



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

TO: P-12 Education Committee and
Subcommittee on State Aid

FROM: John B. King Jr.

SUBJECT: Mandate Relief and Flexibility

DATE: March 2, 2011

STRATEGIC GOAL: 1, 2, 3 and 5

AUTHORIZATION(S):

SUMMARY

Issue for Action

What mandate relief options can the Regents recommend? What are the details of specific mandate relief and flexibility recommendations in the area of school operations and special education?

Reason(s) for Consideration

Review of policy

Proposed Handling

These questions will come before a joint meeting of the Regents Subcommittee on State Aid and the P-12 Education Committee at their March meeting.

Procedural History

The Regents approved their State Aid proposal for school year 2011-12 in December 2010. The proposal supports the continued review and examination of cost containment and mandate relief options. In February, the Regents reviewed and discussed a set of draft mandate relief options intended to increase flexibility and reduce requirements for school districts in ways that do not adversely impact the health and safety of students or the essential elements of the educational reform efforts underway. The materials describe the statutory or regulatory requirement of each

mandate and the rationale for its consideration, as well as alternatives for ensuring compliance. Mandate relief options seek to provide school districts with greater flexibility by streamlining requirements, specifically where the cost of implementation exceeds the benefits.

Detail about the mandate relief and flexibility options that relate to school operations, and were previously proposed by the Regents, is provided in Appendix A-1. Additional draft mandate relief and flexibility options relating to school operations can be found in Appendix A-2.

Detail concerning mandate relief and flexibility options that relate to special education services, and were previously proposed by the Regents, is delineated in Appendix B-1. Additional draft mandate and flexibility relief options relating to special education can be found in Appendix B-2.

Background Information

The Regents carefully crafted this year's State Aid proposal to retain those critical funding directions necessary to continue the State's progress toward educational adequacy, despite the State's worsening revenue picture. The Regents recommended that the State continue to phase in the Foundation Aid formula and to continue to increase support for universal pre-kindergarten. In order to preserve funding for these critical priorities, the Regents recommended cost-containment strategies including mandate relief, regional transportation, and expanded use of BOCES shared services. While all of these mandates were originally enacted to enhance the rights, protections and/or performance of students and the fiscal accountability of school districts, not all have produced their intended result.

Recommendation

It is recommended that the Regents Committees discuss mandate relief and flexibility proposals concerning school operations and special education and approve those recommendations previously proposed by the Regents, as specified in Appendix A-1 and Appendix B-1. Based on discussion at the March meeting, draft mandate relief and flexibility options presented in Appendices A-2 and B-2 will be presented for approval at the April meeting.

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

VOTED: that the Board of Regents approve the mandate relief and flexibility recommendations, as described in Appendix A-1 and Appendix B-1 of this report, each of which have been previously proposed by the Board of Regents.

Timetable for Implementation

The Executive budget proposal laid out reductions for school funding in 2011-12 and recommendations for streamlining some school operations. The proposal also called for a report by the Governor's Mandate Relief Redesign Team by March 1, 2011, which has now been issued, and a legislative budget by April 1, 2011. The Governor will include recommendations resulting from the Mandate Relief Redesign Team, of which Commissioner Steiner and Chief Operating Office Val Grey are members, in his budget negotiations. The resulting changes in the law are expected to affect school district programs for school year 2011-12.

**MANDATE RELIEF and FLEXIBILITY RECOMMENDATIONS
PREVIOUSLY PROPOSED BY THE BOARD OF REGENTS**

SCHOOL OPERATIONS

Educational Management Services

Proposed Mandate Relief or Flexibility Option	Citation	Description	Rationale and Comments
<p>1. Provide flexibility by consolidating Textbook and Software aids</p>	<p>Education Law §§701, 751, and 752 8 NYCRR §21.2, 21.3(a)</p>	<p>Currently, State law provides aid in the form of an expense based reimbursement, up to a maximum amount per pupil, for instructional materials in the form of <i>Textbook Aid</i> and <i>Software Aid</i>. However, changes in educational pedagogy and technological resources suggest the need for a commensurate change in the way State Aid is organized around these two aids.</p>	<p>Since <i>Textbook Aid</i> allows for textbooks in electronic format, this blurs the distinction between <i>Textbook Aid</i> and <i>Software Aid</i>. Consolidating aids will provide districts with greater flexibility to address local educational needs and support better long range planning for year -to-year purchases.</p>
<p>2. Provide flexibility in claims auditing</p>	<p>Education Law §§ 1604(35)(a), 1709 (20-a)(a), 1724, 2526, 2554 (2-a) 8NYCRR 170.12(c)</p>	<p>State Law now gives boards of education (BOE) the authority to audit claims as a whole or to appoint a claims auditor to assume such duties.</p>	<p>This option would expand the allowable means by which districts can meet claims auditing requirements, such as providing for a Deputy Claims Auditor and authorizing BOCES Central Business Office (CBO) to perform claims auditing duties for component school districts participating in that service. It will also strengthen the fiscal accountability in small districts that often have difficulty segregating duties.</p>

Proposed Mandate Relief or Flexibility Option	Citation	Description	Rationale and Comments
3. Eliminate the requirement that school districts have an Early Grade Class Size Reduction Plan	8NYCRR 144.11	This regulatory mandate reflects a prior statute that is no longer valid.	Statute for this requirement was repealed in 2007 when Foundation Aid was enacted. This moribund regulation should be repealed as NYSED does not have the authority to require such a plan.
4. Provide school calendar flexibility to allow school districts outside of NYC to hold regular days of session in July and August	Education Law §§ 3602(1-4), 4408	Provide school districts with the flexibility to adopt a school calendar with a portion of the required 180 days in July and/or August without suffering a loss of State Aid. NYC already has this option.	A flexible school calendar can be useful in maximizing the use of school buildings, while providing additional opportunities for meeting the challenges of the Learning Standards. This option is designed to provide greater flexibility to schools districts, not to reduce the effects of a current mandate.
5. Allow local governments to piggyback on other states' and local governments' contracts	General Municipal Law §103(3)	State Law currently authorizes districts to use county contracts. This proposal would expand the authority of local governments to piggyback onto other local governments' and other states' contracts.	This option could yield savings to districts both in the prices of goods and services purchased as well as their not having to incur the time and expense of going out for bid(s). Options include determining specific contracts that districts could access, if on a more restricted basis.
SCHOOL FACILITIES			
6. Eliminate the Wicks Law for school construction	General Municipal Law §101 (Separate specifications for certain public work)	Wicks law is a 100 year old State law requiring school districts to hire a minimum of four prime contractors for each capital construction project. As school district administrators are not construction experts, the district must then hire out the role of coordinating the project to a construction management firm.	All other states and the federal government, which formerly required "multiple prime contracting", have abolished this practice. It is cumbersome and expensive and can delays in claims resulting in litigation. There are numerous protections that can be added to statutes to protect subcontractors from abuse by general contractors, requiring prompt payment, and preventing bid shopping. These are in place in other jurisdictions and work very well at less cost. A change in statute is required.

**PROPOSED MANDATE RELIEF and FLEXIBILITY OPTIONS FOR DISCUSSION
NOT PREVIOUSLY PROPOSED BY BOARD OF REGENTS
 SCHOOL OPERATIONS**

Educational Management Services

Mandate Relief or Flexibility Option	Citation	Description	Rationale and Comments
1. Allow School Districts with 10,000 or More Students to Audit Samples of Claims	Education Law §§ 1604(35), 1709 (20-a), 1724, 2526, 2554 (2-a) 8NYCRR 170.2(a)	School Districts must now audit all claims, regardless of the size of the district.	This option would provide larger districts with the opportunity to use some kind of risk-based or sampling methodology to determine the number of claims to be audited rather than auditing all claims. The specific number, percentage or type of claims that must be audited will need to be determined.
2. Allow School Districts with Fewer than 1,000 Pupils to Forego an Internal Audit Function	Education Law § 2116-b 8NYCRR 170.12(b)(1)	Only certain districts currently are exempt from internal Auditing requirements including those with fewer than 8 teachers, less than \$5 million in general fund expenses the previous year, or fewer than 300 enrolled students in the previous year.	A greater number of districts would be exempt from the Internal Audit requirement with this proposal, representing a cost savings for them. The specific internal audit level or requirements that districts with fewer than 1,000 pupils would need to adhere to would have to be determined. Other options include, providing for an Internal Audit requirement less than annually, such as every two to three years.

Appendix A-2

Mandate Relief or Flexibility Option	Citation	Description	Rationale and Comments
<p>3. Allow School Districts to Enter Into Credit Card Contracts of National Scope</p>	<p>General Municipal Law §§ 104-b, 77-b (limits travel expenses for certain employees) Local Finance Law §176 (provides that LFL supersedes all other inconsistent laws)</p>	<p>State law currently restricts school districts from utilizing certain contracts, particularly national contracts.</p>	<p>Would provide authority for school districts to enter into national contracts and use credit cards that allow for rebates. There is currently no statutory authority for either. Such contracts might provide cost savings and/or revenues for districts, particularly where rebates are offered based on volume of purchases. Specific contracts that districts could access, if on a more restricted basis, would need to be determined.</p>
<p>4. Clarify that BOCES has the Authority to Contract for Telecommunications on Behalf of their Component School Districts</p>	<p>Education Law §1950</p>	<p>BOCES can operate and service school district equipment used for telecommunications and technology services and computer networks, however State law currently limits or prohibits certain types of school district-BOCES relationships.</p>	<p>When procuring high tech equipment, school districts would benefit if BOCES contracted for these purchases on their behalf, ensuring that the school district' equipment is compatible with BOCES' telecommunication and network equipment and allowing BOCES and district personnel to efficiently service the equipment. State law would need to be amended to require standardization where BOCES and school districts wish to use compatible equipment, or the same equipment, and districts would be required to procure such equipment.</p>

Mandate Relief or Flexibility Option	Citation	Description	Rationale and Comments
<p>5. Eliminate the requirement that school districts have a Shared Decision Making Team</p>	<p>NYC Governance Law §2590-h(15) 8NYCRR 100.11</p>	<p>Both State law and Commissioner's Regulation requires school districts to undertake a Shared Decision Making process with statutorily prescribed committee members. Currently districts are not required to submit the biennial reviews of their Shared Decision making plans, but are required to have them on file, for NYSED review, as requested.</p>	<p>The Comprehensive District Education Plan (CDEP) for Rest of State and the District Comprehensive Education Plan (DCEP) for New York City are inclusive of a range of information from districts and would continue to be required, but would not incorporate the Shared Decision Making mandate. In addition to participation in board of education (BOE) meetings, other opportunities exist for parent involvement in school district planning efforts, such as the Consolidated Application for Title I schools and other federal parent involvement mandates.</p>
<p>6. Enable local government to hold reverse auctions, in which vendors bid against one another for lower prices</p>	<p>General Municipal Law §103(1) Education Law §305(14)(a)</p>	<p>Currently, districts must follow statutorily-required bidding requirements and processes.</p>	<p>This change would allow districts to have vendors "bid down" prices rather than submitting a single price option once via paper copy. Options include amending state law to expand and promote the use of electronic methods for conducting and receiving bids.</p>
<p>7. Allow for piggybacking on Federal General Services Administration Schedule 70 IT, Federal e-government, and national defense authorization act contracts</p>	<p>General Municipal Law §103(3) and §103(6)</p>	<p>State Law limits school district access to these types of contracts.</p>	<p>Contracts already awarded may reflect better pricing than a district could achieve on its own. This option could also conserve district resources by reducing the number of bids a district would need to conduct in a single year. Determine specific contracts that districts could access, if on a more restricted basis.</p>
<p>8. Allow for contracts to be awarded by "best value"--a power the State already has</p>	<p>General Municipal Law §103(1) Education Law §305(14)(f)</p>	<p>State Law stipulates the awarding of school district contracts to lowest, responsible bidders (also the authority to award via the RFP process in certain instances).</p>	<p>For complex technical and service contracts, this would allow districts to consider other factors in awarding contracts. These might include costs, such as conversion costs, rather than solely the price bid for a product. Options could include amending state law to include elements of the RFP process in the competitive bidding requirements.</p>

Mandate Relief or Flexibility Option	Citation	Description	Rationale and Comments
<p>9. Provide local governments with the option of publishing procurement notices in the Contract Reporter instead of publishing in newspapers</p>	<p>General Municipal Law §103(2) Education Law §305(14)(a)</p>	<p>Districts are currently required under state law to advertise in official newspaper(s) designated by the board of education (BOE) when placing legal notices.</p>	<p>This option should provide access to a greater audience leading to greater interest and ultimately better pricing for districts. The threshold for purchase contracts subject to competitive bidding is now \$20,000. All contracts for public works involving an expenditure of more than \$35,000 are subject to competitive bidding. Amounts below these amounts do not require advertising.</p>
<p>10. Clarify that BOCES and school districts have the ability to coordinate nonpublic school transportation through legislation</p>	<p>Education Law §3635</p>	<p>Districts are currently required to transport nonpublic school pupils within a specific distance to nonpublic schools.</p>	<p>This option would help provide for cost effective practices and coordination of services by reducing employee and equipment costs. It is recommended that a new CO-SER Criteria Guideline be allowed for an aidable central office Transportation Coordinator.</p>
<p>11. Require BOCES District Superintendents to collaborate with school districts, nonpublic schools and special education programs in designating bell times that allow for optimum utilization of school buses and school bus routes</p>	<p>Education Law § 1950</p>	<p>There is currently no statutory or regulatory requirement for BOCES and school districts to coordinate bell times.</p>	<p>This option would help provide for cost effective practices and coordination of services by offering the opportunity to reduce employee and equipment costs. Standardizing bell times within BOCES and districts is recommended. There is no authority to compel nonpublic or religious schools to participate. An incentive would encourage nonpublic participation</p>
<p>12. Enact legislation and/or regulation that would require adoption of a standardized annual school calendar to avoid conflicts wherein school buses are deployed on days when public school districts are otherwise closed</p>	<p>Education Law § 3635 (2-a)</p>	<p>Currently, public school districts are not required to transport nonpublic school students on days when public schools are not in session.</p>	<p>This option would provide cost savings for the public school districts in both employee and equipment expenses. School districts are not obligated to provide transportation for students attending nonpublic schools before the first day of public school classes but many do so in order to serve their nonpublic school community. This will result in better communication and coordination.</p>

Mandate Relief or Flexibility Option	Citation	Description	Rationale and Comments
SCHOOL FACILITIES			
13. Eliminate Annual Visual Inspections	8NYCRR 155.4(b)(2)	A five year building condition survey by a licensed professional and annual inspections by district staff are required as a result of the 1998 RESCUE legislation (Rebuild Schools to Uphold Education).	While the five year building condition surveys are useful, the annual inspections, which strain limited district and NYSED resources, do not have a commensurate advantage. There are annual fire inspections conducted by a licensed code enforcement official and any school district with structural concerns can be reimbursed for a structural inspection leading to a corrective project.
14. Eliminate compliance with the recently adopted Smart Growth Legislation (2010) for the vast majority of school projects. Retain it only for work in new land acquisition and new construction.	Chapter 433, Laws of 2010 Environmental Conservation Law §§ 6-0101, 6-0103, 6-0105, 6-0107, 6-0109 and 6-0111	A 2010 State law governing "Smart Growth Criteria" requires all school districts to conduct "Smart Growth Impact Statements" to ensure capital construction projects are aligned with recently developed smart growth criteria to avoid urban sprawl and reduce urban blight.	The first criterion of the "Smart Growth Criteria" is reuse of existing infrastructure, which negates the need for new development. Since 95% of school projects involve the rehabilitation of existing facilities for continued use as schools, this mandate puts an onerous and unnecessary responsibility on districts and SED staff by requiring "Smart Growth Impact Statements".
15. Eliminate School Facilities Report Card	8NYCRR 155.6	This mandate resulted from the 1998 RESCUE legislation, codified in CR 155.6, and requires school districts to summarize all facilities activities, projects, investigations, tests, etc. performed throughout the year. The data is obtained from other required data.	While the intent of the report card was to provide easier access by the public to data collected by districts, it represents an administrative burden and resulted in duplicative data being presented in an alternate format. The report card format developed by SED merely refers readers to other available documentation. As the RESCUE legislation does not specifically identify the report card format, this mandate can be eliminated through a regulatory change.

Mandate Relief or Flexibility Option	Citation	Description	Rationale and Comments
<p>16. Eliminate State requirements for reporting beyond the federal requirements of the Asbestos Hazard Emergency Response Act</p>	<p>Education Law §3602-a of Chapter 53 Laws of 1990</p> <p>Education Law §3641(d)</p>	<p>The Asbestos Hazard Emergency Response Act (AHERA) is a 1986 federal law, enforced by the Environmental Protection Agency (EPA), and requires all public and non-public elementary schools to develop and implement measures to 1) determine if asbestos, identified as a hazardous material, is present; and 2) how to manage and safely monitor it over time. The State has enacted additional laws over and above the federal mandate. Education Law 3641(4)(d) requires that school districts submit a triennial report on known and assumed asbestos that coincides with the EPA 's mandated triennial re-inspection. Additionally, the NYS Labor Department also has extensive rules for the safe removal and handling of asbestos (code rule 56).</p>	<p>The capital planning process already provides safeguards for testing for asbestos and other hazardous materials, requires that districts hire professional consultants to conduct the process, and that all work be carried out in accordance with code rule 56. Asbestos monitoring and compliance with AHERA is a federal responsibility administered by the EPA, safeguards are already in place. The repeal of Education Law 3641(4)(d) will reduce this burden on SED and school districts.</p>

**SPECIAL EDUCATION RECOMMENDATIONS
PREVIOUSLY PROPOSED BY THE BOARD OF REGENTS**

NEW YORK STATE REQUIREMENTS NOT OTHERWISE REQUIRED BY FEDERAL LAW OR REGULATION

NYS Requirement	Citation	How NYS Requirement is Different from Federal Requirement	Comments
PLANNING AND REPORTING REQUIREMENTS			
<p>1. For certain students with disabilities, including those who are in residential placements, the school district must provide information, with the consent of the parent, to other agencies prior to the date when the student graduates or ages out.</p> <p><u>Proposed:</u> Repeal - duplicative of transition planning requirements</p>	<p>Education Law §4402 8 NYCRR §200.4(i)</p>	<p>There is no comparable federal requirement.</p>	<p>This statute was enacted prior to the federal law requirement for transition planning. With the requirement that transition planning occur for each student and representatives of other agencies likely to provide or pay for transition services must, with the consent of the parent, be invited to the CSE meetings. The aging out notifications could be eliminated without significantly impacting sound transition planning for individual students.</p>
<p>2. Boards of Cooperative Educational Services (BOCES) must submit special education space requirements plans by 2/1 of every 5th year. Requirements include development, content, submission, approval, and amendments to the plan and an annual progress report.</p> <p><u>Proposed:</u> Repeal section 1950(17) while retaining the requirement that school districts and BOCES ensure the stability and continuity of program placements for students with disabilities.</p>	<p>Education Law § 1950(17) 8 NYCRR §200.2(g)</p>	<p>Federal law does not specify how a state must ensure space in facilities to meet the needs of students with disabilities and least restrictive environment (LRE) responsibilities.</p>	<p>This strategy was extremely effective when the State had statewide issues with high rates of placements in separate settings. Since then, a new federal requirement has been enacted for the State to collect and publicly report on each school district's LRE placements for students with disabilities. The repeal of the Space Planning requirements was proposed in a prior Regents priority bill.</p>

Appendix B-1

NYS Requirement	Citation	How NYS Requirement is Different from Federal Requirement	Comments
<p>DUE PROCESS</p> <p>3. Written consent of the parent is required prior to initial provision of special education services in a 12-month special service and/or program.</p> <p><u>Proposed:</u> Repeal</p>	<p>Education Law §4402(2)(a) 8 NYCRR §200.5(b)(1)(iii)</p>	<p>Federal regulations allow a state to require parental consent for other services and activities if it ensures that each public agency in the state establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.</p>	<p>Federal safeguards ensure parental consent be obtained prior to the first time a student is provided special education services. A parent continues to have a right to disagree with a CSE recommendation, including a recommendation for 12 month special education services. In addition, federal regulations now provide for the revocation of parental consent.</p>
<p>4. Two year statute of limitations on commencement of an impartial hearing.</p> <p><u>Proposed:</u> Amend Education law to provide that a due process hearing must be requested within one year of the date the parent or district had knowledge of the issue, with exceptions as required by federal law and with an exception that for parents seeking tuition reimbursement, such request must be made within 180 days of the date the parent placed his/her child in the private school.</p>	<p>Education Law §4404(1)(a) 8 NYCRR §200.5(j)(1)(i)</p>	<p>Federal law applies a two-year statute of limitation, except where the state prescribes an explicit time limitation for requesting a hearing.</p>	<p>A statute of limitations of more than one year to request an impartial hearing is programmatically inappropriate since IEPs are developed for one year. IDEA due process procedures should be designed to resolve disputes within one year so that any resulting changes needed to assure that the student receives a free appropriate public education are made in time to benefit the student.</p>

NYS Requirement	Citation	How NYS Requirement is Different from Federal Requirement	Comments
STUDENTS WITH DISABILITIES PARENTALLY PLACED IN PRIVATE SCHOOLS			
<p>5. Parentally placed students with disabilities are entitled to special education services on an equitable basis.</p> <p><u>Proposed:</u></p> <p>Clarify that special education services for such students do not include special classes or integrated co-teaching; clarify responsibilities for July / August services; change the date from June 1 to April 1 for a parent to request special education services; make mediation mandatory when due process complaints are sought; and establish regional rate methodologies for billing to districts.</p>	<p>Education Law §3602-c 8NYCRR §177.2</p>	<p>Federal law requires that such students are not entitled to a free appropriate public education, but rather must receive special education services in accordance with a plan to expend a districts proportionate share of federal IDEA funds based on a count of parentally placed students with disabilities.</p>	<p>These recommendations were developed and supported by a Roundtable Task Force which included representatives of nonpublic schools, public school districts and parents of parentally placed students with disabilities.</p> <p>We are not proposing moving to the federal standard which would significantly reduce eligibility for special education services for parentally placed students but are proposing to clarify and simplify certain aspects of New York's requirements</p>

**SPECIAL EDUCATION RECOMMENDATIONS
NOT PREVIOUSLY PROPOSED BY THE BOARD OF REGENTS**

NYS REQUIREMENTS NOT OTHERWISE REQUIRED BY FEDERAL LAW OR REGULATION UNDER CONSIDERATION FOR MANDATE RELIEF

NYS Requirement	Citation	How NYS Requirement is Different from Federal Requirement	Comments
<p>COMMITTEE ON SPECIAL EDUCATION (CSE) MEMBERSHIP</p> <p>1. The CSE membership must include, in addition to the federal IEP team members:</p> <ul style="list-style-type: none"> • a school psychologist; • a parent of a student with disability (in addition to the student's parent), except that the parent of the student may decline the participation of the additional parent member; and • a physician if requested by the school or parent 72 hours before the meeting. <p><u>Proposal:</u> Conform the membership of the CSE to the federal IEP team membership.</p>	<p>Education Law §4402(1)(b)(1)(a) and (b) 8 NYCRR §200.3(a)(1)</p>	<p>Federal law and regulations do not require a school psychologist, additional parent member or physician.</p>	<p>The federally required IEP team membership was expanded in 1997 to include general education teachers, individuals who can interpret instructional implications of evaluations and others at the discretion of the parents and public agency, and other individuals who have knowledge or special expertise regarding the child. These other individuals could include the school psychologist, another parent or a physician at the request of the school or parent.</p>

Appendix B-2

NYS Requirement	Citation	How NYS Requirement is Different from Federal Requirement	Comments
<p>2. Subcommittees on Special Education - School districts with more than 125,000 inhabitants must appoint subcommittees to the extent necessary to ensure timely evaluation and placement of students with disabilities. Other school districts may, but are not required to, have subcommittees. Subcommittee membership is the same as federal IEP team membership, except a school psychologist is a required member of a subcommittee whenever a new psychological evaluation is reviewed or a change to a program option with a more intensive staff-to-student ratio is recommended.</p> <p>Subcommittees must submit an annual report to CSE. The parent has the right to disagree with Subcommittee recommendations and refer to CSE.</p> <p><u>Proposal:</u> Repeal Subcommittee requirements, contingent upon change to State law to conform the CSE membership to the federal IEP team.</p>	<p>Education Law §4402(1)(b)(1)(d) 8 NYCRR §200.3(c)</p>	<p>The subcommittee membership is the same as the federal mandated IEP team membership, with the exception of the requirements for participation of the school psychologist.</p>	<p>Only viable if the State aligns its CSE membership to federal standard (above). If the membership of the CSE is aligned to the federal IEP team membership, Subcommittees on Special Education would no longer be necessary.</p>
<p>3. Written notice of a CSE meeting must 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 of the CSE.</p> <p><u>Proposal:</u> Repeal contingent upon change to State law to conform the CSE membership to the federal IEP team.</p>	<p>8 NYCRR §200.5(c)(2)(iv)</p>	<p>There is no comparable federal requirement.</p>	<p>Only viable if the State aligns its CSE membership to federal standard (above).</p>

NYS Requirement	Citation	How NYS Requirement is Different from Federal Requirement	Comments
<p>4. If the meeting is being conducted by a Subcommittee on Special Education, the meeting notice must inform the parent(s) that, upon receipt of a written request from the parent, the Subcommittee shall refer to the CSE any matter on which the parent(s) disagrees with the Subcommittee's recommendation concerning a modification or change in the identification, evaluation, educational placement or provision of a free appropriate public education to the student.</p> <p><u>Proposal:</u></p> <p>Repeal contingent upon change to State law to conform the CSE membership to the federal IEP team.</p>	<p>8 NYCRR §200.5(c)(2)(vi)</p>	<p>There is no comparable federal requirement.</p>	<p>Only viable if the State aligns its CSE membership to federal standard (above).</p>
<p>COMMITTEE ON PRESCHOOL SPECIAL EDUCATION (CPSE)</p>			
<p>5. In addition to the federal IEP team members, membership of the CPSE includes an additional parent member (except that the parent can decline the participation of the additional parent member) and a municipality representative, except the attendance of the municipality representative is not required for a quorum.</p> <p><u>Proposal:</u></p> <p>Align CPSE membership with the federal IEP team, except 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.</p>	<p>Education Law §44-10(3) (a)(1)</p> <p>8 NYCRR §200.3(a)(2)</p>	<p>There are no federal requirements for an additional parent member or municipality representative on the committee.</p>	<p>The federally required IEP team membership was expanded in 1997 to include general education teachers, individuals who can interpret instructional implications of evaluations and others at the discretion of the parents and public agency, other individuals who have knowledge or special expertise regarding the child. These other individuals could include the school psychologist, another parent or a physician at the request of the school or parent. If there is no revision to the payment structure for preschool special education, the municipality representative may need to be retained on the CPSE.</p>

<p>NYS Requirement</p>	<p>Citation</p>	<p>How NYS Requirement is Different from Federal Requirement</p>	<p>Comments</p>
<p>INDIVIDUAL EVALUATIONS</p>			
<p>6. For preschool students, the parent selects the evaluator from list of approved evaluators. <u>Proposal:</u> Repeal the requirement that parent select the evaluator and replace it with the requirement that the school district select an evaluator that can provide a timely evaluation of the preschool child. Deem all school districts approved preschool evaluators to allow any district to choose to conduct preschool evaluations themselves.</p>	<p>Education Law §4410(4)(b) 8 NYCRR §200.16 (c)(1)</p>	<p>Federal law imposes evaluation responsibilities on the public school district, with parental right to independent evaluation under limited circumstances.</p>	<p>This requirement has contributed to significant non-compliance in NYS for timely evaluations of preschool students, as parents do not always select approved evaluators who are able to complete the individual evaluation within the State's required timeline. Districts would have the option of serving as approved evaluators and conducting the evaluation or of contracting with an approved evaluation site.</p>
<p>7. For preschool students, the board of education must provide each parent with list of approved evaluators in the geographic area. <u>Proposal:</u> Repeal contingent upon repeal of the parental choice of evaluator.</p>	<p>Education Law §4410(4)(b) 8 NYCRR §200.16 (h)(2)</p>	<p>Federal law imposes evaluation responsibilities on the LEA and does not require a list of private approved evaluators.</p>	<p>Tied to removal of parental choice of evaluator (above).</p>
<p>8. The initial evaluation of a preschool student must be conducted within 30 school days of the date of parental consent to conduct the evaluation. <u>Proposal:</u> Align the timeline to be the same as school age students, which is 60 calendar days.</p>	<p>8 NYCRR §200.16(c)(2)</p>	<p>Federal regulations require the initial evaluation to be conducted within 60 calendar days of receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe.</p>	<p>Our current requirements provide for less time for preschool students' evaluations to be completed than school age evaluations, even though the preschool evaluation system relies is more complex and dependent upon approved evaluators and parental choice of evaluators. This has resulted in substantial non-compliance in preschool evaluation timelines.</p>

NYS Requirement	Citation	How NYS Requirement is Different from Federal Requirement	Comments
<p>9. 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.</p> <p><u>Proposal:</u> Adopt the federal standard for initial evaluations.</p>	<p>Education Law §4402(1)(b)(3)(a) 8 NYCRR §§200.1(aa), (bb), (tt) and (ddd); 200.4(b)(1)(i) – (v); 200.16(c)</p>	<p>Federal requirements do not prescribe specific types of assessments that must be conducted as part of an initial evaluation except that a classroom observation is a federal requirement for students with specific learning disabilities. The terms psychological evaluation, social history and FBA are not defined in federal law or regulation.</p>	<p>This would provide flexibility to Committees to determine most appropriate evaluations (e.g., not every student would require a physical evaluation).</p> <p>Federal regulations require that, for eligibility determinations for special education, the Committee must draw upon information from a variety of sources, including aptitude and achievement tests, parent input and teacher recommendations, as well as information about the student's physical condition, social or cultural background and adaptive behavior.</p>
<p>10. Establishes the process for a school psychologist to determine the need to administer an individual psychological evaluation and requires a written report when such evaluation is determined not to be necessary.</p> <p><u>Proposal:</u> Repeal, contingent upon adoption of the federal standard for individual evaluations.</p>	<p>Education Law §4402(1)(b)(3)(a) 8 NYCRR §200.4(b)(2)</p>	<p>There is no comparable federal requirement.</p>	<p>Only viable if change definition of individual evaluation (above)</p>
PLANNING AND REPORTING REQUIREMENTS			
<p>11. Requires the school district to 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.</p> <p><u>Proposal:</u> Repeal - outdated statutory requirement</p>	<p>Education Law §4402(1)(b)(3)(h) Executive Law §353(15)</p>	<p>There is no comparable federal requirement.</p>	<p>There are no longer any school age students of veterans of the Vietnam War.</p>

Appendix B-2

NYS Requirement	Citation	How NYS Requirement is Different from Federal Requirement	Comments
<p>POLICIES AND PROCEDURES</p> <p>12. Requires boards of education to have plans and policies for appropriate declassification of students with disabilities – regular consideration for declassifying students when appropriate and the provision of educational and support services upon declassification. <u>Proposal:</u> Repeal.</p>	<p>Education Law §4402(1)(b)(3)(d-2) 8 NYCRR §200.2(b)(8)</p>	<p>There is no comparable federal requirement.</p>	<p>CSE/CPSEs must still determine whether a student with a disability continues to need special education services as one component of every annual review. This has not been an effective requirement leading to an increase in declassification rates.</p>
<p>APPROVAL OF CERTAIN EARLY INTERVENTION PROGRAMS</p>			
<p>13. The Commissioner approves the provision of early intervention services by approved preschool providers. <u>Proposal:</u> Repeal.</p>	<p>Education Law §4403(18)</p>	<p>Federal law does not require the State Educational Agency to approve providers of early intervention services.</p>	<p>The Department of Health (DOH) under the Early Intervention Program provides services to children with disabilities, birth to two in NY State. This requirement is a duplicative burden to SED for a responsibility that resides in the first instance with DOH.</p>

NYS Requirement	Citation	How NYS Requirement is Different from Federal Requirement	Comments
<p>DUE PROCESS</p> <p>14. The CSE/CPSE must provide a copy of the State's handbook for parents of students with disabilities or a locally approved handbook when a student is referred for special education.</p> <p><u>Proposal:</u> Repeal</p>	<p>Education Law §4402(1)(b)(7)</p>	<p>There is no comparable federal requirement.</p>	<p>School districts must continue to provide the State's comprehensive mandatory procedural safeguards notice to a parent, which provides a comprehensive explanation of the parent's due process rights. In addition, NY State now has an extensive network of parent centers to assist parents in understanding the special education process. The publication, printing and duplication costs of the parent's guide would be a work and cost savings to the State and to districts.</p>
<p>COMMISSIONER'S APPOINTMENT TO STATE SUPPORTED SCHOOLS</p>			
<p>15. Procedures for the appointment of students to State-supported schools.</p> <p><u>Proposal:</u> Repeal the Commissioner's role in appointments to State supported schools and that the State supported school evaluate the student in addition to the evaluation conducted by the school district.</p>	<p>8 NYCRR §200.7(d)(1)(ii) and (iii)</p>	<p>There are no federal requirements relating to appointment to state-supported schools.</p>	<p>This would eliminate unnecessary administrative procedures that were established before the federal and State laws were enacted and are duplicative costly evaluations of the student for admission to such schools.</p>