



TO: P-12 Education Committee

FROM: Angélica Infante-Green *A. Infante - Green*

SUBJECT: Proposed Amendments to Sections 100.2, 200.1, 200.2, 200.3, 200.4, 200.5, 200.15, 200.16 and 201.11 of the Regulations of the Commissioner of Education Relating to Students with Disabilities

DATE: March 28, 2019

AUTHORIZATION(S):

 *Mary Ellen Eis*

SUMMARY

Issue for Decision

Should the Board of Regents adopt the amendment to sections 100.2, 200.1, 200.2, 200.3, 200.4, 200.5, 200.15, 200.16 and 201.11 of the Commissioner's regulations to conform to recent amendments to both New York State (NYS) Education Law and NYS Social Services Law relating to students with disabilities?

Reason(s) for Consideration

Required by Statute (Chapters 422, 428, and 429 of the Laws of 2017 and Chapter 32 of the Laws of 2018).

Proposed Handling

The proposed amendment is being presented to the P-12 Education Committee for recommendation to the Full Board for adoption as a permanent rule at its April 2019 meeting. A copy of the proposed amendment is included as Attachment A.

Procedural History

A Notice of Proposed Rule Making was published in the State Register on October 3, 2018. Following the 60-day public comment period required under the State Administrative

Procedure Act, the Department received approximately fourteen comments. An Assessment of Public Comment is included as Attachment B.

Background Information

There have been several recent statutory changes that relate to students with disabilities, which require conforming changes to the Commissioner's regulations. The proposed amendments are necessary to conform the Commissioner's regulations to the amendments made by Chapters 422, 428 and 429 of the Laws of 2017 and Chapter 32 of the Laws of 2018 as more specifically set forth below. The proposed changes were presented to the P-12 committee at their September 2018 meeting.

On November 29, 2017, the Governor signed Chapters 422, 428 and 429 of the Laws of 2017 relating to, respectively, State oversight agencies ensuring that facilities under the jurisdiction of the NYS Justice Center have policies and procedures for reporting possible crimes against service recipients; referrals to State adult service agencies for certain students with disabilities who have reached the age of 18 and board of education written policies for the appropriate declassification of students with disabilities; establishing that all school districts are approved evaluators of preschool students suspected of having a disability. On April 18, 2018, the Governor signed Chapter 32 of the Laws of 2018 relating to policies allowing students to participate in a high school graduation ceremony. The provisions of Chapters 428 and 429 have been part of the mandate relief and flexibility legislative proposals relating to special education advanced by the Department each year. Those legislative proposals include only those areas that, given other safeguards in place, are not expected to significantly impact the quality of special education supports and services available to students with disabilities.

Chapter 422 amends Social Services Law §491 to require State oversight agencies (i.e., Office of Mental Health, Department of Health, Office for People with Developmental Disabilities, Office of Children and Family Services, Office of Alcoholism and Substance Abuse Services, and the State Education Department [SED]) to ensure that all facilities or provider agencies operated, licensed, or certified by such State oversight agency have policies and procedures in place to identify and report possible crimes against a service recipient by a custodian. Custodian is defined in Social Services Law to mean a director, operator, employee or volunteer of a facility or provider agency; or a consultant, an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to a facility or provider agency pursuant to contract or other arrangement that permits such person to have regular and substantial contact with individuals who are cared for by the facility or provider agency. The law also requires State oversight agencies to provide guidance to facilities or provider agencies operated, licensed, or certified by such State oversight agency that do not already have policies and procedures for the identification and reporting of possible crimes. To comply with the law, SED must ensure that in-State residential schools have policies and procedures consistent with the requirements of Chapter 422.

Chapter 428 amends Education Law §4402 to eliminate the requirement for committees on special education (CSE) to provide notification about adult services to the parents of students with disabilities who receive residential special education services or

students who receive nonresidential special education services 100 percent of the school day, have intensive management needs or a severe disability, and may need adult services. This statutory requirement was enacted prior to the federal law requirement for transition planning, including the requirement to invite potential transition providers, which could include adult service agencies, to CSE meetings to prepare a student for transition to adult life. To streamline the process, Chapter 428 instead replaces this with the requirement that the CSE, with parental consent (or student consent, if over the age of 18), notify and invite a representative from the Office of Mental Health, Office for People with Developmental Disabilities, or SED, as appropriate, to participate in the development of adult service recommendations not later than the first annual review prior to the eighteenth birthday of a student with a disability who is placed by the CSE in a residential program or day program if the CSE has determined that the student is likely to require adult residential services. With parental consent (or student consent, if over the age of 18), the CSE must release the student's name and other relevant student information in a report to the appropriate public agency(ies), upon the request of such agency(ies), for purposes of determining appropriateness of an adult program for the student. In addition, Chapter 428 repealed the requirement in Education Law §4402 that required boards of education to develop plans and policies for appropriate declassification of students with disabilities. Consistent with federal and State requirements, committees on preschool special education (CPSEs)/CSEs must still meet at least annually (i.e., annual review) to determine a student's continuing eligibility for special education services. In addition, all students with disabilities must continue to receive a reevaluation prior to a recommendation for declassification.

Chapter 429 amends Education Law §4410 to establish that all school districts are deemed approved evaluators of preschool students suspected of having a disability without the need to submit an application to SED. School districts regularly conduct evaluations of school-age students with disabilities. Prior to Chapter 429, similar to any other public or private agencies with appropriately licensed or certified professionals, school districts needed to apply to the Commissioner of Education to be an approved evaluator of preschool students suspected of having a disability. Chapter 429 eliminated the additional paperwork for school districts to provide evaluation services to preschool students with disabilities. Staff who provide such evaluation services must have appropriate licensure or certification.

Chapter 32 of the Laws of 2018 amends Education Law §4402 to require the board of education or the board of trustees of each school district to establish a policy and adopt procedures to allow any student to participate in the graduation ceremony of the student's high school graduating class (i.e., the twelfth-grade class with which such student entered into ninth grade) and all related activities if such student has been awarded a Skills and Achievement Commencement Credential or Career Development and Occupational Studies Commencement Credential but has not otherwise qualified for a Regents or local high school diploma. School districts must provide annual written notice to all students and their parents or guardians about the policy and procedures adopted by the school district.

Related Regents Items

[P-12 Education September 2018](#)

(<http://www.regents.nysed.gov/common/regents/files/918p12d1.pdf>)

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That subdivision (oo) of §100.2, subdivision (ppp) of §200.1 and subdivision (n) of §200.15 be added to the Commissioner's regulations and that subdivision (b) of §200.2, subparagraph (vi) of paragraph (2) of subdivision (c) of §200.2, subdivision (e) of §200.3, subparagraph (i) of paragraph (3) of subdivision (e) of §200.4, subdivision (i) of §200.4, paragraph (6) of subdivision (a) of §200.5, subparagraph (iii) of paragraph (1) of subdivision (b) of §200.4, subparagraph (i) of paragraph (3) of subdivision (j) of §200.5, paragraph (1) of subdivision (f) of §200.15, subdivision (g) of §200.15, paragraph 1 of subdivision (c) of §200.16, and paragraph (1) of subdivision (b) of §201.11 of the Regulations of the Commissioner of Education be amended, as submitted, effective April 24, 2019.

Timetable for Implementation

If adopted at the April 2019 Regents meeting, the proposed amendment will become effective as a permanent rule on April 24, 2019.

Attachment A

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 3204, 4402, 4403 and 4410, Chapters 422, 428 and 429 of the Laws of 2017 and Chapter 32 of the Laws of 2018.

1. A new subdivision (oo) of section 100.2 of the Regulations of the Commissioner of Education is added as follows:

(oo) Graduation ceremony participation policy. The board of education or the board of trustees of each school district shall establish a policy and adopt procedures to allow any student who has been awarded a Skills and Achievement Commencement Credential, or a Career Development and Occupational Studies Commencement Credential, as defined in section 100.6 of this Part, but has not otherwise qualified for a Regents or local high school diploma, to participate in the graduation ceremony of the student's high school graduating class and all related activities. For purposes of this subdivision, a student's high school graduating class shall be the twelfth-grade class with which such student entered into ninth grade.

(1) Such policy and procedures shall provide for annual written notice to be provided to all students and their parents or guardians about the policy and procedures adopted by the school district in accordance with this subdivision.

(2) Nothing in this subdivision shall compel a student to participate in the high school graduation ceremony and activities.

(3) Such policy and procedures shall be consistent with other school district policies and procedures relating to participation in graduation applicable to all students, including policies and procedures which prohibit participation in the graduation ceremony and related activities as a consequence of violating the school district's code of conduct.

2. A new subdivision (ppp) of section 200.1 of the Regulations of the Commissioner of Education is added as follows:

(ppp) *Approved evaluator* means either:

(1) a group of professionals associated with a public or private agency approved by the commissioner pursuant to section 200.7(a) of this Part that are appropriately licensed and/or certified to conduct evaluations of preschool students with disabilities; or

(2) a school district that has staff with appropriate New York State licensure and/or certification to conduct evaluations of preschool students with disabilities.

3. Subdivision (b) of section 200.2 of the Regulations of the Commissioner of Education is amended as follows:

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

(1) . . .

(2) . . .

(3) . . .

(4) . . .

(5) . . .

(6) . . .

(7) . . .

[(8) for the appropriate declassification of students with disabilities which must include:

(i) the regular consideration for declassifying students when appropriate

(ii) a reevaluation of the student prior to declassification; and

(iii) the provision of educational and support services to the student upon declassification;]

[(9)] (8) . . .

[(10)] (9) . . .

[(11)] (10) . . .

[(12)] (11) . . .

[(13)] (12) . . .

[(14)] (13) . . .

[(15)] (14) . . .

4. Subparagraph (vi) of paragraph (2) of subdivision (c) of section 200.2 of the Regulations of the Commissioner of Education is amended as follows:

(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 available in a usable alternative format, as such term is defined in paragraph [(b)(10)] (b)(8) of this section, for each student with a disability at the same time as such instructional materials are available to nondisabled students. To meet this requirement, the district plan may incorporate by reference the plan established by the board of education pursuant to paragraph [(b)(10)] (b)(8) of this section;

5. Subdivision (e) of section 200.3 of the Regulations of the Commissioner of Education is amended as follows:

(e) Role of the chairperson of the committee. The chairperson of the committee on special education, committee on preschool special education and subcommittee on special education shall preside over a meeting of such committee and carry out the functions of a chairperson identified in this Part and in the Education Law, including but not limited to

sections [200.2(b)(11)(iii)] 200.2(b)(10)(iii), 200.4(a), 200.5(b)(1)(i)(c) and, as appropriate, 200.16(b)(1) of this Part, and sections 4401-a, 4402(7)(c) and, as appropriate, 4410(3) of the Education Law.

6. Subparagraph (i) of paragraph (3) of subdivision (e) of section 200.4 of the Regulations of the Commissioner of Education is amended as follows:

(i) ensuring that each regular education teacher, special education teacher, related service provider, and/or other service provider, as defined in section [200.2(b)(11)(i)(a)] 200.2(b)(10)(i)(a) of this Part, who is responsible for the implementation of a student's IEP, is provided a paper or electronic copy of the IEP prior to the implementation of such IEP or shall be able to access such student's IEP electronically. If the board of education or board of trustees adopts a policy that the student's IEP is 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;

7. Subdivision (i) of section 200.4 of the Regulations of the Commissioner of Education is repealed and a new subdivision (i) is added as follows:

(i) Referrals to State adult service agencies for certain students with disabilities who have reached the age of 18. (1) Pursuant to Education Law section 4402(1)(b)(5) and (7), the committee on special education or, in the case of a State-operated school, the multidisciplinary team shall, with parental consent or consent of a student 18 years of age or older, notify and invite a representative of the Office of Mental Health, Office for People With Developmental Disabilities, or the State Education Department, as appropriate, to participate in the committee on special education meeting for the development of a recommendation for adult services pursuant to section 7.37 or 13.37 of the Mental Hygiene Law; section 398c of the Social Services Law or section 4403 of the Education Law, not

later than the annual review prior to the eighteenth birthday of a student with a disability who is placed by the committee or multidisciplinary team in:

(a) a residential program; or

(b) a day program, when the committee or multidisciplinary team has determined that the student is likely to require adult residential services.

(2) The committee on special education or multidisciplinary team shall give the parent or guardian of the student, or a student 18 years of age or older, the opportunity to consent in writing to the release of relevant information to such other public agency or agencies, upon request of such agency or agencies, for purposes of determining appropriateness of an adult program for such student.

(a) For the purposes of this paragraph “relevant information” shall be defined as that information in the possession of and used by the committee on special education or the multidisciplinary team to ascertain the physical, mental, emotional and cultural-educational factors which contribute to the student’s disability, including but not limited to:

(i) results of physical and psychological examinations performed by private and school district physicians and psychologists;

(ii) relevant information presented by the parent, guardian and teacher;

(iii) school data which bear on the student’s progress including the student’s most recent individualized education program;

(iv) results of the most recent examinations and evaluations performed pursuant to section 200.4 of this Part; and

(v) results of other suitable evaluations and examinations possessed by the committee on special education or multidisciplinary team.

Nothing in this subparagraph shall be construed to require any committee on special education or multidisciplinary team to perform any examination or evaluation not otherwise required by law or regulation.

(b) Upon consent obtained pursuant to this paragraph, the committee on special education or multidisciplinary team shall forward the student's name and other relevant information in a report to the appropriate public agency as determined by the committee on special education or multidisciplinary team, based upon the student's disability and physical, mental, emotional and social needs.

(c) The committee on special education or multidisciplinary team shall forward additional and updated relevant information to the appropriate public agency upon the request for such information by such agency, with the consent of the student's parent, or the student, if such student is 18 years or older.

(3) When the committee on special education or multidisciplinary team is notified by the public agency which received the report that such state agency is not responsible for determining and recommending adult services for the student, the committee on special education or multidisciplinary team shall forward the report to another public agency; or, if the committee on special education or multidisciplinary team determines that there exists a dispute as to which state agency has the responsibility for determining and recommending adult services, the committee on special education or multidisciplinary team may forward the report to the Council on Children and Families for a resolution of the dispute.

8. Paragraph (6) of subdivision (a) of section 200.5 of the Regulations of the Commissioner of Education is amended as follows:

(6) Other required notifications. A parent of a student with a disability shall also be provided written notification as follows:

(i) . . .

(ii) . . .

[(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)] (iii) . . .

[(v)] (iv) . . .

9. Subparagraph (iii) of paragraph (1) of subdivision (b) of section 200.4 of the Regulations of the Commissioner of Education is amended as follows

(iii) prior to releasing any personally identifiable information as described in subdivision (e) of this section, in accordance with sections 200.2(b)(6) and 200.4(h) and (i) of this Part;

10. Subparagraph (i) of paragraph (3) of subdivision (j) of section 200.5 of the Regulations of the Commissioner of Education is amended as follows:

(i) Except as provided in subparagraph (ii) of this paragraph and paragraph (6) of this subdivision, appointment from the impartial hearing officer list must be made in accordance with the rotational selection process established in section 200.2(e)(1) of this Part and the administrative procedures established by the board of education pursuant to section [200.2(b)(9)] 200.2(b)(8) of this Part.

(a) . . .

(b) . . .

(c) . . .

11. Paragraph (1) of subdivision (f) of Section 200.15 is amended as follows:

(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 reportable incidents to the Vulnerable Persons' Central Register.*

(i) ...

(ii)...

12. Subdivision (g) of section 200.15 is amended as follows:

(g) Out-of-State residential schools. In addition to the provisions of subdivisions (c)(1)(i) through (vii), (d), (e), (f)(1)(ii), (f)(2), (f)(3)(i)-(ii), (f)(4)(i) and (iii), (h), (i)(1), (j), (l)(1) and (m) of this section, out-of-State residential schools shall comply with following requirements:

(1) ...

(2) ...

(3) ...

(4) ...

13. A new subdivision (n) of section 200.15 is added as follows:

(n) *Duty to report crimes to law enforcement.* All in-State residential schools subject to this section shall have policies and procedures in place to identify and report possible crimes against a student by a custodian to local law enforcement officials.

14. Paragraph (1) of subdivision (c) of Section 200.16 is amended as follows:

(c) *Individual evaluation and reevaluation.* (1) Upon the consent and selection by the parent of an approved program with a multidisciplinary evaluation component to conduct an individual evaluation, as defined in section 200.1(aa) of this Part, the board shall arrange for such evaluation by the [service provider] approved evaluator, as defined

in section 200.1(ppp) of this Part, selected by the parent. In addition, with the consent of the parents, approved evaluators and committees shall be provided with the most recent evaluation report for a child in transition from programs and services provided pursuant to title two-a of article 25 of the Public Health Law. Nothing herein shall be construed to prohibit an approved evaluator or the committee from reviewing other assessments or evaluations to determine if such assessments or evaluations fulfill the requirements of this Part.

15. Paragraph (1) of subdivision (b) of section 201.11 of the Regulations of the Commissioner of Education is amended as follows:

(1) Upon receipt of or filing of a due process complaint notice for an expedited hearing, the board of education shall arrange for an impartial hearing and the appointment of an impartial hearing officer using the list in accordance with the rotational selection process established in section 200.2(e)(l) of this Title and the administrative procedures established by the board of education pursuant to section [200.2(b)(9)] 200.2(b)(8) of this Title.

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on October 3, 2018 the State Education Department (SED) received the following comments on the proposed amendment.

1. COMMENT:

Commenter supports requiring school districts to permit students awarded a Skills and Achievement Commencement Credential (SACC) or Career Development and Occupational Studies Commencement Credential (CDOS) to participate in the graduation ceremony and all related activities class, and to provide notice of such policy to students and parents/guardians. However, the commenter sought an additional requirement that any such policy also include notice to parents of students with disabilities that a student's right to free appropriate public education (FAPE) ends only at the end of the school year in which they turn 21 or after receipt of a Regents or local diploma.

DEPARTMENT RESPONSE:

To the extent that comments are supportive, no response is necessary. However, to the extent that commenter seeks an amendment to require additional notice to a parent, the Department does not believe such requirement is necessary. Commissioner's regulation §200.5(a)(5)(iii) already requires that, prior to a student's exit with an SACC or CDOS Credential, prior written notice must be provided to the student's parent indicating that the student continues to be eligible for FAPE until the end of the school year in which the student turns age 21 or until the receipt of a Regents or local high school diploma. However, nothing prohibits a district from including in its annual written notice of the graduation policy that any

student under twenty-one years of age who has not received a high school diploma continues to be entitled to a free appropriate public education.

2. COMMENT:

Several commenters opposed requiring school districts to be mandatory preschool evaluators. Commenters suggested amendments to Ch. 429 of the Laws of 2017 or that the regulations be revised to clarify that districts *may* become evaluators of preschool children with disabilities but are not required to do so. Many comments raised concerns with lack of school district resources to perform preschool evaluation, echoing statements that school districts may not have the capacity or the inclination to take on this responsibility.

DEPARTMENT RESPONSE:

Pursuant to Education Law §4410, each Board of Education (BOE) has the responsibility to identify each preschool child suspected of having a disability who resides within the school district. Evaluation and eligibility determinations must be made within 60 school days of receipt of the parent's consent to evaluate. The legislative intent of Ch.429 of the Laws of 2017 was to eliminate additional paperwork for school districts by establishing that all school districts are deemed approved evaluators of preschool students suspected of having a disability and does not expressly require school districts to perform preschool evaluations. Rather it establishes that school districts are approved to perform preschool evaluations without any additional authorization from the New York State Education Department. If a school district has staff with appropriate New York State licensure and/or certification to conduct evaluations of preschool students, then school districts are one option, along with other approved Multidisciplinary Evaluation programs, that may be selected by the parent.

In order to perform the preschool evaluation, a school district may include itself on the list of approved Multidisciplinary Evaluation programs that its CPSE provides to the parent. If the school district is selected by the parent, as with any approved evaluator, the school district may accept or decline to perform the evaluation depending on the availability of its staff with the appropriate licensure and/or certification.

While Ch.429 of the Laws of 2017 does not expressly require districts to conduct preschool evaluations, districts remain subject to the federal and State statutory and regulatory requirements of ensuring timely evaluations of preschool students. In order to meet its responsibilities, a school district may be required to conduct the evaluation of preschool students residing in their district. Therefore, no revisions are necessary.

3. COMMENT:

Many commenters expressed concern that districts do not have the resources or proper materials to provide evaluations for preschoolers and that requiring districts to provide such evaluations would divert resources from school-age students. Specifically, one commenter raised concerns related to existing collective bargaining agreements and the impact on school-aged providers/evaluators.

DEPARTMENT RESPONSE:

Presently, all preschool evaluations must meet the requirements of §200.4(b) and §200.16(c) of the Commissioner's regulations and must be conducted by staff with appropriate New York State licensure and/or certification. If selected by the parent, as with any approved evaluator, the school district may accept or decline to conduct the evaluation depending on the availability of its staff with the appropriate licensure and/or certification or the ability to meet the evaluation standards of §200.4(b) and §200.16(c). Provided that just

as the provision of services for school-age students is a responsibility of the school district, so is the timely evaluation of a preschool student. Therefore, no revisions are necessary.

4. COMMENT:

Commenter sought clarification on the impact of school districts as approved preschool evaluators on existing contracted services through BOCES and/or independent contracts for school-age evaluation components such as occupational and physical therapy.

DEPARTMENT RESPONSE:

The proposed rulemaking is necessary to implement the provisions of Ch. 429 of the Laws of 2017 which provides that school districts are deemed approved evaluators of preschool students with disabilities. The manner in which school districts provide such evaluations is outside the scope of this rulemaking, and therefore no revisions are necessary. However, the Department may issue additional guidance for school districts who wish to provide such evaluations.

5. COMMENT:

Commenter expressed concerns that school districts do not have staff with the appropriate early childhood experience.

DEPARTMENT RESPONSE:

While the Department understands the concerns related to resources, the proposed rulemaking is necessary to implement the provisions of Ch. 429 of the Laws of 2017 which provides that school districts are deemed approved evaluators of preschool students with disabilities. Whether or not and the manner in which school districts provide such evaluations is outside the scope of this rulemaking, and therefore no revisions are necessary. Additionally, the proposed rulemaking requires any such evaluators of preschool

students with disabilities to have the appropriate New York State licensure and/or certification.

6. COMMENT:

Commenter was concerned that school districts would not meet required quality standards when performing preschool evaluations.

DEPARTMENT RESPONSE:

The proposed rulemaking is necessary to implement the provisions of Ch. 429 of the Laws of 2017 which provides that school districts are deemed approved evaluators of preschool students with disabilities and does not change the evaluation requirements applicable to all evaluators pursuant to §200.4(b) and §200.16(c) of the Commissioner's regulations. The comment is outside of the scope of the proposed regulation and no revisions are necessary.

7. COMMENT:

Commenter indicated that more evaluators are needed to avoid extended wait times and expressed support for any efforts to ensure timely evaluations of preschool children.

DEPARTMENT RESPONSE:

The comment is outside the scope of the proposed rulemaking. However, Commissioner's regulation §200.16(c)(2) presently requires that the initial individual evaluation must be completed within 60 days of receipt of parental consent to evaluate.

8. COMMENT:

Several commenters asked if school districts are required to contract with a municipality in order to receive reimbursements for evaluations, noting that this will take time to complete.

DEPARTMENT RESPONSE:

This comment is outside the scope of the proposed rulemaking. School districts who choose to perform preschool evaluations remain subject to the existing provisions of section Education Law §4410 which requires municipal contracts for the purposes of receiving New York State and county reimbursement for preschool evaluations.

9. COMMENT:

Commenter asked if school districts are responsible to provide services to preschool students with disabilities or only evaluations.

DEPARTMENT RESPONSE:

Consistent with Chapter 429 of the Laws of 2017, the proposed regulation only relates to school districts as approved evaluators. However, Education Law §4410 governs the responsibilities of school districts in relation to the provision of a free appropriate public education.

10. COMMENT:

Several commenters asked how school districts would be reimbursed for the expense of providing preschool evaluations and raised concerns about preschool evaluations becoming an unfunded mandate. Commenters noted that reimbursement rates do not cover the actual costs of complex evaluations and the costs of such evaluations have not fallen within the approved local budgets which are subject to the property tax cap. Commenters recommended that reimbursement rates be revised to be consistent with similar types of medical evaluations to reflect actual and trending costs in the region of the school district. Commenters recommend that parity be maintained with a single billing and reimbursement system for all evaluators with single rate of reimbursement.

DEPARTMENT RESPONSE:

This comment is outside the scope of the proposed rulemaking. The provisions of Education Law §4410 relating to reimbursement remain the same. Additionally, reimbursement rates for all preschool evaluations are recommended by the Department and approved by the Division of the Budget. They are published annually:

http://www.oms.nysed.gov/rsu/Rates_Methodology/Rates/NonRSURates/home.html#PreschoolEval

11. COMMENT:

How will the timeliness and provision of preschool evaluations be enforced?

DEPARTMENT RESPONSE:

Chapter 429 of the Laws of 2017 pertains to school districts as approved evaluators only. As a result, the comment is outside the scope of the proposed rulemaking and no revisions are necessary. However, the existing regulations provide that all preschool evaluators must meet quality standards as outlined in §200.4(b) and §200.16(c).

12. COMMENT:

Commenter noted that the proposed regulations do not differentiate between the separate authorizations for preschool evaluators (i.e., approved programs with an evaluation component and a public/private agency independent evaluators) under Education Law §4410(9) and §4410(9-a) and requested that this distinction be preserved. Commenter was also concerned that a cross reference to section 200.7(a) relating to “private school approval” does not properly reflect evaluators who might be approved without a corresponding program approval.

DEPARTMENT RESPONSE:

Consistent with Chapter 429 of the Laws of 2017, the proposed regulation merely deems school districts as approved evaluators of preschool students and does not implicate the process by which other programs or individuals may be approved to provide such evaluations. SED recognizes the two separate subdivisions contained within Education Law §4410 which authorize preschool evaluators; however, SED's existing approval process for approved programs with an evaluation component and evaluators approved for the Multidisciplinary Evaluation program only is the same under the law. Education Law §4410(9-a) states that "[t]he Commissioner shall approve evaluators pursuant to this subdivision consistent with the approval process for the multi-disciplinary evaluation component of programs approved pursuant to subdivision nine of this section consistent with regulations adopted pursuant to such subdivision." Therefore, the comment is outside the scope of the rulemaking and no revisions are necessary.

Additionally, the cross citation in the proposed rulemaking to §200.7 references SED's general program standards for the approval of education programs, including preschool programs for students with disabilities being educated in private agencies (both approved programs with an evaluation component and evaluators approved for the Multidisciplinary Evaluation program only). As the proposed regulation does not change SED's existing approval process for private Multidisciplinary Evaluation programs that are part of an approved program evaluation component or those that are standalone, no revisions are necessary.