



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** P-12 Education Committee

**FROM:** Ken Slentz 

**SUBJECT:** Proposed Amendment of Sections 200.4, and 200.16 of the Regulations of the Commissioner of Education Relating to Preschool and School-Age Individual Evaluations

**DATE:** November 30, 2011

**AUTHORIZATION(S):**

### Summary

#### Issue for Discussion

Should the Regents amend sections 200.4 and 200.16 of the Regulations of the Commissioner of Education relating to preschool and school-age individual evaluations?

#### Reason for Consideration

Review of Policy

#### Proposed Handling

The proposed amendment is before the P-12 Education Committee for discussion at the December 2011 meeting.

#### Procedural History

None

#### Background Information

Proposals to amend the regulations relating to preschool and school-age individual evaluations were part of the broader mandate relief discussion by the Board of Regents at the February, May and November 2011 meetings. During the summer of 2011, the Department sought public comment and conducted three public hearings on the subject of

mandate relief. At the November 2011 Regents meeting, the P-12 Committee directed Department staff to develop proposed regulations to amend requirements for preschool and school-age individual evaluations. The proposed amendment would:

1. Amend section 200.4(b) to clarify that the 60-day timeline to complete an evaluation pertains to an initial evaluation of a student suspected of having a disability and to repeal the requirement that a school psychologist prepare a written report of his/her determination of the need to administer an individual psychological evaluation for a reevaluation of a student with a disability.
2. Amend section 200.16 to align the preschool initial evaluation timeline (i.e., 30 school days from receipt of consent) to the federal timeline for initial evaluations and the timeline established in New York for school-age evaluations (i.e., 60 calendar days), to allow school districts additional time to complete preschool initial evaluations, while continuing to ensure the timely provision of programs and services within 60 school days from receipt of consent to evaluate; and

Additional information on these two proposed amendments follows:

### **Evaluations and Reevaluations**

Education Law section 4402(1)(b)(3)(a) requires that a school psychologist make a determination of the need to administer an individual psychological evaluation to a school-age student for both initial and reevaluations<sup>1</sup>. This determination is made based on an assessment conducted by the school psychologist to substantiate his or her determination. Section 200.4(b)(2) of the Regulations of the Commissioner further requires that whenever a school psychologist determines that a psychological evaluation is unnecessary, the psychologist must prepare a written report of his/her assessment, including a statement of the reasons such evaluation is unnecessary. The Committee on Special Education (CSE) must then review the psychologist's report to determine whether a psychological evaluation is needed for the student.

The proposed amendment would repeal the requirement that a school psychologist prepare a written report of his/her determination of the need to administer an individual psychological evaluation as part of a reevaluation of a school age student, while retaining the requirement for the written report for an initial evaluation. The determination that a psychological evaluation is not necessary as part of a student's reevaluation would be considered when, consistent with federal and State regulations, the CSE and other qualified individuals review existing evaluation data as part of any reevaluation and determine what if any additional evaluations must be completed. Regulations require that the reevaluation be sufficient to determine the student's individual needs, educational progress and achievement, the student's ability to participate in instructional programs in general education and the student's continuing eligibility for special education.

---

<sup>1</sup> A reevaluation of every student with a disability must be conducted at least once every three years unless the parent and the district agree in writing that the reevaluation is not necessary.

The proposal also clarifies that, consistent with federal requirements, the 60-day timeline to complete an evaluation pertains to initial evaluations only.

### **Timeline to conduct the initial evaluation of preschool students**

The proposed amendment would change the timeline to conduct the initial evaluation of a preschool child from 30 school days to 60 calendar days. The State's current mandated timeline to provide the preschool student with his/her recommended special education services is not affected by this proposal.

The federal standard for completing an initial evaluation is 60 calendar days. While the State's timeline for school-age evaluations is consistent with this federal standard, the State has a shorter timeline (30 school days) established for the completion of preschool evaluations [Section 200.4(e)(1)]. Therefore, the requirements provide less time (depending on the school calendar, by approximately 12 or more calendar days) for preschool initial evaluations to be completed than school-age initial evaluations.

The State collects and reports data annually on the percentage of students who receive their initial evaluations within the State required timelines. In the 2009 federal fiscal year, the State reported that only 68.4 percent of preschool children had their initial evaluations completed within the 30 school days, in part, because of the shorter timeline requirement and the State reliance on approved evaluators and parental choice of evaluators. Data shows that approximately 35 percent of the preschool evaluation delays were between one and ten days.

### Recommendations

It is recommended that the Regents P-12 Education Committee discuss the proposed amendment in December 2011 and take action at the March 2012 Regents meeting.

### Timetable for Implementation

A Notice of Proposed Rule Making will be published in the State Register on January 4, 2012. Public comment on the proposed amendment will be accepted for 45 days from the date of publication in the State Register. A copy of the proposed amendment is attached. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

The proposed amendment is before the Committee for discussion in December 2011 and, following the receipt of public comment, will be submitted for action at the March 2012 meeting with a proposed effective date of April 11, 2012.

Attachment

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 4402, 4403 and 4410.

1. Paragraphs (1) and (2) of subdivision (b) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective April 11, 2012, as follows:

(b) Individual evaluation and reevaluation. (1) Unless a referral for an evaluation submitted by a parent or a school district is withdrawn pursuant to paragraph (a)(7) or (9) of this section, after parental consent has been obtained or a parental refusal to consent is overridden, an individual evaluation of the referred student shall be initiated by a committee on special education. The initial individual evaluation shall be completed within 60 days of receipt of consent unless extended by mutual agreement of the student's parents and the CSE pursuant to subparagraph (7)(i) and paragraph (j)(1) of this subdivision. The individual evaluation shall include a variety of assessment tools and strategies, including information provided by the parent, to gather relevant functional, developmental and academic information about the student that may assist in determining whether the student is a student with a disability and the content of the student's individualized education program, including information related to 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) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(2) A determination by a school psychologist of the need to administer an individual psychological evaluation to a student of school age pursuant to Education Law, section 4402(1)(b)(3)(a) and section 200.1(aa) and (bb) of this Part, shall be based upon an assessment conducted by the school psychologist to substantiate his or her determination. Whenever a school psychologist determines that a psychological evaluation is unnecessary as a component of the initial evaluation, the psychologist shall prepare a written report of such assessment, including a statement of the reasons such evaluation is unnecessary, which shall be reviewed by the committee.

2. Paragraph (2) of subdivision (c) of section 200.16 of the Regulations of the Commissioner of Education is amended, effective April 11, 2012, as follows:

(2) Except as provided in section 200.4(b)(7) of this Part, [The] the initial individual evaluation shall be completed within 60 days of receipt of consent to evaluate and conducted in accordance with section 200.4(b) of this Part. 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 [so as to allow for a recommendation by the committee to be made to the board within thirty school days of the receipt of consent]. 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. Paragraph (1) of subdivision (e) of section 200.16 of the Regulations of the Commissioner of Education is amended, effective April 11, 2012, as follows:

(e) Recommendation. (1) The committee on preschool special education shall [provide a] meet to review the results of the initial evaluation and develop a recommendation [to the board of education] within [30 school days] 60 calendar days of the date of the receipt of consent to evaluate.

4. Paragraph (1) of subdivision (f) of section 200.16 of the Regulations of the Commissioner of Education is amended, effective April 11, 2012, as follows:

(f) Provision of services for preschool students with disabilities. (1) Upon receipt of the recommendation of the committee, the board of education shall arrange for the preschool student with a disability to receive such programs and services commencing with the July, September or January starting date for the approved program, unless such services are recommended by the committee less than 30 school days prior to, or after, such appropriate starting date selected for such preschool student, in which case, such services shall be provided as soon as possible following development of the IEP, but no later than 30 school days from the recommendation of the committee and within 60 school days from receipt of consent to evaluate. If the board disagrees with the recommendation of the committee, it shall send the recommendation back to the committee with notice to the parent and the committee including a statement of the board of education's reasons and that the recommendation will be sent back to the committee with notice of the need to

schedule a timely meeting to review the board's concerns and to revise the IEP as deemed appropriate.