



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: September 6, 2018

AUTHORIZATION(S):  *Mary Ellen Eina*

SUMMARY

Issue for Discussion

Should the Board of Regents amend §§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 discussion at the September 2018 Board of Regents meeting. A copy of the proposed amendment is attached.

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on October 3, 2018 for a 60-day public comment period in accordance with the State Administrative

Procedure Act. Supporting materials are available upon request from the Secretary to the Board of Regents.

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.

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. The 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

Not Applicable.

Timetable for Implementation

Following the 60-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the January 2019 Regents meeting. If adopted at the January 14-15, 2019 meeting, the proposed amendment will become effective on January 30, 2019.

Attachment

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) . . .

9. 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)...

10. Subdivision (g) is amended of section 200.15 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) ...

11. 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.*

12. 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.

13. 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.