

PROGRAMS FOR STUDENTS WITH DISABILITIES

(X) Required

() Local

() Notice

NEW NOTE: We have revised this policy in response to Formal Opinion of Counsel No. 242 from the NYS Department of Education, issued 7/6/23), regarding the applicability of a 2nd Circuit court ruling (A.R. v. Connecticut State Board of Education) to school districts in New York State. The Opinion and Court case clarify that the federal Individuals with Disabilities Act (IDEA) requires districts to provide special education services to students with disabilities until their 22nd birthday, if they have not received a high school diploma. New York State Education law section 4402 requires such services be provided until the end of the school year in which the student turns 21 (students with birthdays in July and August could continue until the end of the summer program).

NOTE: This policy serves as a comprehensive overview of the Board's obligations regarding special education (the other policies that follow in the series offer more detail on specific requirements). Special education is an area in which federal and state statutes, regulations and case law keep evolving, resulting in the need to periodically review and update school district policies.

The Board of Education ~~shall make~~ makes available a free appropriate public education to all students with disabilities who reside within its district and are eligible for special education and related services under the Individuals with Disabilities Education Act and Article 89 of New York's Education Law, and their implementing regulations. Special education and related services will be provided to resident eligible students with disabilities in conformity with their individualized education program (IEP) and in the least restrictive environment appropriate to meet their individual educational needs. Special education services or programs will be designed to enable ~~a student~~ students with disabilities to be involved in and progress in the general education curriculum, to the extent appropriate to ~~his/her~~ needs.

~~—~~ their needs.

The Board also ~~shall make~~ makes available special education and related services to eligible students with disabilities parentally placed in a nonpublic school located within the district, regardless of whether they are residents of the district. However, this obligation does not extend to resident students with disabilities who are placed by their parents in a nonpublic school within district boundaries because of a disagreement between the parents and the school district over the provision of a free appropriate public education. Nonpublic school students with disabilities who are not district residents but who reside within New York State will be provided programs and services in accordance with their individualized education services program (IESP). Nonpublic school students with disabilities who reside out-of-state will be provided services in accordance with their services plan (SP). (Refer to policy 4321.10, Programs and Services for Parentally-placed Nonpublic School Students with Disabilities under the IDEA and New York's Education Law Article 89 for more guidance on this topic).

In addition, to the maximum extent appropriate to their individual needs, eligible students with disabilities residing within the district and attending the district's public schools will be entitled to participate in school district academic, cocurricular and extracurricular activities available to all other students enrolled in the district's public schools. Such cocurricular and extracurricular activities may

include athletics, transportation, recreational activities, school-sponsored special interest groups or clubs, and referrals to agencies that provide assistance to individuals with disabilities and the employment of students (including both employment by the school district and assistance in making outside employment available).¶

In providing a free appropriate public education to students with disabilities eligible under the IDEA and Article 89, the Board will afford the students and their parents the procedural safeguard rights they are entitled to under applicable law and regulations. The Board also will provide them with notice of such rights as required by law and regulation, using the form prescribed by the commissioner of education.¶

For purposes of this policy and others related to the provision of services to eligible students with disabilities, and consistent with applicable law and regulation, the word parent means a birth or adoptive parent, a legally appointed guardian generally authorized to act as the ~~HAUPPAUGE 4321~~ child's parent or authorized to make educational decisions for the child; a person in parental relationship to the child as defined in section 3212 of the Education Law; an individual designated as a person in parental relation pursuant to title 15-A of the General Obligations Law, including an individual so designated who is acting in the place of a birth or adoptive parent (including a grandparent, stepparent, or other relative with whom the child resides; or a surrogate parent who has been appointed in accordance with commissioner's regulations.¶

NEW NOTE: In the Formal Opinion of Counsel No. 242, the State Education Department (SED) clarified that school districts are legally obligated to provide a free appropriate public education to students with disabilities up until a student's 22nd birthday. In this Opinion, SED also recommended districts consider providing special education and related services to students beyond their 22nd birthday, through to the end of the school year in which a student turns 22. SED recommends this decision be part of the larger discussion between schools and families concerning students' transition from school to post-school activities. Before adopting language to that effect, whether as a wholesale practice or upon recommendation by the CSE, we urge districts considering such a policy to consult with their school attorneys regarding the legal implications. Possible language could be "until the end of the school year in which they turn 22, after discussion with the student's family and upon the recommendation of the CSE" instead of "until their 22nd birthday" as shown below.

Eligible students with disabilities will be entitled to special education and related services until ~~the end of the school year in which they turn 21~~ their 22nd birthday or until they receive a local high school or Regents diploma.¶

~~—, whichever comes first.~~

NOTE: Students with disabilities who graduate with a local high school or Regents diploma; or a skills and achievement commencement or career development and occupational studies commencement credential remain eligible for services in districts that provide post-graduation services to non-disabled students under section 3202 of New York's Education Law.

Students with disabilities may not be required to take medication as a condition for receiving a free appropriate public education.¶

To ensure the provision of a free appropriate public education to all eligible students with disabilities:•
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The Board will adopt and maintain a district special education services plan in conformance with Commissioner's Regulations (8NYCRR 200.2(c)). The plan will be available for public inspection and review by the Commissioner of Education.¶¶

~~1. 2.~~

School district staff will take steps to locate, identify, evaluate and maintain information about all children with disabilities within the district, including homeless children and ¶¶

~~2. 3.~~ children who are wards of the state, and children attending nonpublic school within the district (including religious schools), who are in need of special education.

~~4.~~ The district will establish a plan and practice for implementing school-wide approaches and interventions in order to remediate a student's performance prior to referral for special education services. The district will provide general education support services, instructional modifications, and/or alternative program options to address a student's performance before referring the student to the Committee on Special Education (CSE). The ~~IST (In-School Support~~
~~Support~~**insert name of district team that is responsible for RTI, i.e. Child Study Team**) will develop, implement and evaluate pre-referral intervention strategies (4321.2, School-wide Pre-referral Approaches and Interventions).¶¶

~~3. 5.~~

4. School district staff will initiate a request for evaluation of a student who has not made adequate progress after an appropriate period of time when provided instruction under a response to intervention program. In making the request the staff person will describe in writing intervention services, programs and methodologies used to remediate the student's performance prior to referral. In addition, the extent of parental contact will be described as well.

~~6.~~ The Board will appoint a committee on special education (CSE), and, as appropriate, CSE subcommittees, to assure the timely identification, evaluation and placement of eligible students with disabilities.¶¶

~~5. 7.~~

The Board will arrange for special education programs and services based upon the recommendation of the CSE or CSE subcommittee.¶¶

~~6. 8.~~

The Superintendent ~~shall~~ will establish a plan for the recruitment, hiring and retention of staff appropriately and adequately prepared to meet the needs of students with disabilities including, but not limited to, highly qualified special education teachers. ~~HAUPPAUGE 4321~~¶¶

~~7. 9.~~

8. The Superintendent ~~shall~~ ~~shall~~ will establish a comprehensive professional development plan designed to ensure that personnel necessary to carry out IDEA and Article 89 possess the skills and knowledge required to meet the needs of students with disabilities. ~~+10-~~

9. The Superintendent will establish a process for ensuring that district staff understand the right of students with disabilities to access and participate in the same academic, cocurricular and extracurricular programs and activities as all other students enrolled in the district's public schools, to the maximum extent appropriate to their individual needs.¶

Locate and Identify Students with Disabilities¶¶

The district will conduct an annual census to locate and identify all students with disabilities who reside in the district, and establish a register of such students who are entitled to attend the public schools of the district during the next school year, including students with disabilities who are homeless or wards of the State. The census ~~shall~~ ~~shall~~ will be conducted, and the registry maintained, in accordance with the requirements established in Commissioner's regulations.¶¶

The Superintendent will determine what other activities might be appropriate to help ~~locate~~ and identify students with disabilities. These may include, but are not limited to, the mailing of letters to all district residents regarding the availability of special education programs and services and their right to access such services, and/or the publication of a similar notice in school newsletters and other publications. ¶

(Refer to policy 4321.10, Programs and Services for Parentally-placed Nonpublic School Students with Disabilities under the IDEA and New York's Education Law Article 89, for more information regarding how to locate and identify nonpublic school students with disabilities).*

Evaluation of Students with Disabilities ¶

To initially determine a student's eligibility for a free appropriate public education under the IDEA and Article 89, the district will conduct a full evaluation of the student in accordance within legally prescribed time lines. As set forth in Commissioner's regulations, the initial evaluation will include, at least, a physical examination, an individual psychological evaluation unless the school psychologist determines it unnecessary, a social history, an observation of the student in the student's learning environment to document the student's academic performance and behavior in the areas of difficulty, and other appropriate assessments or evaluations (including a functional behavioral assessment for a ~~student~~ students whose behavior impedes ~~his or her~~ their learning or that of others) to ascertain the physical, mental, behavioral and emotional factors that contribute to the suspected disabilities. ¶

Once a student has been determined eligible to receive a free appropriate public education, the district will reevaluate the student with a disability whenever the student's parent requests a reevaluation, and when the district determines the educational and related services needs (including improved academic achievement and functional performance) of the child warrant a reevaluation. However, a reevaluation must take place at least once every three years, unless the student's parent and the district agree it is unnecessary. ¶

Parental Consent for Student Evaluations ¶

Before conducting any type of evaluation, district staff will take steps to obtain written informed consent from a student's parent, as required by applicable law and regulations. They also will keep a detailed record of those attempts and their results, including phone calls and correspondence, visits to the parent's home and any responses received. ¶

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If a parent refuses to give consent for an initial evaluation, or fails to respond to such a request, the parent will be given an opportunity to attend an informal conference and ask questions about the proposed evaluation. Unless the referral for evaluation is withdrawn, if the parent continues to withhold consent, the Board will commence due process proceedings to conduct an initial evaluation without parental consent within the time lines established in Commissioner's regulations. ¶

~~4. 2.~~

If a parent refuses to give consent for a reevaluation, or fails to respond to such a request, district staff will proceed with the reevaluation without parental consent if it has engaged in documented reasonable efforts to obtain such

consent and the parent has failed to respond. If the district cannot document its efforts to obtain consent, the Board will commence due process proceedings to conduct a reevaluation without parental consent.¶¶

~~2. 3.~~

3. If district staff is unable to obtain consent for the initial evaluation or reevaluation of a home schooled or a parentally-placed nonpublic school student, the Board will not commence due process proceedings to conduct the evaluation without parental consent, and will consider the student as not eligible for special education.*

Conduct of Evaluations¶¶

In conducting evaluations of students with disabilities, the district will use a variety of assessment tools and strategies, including parent-provided information, to gather relevant functional, developmental, and academic information for determining a student's eligibility for special education and related services, and the content of the student's individualized education program or individualized education services program or services plan in the case of nonpublic school students with disabilities (including information related to enabling the student to be involved in and progress in the general education curriculum).¶¶

The district also will assess a student in all areas of suspected disability, and the assessment and other evaluation used will not be discriminatory on a racial or cultural basis. In addition, students will be assessed in the language and form most likely to yield accurate information on what the student actually knows and can do academically, developmentally, and functionally, unless it is not feasible to do so.¶¶

In the case of students suspected of having a specific learning disability, the district will follow the procedures established in commissioner's regulations.¶¶

The district will notify a student's parent of any determination that no additional data is needed and the reasons for such a determination. It will also inform ~~the parent of his or her~~ parents of their right to request an assessment, notwithstanding that determination.*

Eligibility Determination¶¶

The CSE or CSE subcommittee will determine whether a student is eligible for special education and related services under the IDEA and Article 89, as well as the student's educational needs.¶¶

The CSE or CSE subcommittee may not determine that a student is eligible for special education and related services if the determining factor is lack of appropriate instruction in the essential components of reading, including phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies; or lack of appropriate instruction in math; or limited English proficiency.*

Committee on Special Education¶¶

The members of the CSE and CSE subcommittees will include those individuals identified in applicable law and regulations, and their attendance at CSE and CSE subcommittee meetings will be required except as otherwise provided in law and regulations.¶¶

The parent of a student with disabilities is one of the mandated CSE and CSE subcommittee members and as such has a right to participate in CSE and CSE subcommittee meetings concerning the identification, evaluation, educational placement, and the provision of a free appropriate public education to their child. District staff will take steps to ensure the parent's participation, in accordance with the following:¶¶

1. ~~2.~~

CSE and CSE subcommittee meetings will be scheduled at a time and place that is mutually agreeable to the parent and the district.¶¶

~~4.~~ ~~2.~~

The parent will be given at least five days notice of the time and place of a CSE or CSE subcommittee meeting, except as otherwise provided in law and regulation, along with notice of the purpose of the meeting, those who will attend (including name and title), and the parent's right to be accompanied to the meeting by person(s) the parent considers to have knowledge and special expertise about their child.¶¶

~~2.~~ ~~3.~~

The parent and the district may agree to use alternative means of participation at CSE meetings, such as videoconferences or telephone conference calls.¶¶

~~3.~~ ~~4.~~

District staff will take any action necessary to ensure that the parent understands the proceedings at CSE meetings, including arranging for an interpreter for deaf parents or parents whose native language is other than English.¶¶

¶¶

~~4.~~

The CSE or CSE subcommittee may meet without a student's parent only if district staff has been unable to obtain either parent's participation, and has a record of its attempts to arrange a mutually agreed upon time and place. Similarly, the CSE or CSE subcommittee may make a decision without the involvement of the student's parent only if district staff has been unable to obtain parental participation, even through the use of alternative means of participation, and has a record of its attempts to ensure parental involvement.¶

Provision of Services¶¶

The Board will arrange for appropriate special education and related services recommended by the CSE or CSE subcommittee within 60 school days of the district's receipt of parental consent to evaluate a student not previously identified as a student with a disability, or within 60 school days of referral for review of a student with a disability, except as otherwise provided in law and regulations.¶¶

All staff responsible for the implementation of a student's individualized education program, or an individualized education services program or services plan in the case of parentally placed nonpublic school students with disabilities, will be provided information regarding those responsibilities (Refer to policy 4321.5 for more information on this topic).¶¶

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Parental Consent for the Provision of Services

The Board acknowledges that parental consent for initial evaluation does not constitute consent for placement for the provision of special education and related services. Therefore, district staff will take steps to obtain written informed consent for the initial provision of special education and related services to an eligible student. The Board will be precluded by applicable law and regulations from commencing due process proceedings to override the parent's refusal to provide such consent or override the parent's failure to respond to such a request.

Transition Service and Diploma/Credential Options

In accordance with law and regulation, the Board will ensure the provision of transition services, which are a coordinated set of activities for students with disabilities that facilitates movement from school to post-school activities, which may include but are not limited to post-secondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living or community participation. At age 15, or younger if appropriate, the student's IEP will include a statement of transition service needs and will include undertaking activities in the following areas:

- Instruction
- Related services
- Community experiences

- 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 provision of a functional vocational evaluation.

In developing the plan for transition services, students and parents will be made aware of the range of diploma and credential options available and the requirements associated with each option.

~~Cross ref. 1900,~~

NOTE: One of the best resources available to school districts for understanding the overall and specific school district responsibilities in providing special education programs and services is the website maintained by the State Education Department's Office of Special Education. The address for the website is: <http://www.p12.nysed.gov/specialed>.

Cross ref:

- 1900, Parental Involvement (Title I)
- 4000, Student Learning Objectives and District Instructional Goals
- 4773, Diploma and Credential Options for Students with Disabilities
- 5500, Student Records
- 6700, Purchasing

9700, Staff Development

Ref:

The Individuals with Disabilities Education Act (IDEA), 20 USC §§1400 *et seq.*;
34 CFR Part 300

~~N.Y.~~

Education Law Article 89, §§4401 *et seq.*;
8 NYCRR Part 200

~~Adoption date: May 4, 2021~~

A.R. v. Connecticut State Board of Education, 5 F.4th 155 (2021)
Formal Opinion of Counsel No. 242 (7/6/2023), NYSED

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