

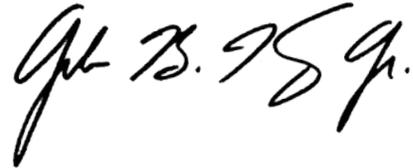


THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents
FROM: Ken Slentz 
SUBJECT: Proposed Amendment to Sections 200.2 through 200.5 of the Regulations of the Commissioner of Education Relating to Chapters 276 and 279 of the Laws of 2012

DATE: December 3, 2012

AUTHORIZATION(S):



Summary

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the proposed amendment of sections 200.2 through 200.5 of the Regulations of the Commissioner of Education to conform State regulations to New York State (NYS) Education Law, as amended by Chapters 276 and 279 of the Laws of 2012?

Reason for Consideration

Required by Statute (L. 2012, Ch. 276 and Ch. 279).

Proposed Handling

The proposed amendment will be submitted to the Full Board for adoption at the December 2012 meeting.

Procedural History

On August 1, 2012, the Governor signed Chapters 276 and 279 of the Laws of 2012 relating to, respectively, the additional parent member of a committee on special education (CSE) and authorizing electronic access to students' individualized education programs (IEP).

The proposed amendment was discussed by the P-12 Education Committee at the September 2012 Regents meeting. A Notice of Proposed Rule Making was published in

the State Register on September 26, 2012. Public comment on the proposed amendment was accepted for 45 days from the date of publication in the State Register (i.e., until November 13, 2012), and three public hearings were conducted statewide.

Background Information

The purpose of the proposed amendment is to conform the Regulations of the Commissioner of Education to Chapters 276 and 279 of the Laws of 2012, which became effective August 1, 2012.

Chapter 276 amends Education Law section 4402 to provide that the additional parent member of a CSE need not be in attendance at any CSE meeting unless specifically requested by the parent, the student or the district in writing at least 72 hours prior to the meeting. The law further requires that parents receive proper written notice of their right to have an additional parent member attend any CSE meeting along with a statement, prepared by the State Education Department, explaining the role of having the additional parent attend the meeting. No changes were made regarding additional parent membership on a committee for preschool special education.

Chapter 279 amends Education Law section 4402 to allow school districts the option of giving teachers, related service providers and other service providers access to a student's IEP electronically. If the school district's policy provides that a student's IEP is to be accessed electronically, the policy must also ensure that the individuals responsible for the implementation of the IEP are notified and trained on how to access such IEP electronically.

Since publication of a Notice of Proposed Rule Making in the State Register on September 26, 2012, the Department received seven comments on the proposed amendments. Attached is the full text of the proposed terms of the rule (Attachment 1) and the Assessment of Public Comment (Attachment 2). Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

Recommendation

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

VOTED: That subparagraph (i) of paragraph (11) of subdivision (b) of section 200.2, subparagraph (viii) of paragraph (1) of subdivision (a) of section 200.3, subparagraph (i) of paragraph (3) of subdivision (e) of section 200.4, and subparagraphs (iv) and (v) of paragraph (2) of subdivision (c) of section 200.5 of the Regulations of the Commissioner of Education be amended as submitted, effective January 2, 2013.

Timetable for Implementation

If adopted at the December Regents meeting, the proposed amendment will become effective January 2, 2013.

Attachments

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 4402, 4403 and 4410 and Chapters 276 and 279 of the Laws of 2012.

1. Subparagraph (i) of paragraph (11) of subdivision (b) of section 200.2 of the Regulations of the Commissioner of Education is amended, effective January 2, 2013, as follows:

(i) each regular education teacher, special education teacher, related service provider and/or other service provider, as defined in clause (a) of this subparagraph, who is responsible for the implementation of a student's individualized education program (IEP) is provided a paper or electronic copy of such student's IEP, including amendments to the IEP, made pursuant to section 200.4(g) of this Part, prior to the implementation of such program or shall be able to access such student's IEP electronically. If the policy provides that students' IEPs are 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:

(a) . . .

2. Subparagraph (viii) of paragraph (1) of subdivision (a) of section 200.3 of the Regulations of the Commissioner of Education is amended, effective January 2, 2013, as follows:

(viii) an additional parent member of a student with a disability residing in the school district or a neighboring school district, provided that the additional parent member may be the parent of a student who has been declassified within a period not to exceed five years or the parent of a student who has graduated within a period not to exceed five years[.

Such parent is not a required member if the parents of the student request that the additional parent member not participate in the meeting], if specifically requested in writing by the parent of the student, the student or by a member of the committee at least 72 hours prior to the meeting;

3. Subparagraph (i) of paragraph (3) of subdivision (e) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective January 2, 2013, 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) 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;

4. Subparagraphs (iv) and (v) of paragraph (2) of subdivision (c) of section 200.5 of the Regulations of the Commissioner of Education are amended, effective January 2, 2013, as follows:

(iv) for meetings of the committee on special education, inform the parent(s) of his or her right to request, in writing at least 72 hours before the meeting, the presence of the school physician member and an additional parent member of the committee on special education at any meeting of such committee pursuant to section 4402(1)(b) of the Education Law and include a statement, prepared by the State Education Department, explaining the role of having the additional parent member attend the meeting;

(v) for meetings of the committee on preschool special education, inform the parent(s) of his or her right to decline, in writing, the participation of the additional parent member at any meeting of such committee pursuant to section [4402(1)(b)] 4410(3)(a)(1)(v) of the Education Law;

PROPOSED AMENDMENT OF SECTIONS 200.2 THROUGH 200.5 OF THE
REGULATIONS OF THE COMMISSIONER OF EDUCATION PURSUANT TO
EDUCATION LAW SECTIONS 101, 207, 305, 4402, 4403 AND 4410 AND CHAPTERS
276 AND 279 OF THE LAWS 2012, RELATING TO THE PROVISION OF SPECIAL
EDUCATION PROGRAMS AND SERVICES TO STUDENTS WITH DISABILITIES

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on September 26, 2012, the State Education Department (SED) received the following substantive comments on the proposed amendment.

Electronic Access to Individualized Education Programs: §§200.2 and 200.3

COMMENT:

Regulations or guidance must be in place to ensure that teachers, related service providers and other service providers have the tools, time and resources at their disposal to readily access students' IEPs prior to implementation. State regulations or policy must clearly inform school districts that they must provide paper copies of IEPs to teachers, related service providers and other service providers if conditions for electronic access are not met. Districts must also have necessary equipment and supplies to support the issuance of print copies if electronic versions are unavailable.

DEPARTMENT RESPONSE:

Comments will be considered for SED guidance.

COMMENT:

The proposed amendment is deficient in that it does not explicitly address electronic access to IEPs by supplementary school personnel. State law explicitly uses the term

“access” in circumstances where a school board adopts a policy that students’ IEPs are to be accessed electronically, and State regulations must reflect that supplementary school personnel with IEP implementation responsibilities have the same access to their students’ IEPs as teachers, related service providers and “other school personnel” as currently defined in section 200.2(b)(11)(i)(a) of the Commissioner’s Regulations.

DEPARTMENT RESPONSE:

The proposed amendment does not make any changes to the requirement that districts ensure that supplementary school personnel (i.e., teaching assistants or teacher aides) have the opportunity to review a copy of the student’s IEP, prior to the implementation of the IEP, and that they have ongoing access to a copy of the IEP, which may be the copy provided to the student’s special education teacher or the teacher or related service provider under whose direction the individual works.

COMMENT:

Clear guidance is needed which states that electronic notification does not replace the requirement in section 200.4(e)(3)(iii) that school personnel with IEP implementation responsibilities must be informed of their specific responsibilities prior to implementation of the IEP. Notice of the availability of an electronic version of an IEP and providing training to access the document would not satisfy the intent of section 200.4(e)(3)(iii).

DEPARTMENT RESPONSE:

The proposed amendment does not make any changes to section 200.4(e)(3)(iii) of the Regulations of the Commissioner of Education. Therefore, districts must continue to ensure the appropriate personnel have been informed, prior to the implementation of the IEP, of his or her responsibility to implement the IEP as specified in section 200.4(e)(3)(iii) of the Regulations of the Commissioner of Education.

COMMENT:

School district policy must ensure not only the provision of appropriate notification of individuals responsible for the implementation of student IEPs, but also the necessary training to allow for electronic access.

DEPARTMENT RESPONSE:

The proposed amendment requires that individual's responsible for the implementation of a student's IEP be notified and provided with training on how to access the IEPs electronically.

Additional Parent Member of the CSE: §§200.3 and 200.5

COMMENT:

We recognize that these regulations must be adopted for conformance to law.

DEPARTMENT RESPONSE:

No response is necessary since comment is supportive in nature.

COMMENT:

Parent member should be totally eliminated as mandated member of the committee on special education (CSE). It is difficult for districts to find parent members and the parent member is not required by federal law. Obtaining an additional parent member may cause a delay in scheduling the CSE meeting.

DEPARTMENT RESPONSE:

While the additional parent member on the CSE is not required by federal law, it is required by State statute [see Education Law section 4402(1)(b)(1)(a)(viii)], and therefore the above comment is beyond the scope of this rulemaking, which merely conforms the Commissioner's regulations to the State statute, as amended by Chapter 276 of the Laws of 2012. To ensure timely meetings, school districts must maintain a list of sufficient numbers of additional parent members, which may include a parent from a neighboring

school district or the parent of a student who has been declassified or who has graduated within a period not to exceed five years.

COMMENT:

Less administrative time is spent trying to find a parent member when email is utilized.

DEPARTMENT RESPONSE:

Nothing in the proposed amendment addresses procedures for districts to contact additional parent members to participate in CSE meetings.

COMMENT:

Obtaining services for a child with a disability can be a lonely and confusing experience for a parent. Parent members provide parent with support and objectivity during CSE meetings. Parent member is the only unbiased member of the committee.

DEPARTMENT RESPONSE:

SED agrees that having another member of the CSE be a parent of a student with a disability can be a source of support for a parent. The role of the additional parent member is to bring another perspective as a parent of a child with a disability to the discussions and decision-making process. This individual can also help parents to understand and participate in the meeting by explaining procedures, asking questions and clarifying information.

COMMENT:

The implementation of this new requirement could limit the support for parents of students with disabilities as provided by the additional parent member on the CSE, particularly if the meeting notice requirement is not fulfilled appropriately and in a timely manner, especially for parents whose dominant language is other than English.

DEPARTMENT RESPONSE:

SED has revised its State-mandated meeting notice form to include notice to parents of their right to request, in writing, that the district include the additional parent member in the meeting and to explain the role of the additional parent member. The Department is translating the required meeting notice form into several languages.

COMMENT:

The Department will need to commit to actively monitor school district compliance with this regulation, particularly with the provision of timely written prior notice detailing the parental right to request the attendance of an additional parent member and including a statement on the role of the additional parent member. This would include reviewing written requests for the attendance of an additional parent member within 72 hours prior to the meeting and whether parents were given adequate opportunity to make such requests.

DEPARTMENT RESPONSE:

This requirement will be enforced consistent with the State's current monitoring and general supervision system.

COMMENT:

Should allow longer than 72 hours to obtain an additional parent member, as this is not enough time to find volunteers for this position. If requested by the parent, the school district should have five days to secure a parent member.

DEPARTMENT RESPONSE:

The proposed amendment conforms to changes to Chapter 276 of the Laws of 2012, which state that the parents, persons in a parental relation of the student in question, student or member of the CSE may request in writing, at least 72 hours prior to a meeting, the attendance of an additional parent. School districts must maintain a list of sufficient numbers of additional parent members, which may include a parent from a neighboring school district or the parent of a student who has been declassified or who has graduated

within a period not to exceed five years; and when establishing the schedule of CSE meetings, should anticipate the need for additional parent members to be available for the meeting in the event their participation is requested by the parent so that these arrangements may be made in a timely manner.

COMMENT:

Clarify if the proposed change to no longer require an additional parent member pertains to committees on preschool special education (CPSE).

DEPARTMENT RESPONSE:

No changes were made to the Education Law, or have been included in the proposed rule, regarding the additional parent membership on a CPSE. Education Law section 4410(3)(a)(1)(v) continues to require that the CPSE include an additional parent member.

COMMENT:

Regulation should be the same for preschool and school age. Federal regulations do not support New York's requirement that an additional parent member participate in CPSE meetings.

DEPARTMENT RESPONSE:

The proposed amendment conforms to changes to Chapter 276 of the Laws of 2012, which specifies revisions pertaining to the attendance of an additional parent member at CSE meetings. Education Law section 4410(3)(a)(1)(v) continues to require that the CPSE include an additional parent member. Federal law establishes that certain individuals must participate on the Committee, but does not preclude states from requiring additional members.

COMMENT:

Clarify if a district can choose to include a parent representative, but excuse that person at the parent's request.

DEPARTMENT RESPONSE:

If the district requests the participation of the additional parent member, it may later decide that the participation of the additional parent member is not necessary in accordance with section 200.3(f).

COMMENT:

Clarify what happens if a parent does not provide proper notice of his/her desire to have the additional parent member (i.e., Can CSE meeting still be held in direct opposition to the parent's wish to have a parent member attend, or is the district obligated to reschedule the meeting?).

DEPARTMENT RESPONSE:

If a parent does not request, in writing, at least 72 hours prior to the meeting, that the district include the additional parent member at a CSE meeting, the school district is not required by law or regulation to include the additional parent member and there is no requirement that the district reschedule the meeting, provided that the district provide the required meeting notice as developed by SED to the parent at least five days before the meeting). Also, a district could agree to reschedule the meeting at another mutually agreed on time and place so that the additional parent member could be in attendance. If the district chooses to reschedule the CSE meeting, it would still be obligated to ensure that all the required timelines are met. Districts have similar experience and responsibilities regarding the participation of the school physician when requested of the district by the parent 72 hours in advance of the meeting.

COMMENT:

The proposal provides little actual mandate relief and may result in added work for districts to reschedule CSE/CPSE meetings and schedule the requested additional parent member after the agenda for the meeting has been set.

DEPARTMENT RESPONSE:

The agenda for a CSE meeting should not be adjusted based on whether an additional parent member will attend. There are no changes to the CPSE requirements relating to the additional parent member.

COMMENT:

Do not cut State funding for special education programs.

DEPARTMENT RESPONSE:

Nothing in the proposed amendment would result in a cut to State funding for special education programs.