



TO: Special Education and Adult Career and Continuing Education Services Committee

FROM: Ceylane Meyers-Ruff *Ceylane Meyers-Ruff*

SUBJECT: Proposed Amendment of Section 200.5 of the Regulations of the Commissioner of Education Relating to Special Education Due Process Hearings

DATE: September 25, 2025

AUTHORIZATION(S): *Dom N. B.* *Betty M.*

SUMMARY

Issue for Discussion

Should the Board of Regents adopt the proposed amendment of section 200.5 of the Regulations of the Commissioner of Education relating to special education due process hearings?

Reason for Consideration

Review of policy.

Proposed Handling

The proposed amendment is presented to the Special Education and Adult Career and Continuing Education Services Committee for discussion at the October 2025 Regents meeting. A copy of the proposed rule (Attachment A) is attached.

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on October 22, 2025, for a 60-day public comment period. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

The Individuals with Disabilities Education Act (IDEA) requires that states, as a condition of funding, provide parents with an opportunity to request an administrative hearing concerning their child's right to special education. As New York State regulations currently indicate, "[a] parent or school district may file a due process complaint with respect to any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education (FAPE) to such student" (8 NYCRR 200.5 [i] [1]; see 20 USC § 1415 [b] [6] [A]).

Parentally placed nonpublic school students do not have "an individual right to receive some or all of the special education and related services that the[y] ... would receive if enrolled in a public school" or the right to a due process hearing (34 CFR 300.137 [a]). Instead, the IDEA requires that an "equitable" share of each school district's IDEA funds be used to provide services to students with disabilities attending nonpublic schools (34 CFR 300.138). School districts must locate, evaluate, and provide nonpublic school students with a "services plan that describes the specific special education and related services that the [district] will provide to the child in light of the services that [it] has determined ... it will make available to parentally placed private school children with disabilities" (34 CFR 300.138 [b] [1]). In New York, this document is called an Individualized Education Services Plan (IESP) (Education Law § 3602-c [2] [b] [1]).

Under federal law, the parents of parentally placed nonpublic school students with disabilities are generally unable to file due process complaints (34 CFR 300.140[a]). These parents only have a right to file a due process complaint about an alleged failure to meet child find requirements (34 CFR 300.140[b]). However, New York State law exceeds federal requirements by also providing parents of parentally placed nonpublic school students with disabilities the ability to file due process complaints for the "[r]eview [of] the recommendation of [IESP services made by a] committee on special education" (Education Law § 3602-c [2][b][1]).

In the City of New York, many parents who parentally place their child with a disability in a nonpublic school take on the burden of filing due process complaints seeking payment for IESP services that the New York City Department of Education (NYCDOE) has not delivered. In these complaints, parents seek payment for services that they unilaterally obtained. Typically, the district does not contest that it recommended the services at issue.

Parents can, and should, expect implementation of the services identified on their children's IESPs. The Department has repeatedly informed the NYCDOE that parents should not be required to file a due process complaint to obtain payment for IESP services that the district did not provide. For example, in a May 27, 2020, letter to the NYCDOE, the Department's Senior Deputy Commissioner for P-20 Education wrote: "In addition to the administrative burdens, a request to proceed to due process after a parent finally obtains a provider is a [unnecessary] burden placed on the parents of students with disabilities."

A due process hearing is not the appropriate forum for an implementation dispute. As stated above, Education Law § 3602-c does not grant a parent the right to file a due process complaint to dispute the implementation of an IESP, including payment for IESP services obtained by the parent. However, parents deserve to be made whole if a school district did not implement IESP services through direct and timely reimbursement from their school district. If this does not occur, parents are entitled to pursue administrative or judicial remedies—but not a due process hearing.

In August 2024, the NYCDOE Office of the General Counsel (OGC) established the Enhanced Rate Equitable Services Unit¹ ([ERES Unit](#)), so parents could submit a written request to help identify service providers and/or obtain approval for services at an enhanced rate where a parent or their representative filed a parental notice of intent (PNI). When a parent has submitted documentation demonstrating that a good faith effort was made to resolve the rate dispute with the NYCDOE ERES Unit, and there are remaining allegations that meet the requirements, the Department will investigate a rate dispute via the [State Complaint process](#). The Department has developed forms and guidance for this type of state complaint.²

School districts that provide payment for IESP services obtained by parents, however, are entitled to impose internal controls to ensure that requests for services are made by the student's family, that payments are only made to providers who possess appropriate certification, and that rates accurately represent the cost of the service provided (i.e., fair market value). These controls are essential to prevent fraud, waste, abuse, and mismanagement.³

Proposed Amendment

The Department proposes to amend section 200.5 of the Commissioner's regulations to clarify that parents of students who are parentally placed in nonpublic schools do not have the right under Education Law § 3602-c to file a due process complaint regarding the implementation of services recommended on an IESP. Further, it is the Department's position that going to a due process hearing for payment for IESP

¹ The Albany County Supreme Court has stated that ERES unit is an adequate remedy at law for purposes of resolving requests for enhanced rates and where the request is denied the parents can seek judicial review (*Agudath Israel of America, et. al., v. New York State Board of Regents, et. al.*, Index No. 909589-24 [July 11, 2025]).

² See <https://www.nysed.gov/special-education/new-york-state-education-department-rate-dispute-state-complaint-information>

³ In a recent case at the Supreme Court of the State of New York involving a related services provider from New York City and the NYCDOE, the Senior Policy Advisor for the NYCDOE's Impartial Hearing Order Implementation Unit (IU) affirmed that they had encountered significant discrepancies related to the provider's billing. Notably, the senior policy advisor indicated that 3,690 invoices dating from 2017 to 2023 and totaling approximately 12 million dollars showed the following inaccuracies: overlapping billing, sessions taking place between 11:30pm and 5:30am, and the use of remote paraprofessionals that were "clinically inappropriate and not allowable by the terms of the orders issued by the Impartial Hearing Officer." Other sessions also appear unlikely to have occurred on the reported days due to restrictions of the student's family's religious beliefs.

services obtained by the parent unfairly imposes administrative and financial burdens on parents. The Department seeks to ensure that parents whose IESP services were not implemented receive prompt reimbursement at the local level. The Department will continue to work with the NYCDOE to ensure that it meets its obligations under the IDEA to provide equitable services to students with disabilities, including those parentally placed in nonpublic schools.

Related Regents Items

[January 2012: Proposed Amendment of Sections 200.1 and 200.5 of the Regulations of the Commissioner of Education Relating to Special Education Impartial Hearings](https://www.regents.nysed.gov/common/regents/files/documents/meetings/2012Meetings/January2012/112p12d3.pdf)

(<https://www.regents.nysed.gov/common/regents/files/documents/meetings/2012Meetings/January2012/112p12d3.pdf>)

[June 2012: Proposed Amendment of Sections 200.1 and 200.5 of the Regulations of the Commissioner of Education Relating to Special Education Impartial Hearings](https://www.regents.nysed.gov/common/regents/files/documents/meetings/2012Meetings/June2012/612p12d1.pdf)

(<https://www.regents.nysed.gov/common/regents/files/documents/meetings/2012Meetings/June2012/612p12d1.pdf>)

[March 2020: Proposed Amendments to Sections 200.1 and 200.5 of the Regulations of the Commissioner of Education Relating to Special Education Impartial Hearing Officers and the Special Education Due Process System Procedures](https://www.regents.nysed.gov/common/regents/files/320p12d4.pdf)

(<https://www.regents.nysed.gov/common/regents/files/320p12d4.pdf>)

[July 2020: Proposed Amendments to Sections 200.1 and 200.5 of the Regulations of the Commissioner of Education Relating to Special Education Impartial Hearing Officers and the Special Education Due Process System Procedures](https://www.regents.nysed.gov/common/regents/files/720brd4revised.pdf)

(<https://www.regents.nysed.gov/common/regents/files/720brd4revised.pdf>)

[October 2020: Proposed Amendments to Sections 200.1 and 200.5 of the Regulations of the Commissioner of Education Relating to Special Education Impartial Hearing Officers and the Special Education Due Process System Procedures](http://www.regents.nysed.gov/common/regents/files/1020p12d1revised.pdf)

(<http://www.regents.nysed.gov/common/regents/files/1020p12d1revised.pdf>)

[March 2021: Proposed Amendments to Sections 200.1 and 200.5 of the Regulations of the Commissioner of Education Relating to Special Education Impartial Hearing Officers and the Special Education Due Process System Procedures](https://www.regents.nysed.gov/common/regents/files/321p12a4.pdf)

(<https://www.regents.nysed.gov/common/regents/files/321p12a4.pdf>).

[February 2023: Proposed Amendments of Section 200.5 of the Regulations of the Commissioner of Education Relating to Special Education Due Process Hearings](https://www.regents.nysed.gov/sites/regents/files/223p12d1.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/223p12d1.pdf>).

[May 2024: Proposed Amendment of Section 200.5 of the Regulations of the Commissioner of Education Relating to Special Education Due Process Hearings](https://www.regents.nysed.gov/sites/regents/files/524p12d2revised.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/524p12d2revised.pdf>)

Recommendation

Not applicable.

Timetable for Implementation

It is anticipated that the proposed amendment will be presented for permanent adoption at the February 2026 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the February 2026 meeting, the proposed amendment will become effective on February 25, 2026.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, 3602-c, 4404, and 4410 of the Education Law.

1. Paragraph (1) of subdivision (i) of section 200.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(1) A parent or school district may file a due process complaint with respect to any matter relating to the identification, evaluation, or educational placement of a student with a disability, a student suspected of having a disability, or the provision of free appropriate public education to such student. With respect to services provided to nonpublic school students pursuant to Education Law §3602-c, due process complaints may only be brought relating to the recommendation of an individualized education services plan (IESP) made by a committee on special education and relating to compliance of the school district of location with child find requirements, including evaluation requirements. This does not include disputes over the implementation of services in an IESP, such as the payment for services by a school district that were obtained by the parents of a student with a disability. The party presenting the complaint, or the attorney representing such party, shall provide a written due process complaint notice to the party, which shall include:

- (i) ...
- (ii) ...
- (iii) ...
- (iv) ...
- (v) ...