this Part. A district, school or other agency granted a permanent waiver shall not be required to submit an annual application or an annual report. A permanent waiver shall continue until terminated in accordance with paragraph (4) of this subdivision.

(4) The commissioner may terminate a waiver granted pursuant to this subdivision upon a finding that the program has not met its stated objectives or upon a finding that the program is no longer consistent with any requirement of State or Federal law or provision of this Part not specifically waived in the approval granted pursuant to this subdivision. The commissioner shall provide at least 30 days notice of a proposed termination. The district, school or agency shall be afforded the opportunity to submit a written response to the proposed termination which addresses any deficiencies, provided that such response shall be submitted no later than five business days prior to the date of the proposed termination.

(m) Levels of service. (1) The percent of each instructional school day during which a student is provided any one or combination of the special education programs and services shall be in keeping with the unique needs of the student and the standards established in subdivisions (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j) of this section.

(2) Claims for State excess cost aid shall be based upon the minimum levels of service established in section 3602 of the Education Law.

(3) A child with a disability under the age of seven who is eligible for school-age services, not subject to compulsory attendance requirements and not on a regular school attendance register for school-age children shall be deemed enrolled for the purpose of claiming State aid pursuant to section 3602 of the Education Law for the provision of special education and related services in accordance with subdivision 2 of section 4401 of the

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screened in accordance with the provisions of sections 424-a and 495(2) and (3) of the Social Services Law.

(7) An approved private school, a state-operated school, or a state-supported school shall conform to all applicable fire and safety regulations of the state and municipality in which it is located. Each such school shall cause an annual inspection to be made in the manner set forth in subdivision 3 of section 807-

(4) An educational progress re

the placement at the State-operated school is an appropriate placement in the least restrictive environment, taking into account any alternative placement recommended by the school district responsible for the student.

(3) If the commissioner, or his or her designee, determines that placement in the State-operated school is not in the least restrictive environment or otherwise disagrees with the recommendation of the State-operated school, the commissioner shall state his or her reasons in writing and shall send the recommendation back to the multidisciplinary team of the State-operated school for reconsideration, with notice to the parents and the school district responsible for the student. If the commissioner refers the recommendation back to the multidisciplinary team for reconsideration, the commissioner shall also notify the parents, the school district responsible for the student and the multidisciplinary team in writing of the need to schedule a meeting to ensure timely placement.

(4) If the commissioner declines to make a State appointment of a student who has been recommended for appointment by a State-operated or State-supported school or by the Commissioner for classification or placement against the recommendation of the State-operated or State-supported school which such student attendchSt1(S)-i265 pa5nt

(c) Submission of claims. In order to be eligible for State assistance pursuant to Education Law, sections 4406 and 4410:

(1) for services provided on or after July 1, 1983, payment by the county or city for such services shall be made not later than 12 months from the date on which a certificate of approval for State aid was issued, or 12 months from the last day of the school year within which special educational services were provided, whichever is later, and each voucher for payment by the State, pursuant to the provisions of subdivisions 2 and 3 of section 4406 of the Education Law, shall be submitted by a county or city not later than two months after issuance by the department of the automated voucher listing immediately following the later of the above two dates; or

(2) for services provided to a preschool student with a disability on or after September 1, 1989, payment by the county or city for such services shall be

(7) Compliance issue means a condition identified by the commissioner's designated representative, whereby a program is determined to be out of compliance with one or more State or Federal statutes or regulations.

(8) Compliance review means a review initiated by the commissioner's designated representative for the purpose of determining whether a compliance issue, as defined in paragraph (7) of this subdivision, exists.

(9) Corrected rate means a tuition rate that has been adjusted due to a mathematical or reporting error either in the tuition rate calculation or an error in the financial report data submitted to the commissioner.

(10) Cost center means revenues and expenses, as well as statistical and other information relating to a specific program or functional purpose.

(11) Direct care cost means a cost associated with the provision of instruction and related services to students with disabilities.

(12) Full-time equivalent (FTE) enrollment shall have the same meaning as such term is defined in section 175.6 of this Title.

(13) Insufficient resources means a condition whereby a program as currently structured does not meet applicable State or Federal statutes or regulations for the population being served and that the reassignment of existing staff or reallocation of program resources currently allocated for other needs would not bring the program into compliance.

(14) Less-than-arm's-length transaction means one between the program or related entity and anyone who serves as part of the management or as a volunteer or employee of the program or related entity, or any of the following relations of such persons: spouse, former spouse, child or descendant, parent or ancestor, sibling, or spouse of descendant, ancestor or sibling. Also included are dealings with partnerships of which such persons are partners or employees, or with therebyersor or( )-301(b)6(er-6(a)-3(t)8(h)-3(e

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districts, boards of cooperative educational services (BOCES), and public school districts.

(c) School district or local government reimbursement to approved programs shall conform to the provisions of this section and articles 81 and 89 of the Education Law.

(d) Accounting requirements for approved programs. (1) Programs shall maintain accounts in accordance with generally accepted accounting principles.

(2) Programs shall use the accrual basis of accounting. Accounting books of original entry shall include asset, liability and fund balance or equity accounts, as well as expenditure and revenue accounts. Subsidiary revenue and expenditure accounts shall be maintained for each approved program requiring a tuition rate, for preschool evaluation costs, and for each government grant administered by the commissioner.

(3) Programs shall retain all pertinent accounting, allocation and enrollment/ attendance records for a period of seven years following the end of each reporting year. Information relating to the acquisition of fixed assets, equipment, land or building improvements and any related financing arrangements and grants must be retained as long as the facility is used by any educational program the provider operates if this period exceeds seven years.

(4) Government grants received for costs of construction, renovation or acquisition of facilities or equipment shall be deducted from the o0sr713( )rs.Tc-5(e)-3(T

(i) Financial Reports.

(a)

(f) The Consolidated Fiscal Report shall be submitted no later than October 31st following the close of the July 1st through June 30th fiscal year and no later than April 30th following the close of the calendar year, as applicable. The SA-111 shall be submitted no later than October 1st following the close of the school fiscal year and the ST-3 shall be submitted in accordance with the schedule established by the State Comptroller.

(ii) Financial Statements.

(a) The financial statements submitted by approved programs shall be certified by a licensed or certified public accountant independent of the program. In instances where the licensed or certified public accountant or accounting entity provides other nonaudit services to the program such as management consulting, automation consulting, or bookkeeping services, the provision of these services shall be fully disclosed via an explanatory note to the audited financial statements.

(b) The required financial statements for nonprofit providers shall include a balance sheet, a statement of activity and a statement of changes in financial position. The required financial documents for for-profit providers shall include a balance sheet, an income statement and a statement of cash flows. For nonprofit and for-profit providers, any notes that may be appropriate to explain the data collected in the above statements, a management letter if available, and a report on the reliability of the systems of internal control shall also be included.

(c) For private providers that are required to file a New York State Consolidated Fiscal Report with other State agencies on a calendar year, the financial statements shall be consistent with the financial reporting period of the Consolidated Fiscal Report whenever possible.

(d) All other private providers and special act school districts are required to file the Consolidated Fiscal Report and financial statement information on a July 1st through June 30th fiscal year.

(e) BOCES and public school districts shall submit financial statements to the commissioner and/or the State Comptroller in the required format.

(f) Financial statements shall be required to be submitted to the appropriate representative on the same schedule that the

financial reports, as prescribed in clause (i)(f) of this paragraph, are required.

(2) Private providers may request one 30-day extension for filing complete financial statements and financial reports provided that they demonstrate in writing why the required information could not be provided prior to the established due date. Extension requests shall be approved or disapproved by the commissioner in writing.

(3) Programs seeking initial approval shall submit a programmatic application to the commissioner's designated representative, in accordance with section 200.7 of this Part.

(i) Tuition rates for at least the first two school years of operation for special class programs shall be established in the manner described in subparagraph (f)(2)(ix) of this section.

(ii) Tuition rates for the first two school years of operation for other than special class programs, shall be based on financial and related statistical information submitted to the commissioner on required budget forms.

(f) Principles governing reimbursement rates for approved programs. (1) Reimbursement to special education programs shall be subject to the following principles:

(i) Tuition rates shall include administration and direct care costs and the costs of operation and maintenance of instructional facilities, pursuant to section 4401 of the Education Law. Expenditures shall include but not be limited to: personal service costs, supplies, materials, equipment, and related debt service.

(ii) Evaluation costs will be reimbursed either as part of the tuition rate or through a separate evaluation rate, as warranted by the commissioner. Such separate evaluation rates shall be established by the commissioner and transmitted to the Director of the Budget for approval.

(iii) For the purposes of establishing tuition rates, program expenses shall be offset by revenues received for special education programs, as prescribed in subparagraph (2)(v) of this subdivisionirst twod in suerat[(a)-3(p)-3(p)-3

(a) any reported cost not considered necessary or directly related to the operation of the specific approved special education program;

(b) any reported cost that cannot be substantiated on field audit by adequate written documentation. Adequate documentation shall include but not be limited to: payroll records, allocation records, canceled checks, invoices, and depreciation schedules;

(c) any reported costs incurred by the program as a result of unsound business practices or accounting practices not in accordance with generally accepted accounting principles;

(d) excess depreciation or amortization costs incurred as a result of using accelerated methods or useful lives other than those required for the Consolidated Fiscal Report;

(e) costs incurred in less-than-arm's-length transactions that are determined to be above the actual, documented costs of the owner. Costs above actual, documented costs of the owner shall be allowed only with written approval of the commissioner upon the establishment of the cost effectiveness resulting from the transaction;

(f) interest expense on capital indebtedness or on working capital loans incurred in a less-than-arm's length transaction between the lender and the borrower in excess of the prime rate of the lending institution. Interest rates in excess of the prime rate shall be allowed only with the written approval of the commissioner upon establishment of the cost effectiveness resulting from the transaction; provided, however, that interest rates on working cTm(e)-3( )-edffe Co(sa)-3(ct-3(li-3(n)651 0 0 1 260.93 308.69 86[(cTm(e)-3( )-

month school year component and the July and August component shall be calculated using the same formula.

(viii) The tuition rate for special class programs seeking initial approval shall be based on the regional weighted average per diem tuition rate for two years until such time that the required financial statements and reports of the new program are received by the commissioner.

providing direct and/or indirect special education itinerant services as defined in section 200.16(i)(3)(ii) of this Part in accordance with the student's individualized education program (IEP). The difference between the total number of hours employed in the special education itinerant teacher's standard work week minus the hours of direct and/or indirect special education itinerant service hours must be spent on required functions. Such functions include but are not limited to: coordination of service when both special education itinerant services and related services are provided to a student pursuant to section 4410(1)(j) of the Education Law; preparation for and attendance at committee on preschool special education meetings; conferencing with the arationither 4i-5(r)p atui6 a(h)-3(o)-3(o)-3s

(a) A standardized method for calculating coordination rates for two or more related services established by the commissioner and approved in advanced by the Director of the Budget shall include the following provisions:

(1) Rates shall be established on a half hour service block basis.

(2) The half hour rate shall be no greater than the related services rate per half hour established by the municipality and paid to the identified service provider.

(3) Periods of less than a half hour block of time may be aggregated into half hour service blocks of coordination services for billing purposes.

(4) The rate shall be paid for up to 10 sessions during the school year and up to two sessions during a summer program.

(5) In extraordinary instances, such as those instances where extended periods of time are necessary for the coordination of three or more related services, the municipality official may extend the number of service blocks for which the service provider will be paid. However, under no circumstances may the rate exceed the applicable related services rate. Municipalities must notify the commissioner in ho3(ic6( )--5(r -11( )-28)-3(a)-3(r c0(h)-3(a) -5(r 10(te)-5(n)-3stan)-5(s)]

(i) Tuition rate appeals. A program may appeal the existing approved tuition rate for the current school year for the reasons specified in clauses (a) through (d) of this su

number of days in session in the formula set forth in subparagraph (2)(vii) of this subdivision.

(3) The per diem rates used in the total cost screen calculation, as set forth in subparagraph (2)(vi) of this subdivision, shall exclude the overpayment/underpayment adjustment.

(4) If a program will not be in operation in the tuition rate year and subsequent years, no overpayment/underpayment adjustment shall be calculated. Instead, a reconciliation rate for this program will be established for the base year in accordance with clause (iii)(a) of this paragraph.

(iv) Rates based on audit. Tuition rates shall be subject to adjustment based on a final audit of actual program expenses, revenues, enrollment and other relevant program information in accordance with section 200.18 of this Part.

(v) Rates for new special case programs. The department will accept a written request from a program to adjust rates established for the third year of operation which were based on a regional weighted average per diem, if the program demonstrates that the third year full-time-equivalent enrollment equals or exceeds the required minimum number of full-time-equivalent students in accordance with section 200.7(c)(3) of this Part.

(4) Regional maximum per trip rates for students receiving transportation services under section 4410 of the Education Law.

(i) Definitions. As used in this paragraph:

(a) Base year means the July 1st through June 30th school period that is two years prior to the school year for which the regional maximum per trip rates are calculated.

(b) Base year data means the financial information and relevant

claimed for students transported within the state divided by the one way trips within the state claimed on an enrollment basis.

(d) The regional average per trip rates will be calculated using twelve month (July to June) data for per student transportation expenses unless the regional average per trip rate separately calculated for the July/August component of the school year exceeds the regional average per trip rate for the twelve month school year by more than 15 percent, then separate July/August and September through June per trip rates will be calculated.

(e) The base year regional average per trip rate will be trended forward by the regional growth factor, which shall have been approved by the Director of the Division of the Budget, for the purposes of establishing tuition rates as described in clause (2)(vi)(b) of this subdivision.

(f) Regional maximum per trip rates shall equal the regional average per trip rate but shall not be more than 25 percent greater than the statewide average per trip rate.

(g) Regional maximum per trip rates shall be approved by the Director of the Division of the Budget.

(iii) Recordkeeping and retention. Municipalities shall maintain detailed student records and accounting records to document and support their claims. At a minimum, such records shall include trip logs by type of placement, as prescribed by the commissioner, transporter name,

(k) The accounting records of State-operated and State-supported schools shall be

(i) If the committee on special education determines that the school district has an appropriate program for such a student, or can provide an appropriate program by agreement with a board of cooperative educational services or with another school district, such committee shall recommend to the board of education that the student be admitted to such program.

(ii) In the event that the committee on special education determines that there is no program appropriate to the needs of such a student in the schools of the district, or at a board of cooperative educational services or another school district, such committee shall report its findings to the board of education.

(iii) If the committee on special education concludes that placement in a private school for students with a disability is the appropriate educational placement for the student, the committee's report to the board of education may include a recommendation that the board of education recommend that the Office of Mental Health or the Office for People With Developmental Disabilities place such a student in a private, nonresidential school for students with disabilities.

(b) Students residing in child care institutions shall be identified, evaluated and provided with suitable special education services in accordance with section 4005 of the Education Law.

(1) The committee on special education of a child care institution having its own school shall recommend to the school district in which the facility is located, that those students determined by the facility committee to be able to be

schools of the district, such committee shall report its findings to the board of education.

(c) If a board of education determines that there is no program appropriate to the needs of a student in the schools of the district, or at a board of cooperative educational services or another school district, the board of education shall give notice of such determination to the parent, if the identity of the parent is available to the board, and to the chief administrator of the facility or child care institution in which the student resides. Such notice shall also inform the recipients that either the parent or the chief administrator of the facility may obtain review of the determination made by the board of education by a hearing officer appointed by the chief administrator of the facility or child care institution in accordance with the provisions of section 200.5 of this Part. For purposes of this subdivision, the duties of the school district committee on special education and board of education or trustees set forth in section 200.5 of this Part shall be the duties of the committee on special education and chief administrator of each facility or child care institution, respectively.

(1) A parent who desires such a hearing shall so inform the chief administrator of the facility or the child care institution in writing. Written notice of the

school year, from the school to the student's home at the conclusion of the school year, and no more than three additional trips to and from school for students enrolled in a 10-month program, or four additional trips to and from school for students enrolled in receiving a 12-month special service and/or program, except as additional trips may need to be provided for the periods during which residential care is not provided to the students attending such school; and

(b) expenditures for the costs of travel, lodging and meals incurred by a volunteer escort shall also be aidable if the escort is required by the student's individualized education program and the escort is engaged pursuant to a transportation contract between the volunteer escort and the school district, subject to a test of reasonable cost by the commissioner.

200.13 Educational programs for students with autism.

(a) The functioning levels of students with autism, based upon the criteria set forth in section 200.6(h)(2) of this Part, shall govern their individual or small group instruction.

(1) The continuum of special education programs and services as described in section 200.6 of this Part shall be available to students with autism as needed.

(2) The chronological age range of instructional groups serving students with autism shall not exceed 36 months for students under age 16 and shall not be limited for students 16 years of age or older.

(3) The class size for such students shall be determined in accordance with

responsibility of the committee on special education of the school district of the student's residence. Such determinations and recommendations for students admitted to a day treatment program shall be based on consultation with the program's treatment team.

(c) Individual evaluation. In addition to conducting an individual evaluation pursuant to the requirements of section 200.4(b) of this Part, the committee on special education shall assure that appropriate staff participate in the treatment planning conducted by the treatment team. The evaluation shall include an assessment by the day treatment program's special education teacher and other appropriate professional staff of the day treatment program.

(d) Recommendation. (1) The results of the individual evaluation described in subdivision (c) of this section, as well as the suggestions of the treatment team,

to: slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, punching, shaking, burning, cutting or the use of corporal punishment. Physical abuse shall not include reasonable emergency interventions necessary to protect the safety of any person.

(b) Sexual abuse means any conduct by a custodian that subjects a student to any offense defined in article 130 or sections 255.25, 255.26 or 255.27 of the Penal Law; or any conduct or communication by such custodian that allows, permits, uses or encourages a student to engage in any act described in articles 230 or 263 of the Penal Law, except as otherwise provided in section 488(1)(b) of the Social Services Law.

(c) Psychological abuse means conduct by a custodian intentionally or recklessly causing, by verbal or non-verbal conduct, a

counter medication, which is inconsistent with a prescription or order issued for a student by a licensed, qualified health care practitioner, and which has an adverse effect on a student. Adverse effect shall mean the unanticipated and undesirable side effect from the administration of a particular medication which unfavorably affects the well-being of the student; or

(4) inappropriate use of restraints, which shall mean the use of a restraint when the technique that is used, the amount of force that is used or the situation in which the restraint is used is incon V L V W H Q W Z L W K individual treatment plan or behavioral intervention plan, generally accepted treatment practices and/or any applicable federal or state laws, reg3( )-461 isn s223.25en-6(i)12[s056004C005600 wir7hby 004C0

(ii) the names, addresses and telephone numbers of references who can verify the applicant's employment history, work record and qualifications;

(iii) a statement or summary of the applicant's educational experience showing elementary school(s), secondary school(s), or college(s)

factors as the student population served, architectural factors, and the size of the facility. Such procedures shall include, but need not be limited to, the following:

(1) staffing patterns and the rationale for such;

(2) responsibilities of supervisors;

(3) the method by which staff and volunteers will be made aware of the identity of all supervisors, including designated on-site supervisors;

(4) provision of written supervisory guidelines to employees and volunteers;

(5) periodic observations by supervisors of employees and volunteers in interaction with students;

(6) periodic supervisory conferences for employees and volunteers; and

(7) written performance evaluations of staff to be conducted by supervisors in a manner consistent with applicable provisions of the Civil Service Law and existing collective bargaining agreements.

(f) Procedures for the protection of students. All residential schools subject to this section shall develop written procedures for the protection of students from abuse, neglect and significant incidents. Such procedures shall include, but need not be limited to, the following:

(1) Duty to report. (i) Reporting incidents. Except as provided in subdivision (g) of this section, in-State residential schools shall:

(a) ensure that allegations of reportable incidents, including any death for which there is any reason to believe that abuse or neglect may be involved, shall be identified and immediately UHSRUWHG WR WKH 9XOQHUDEOH 3HUVRQV ¶ discovery by a mandated reporter in accordance with the provisions of sections 491 and 492 of the Social Services Law. Nothing in this paragraph shall be construed to prohibitBT1 0 0 10(a)-3(

Such information shall also be made available upon request to any person.

(ii) Reporting deaths. The death of any New York State student attending an in-State or out-of-State residential school shall be immediately

appropriate designee of the commissioner for approval, a written plan of prevention and remediation to be taken with respect to an individual employee or volunteer and/or the residential school to assure the continued health and safety of students and to provide for the prevention of future acts of abuse or neglect, which shall include, at a minimum, those actions previously taken pursuant to paragraph (2) of this subdivision; and

(b) in the event a report of abuse or neglect determines that such abuse or neglect may be attributed in whole or in part to noncompliance by the facility with provisions of title 6 of article 11 of the Social Services Law, or sections 4212, 4314, 4358 or 4403(11)-(12) of the Education Law or the regulations of the Commissioner of Education, develop and implement a plan of prevention and remediation, which shall address, at minimum, those areas in which the facility has been found to be out of compliance and shall indicate the manner in which the facility will come into compliance. Such plan shall be developed and submitted for approval to the appropriate designee of the commissioner within 30 days of receipt of such a report.

(ii) Significant incidents. Upon a determination of the need for preventative or remedial action associated with a report of a significant incident, the chief administrator of the residential school, after consideration of any recommendations of the State Education Department, shall develop and implement a written plan of prevention and remediation

and (m) of this section, out-of-State residential schools shall comply with following requirements:

(1) When there is an allegation of abuse or neglect of a New York State student, the residential school shall immediately notify the Justice Center, the State Education Department and any local social services district and/or school district who placed the student in the residential school of

(vi) laws, regulations and procedures, including appropriate reporting responsibilities, governing the protection of students from reportable incidents; and

(vii) any relevant information provided by the department.

(2) The department may exempt administrators from such training requirements upon demonstration of substantially equivalent knowledge or experience.

(3)

(k) Incident Review Committees. All in-State residential schools subject to this section must establish an incident review committee pursuant to section 490(1)(f) of the Social Services Law for the purpose of reviewing individual reportable incidents and incident patterns and trends to identify and implement preventative and corrective actions, which may include, but shall not be limited to, staff retraining or any appropriate disciplinary action allowed by law or contract, as well as opportunities for improvement.

(1) The incident review committee shall be composed of at least one member

(l) Access to records and residential schools. (1) The residential school shall grant access to the Department, other State oversight agencies and the Justice Center at any and all times to the residential school, and, consistent with section 200.2(b)(6) of this Part and any applicable federal or State laws or regulations, to all books, records, and data pertaining to any such school deemed necessary for the Department, State oversight agency and the Justice Center to carry out its functions, powers and duties pursuant to article 11 of the Social Services Law.

(2) In accordance with section 490(6) of the Social Services Law, records of in-state residential schools not otherwise subject to article 6 of the Public Officers Law shall be made available for public inspection and copying, when such records relate to abuse and neglect of students, consistent with the requirements of section 200.2(b)(6) of this Part. Any request made to a residential school for records relating to abuse and neglect shall be referred to the Justice Center. The residential school shall cooperate with the Justice Center and provide any records that the Justice Center deems subject to disclosure, in accordance with the provisions of 14 NYCRR section 703.

(m) Variances. Where the residential component of a school governed by this section is licensed or certified by a State agency other than the State Education Department, a variance may be granted, in whole or in part, from the requirements of subdivision (c), (e), (f), (h) (i) or (j) of this section with respect to employees or volunteers other than those employed in the educational

The summary report shall include a detailed statement of the preschool student's individual needs, if any. The summary report shall not include a recommendation as to the general type, frequency, location and duration of special education services and programs that should be provided; shall not address the manner in which the preschool student can be provided with instruction or related services in the least restrictive environment; and shall not make reference to any specific provider of special services or programs. Reports of the assessment and/or evaluation and a summary portion of the evaluation shall be provided to the members of the committee on preschool special education and to the person designated by the municipality in which the preschool student resides. An approved evaluator shall provide the parent with a copy of the statement and recommendation provided to the committee. Such statement and recommendation including the summary evaluation shall be provided in English and when necessary, in the native language of the parent or other mode of communication used by the parent unless it is not feasible to do so.

(3) Prior to making any recommendation that would place a child in an approved program owned or operated by the same agency which conducted the evaluation of the child, the committee may exercise its discretion to obtain an evaluation of the child from another approved evaluator. If the committee recommends placing a child in an approved program that also conducted an evaluation of the child, it shall indicate in writing that the placement is appropriate for the child and shall provide written notice to the commissioner of such recommendation on a form prescribed by the commissioner.

(4) For school years 1994-95 and thereafter, if the approved evaluator finds that the student requires evaluations beyond those previously authorized by the committee during the school year, or requires a reevaluation of any component, the committee must provide written authorization prior to the approved evaluator conducting the evaluation. The chairperson of the committee shall notify, at least five business days prior to the date of the evaluation, the representative of the municipality and other members of the committee of such request. The representative of the municipality or other members of the committee may request a meeting of the committee to determine the need for such an evaluation.

(5) Prior to the committee meeting, the committee shall provide the parent with a copy of the summary report of the findings of the evaluation in accordance with paragraph (2) of this subdivision. Upon request of the parent, the committee shall provide copies of all written documentation to be considered by the committee in the development of the preschool student's individualized education program.

(i) prior to recommending the provision of special education services in a setting which includes only preschool children with disabilities, the committee shall first consider providing special education services in a setting where age-appropriate peers without disabilities are typically found. Provision of special education services in a setting with no regular contact with age-appropriate peers without disabilities shall be documented on the child's IEP and shall only be considered when the nature or severity of the child's disability is such that education in a less restrictive environment with the use of supplementary aids and services cannot be achieved satisfactorily; and

(ii) only be made for a program which uses psychotropic drugs if such program has a written policy pertaining to such use. The parent of a student for whom such a recommendation is made must be provided with a copy of such written policy at the time such recommendation is made.

(4) The committee's recommendation shall be developed at a meeting of the committee on preschool special education in accordance with section 200.4(d)(4) of this Part and section 4410 of the Education Law. To the extent possible, any meeting of the committee shall be held at a site and

parent and the municipality with the reasons the board determined to provide a different program.

(3) Upon receipt of the written notification of the approval by the board of education of the committee's recommendation, the municipality shall contract with the designated preschool program provider in a manner approved by the commissioner, pursuant to section 4410 of the Education Law.

(4) The board shall notify the parent, the appropriate municipality and the commissioner of its actions on behalf of a preschool student with a disability:

(i) if, based upon the recommendation of the committee, the board approved the preschool student's program or services;

(ii) if, based upon the recommendation of the committee the board approves that such program or services must be terminated because the preschool student with a disability has moved out of the school district; or

(iii) if, based upon the recommendation of the committee the board approves that a new municipality is responsible to contract with the provider for the same special education program and services because the preschool student with a disability has moved to a different municipality within the school district. The board shall issue a new written notice of determination for the same special education service or program effective the next school day which shall become the responsibility of the new municipality in which such student resides.

(5) When a preschool student currently placed by another school district in an approved program moves into a new district, if the approved program is within a reasonable distance of such student's new school district of residence, the board of education shall issue a notice of determination to continue such program if the board approves the committee's recommendation that the program is appropriate to the student's needs.

(6) The IEP of a preschool student with a disability shall be implemented in accordance with section 200.4(e)(1)(i) and (ii), (3), (4), (7), (8) and (9) of this Part, except that during the pendency of proceedings conducted pursuant to paragraphs (h)(9) and (10) of this section, the placement of a preschool student shall be as provided in paragraph (h)(3) of this section.

(g) Annual review. The individualized education program (IEP) of each preschool student with a disability shall be reviewed and, if appropriate, revised periodically but not less frequently than annually in accordance with section 200.4(f) of this Part. In any such meeting of the committee, the professional who participated in

further action will be taken by the committee on preschool special education until such consent is obtained; and

(iv) indicate that a preschool student who received services pursuant to section 236 of the Family Court Act or its successor during the previous year may continue to receive, from the provider of such services, preschool special education services in an approved program appropriate to the needs of such student until all proceedings have been completed.

(4) Notice of meetings. The meeting notice shall be provided in accordance with section 200.5(c) of this Part. In addition, such notice shall inform the parent of the opportunity to address the committee in person or in writing.

(5) Notice upon recommendation. Prior written notice of the recommendation of the committee on preschool special education shall be provided to the board of education and to the parent of the preschool student in accordance with section 200.5(a) of this Part. The notice upon recommendation shall indicate that, in the event that the parent does not provide consent for the initial provision of special education services, no further action will be taken by the committee on preschool special education until such consent is obtained.

(6) Board of education notice. The board of education shall notify the parent of the preschool student of its determination of placement pursuant to sections 200.2(d) and section 200.5(a) of this Part.

(7) Consent to initial evaluation or initial placement. Written consent of the parent, as defined in section 200.1(l) of this Part, is required in accordance with section 200.5(b) of this Part.

(8) Mediation. The board of education shall ensure that mediation sessions are available to the parent of a preschool child to resolve disputes in accordance with section 4404-a of the Education Law and section 200.5(h) of this Part.

(9) Impartial due process hearings. Impartial due process hearings shall be

(12) Surrogate parents. Surrogate parents shall be appointed in accordance with section 200.5(n) of this Part.

(13) Confidentiality of personally identifiable information. Personally identifiable data, information or records pertaining to a preschool student with a disability shall be maintained in accordance with section 200.2(b)(6) of this Part.

(i) Continuum of services.

means a regular preschool program or day care program approved or

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the approved program may temporarily increase the enrollment of a class up to a maximum of 13 preschool students for the remainder of the school year, by a procedure to be established by the Commissioner, to ensure that the student receives a free appropriate public education. If the attendance during the instructional time exceeds 12 students, another staff member shall be assigned to the class. Other staff members may include related service providers and/or supplementary school personnel.

(c) such services shall be provided for not less than two and one half hours per day, two days per week; and

(d) consistent with the requirements of section 200.20(a)(9) of this Part, the special class shall include instructional services and related services, as specified in the V W X G H Q W ¶ V L Q G L Y L G education program.

(iv) in-state residential special education programs and services shall be provided to each preschool student with a disability for whom such services have been recommended for a minimum of five hours per day, five days per week. Placement in such residential programs shall be approved by the commissioner in accordance with section 200.6(j) of this Part;

(v) 12-month special services and/or programs shall be provided to eligible preschool students with disabilities consistent with their individual needs, as specified in their individualized education programs. Preschool students with disabilities may be considered for such special services and/or programs in accordance with their need to prevent substantial regression if they are:

(a) preschool students whose management needs are determined to be highly intensive and require a high degree of individualized attention and intervention; or

(b) preschool students with severe multiple disabilities, whose programs consist primarily of habilitation and treatment; or

(c) preschool students whose special education needs are determined to be highly intensive and require a high degree of individualized attention and intervention or who have severe multiple disabilities and require primarily habilitation and treatment in the home; or

(d)

(e) preschool students who are not described in clauses (a) through (d) of this subparagraph whose disabilities are severe enough to exhibit the need for a structured learning environment of 12 months duration to prevent substantial regression as determined by the preschool committee on special education.

(vi) The commissioner may grant a waiver from any requirement in sections 200.1, 200.6, and 200.16 of this Part, upon a finding that such waiver will enable a preschool program, as defined in section 200.1(nn) of this Part, to implement an innovative special program that is consistent with State law, applicable Federal requirements and all other sections of this Part, and will enhance student development and/or increase opportunities for preschool students with disabilities to interact with students without disabilities.

(a) Except as otherwise provided in clause (c) of this subparagraph, any preschool program as defined in section 200.1(nn) of this Part shall submit an application for a waiver at least 60 days in advance of the proposed starting date of the program. Such application shall be in a form prescribed by the commissioner.

(b) Except as otherwise provided in clause (c) of this subparagraph, any preschool program as defined in section 200.1(nn) of this Part granted a waiver shall submit an annual report to the commissioner regarding the operation and evaluation of the program no later than 30 days after the end of each school year for which a waiver is granted.

(c) Any preschool program as defined in section 200.1(nn) of this Part granted a waiver for three consecutive school years may be granted a permanent waiver, upon a finding by the commissioner that the program has resulted in improved student achievement and/or enhanced opportunities for preschool students with disabilities to interact with students without disabilities and is consistent with State law and Federal requirements and all other sections of this Part. A preschool program as defined in section 200.1(nn) of this Part that is granted a permanent waiver shall not be required to submit an annual application or an annual report. A permanent waiver shall continue until terminated in accordance with clause (d) of this subparagraph.

(d) The commissioner may terminate a waiver granted pursuant to this subdivision upon a finding that the program has not met its stated objectives or upon a finding that the program is no longer consistent with any requirement of State or Federal law or provision of this Part not specifically waived in the approval granted pursuant to this subdivision. The commissioner shall provide at least 30 days notice of a proposed termination. The

district, school or agency shall be afforded the opportunity to

most recent year for which satisfactory data are available bears to the total number of such students residing in the State on that date.

(iii) The commissioner shall, prior to July 1st of each school year, notify each district of its allocation and set forth procedures and forms for making application for the use of such funds.

(iv) Upon receipt and approval of such application, the commissioner shall forward to the applicant an advance payment of Federal funds which shall not exceed the approved amount budgeted by the applicant or the allocation, whichever is the lesser amount.

(v) In January of any year in

by the commissioner for reimbursement of such costs pursuant to section 4410(11) of the Education Law within 30 days of the date on which the payment was made to the school district.

(ix) Due process costs shall not be included in allowable administrative costs.

(b) Reimbursement of due process costs. (1) Allowable costs associated with due process proceedings for students eligible to receive services pursuant to section 4410 of the Education Law shall include all reasonable and appropriate costs incurred by the school district as determined by the commissioner. A detailed accounting and itemization of all due process costs incurred may be submitted in a format prescribed by the commissioner no later than 30 days after the determination of the hearing officer has been received by the school district.

(2) The commissioner shall review the due process costs and, if indicated, recommend a student specific tuition rate to the director of the budget for certification. Upon approval, the commissioner will notify the school district and the appropriate municipality of such student specific tuition rate.

(3) The school district shall submit a voucher to the appropriate municipality for all approved due process costs within 30 days of the receipt of the certified student specific tuition rate notification.

(4) The appropriate municipality shall reimburse the school district for all due process costs within 30 days of receipt of the voucher from the school district for such approved due process costs as required by the certified student specific rate notification.

200.18 Fiscal audits of app

(2) Access to all records, property and personnel related to approved programs shall be provided during an audit. Access shall also apply to program costs allocated to approved programs. Such cost allocations to related programs are also subject to audit.

(3) Approved programs shall be provided a draft report on the results of the audit for review and comment. The chief school official of the approved program or an individual designated by the official shall reply in writing to a draft State audit within 30 days of its receipt and may request a conference. The draft audit report shall be considered final if no reply is received within 30 days.

(b) Fiscal audits of approved preschool programs and services approved under section 4410 of the Education Law performed by the municipality and accepted by the commissioner.

(1) Each municipality, or, in addition, in the case of a city having a population of one million or more, the board of education of the city school district of such city, may perform fiscal audits of approved preschool programs and services for which it bears fiscal responsibility. Access to all records, property and personnel related to approved programs shall be provided during an audit. Access shall also apply to program costs allocated to approved programs. Such cost allocations to related programs are also subject to audit.

(2) Prior to conducting an audit of aud Lawauss t.1 72.024 au(r)] TJETf auauss8cces

(3) Upon approval of the audit program and audit plan by the commissioner, the municipality may conduct audits in conformance with generally accepted auditing standards. Commissioner approval of an audit program and audit plan shall be valid for a period of five years from the date of approval. Municipalities need not submit an audit program and audit plan for each audit to be performed during the five year approval period once approval has been granted by the commissioner. However, modifications to the approved audit plan and audit program shall be submitted to the department for review and approval and new approval must be obtained once the five year approval period has concluded.

(4)

through (3) and (b)(3), (5) and (6) of this Part, except that the following requirements shall apply:

(1)

(8)

Federal Trade Commission or any official department, division, commission or agency of the State.

(11) Business plan. (i) By January 1, 1997, each approved provider of special services and programs for preschool children with disabilities, including local educational agencies, shall develop and submit to the department, in a format prescribed by the department, a business plan in accordance with subdivision 9-d of section 4410 of the Education Law and this paragraph.

(ii) The business plan shall include:

(a) a plan for the redirection of fiscal and personnel resources toward providing special education programs and services in settings with children who do not have disabilities rather than a program or setting which includes only preschool children with disabilities, by such means as:

(1) converting a full-

field as such term is defined in section 200.1(qq) of this Part; and, consistent with the requirements of section 80-3.10 of this Title, shall hold New York State certification as a School Building Leader or School District Leader or School Administrator/Supervisor. Nothing in this paragraph shall require that an approved preschool program hire an educational director in addition to the executive director, when the executive director otherwise provides the on-site direction of the program.

(6) Make-up of missed services. Each preschool provider shall, consistent with Department guidelines, ensure the make-up of missed services occurs, consistent with the duration and location specified in the IEP, within 30 days of the missed session unless there is a documented child-specific reason why the make-up session could not be provided within 30 days.

(7) Program standards for instruction of preschool students with disabilities. Each approved provider shall, as applicable, ensure that preschool students with disabilities receive instruction and positive behavioral supports that are based on peer reviewed or evidence-based practices and consistent with the standards in this paragraph.

(i) Instructional standards for approved preschool special class programs.

(a) By not later than September 1, 2017, providers shall adopt and implement curricula aligned with the New York State Prekindergarten Learning Standards, which ensures continuity with instruction in the early elementary grades; and shall provide early literacy and emergent reading programs based on developmentally appropriate, effective and evidence-based instructional practices.

(b) The instructional program for preschool students with disabilities shall edc239.6(d)6( )] TJETBT1 0 0 1 194.42 ch asd

(a) By not later than September 1, 2017, providers shall establish and implement a program-wide system of positive evidence-based practices to support social-emotional competence and teach social-emotional skills to preschool students, which shall include:

(1) universal supports for all children through nurturing and responsive relationships and high quality environments;

(2) practices that are targeted social-emotional strategies to prevent problem behaviors; and

(3) practices related to individualized intensive interventions.

(b) Except as provided pursuant to section 201.8 of this Title, no preschool student with a disability may be suspended, expelled or otherwise removed by the provider from an approved preschool special education program or service because of W K H V W X G H Q W ¶ V E H K D Y L R U S U L R U W R

(2) The commissioner shall conduct such reapproval review in accordance with the department's ongoing quality assurance procedures, including schedules, in order to determine that the program under review provides quality services in a necessary and cost-efficient manner and in the least

(ii) Additional information may be requested from the complainant, as appropriate, which may include a request for a sworn affidavit.

(iii) The impartial hearing officer shall be provided an opportunity to respond in writing and provide documentation to the State Education Department. The response from the impartial hearing officer must be received not later than 30 days from the date the impartial hearing officer receives the complaint summary.

(iv) All relevant information shall be reviewed.

(v) A written final decision shall be sent to the impartial hearing officer and complainant that addresses each allegation in the complaint.

(vi) If, upon a review of the facts, the commissioner finds misconduct or incompetence on the part of the impartial hearing officer, the commissioner may issue a warning letter to the impartial hearing

200.22 Program standards for behavioral interventions.

Behavioral interventions for students with disabilities shall be provided in accordance with this section and those other applicable provisions of this Part and/or Part 201 that are not inconsistent with this section.

(a) Assessment of student behaviors. For purposes of this section, an assessment of student behaviors

behavioral interventions and supports and other strategies to address that behavior. If a particular device or service, including an intervention, accommodation or other program modification is needed to address the

(7) Staff shall continuously monitor the student in a time out room. The staff must be able to see and hear the student at all times.

(8) The school shall establish and implement procedures to document the use of the time out room, including information to monitor the effectiveness of the use of the time out room to decrease specified behaviors.

(9) For an education program operated pursuant to section 112 of the Education Law and Part 116 of this Title, if a provision of this section relating to use of time out rooms conflicts with the rules of the respective State agency operating such program, the rules of such State agency shall prevail and the conflicting provisions of this section shall not apply.

(d) Emergency Interventions. (1) For purposes of this subdivision, emergency means a situation in which immediate intervention involving the use of reasonable physical force pursuant to section 19.5(a)(3) of this Title is necessary.

(2) Use of emergency

(e) Child-specific exception to use aversive interventions to reduce or modify student behaviors. A child-specific exception to the prohibition of the use of aversive interventions set forth in section 19.5 of this Title may be granted for a school-age student, in accordance with the procedures outlined in this subdivision, only during the 2006-2007, 2007-2008 and 2008-2009 school years; provided that a student whose IEP includes the use of aversive interventions as of June 30, 2009 may be granted a child-specific exception in each subsequent school year, unless the IEP is revised to no longer include such exception. No child-specific

other counseling services, speech and language therapy and/or functional communication training.

(iv) Aversive interventions shall be combined with reinforcement procedures, as individually determined based on an assessment of t K H V W X G H Q W ¶ V U H L Q I R U F H P H Q W S U H I H U H Q F H V

(v) Aversive interventions shall be implemented consistent with peer-reviewed research based practices and shall include individualized procedures for generalization and maintenance of behaviors and for the fading of the use of such aversive interventions.

(vi) The use of aversive interventions shall be limited to those self-injurious or aggressive behaviors identified for such interventions on W K H V W X G H Q W ¶ V , (3

(vii) Whenever possible, the use of aversive interventions shall apply the lowest intensity for the shortest duration and period of time that is effective to treat the problem behavior and employ strategies that increase the effectiveness of mild levels of aversive interventions. In the event the aversive intervention fails to result in a suppression or reduction of the behavior over time, alternative procedures shall be considered that do not include increasing the magnitude of the aversive intervention.

(viii) The use of any aversive conditioning device used to administer an electrical shock or other noxious stimuli to a student to modify undesirable behavioral characteristics shall be limited to devices tested for safety and efficacy and approved for such use by the United States Food and Drug Administration where such approval is required by Federal regulation. The magnitude, frequency and duration of any administration of aversive stimulus from such a device must have been shown to be safe and effective in clinical peeconsistes5544o(e)-3(v8(te)-5(rv)

practitioner; one registered dietician or nutritionist; one attorney, law student or paralegal; and one parent or parent advocate and may include not more than two additional individuals selected by the school

consent for an aversive intervention. A parent shall be given a copy of the school's policies and procedures on the use of aversive interventions.

(6) Quality assurance reviews. The program providing aversive interventions shall conduct periodic reviews of all incident reports relating to such interventions to ensure that practices are clinically sound, supported by proper documentation and consistent with these program standards and the VFKRRO¶V SROLFLHV DQG SURFHGXUHV DV DSSURYH

(7) Progress monitoring. (i) The program shall provide for ongoing monitoring of student progress, including the collection and review of data and

December 2010

REGULATIONS OF THE COMMISSIONER OF EDUCATION
Pursuant to Sections 207, 3214, 4403, 4404 and 4410 of the Education Law

PART 201 - PROCEDURAL SAFEGUARDS FOR STUDENTS WITH DISABILITIES SUBJECT TO DISCIPLINE
(Includes all Amendments through December 2010)

PART 201
PROCEDURAL SAFEGUARDS FOR STUDENTS WITH DISABILITIES SUBJECT TO DISCIPLINE

201.1 Purpose.

The purpose of this Part is to implement the procedural protections of paragraph g of subdivision 3 of section 3214 and subdivision 1 of section 4404 of the Education Law relating to student discipline by coordinating the general procedures for suspension of students under Education Law section 3214 with the requirements of section 615(k) of the Individuals with Disabilities Education Act (20 U.S.C. section 1415[k]) and the Federal regulations implementing such statute.

201.2 Definitions.

As used in this Part, the following terms shall have the following meanings:

(a) Behavioral intervention plan means a plan that is based on the results of the functional behavioral assessment and, at a minimum, includes a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs and intervention strategies that include positive behavioral supports and services to addres(g)6()-134 Tm[(F76(d)-3(a)4(d)-3(d)-3(res(g)66i)4(d)-3(d.95T1

(2) Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day).

(e) Disciplinary change in placement means a suspension or removal from a student's current educational placement that is either:

(k) Interim alternative educational setting or IAES a temporary educational placement, 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:

(1) 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 V W X G H Q W ¶ V , (3 D Q G

(2) rece

(b) Individuals to carry out review. A review described in subdivision (a) of this section shall be conducted by a manifestation team in a meeting, which shall include a representative of the school district knowledgeable about the student and the interpretation of information about child behavior, the parent and relevant members of the CSE as determined by the parent and the school district. The parent must receive written notification prior to any manifestation team meeting to ensure that the parent has an opportunity to attend. The notification shall inform the parent of the purpose of the meeting, the names of the individuals expected to attend and inform the parent of his or her right to have relevant members of the CSE participat H D W W K H S D U H Q W ¶ V U H T X H V W

(c) Conduct of review. The manifestation team shall review all relevant information L Q W K H V W X G H Q W ¶ V I L O H L Q F O X G L Q J W K H V W X G H Q W ¶ any relevant information provided by the parents to determine if:

(1) the conduct in question was caused by or had a direct and substantial U H O D W L R Q V K L S W R W K H V W X G H Q W ¶ V G L V D E L O L W \ F

(2) W K H F R Q G X F W L Q T X H V W L R Q Z D V W K H G L U H F W U H V X implement the IEP.

(d) Determination. (1) The conduct must be determined to be a manifestation of the

Part, if the school district is deemed to have had knowledge as determined in accordance with subdivision (b) of this section, that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. Where the school district is deemed to have had knowledge that the student was a student with a disability before such behavior occurred, such student is a "student presumed to have a disability for discipline purposes."

(b) Basis of knowledge. Except as otherwise provided in subdivision (c) of this section, a school district shall be deemed to have knowledge that such student had a disability if prior to the time the behavior occurred:

(1) the parent of such student has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency or to a

(e) Conditions that apply if there is no basis for knowledge. If the superintendent of schools, building principal or other school official imposing the disciplinary removal determines that there is no basis for knowledge that the student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as any other nondisabled student who engaged in comparable behaviors. However, if a request for an individual evaluation is made while such nondisabled student is subjected to a disciplinary removal, an expedited evaluation shall be conducted in accordance with 201.6 of this Part.

201.6 CSE responsibilities for expedited evaluations.

(a) If a request for an individual evaluation is made during the period that a nondisabled student, who is not a student presumed to have a tions.

(b)

(i) has inflicted serious bodily injury, as defined in section 201.2(m) of this Part, upon another person while at school, on school premises or at a school function under the jurisdiction of the educational agency;

(ii) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of the educational agency; or

(iii) knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises or at a school function under the jurisdiction of the educational agency.

(2) The period of suspension or removal ordered by the superintendent may not exceed the amount of time that a nondisabled student would be suspended for the same behavior.

(f) School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement consistent with the other requirements of this Part is appropriate for a student with a disability who violates D V F K R R O G L V W U L F W ¶ V F R G H R I F R Q G X F W

201.8 Authority of impartial hearing officer to order a change in placement to an IAES in a dangerous situation.

(a) An impartial hearing officer appointed pursuant to Education Law section 4404(1), in an expedited due process hearing conducted pursuant to section 201.11 of this Part, may order a change in placement of a student with a disability to an appropriate interim alternative educational setting (IAES) for not more than 45 school days, if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or others.

(b) The procedures established in this section may be repeated if the school district believes that returning the student to the original placement is substantially likely to result in injury to the student or others.

(c) A school district shall not be required to commence disciplinary action against a student with a disability as a prerequisite for initiating an expedited due process hearing to obtain an order of an impartial hearing officer pursuant to this section.

(d) $ G H W H U P L Q D W L R Q W K D W W K H V W X G H Q W ¶ V E H K D Y L R U disability shall not preclude an impartial hearing officer from ordering a change in placement to an IAES pursuant to this section.

201.9

placement should not be considered, the hearing shall proceed to the penalty phase.

(2) Upon a determination by the manifestation team that the behavior of a student with a disability was not a manifestation of the student's disability, such student may be disciplined in the same manner as a nondisabled student, except that such student shall continue to receive services in accordance with section 201.10 of this Part. Upon receipt of notice of such determination, the superintendent or hearing officer in

disability, except where the student is placed in an IAES for behavior involving serious bodily injury, weapons, illegal drugs or controlled substances pursuant to section 201.7(e) of this Part or the student is placed in an IAES by an impartial hearing officer pursuant to section 201.8 of this Part.

and modifications that are designed to address the behavior violation so it does not recur. The IAES and services shal

(i)