



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:** Lawrence C. Gloeckler *Lawrence C. Gloeckler*

**COMMITTEE:** Vocational and Educational Services for Individuals with Disabilities

**TITLE OF ITEM:** Proposed amendment of sections 200.1, 200.4, 200.16 and 201.10 of the Regulations of the Commissioner of Education

**DATE OF SUBMISSION:** January 13, 2003

**PROPOSED HANDLING:** Discussion

**RATIONALE FOR ITEM:** Policy discussion prior to action

**STRATEGIC GOAL:** #4

**AUTHORIZATION(S):** *[Signature]* *Thomas J. Kelly*

**SUMMARY:**

Attached is a proposed amendment of sections 200.1, 200.4, 200.16 and 201.10 of the Regulations of the Commissioner of Education. Supporting materials for the proposed amendments are available upon request from the Secretary to the Board of Regents.

The purpose of the proposed amendment is to align State regulations consistent with Part 300 of the Code of Federal Regulations relating to the definition of mediator and to make technical corrections to the definition of independent educational evaluations, the contents of the individualized education program (IEP) for preschool students and to certain cross citations. These changes are required by the U.S. Department of Education as part of our eligibility for federal funding.

A Notice of Proposed Rule Making will be published in the State Register on February 5, 2003. The proposed amendments will be submitted for approval in April 2003, with a proposed effective date of May 22, 2003.

Attachment

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 3214, 4403, 4404,  
and 4410 of the Education Law.

1. Subdivisions (z) and (dd) of section 200.1 of  
the Regulations of the Commissioner of Education are amended,  
effective May 22, 2003, as follows:

(z) Independent educational evaluation means an  
individual evaluation of a student with a disability or a  
student thought to have a disability, conducted by a qualified  
examiner [person] who is not employed by the public agency  
responsible for the education of the student. Whenever an  
independent educational evaluation is at public expense, the  
criteria under which the evaluation is obtained, including the  
location of the evaluation and the qualifications of the  
examiner, shall be the same as the criteria which the school  
district uses when it initiates an evaluation.

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(dd) Mediator means a qualified and impartial individual who is trained in effective mediation techniques to resolve disputes in accordance with Education Law section 4404-a and section 200.5(h) of this Part. An individual who serves as a mediator may not have a personal or professional interest which would conflict with his or her objectivity in the mediation process and may not be an employee of a State educational agency that is providing direct services to a student who is the subject of the mediation process or a school district or program serving students with disabilities, provided that a person who otherwise qualifies to conduct mediation under section 200.5(h) of this Part shall not be deemed an employee of the State, a school district, school, or a program serving students with disabilities solely because he or she is paid by a community dispute resolution center through grant funds provided by the State Education Department to serve as a mediator.

2. Paragraph (2) of subdivision (f) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective May 22, 2003, as follows:

(2) Prior to the annual review, the committee on special education shall notify the parent of its intent to review the student's program and placement in accordance with section [200.5(a)] 200.5(c) of this Part.

3. Paragraph (3) of subdivision (d) of section 200.16 of the Regulations of the Commissioner of Education is amended, effective May 22, 2003, as follows:

(3) If the committee determines that the preschool child has a disability, the committee shall recommend approved appropriate services and/or special programs and the frequency, duration, location and intensity of such services including, but not limited to, the appropriateness of single services or half-day programs based on the individual needs of

the preschool child. The committee shall first consider the appropriateness of providing (i) related services only; or (ii) special education itinerant services only; or (iii) related services in combination with special education itinerant services; or (iv) a half-day preschool program as defined in section 200.1 of this Part; or (v) a full-day preschool program. If the committee determines that the child demonstrates the need for a single related service, such service shall be provided as a related service only or, where appropriate, as a special education itinerant service. The IEP recommendation shall be developed in accordance with section 200.4(d)(2), (3) and (4) of this Part provided that subparagraphs [(iv)], (v), (viii), and (ix) [and (xiii)] of paragraph (2) shall not apply. In addition, the recommendation for special education programs and services for a preschool student with a disability shall:

- (i) . . . . .

(ii) . . . . .

(iii) . . . . .

(iv) . . . . .

(v) . . . . .

(vi) . . . . .

4. Subdivision (b) of section 201.10 of the Regulations of the Commissioner of Education is amended, effective May 22, 2003, to read as follows:

(b) During suspensions or removals for periods of up to 10 school days in a school year that do not constitute a disciplinary change in placement, students with disabilities of compulsory attendance age shall be provided with alternative instruction pursuant to Education Law section [3214(e)] 3214(3)(e) on the same basis as nondisabled students. Students with disabilities who are not of compulsory attendance age shall be entitled to receive services during such suspensions only to

the extent that services are provided to nondisabled students of  
the same age who have been similarly suspended.