




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

**TO:** P-12 Education Committee  
**FROM:** Ken Slentz   
**SUBJECT:** Mandate Relief – Special Education Requirements  
**DATE:** November 2, 2011  
**AUTHORIZATION(S):**

### SUMMARY

#### Issue for Decision

Do the Regents support legislative and/or regulatory amendments that would provide mandate relief in special education?

#### Reason(s) for Consideration

Review of policy.

#### Proposed Handling

This item will come before the P-12 Education Committee for action at their November 2011 meeting.

#### Background Information

At their May 16, 2011 meeting, the P-12 Education Committee and the Subcommittee on State Aid issued a vote of support for the Department to seek public comment on several special education mandate relief recommendations prior to proposing statutory revisions or adopting regulatory changes. Following that meeting, information was posted on the Office of Special Education website to provide an opportunity for stakeholders to submit written comment on the proposals. In addition, three public hearings were conducted in June 2011 in Rochester, Albany and Brooklyn, at which more than 200 individuals attended and 67 individuals provided oral testimony. The Department received approximately 700 written and oral comments in total.

The majority of comments were submitted by psychologists and professional psychology organizations. Other commenters included school district administrators, organizations representing public schools, parents and family members of students with disabilities, general and special educators, related service providers, preschool providers, advocates/advocacy organizations, teacher's unions, and others. Most commenters opposed one or more of the special education mandate relief proposals. The largest number of comments was received on the proposals to conform the membership of the Committee on Special Education (CSE) and Committee on Preschool Special Education (CPSE) to the federal individualized education program (IEP) team and to adopt the federal standard for initial evaluations. Many of the commenters who opposed special education mandate relief in general expressed concern that a number of the proposals will have an adverse effect on students with disabilities, particularly low income students, and that school districts, faced with fiscal challenges, will make decisions at the expense of students. Other commenters felt that the proposals will not provide enough relief to school districts. Attached is a summary of comment received on each of the nine proposals.

### Next Steps

Based on review and consideration of the comments submitted for each proposal and with the endorsement of the Board of Regents, staff will begin development of the following legislative and regulatory proposals relating to special education mandate relief:

#### **CSE and CPSE Membership**

1. Propose legislation to amend section 4402 of the Education Law to more closely align the membership of the CSE to the federal IEP team membership by repealing the requirement that the CSE membership must include an additional parent of a student with a disability and a school physician and conditioning the mandatory requirement for a school psychologist on the CSE to meetings to determine a student's initial eligibility for special education services. If amended, the membership of the CSE would include at least the following members:
  - the parents or persons in parental relationship to the student;
  - one general education teacher of the student whenever the student is or may be participating in the general education environment;
  - one special education teacher of the student, or, if appropriate, a special education provider of the student;
  - a school psychologist, if the meeting is for the purpose of determining a student's initial eligibility for special education;
  - a representative of such school district who is knowledgeable about the general curriculum and the availability of resources of the school district;
  - an individual who can interpret the instructional implications of evaluation results;

- such other persons having knowledge or special expertise regarding the student as the school district or the parents or persons in parental relationship to the student shall designate, to the extent required under federal law; and
  - if appropriate, the student.
2. Propose legislation to repeal section 4402(1)(d) of the Education Law relating to Subcommittees on Special Education.
  3. Propose legislation to amend section 4410 of the Education Law to more closely align the membership of the CPSE to the federal IEP team by repealing the requirement that the CSE membership must include an additional parent of a child with a disability whose child is enrolled in a preschool or elementary level education program. If amended, the membership of the CPSE would include:
    - the parents or persons in parental relationship to the student;
    - one general education teacher of the student whenever the student is or may be participating in the general education environment;
    - one special education teacher of the student, or, if appropriate, a special education provider of the student;
    - a representative of such school district who is knowledgeable about the general curriculum of the school district and the availability of preschool special education programs and services and other resources in the school district and the municipality;
    - an individual who can interpret the instructional implications of evaluation results;
    - such other persons having knowledge or special expertise regarding the student as the school district or the parents or persons in parental relationship to the student shall designate, to the extent required under federal law;
    - for a child in transition from early intervention (EI) services to preschool special education, the appropriate EI representative (with the consent of the parent); and
    - an appropriately certified or licensed professional appointed by the chief executive officer of the municipality (not required for a quorum).

### **Preschool Evaluations**

1. Propose legislation to repeal the requirement in section 4410(4)(b) of the Education Law that the parent selects the preschool evaluator and replace it with the following:
  - Each board shall, within time limits established by the Commissioner, be responsible for providing the parent of a preschool child suspected of having a disability with a list of approved evaluators in the geographic area.
  - The school district must, after providing the parent with a list of approved preschool evaluators and obtaining parent consent to evaluate, arrange for an evaluation by the service provider selected by the district who can provide the evaluation of the student within the timeline required by the State.

- In selecting the evaluator, the district must consider the parent's expressed preference, if any, for the evaluator.
2. Propose legislation to amend section 4410(9-a) of the Education Law to establish that all school districts are automatically approved evaluators of preschool students suspected of having a disability without the need to submit an application to the Department.
  3. Propose regulations to amend section 200.16(c), (e) and (f) of the Regulations of the Commissioner of Education, as needed, to require the preschool initial evaluation be completed within 60 calendar days of receipt of parent consent to evaluate, while retaining the current requirement that the district arrange for the appropriate special education programs and services to be provided to a preschool student with a disability within 60 school days from receipt of consent to evaluate.

### **Individual Evaluations**

Repeal the requirement in section 200.4(b)(2) which mandates that a school psychologist determine the need to administer an individual psychological evaluation and provide a written report prior to every reevaluation of a student with a disability.

### **Planning and Reporting Requirements**

1. Propose legislation to repeal section 4402(1)(b)(3)(h) that the school district must provide a form to parents of certain children with disabilities who are veterans of the Vietnam War for a report to the Division of Veterans' Affairs for research purposes.
2. Propose legislation to repeal the requirement in section 4402(1)(b)(3)(d-2) that boards of education develop plans and policies for appropriate declassification of students with disabilities. The proposed repeal of the board of education plan and policy would not affect the district's responsibility to ensure that a reevaluation of a student is conducted prior to declassification and for the CSE/CPSE to convene a meeting to consider the results of the reevaluation to make a declassification recommendation. In addition the CSE would continue to be responsible to make recommendations, as appropriate, for declassification support services to be provided to a student in the first year following declassification that would aid the student to move from special education to full-time general education.

### **Approval of Certain EI Programs**

Propose legislation to repeal section 4403(18) of the Education Law that the Commissioner of Education must approve the provision of EI services by approved preschool providers. This should be the responsibility to the Department of Health, which is the lead State agency for EI Services.

## **Commissioner's Appointment to State-Supported Schools**

Propose legislation to repeal the requirements in section 4201 of the Education Law that the Commissioner make appointments to State-supported schools and that the State-supported school evaluate the student in addition to the evaluation conducted by the school district.

### Recommendation

VOTED: That the Board of Regents directs staff to develop proposed legislation to amend sections 4402 and 4410 and repeal section 4402(1)(d) of Education Law, as described above, relating to CSE and CPSE membership.

VOTED: That the Board of Regents directs staff to develop proposed legislation to repeal a requirement in section 4410(4)(b) and amend section 4410(9-a) of Education Law, and develop proposed regulations to amend section 200.16(c), (e) and (f) of Commissioner's Regulations, as described above, relating to Preschool Evaluations.

VOTED: That the Board of Regents directs staff to develop proposed regulations to repeal a requirement in section 200.4(b)(2) of Commissioner's Regulations, as described above, relating to Individual Evaluations.

VOTED: That the Board of Regents directs staff to develop proposed legislation to repeal section 4402(1)(b)(3)(h) and repeal a requirement in section 4402(1)(b)(3)(d-2) of Education Law, as described above, relating to Planning and Reporting Requirements.

VOTED: That the Board of Regents directs staff to develop proposed legislation to repeal section 4403(18) of Education Law, as described above, relating to Approval of Certain EI Services.

VOTED: That the Board of Regents directs staff to develop proposed legislation to repeal certain requirements in section 4201 of Education Law, as described above, relating to Commissioner's Appointments to State-Supported Schools.

### Timetable for Implementation

With support of the Regents, the Department will propose revised regulations at the December 2011 Regents meeting and develop legislation, as appropriate, for the above recommendations.

Attachment

**SPECIAL EDUCATION MANDATE RELIEF PROPOSALS - PUBLIC COMMENT**

**Proposal # 1: Conform the membership of Committee on Special Education (CSE) to the federal individualized education program (IEP) team membership by repealing the requirement that CSE membership must include: a school psychologist; an additional parent of a student with a disability; and a physician if requested by the school or parent 72 hours before the meeting. Repeal related requirements: Subcommittees on Special Education and Meeting Notice content information relating to Subcommittees**

**PSYCHOLOGIST**

**SUPPORT**

**OPPOSE**

- Participation of one professional over another should not be mandated.
- Allows CSE membership to be determined based on a student's individual needs.
- Aligns with federal regulations, bringing consistency to the systems while providing relief to districts.
- Parents have right to invite other individuals to meetings. Psychologists can still be invited to attend CSE meetings, as needed, without a specific mandate.
- Original purpose of having the school psychologist on the CSE to interpret assessment data no longer exists as schools have multiple qualified individuals capable of interpreting test results.
- Proposal will allow districts, especially small, rural districts with only one school psychologist, the flexibility to utilize the skills and expertise of school psychologists most appropriately.
- Psychologists are necessary for meetings to discuss initial evaluations, but should not be required to attend subsequent meetings unless cognitive issues or achievement testing are discussed.
- Although school psychologists play a vital role, they meet the requirements of a mandated member under a different role and will continue to attend CSE meetings.
- It is not fiscally responsible to pull professionals from direct service to attend CSE meetings when their attendance is not necessary to make appropriate recommendations.

- Mandate relief exists via Subcommittees, Ch. 311 of 1999 (allows members to serve multiple roles) and Ch. 378 of 2007 (allows member's excusal with parent consent).
- State law/regulations regarding IEP team membership can exceed IDEA.
- Proposal will provide minimum fiscal relief.
- Psychologists are uniquely trained/qualified and have thorough knowledge of assessments; disability categories; program options; data; progress monitoring; diversity issues; and federal and state mandates. No other member has same breadth/scope of knowledge. Their contributions are vital to the CSE.
- Psychologists provide wide array of services in schools and bring this expertise to the CSE.
- Psychologists are trained to evaluate the adequacy of assessment instruments, and their removal from the CSE will reduce the reliability and validity of assessment data and may increase classification rates.
- Denies parents chance to have psychologist explain evaluation results at CSE meetings, impacting their ability to effectively participate.
- Psychologist is the only consistent CSE member over multiple years and provides continuity and student specific history.
- Psychologist fulfills federal requirement that IEP team include an individual who can interpret the instructional implications of evaluation results and an individual who is knowledgeable about the availability of resources of the public agency.
- If psychological evaluations are not required, it's less likely that psychologists will be invited to CSE meetings.
- Low income families who may not understand psychologist's role and cannot afford private evaluations may be impacted by the proposal.

**Public comment suggesting revisions to the proposal:**

- Maintain psychologist member, unless he or she is otherwise in attendance in another role.
- If adopted, require psychologist and parent to meet prior to the CSE meeting to discuss evaluations.
- Psychologists are necessary for meetings to discuss initial evaluations, but should not be required to attend subsequent meetings unless cognitive issues or achievement testing are discussed.

## SPECIAL EDUCATION MANDATE RELIEF PROPOSALS - PUBLIC COMMENT

<b>PARENT MEMBER</b>	
<b>SUPPORT</b>	<b>OPPOSE</b>
<ul style="list-style-type: none"> <li>• Difficult for districts, especially small, rural districts, to find individuals with the time and flexibility to volunteer to comply with the timelines and additional membership requirements.</li> <li>• Parent member was first mandated when parents were not recognized as CSE members. As State and federal regulations now include parents on the CSE and support a parent's right to include other individuals with knowledge or special expertise, the parent member no longer serves original function.</li> <li>• Parent member should be at the request of the parent, not mandated.</li> <li>• No part of IEP development is dependent on a parent member's expertise and districts cannot mandate their attendance.</li> <li>• Parents often waive the parent member to ensure privacy and confidentiality.</li> <li>• Parents are aware that they can bring other individuals to CSE meetings.</li> <li>• Time district's spend to meet this mandate would be better spent developing relationships with parents, refining programs and developing IEPs.</li> <li>• It would be more efficient for districts to direct parents to programs that can help them negotiate the system.</li> <li>• The requirement for the parent member's name to be on meeting notices results in additional time and expense.</li> <li>• Role of the parent member is confusing and is often mistaken by the parents to be a parent advocate.</li> </ul>	<ul style="list-style-type: none"> <li>• NYS' model of having a parent member, who has gone through the process, to guide and support parents, especially parents new to the process has been very successful.</li> <li>• Parent member was added to protect parents' rights and is the only independent party on the CSE.</li> <li>• Parent member and psychologist, which have been key features of special education process since 1975, are needed for a true multi-disciplinary approach.</li> <li>• State law/regulations regarding IEP team membership can exceed IDEA.</li> <li>• There is no evidence that having a parent member is a fiscal burden on districts as this is not a paid position.</li> <li>• Procedures for parents to waive the parent member are already in place and this decision should remain with the parents.</li> <li>• Elimination of the parent member, in addition to funding cuts to Parent Information Resource Centers, will result in families having to learn the special education process on their own.</li> <li>• With parent member training provided by Parent Centers and the Department's Regional Special Education Technical Assistance Support Centers (RSE-TASC), parent members are more aware of their role and offer valuable insight at meetings.</li> <li>• Evaluate results of RSE-TASC parent member training before removing mandate.</li> <li>• Elimination of the parent member, psychologist and school physician from the CSE will not save money and will substantially limit parents' and students' rights.</li> </ul>
<p><b>Public comment suggesting revisions to the proposal:</b></p> <ul style="list-style-type: none"> <li>• Provide flexibility by having parents use a check off list of who they want in attendance.</li> <li>• Require the parent member at initial IEP meetings, unless waived by the parent, with subsequent meetings being optional.</li> <li>• Allow parents to waive parent member if one cannot be found.</li> <li>• Consider adding language that a parent member will be "available on request", as this would provide some relief.</li> <li>• Define parent member's role in regulations; require no cost training; provide small stipend to cover costs incurred by serving as a parent member; and provide parent members the opportunity to review student records or talk to parents prior to CSE meetings to ensure meaningful participation.</li> <li>• Minimally, require districts to notify parents that they can have a parent member at the meeting arranged for by the district or by the parent using the district's list.</li> </ul>	

**SPECIAL EDUCATION MANDATE RELIEF PROPOSALS - PUBLIC COMMENT**

<b>PHYSICIAN</b>	
<b>SUPPORT</b>	<b>OPPOSE</b>
<ul style="list-style-type: none"> <li>• Parents have never requested the physician's attendance but that one is invited if needed.</li> <li>• For students with medical needs, it would be more beneficial to have the <u>student's</u> physician provide input to the CSE (e.g., copy of the student's medical report).</li> <li>• Physicians have limited availability and logistically it is difficult and costly to have a physician attend CSE meetings. Information could be provided in a written report instead.</li> <li>• 72 hour timeline for requesting a school physician does not account for the physician's private practice schedule.</li> <li>• Often it is the school nurse, who has the relevant expertise and background to address a student's medical needs, who participates in CSE meetings.</li> </ul>	<ul style="list-style-type: none"> <li>• Before taking action, gather information about the circumstances in which school physicians are invited, how often this provision is used, and the fiscal relief that eliminating this member would provide.</li> <li>• Burden of current provision is minimal on districts and benefits all parties.</li> <li>• A school physician should be present at CSE meetings if there are medical issues involved.</li> <li>• Including a school physician at a CSE meeting when requested, provides parents the opportunity to advocate for medically appropriate related services (e.g., nursing services, special transportation, etc.).</li> <li>• If information is not included in the meeting notice, parents may not be aware that they have the right to request a school physician's attendance at a CSE meeting.</li> <li>• The cost for parents to hire their own physician to attend a meeting would be detrimental and would put parents at an unfair advantage.</li> </ul>

**Public comment suggesting revisions to the proposal:**

- Require a physician only when there is a documented medical need and allow other medical professionals familiar with a student's medical needs to fulfill this role (e.g., physician's assistant or nurse practitioner). Allow participation by other means (e.g., telephone, video conference, etc.).
- Expand timeline for requesting the physician attend a meeting to 96 hours (4 days).
- Change "school physician" to "medical professional familiar with the student's medical diagnosis or medical needs."

**Proposal #2: Align Committee on Preschool Special Education (CPSE) membership with the federal IEP team, by repealing the requirement that the CPSE membership must include an additional parent member, but continue the municipality representative until such time that the county no longer has a role in the provision or payment of special education to preschool students.**

<b>SUPPORT</b>	<b>OPPOSE</b>
<ul style="list-style-type: none"> <li>• The removal of parent member would provide greater relief at the preschool level, as there are no subcommittees for preschool students.</li> <li>• A parent member must be at every meeting, and that the limited availability of a parent member makes it difficult for districts to meet the 30 day preschool timeline.</li> </ul>	<ul style="list-style-type: none"> <li>• Many who opposed proposal #1 also opposed aligning the CPSE membership with the federal IEP team membership.</li> <li>• Reasons for opposing this change were similar to those provided in proposal #1 regarding the elimination of the additional parent member.</li> <li>• Some indicated that a parent member's participation is even more critical at the CPSE level as parents have little experience with the special education process.</li> </ul>



## SPECIAL EDUCATION MANDATE RELIEF PROPOSALS - PUBLIC COMMENT

**Proposal #3: Repeal the requirement that the parent selects the preschool evaluator and replace it with the requirement that the school district, after providing the parent with a list of approved evaluators, must consult with the parent regarding the selection of an evaluator that can provide a timely evaluation of the preschool child.**

### EVALUATOR SELECTION

#### SUPPORT

- Proposal more closely aligns preschool and school-age processes, and will make transition from CPSE to CSE smoother.
- Districts are familiar with evaluation sites, including which evaluators can provide timely evaluations, and most parents already welcome district input in selecting an evaluator.
- Since districts are responsible for evaluating preschool students, they should have the option to determine which agency will conduct the evaluation.
- Proposal ensures communication between parents and districts about evaluations and allows districts to partner with parents in selecting an approved evaluator who is qualified and can provide timely evaluations.
- Proposal eliminates any conflict of interest resulting from students attending the school run by the initial evaluation sites.

#### OPPOSE

- Because preschool special education is voluntary on the part of parents, parents should have the choice of selecting an evaluator and consulting with the district.
- New, unfunded mandate for districts to confirm provider availability and consult with parents will further slow the process and strain district resources.
- Proposal implies that parents are incapable of making decisions without district guidance.
- Allowing districts to select evaluator could be a conflict of interest, since many have longstanding relationships with certain evaluators.
- Not clear how consultation will be required to occur (e.g., a call, form letter, etc.).
- Concerned parents will be coerced to use certain evaluators and about how the process will be monitored to ensure fairness in choosing an evaluation site.
- If parent choice is eliminated, more parents may seek independent education evaluations (IEEs) at district expense.
- Current regulations give districts the option of obtaining a second evaluation from another approved evaluator prior to recommending that a child be placed in a program operated or owned by the parent selected evaluator.
- Timeline compliance issues are due to district/county bureaucracy rather than the evaluators' scheduling capacity.

#### **Public comment suggesting revisions to the proposal:**

- Require districts to consult with parents, identify an evaluator and provide the parent with the evaluator's contact information within a week of receiving the referral.
- Change "consult with" to "assist" to clarify parent has the right to choose the evaluator.
- Instead of repealing the current requirement, establish guidelines for when the parent selected evaluator cannot complete the evaluation within the required timeline. For example, require the district to notify parents that selecting a particular evaluator excuses the district from its responsibility to complete the evaluation within 30 days, and give parents the option of choosing another evaluator from the list.
- To improve timelines, remove providers responsible for noncompliance with the timelines from the evaluator list.
- Monitor evaluators for timely evaluations. Hold districts harmless for evaluator delays. Notify parents that selecting sites that cannot commit to meeting timelines will delay meetings and implementation of services.

**SPECIAL EDUCATION MANDATE RELIEF PROPOSALS - PUBLIC COMMENT**

<b>Proposal #3 continued: All school districts would be approved preschool evaluators.</b>	
<b>SCHOOL DISTRICTS APPROVED EVALUATORS</b>	
<b>SUPPORT</b>	<b>OPPOSE</b>
<ul style="list-style-type: none"> <li>• Districts have trained individuals capable of assessing preschool students on staff.</li> <li>• Proposal will increase quality control of the CPSE assessment process and ensure timely evaluations for preschoolers.</li> <li>• Having districts as approved preschool evaluators will provide an additional resource for evaluations, streamline the process, and be financially prudent.</li> <li>• Proposal will allow districts to become more familiar with students' needs and for parents to become familiar with district personnel prior to entering the school-age system.</li> <li>• Being a district that is already an approved preschool evaluator has been very beneficial to the district.</li> <li>• If districts become approved evaluators, require that parents have their child evaluated by the district.</li> <li>• Recommendations from agencies that currently conduct preschool evaluations often result in students' classification and parents selecting the same agencies for their children to attend. Results of district evaluations may be more objective and reduce the overall cost of preschool services.</li> </ul>	<ul style="list-style-type: none"> <li>• Current system is well managed by 4410 programs and there is no evidence that current evaluators have done an inadequate or inappropriate job.</li> <li>• There is already a mechanism in place for school districts to apply to become an approved evaluator. Districts should be required to meet same approval standards as other evaluation sites.</li> <li>• Districts do not have expertise to conduct preschool evaluations as their scope of practice has been limited to school-age children. Hiring additional personnel with this expertise and purchasing age-appropriate testing materials, may result in timeline delays and increased costs for districts.</li> <li>• Transferring the responsibility for preschool evaluations to districts would be a significant new burden and there is no evidence that this will improve compliance with evaluation timelines.</li> <li>• Data does not support Department's assertion that parent choice of evaluator has increased eligibility findings and higher levels of service when the evaluator is also the provider.</li> </ul>
<b>Public comment suggesting revisions to the proposal:</b>	
<ul style="list-style-type: none"> <li>• Require individuals conducting preschool evaluations to be experienced with ages 2-5 population and have appropriate credentials.</li> <li>• Before deeming districts to be approved evaluators, require districts to demonstrate that staff members have knowledge and training regarding preschool assessments.</li> <li>• Require CPSE administrators to pass proficiency tests proving their knowledge of special needs population ages 3-5 and accountability system.</li> <li>• Strictly impose evaluation responsibilities on the district.</li> </ul>	

**SPECIAL EDUCATION MANDATE RELIEF PROPOSALS - PUBLIC COMMENT**

**Proposal #4: Align the preschool initial evaluation timeline to be the same as the evaluation timeline for school-age students, which is 60 calendar days.**

<b>SUPPORT</b>	<b>OPPOSE</b>
<ul style="list-style-type: none"> <li>• The school-age evaluation timeline has proven effective and allowing same timeline for preschoolers would allow enough time for thorough evaluations to be completed.</li> <li>• Aligning the timelines will allow districts to evaluate and place students while staying within the 60 school day timeline.</li> <li>• Consistent timelines will be easier for parents to understand and will make the transition from CPSE to CSE smoother.</li> <li>• Since school districts are responsible for preschool evaluations, it makes sense that the timelines should be aligned with the CSE regulations.</li> <li>• There is no legitimate basis for having an accelerated timeline for preschool evaluations and meetings.</li> <li>• Streamline the preschool and school-age systems and eliminate any differences in the systems that serve no purpose.</li> <li>• The 30 school day evaluation timeline is unrealistic given waiting lists at evaluation sites and the shortage of qualified therapists.</li> <li>• As preschool initial evaluations can be complex, the additional time will ensure the timeliness of evaluations and increase compliance.</li> <li>• Extending the timeline would allow more flexibility in scheduling meetings.</li> </ul>	<ul style="list-style-type: none"> <li>• Current timeline allows students to remain in early intervention (EI) past their 3<sup>rd</sup> birthday and allows the CPSE additional time to find an appropriate placement. The proposal may result in children aging out of EI before their 3<sup>rd</sup> birthday and not being able to extend their EI services. This will place additional cost burdens on school districts to provide services through the CPSE system.</li> <li>• Current bifurcated timeline allows districts to complete the evaluation and develop an IEP, and still have enough time to implement services.</li> <li>• Evidenced-based research indicates that earlier access to services is more beneficial to a child's development in the long term. Changing the evaluation timeline from 30 school days to 60 calendar days is significant within the developmental period for a preschool student and would delay necessary meetings and implementation of services.</li> <li>• Extending the timeline will result in more students not receiving services in a timely manner.</li> <li>• The State is already unable to meet school-age evaluation timelines and there are also compliance issues regarding the number of children who are referred from Part C who are found eligible for Part B and who have an IEP developed and implemented by the child's 3<sup>rd</sup> birthday.</li> </ul>

**Public comment suggesting revisions to the proposal:**

Investigate approved evaluators that have a high rate of noncompliance to determine reasons for delays and take action to ameliorate those issues.

**SPECIAL EDUCATION MANDATE RELIEF PROPOSALS - PUBLIC COMMENT**

**Proposal #5a: Adopt the federal standard for initial evaluations by repealing the requirement that each initial individual evaluation of a student suspected of having a disability must include a physical examination, individual psychological evaluation, social history, observation, other appropriate evaluations and functional behavioral assessment (FBA) when behavior impedes learning.**

<b>SUPPORT</b>	<b>OPPOSE</b>
<ul style="list-style-type: none"> <li>• Would provide CSEs flexibility to determine on an individual basis which assessments to give, based on the reasons for referral and the student's needs.</li> <li>• Conducting unnecessary evaluations are costly and time consuming.</li> <li>• Proposal will result in cost savings.</li> <li>• Federal requirement that an initial evaluation include an assessment in all areas related to the suspected disability is all encompassing and it is not necessary to mandate specific evaluations.</li> <li>• Eliminating unnecessary evaluations will reduce the over-testing of students and allow districts to specifically target an area(s) of suspected disability.</li> <li>• Federal law contains protections for parents to request additional evaluations, including an IEE at public expense if they disagree with the district's evaluation.</li> <li>• If response to intervention (RTI) is appropriately implemented, the CSE will already have a wealth of information about a student at the time of referral.</li> </ul>	<ul style="list-style-type: none"> <li>• The proposal would not diminish the burden on districts.</li> <li>• Federal requirement is insufficient to accurately evaluate all disability categories and determine eligibility. NYS' standard ensures all areas of a suspected disability are identified.</li> <li>• Broad testing provides a picture of the whole child and may reveal underlying issues that otherwise would have been missed.</li> <li>• Proposals 5a &amp; b contradict spirit of Forest Grove v. T.A. Supreme Court decision, where the district failed to provide a free appropriate public education (FAPE) by neglecting to evaluate the student in all areas of suspected disability.</li> <li>• Disputes regarding evaluations will result in increased IEE and impartial hearing requests and will provide little fiscal relief.</li> <li>• Although a psychological evaluation is not federally mandated, information needed to determine eligibility for most students can only be obtained through this evaluation.</li> <li>• Current requirements ensure consistency across districts and that all students are appropriately evaluated. The proposal may result in different evaluation standards in low versus high needs districts.</li> <li>• Comprehensive evaluation, including a psychological evaluation, should at least be done at initial referral to obtain a baseline.</li> <li>• Regulations already provide flexibility for the psychologist to determine need for a psychological evaluation and the district to review existing data and determine if additional data is needed.</li> <li>• Proposal is unlikely to clear judicial barrier imposed under Jose P. v. Mills decision, for New York City to correct assessment practices affecting English language learners, which identified the critical role psychologists play in the assessment process.</li> <li>• NY's social history requirement ensures students are not inappropriately identified due to language or cultural differences.</li> <li>• Physical exam is required by Education Law</li> </ul>

## SPECIAL EDUCATION MANDATE RELIEF PROPOSALS - PUBLIC COMMENT

SUPPORT	OPPOSE
	<p>sections 903, 904 and 905, and eliminating this will not result in cost savings.</p> <ul style="list-style-type: none"> <li>• Proposals 1 and 5a will result in lower quality evaluations being interpreted by less qualified individuals.</li> <li>• Proposal may result in districts eliminating costly evaluations to save money.</li> </ul>
<p><b>Public comment suggesting revisions to the proposal:</b></p> <ul style="list-style-type: none"> <li>• Allow parents and districts to agree to eliminate specific evaluations they feel would not be necessary with caveat that the parent has a full understanding of why other evaluations are not needed and their right to request additional evaluations.</li> <li>• Eliminate the observation for preschool students not currently enrolled in a classroom program.</li> </ul>	

**Proposal #5b: Repeal the requirement that establishes a process for a school psychologist to determine the need to administer an individual psychological evaluation and provide a written report when such evaluation is determined not to be necessary. (Contingent upon Proposal #5a to adopt the federal standard for individual evaluations.)**

SUPPORT	OPPOSE
<ul style="list-style-type: none"> <li>• Support eliminating written report, but continue requirement that psychologist determines the need for an updated evaluation.</li> <li>• Eliminating the written report when an evaluation is not needed would allow psychologists to focus on other responsibilities.</li> <li>• Although the written report makes the psychologist's determination clear, this information could be embedded in other ways to simplify the process.</li> <li>• The CSE can determine if a psychological evaluation is needed.</li> </ul>	<ul style="list-style-type: none"> <li>• A school psychologist is uniquely qualified to determine when a psychological evaluation is necessary.</li> <li>• Current provision was originally implemented to provide fiscal relief during the 1990s budget crisis and provides flexibility to districts.</li> <li>• In making the decision for the need for a psychological evaluation, the psychologist also identifies the need for other evaluations.</li> <li>• Current requirement ensures that students are evaluated appropriately.</li> <li>• Written report provides formal accountability, reduces the possibility that evaluations will be inappropriately omitted, and puts districts in a better position to determine students' individual needs.</li> </ul>

**Proposal #6: Repeal the outdated requirement that the school district must provide a form to parents of certain children with disabilities who are veterans of the Vietnam War for a report to the Division of Veterans' Affairs for research purposes.**

Most either took no position or supported repealing this requirement as it is obsolete and does not enhance services for students. The few who opposed the proposal recommended that the current requirement be updated to include parents of students with disabilities who are veterans of the most recent war/conflicts.

**SPECIAL EDUCATION MANDATE RELIEF PROPOSALS - PUBLIC COMMENT**

**Proposal #7: Repeal the requirement for boards of education to have plans and policies for appropriate declassification of students with disabilities, while retaining the federal requirement that each student with a disability receive a reevaluation prior to a declassification recommendation.**

<b>SUPPORT</b>	<b>OPPOSE</b>
<ul style="list-style-type: none"> <li>• Continued eligibility is considered at any CSE meeting. There is no need for mandated plans/policies for declassification.</li> <li>• The requirement is redundant and the proposal will save valuable time, paper and money.</li> <li>• The federal requirement is adequate for determining the appropriateness of declassification.</li> <li>• Declassification plans and procedures should continue as best practice, but should not be mandated.</li> <li>• District level plans and policies are not tailored to individual needs and suitable for implementation in a blanket fashion.</li> <li>• Repeal all mandatory plans and policies that are not required by federal law.</li> </ul>	<ul style="list-style-type: none"> <li>• Proposal does not relieve districts of any procedural obligations.</li> <li>• The current requirement ensures that comprehensive procedures are followed; employees are held accountable for not following federal and State policies; and children receive appropriate services.</li> <li>• Plans/policies are essential to protect children's rights and without these the potential for arbitrary decision making will increase.</li> <li>• The Department should assess the implementation of declassification policies once developed.</li> <li>• Proposal does not address the requirement that appropriate declassification includes the provision of educational and support services upon declassification and districts may eliminate support services in addition to their declassification plans.</li> <li>• Without appropriate declassification planning, students may be put back into general education programs without adequate support, leading to increased costs for additional remediation.</li> </ul>

**Proposal #8: Repeal the requirement that the Commissioner of Education must approve the provision of early intervention services by approved preschool providers. Transfer this responsibility to the Department of Health (DOH), which is the lead State agency for Early Intervention (EI) Services.**

<b>SUPPORT</b>	<b>OPPOSE</b>
<ul style="list-style-type: none"> <li>• Proposal does not impact students or districts.</li> <li>• Since DOH regulates EI, consolidating responsibilities under one agency makes sense and brings more consistency to the system.</li> <li>• EI services are directly related to development, not educationally driven, and should be handled by DOH.</li> </ul>	<ul style="list-style-type: none"> <li>• Unclear how proposal will provide mandate relief for districts or counties.</li> <li>• Oversight should be by individual with relevant educational credentials. Makes more sense for NYSED to be lead agency.</li> <li>• DOH is not an educational agency and the proposal would lead to increased difficulties in transitioning between the two systems.</li> <li>• As children receive EI services from both educational and health providers, both agencies should remain involved in approval process.</li> <li>• Entire EI system needs to be realigned in more efficient manner. There is too much division and cross-departmental provisions.</li> </ul>

## SPECIAL EDUCATION MANDATE RELIEF PROPOSALS - PUBLIC COMMENT

**Proposal #9: Repeal the Commissioner of Education's role in appointments to State-supported schools and the requirement that the State-supported school evaluate the student in addition to the evaluation conducted by the school district.**

SUPPORT	OPPOSE
<ul style="list-style-type: none"> <li>• Proposal eliminates unnecessary duplication of efforts and the over testing of students</li> <li>• The proposal will streamline admission and evaluation process for State-supported schools.</li> <li>• Ensure change is not accompanied by change in funding formula that would be detrimental to districts.</li> <li>• Since districts are financially responsible for students placed in State-supported schools, the provision that allows a parent to apply directly to the Commissioner and secure placement in a 4201 school, without going through the CSE, needs to be changed.</li> <li>• Districts should be responsible for evaluating all students.</li> <li>• Proposal recognizes scarcity of resources and fiscal restraints districts are under.</li> <li>• Support, however, State-supported schools should conduct reevaluations of students placed in these schools.</li> <li>• District evaluation will provide checks and balances of State-supported schools.</li> </ul>	<ul style="list-style-type: none"> <li>• Proposal will have a negative impact on the proper evaluation and appropriate placement of NY's deaf, blind and/or physically disabled students.</li> <li>• Prior to repealing, conduct full programmatic and fiscal assessment to determine current costs and anticipated savings.</li> <li>• Direct access to evaluations of students with low incidence disabilities by 4201 schools was found to be a valuable asset to parents.</li> <li>• Proposal eliminates parents' right to an evaluation by professionals uniquely qualified to assess students with low incidence disabilities and access to educational choices for their child.</li> <li>• As 4201 schools have unique expertise and resources to evaluate and educate students with low incidence disabilities, urge Department to continue to partner with these schools and utilize this expertise.</li> <li>• Proposal will have fiscal implications for districts that have to hire staff with the expertise to properly evaluate and place students with low incidence disabilities.</li> <li>• 4201 evaluations are supplemental, not duplicative, and include finer assessments by highly specialized professionals using specialized tools.</li> <li>• Districts are not aware of what 4201 schools can offer students with low incidence disabilities and the proposal may result in students falling through the crack.</li> <li>• District evaluations through interpreters, for whom there are no minimal State standards, are not effective or efficient.</li> <li>• Oppose; however, districts should have role in determining what evaluations are needed.</li> </ul>