



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: John B. King, Jr. *John B. King, Jr.*

SUBJECT: Proposed Amendment of Section 200.5 of the Regulations of the Commissioner of Education Relating to Parental Consent for Initial Provision of Special Education Services in a 12-month Special Service and/or Program

DATE: July 2, 2014

AUTHORIZATION(S): *Richard A. Trachtenberg*

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the proposed amendment of section 200.5 of the Regulations of the Commissioner of Education to conform State regulations to New York State (NYS) Education Law, as amended by Chapter 56 of the Laws of 2014?

Reason(s) for Consideration

Required by Statute (L. 2014, Ch. 56).

Proposed Handling

The proposed amendment will be submitted to the Full Board for adoption at the July 2014 meeting.

Procedural History

On March 31, 2014, the Governor signed Chapter 56 of the Laws of 2014. Section 16-a of Part A of Chapter 56 amended Education Law section 4402(2)(a) to

eliminate the requirement for parental consent prior to the initial provision of special education services and programs during the months of July and August.

A Notice of Proposed Rule Making was published in the State Register on May 7, 2014. Public comment on the proposed amendment was accepted for 45 days from the date of the publication in the State Register (i.e., until June 23, 2014).

Background Information

The purpose of the proposed amendment is to conform the Regulations of the Commissioner of Education to Section 16-a of Part A of Chapter 56. Effective March 31, 2014, school districts are no longer required to obtain parental consent for the initial provision of special education services and programs during the months of July and August (i.e., a 12-month special service and/or program). However, if a school district provides special education services to a student for the first time during the months of July and August and the student has not previously been identified as having a disability, parental consent must be obtained prior to the initial provision of special education to the student.

Since publication of a Notice of Proposed Rule Making in the State Register on May 7, 2014, the Department received four comments, all in support of the proposed amendment. 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 paragraph (1) of subdivision (b) of section 200.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective July 30, 2014.

Timetable for Implementation

If adopted at the July Regents meeting, the proposed amendment will become effective July 30, 2014.

Attachments

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 4402, and 4403 and section 16-a of Part A of Chapter 56 of the Laws of 2014.

Paragraph (1) of subdivision (b) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective July 30, 2014 as follows:

(1) The school district must make reasonable efforts to obtain written informed consent of the parent, as such term is defined in section 200.1(l) of this Part, and must have a detailed record of its attempts, and the results of those attempts. Written consent of the parent is required:

(i) . . .

(ii) prior to the initial provision of special education to a student who has not previously been identified as having a disability. Consent for initial evaluation may not be construed as consent for initial provision of special education services; and

[(iii) prior to initial provision of special education services in a 12-month special service and/or program;]

[(iv)] (iii) . . .

8 NYCRR §200.5

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on May 7, 2014, the State Education Department (SED) received the following comments on the proposed amendment.

1. COMMENT:

Fully support the proposed amendment. Current requirement appears to be repetitive since consent is received prior to the initial provision of special education services, which includes summer services. Applaud SED's efforts to create higher standards for the quality of special education services for students by eliminating redundancy and promoting efficiency in the parental consent process. Eliminating the duplicative consent requirement (initial provision of special education services and initial provision of summer services) will reduce confusion for parents and remove any delay in providing services to students.

DEPARTMENT RESPONSE:

Federal and State law and regulations will continue to require that parental consent be obtained prior to the initial provision of special education services, including whenever July/August services are recommended at the time the student first receives special education. Minimizing the instances when consent from parents must be obtained will provide some relief from procedural compliance requirements. Pursuant to Chapter 56 of the Laws of 2014, which has been in effect since March 31, 2014, school districts are no longer required to obtain parental consent for the initial provision of special education services and programs during the months of July and August.

2. COMMENT:

Ensure that a template of expected detailed records of attempts is provided to the school districts and Committees on Special Education so there is a uniform way to document the results of those attempts.

DEPARTMENT RESPONSE:

Consistent with Section 16-a of Chapter 56, the proposed amendment eliminates the requirement for school districts to obtain parental consent prior to the initial provision of special education during the months of July and August and, therefore, eliminates the requirement for districts to document attempts to obtain such consent. However, parental consent will continue to be required prior to the first time a student is provided special education services. Documentation of reasonable efforts to obtain consent for the initial provision of special education, as well as for initial evaluations and reevaluations, must be maintained by the school district. Documentation must include a record of the school district's attempts to obtain consent such as detailed records of telephone calls made or attempted and the results of those calls, copies of any correspondence sent to the parents and any responses received, and detailed records of visits made to the parent's home or place of employment and the results of those visits. SED believes that districts are in the best position to determine what documentation and records are needed to demonstrate the attempts that were made to obtain parental consent.