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The University of the State of New York  
**THE STATE EDUCATION DEPARTMENT**  
Office of P-12 Education  
Office of Special Education  
Albany, New York 12234

# **REGULATIONS OF THE COMMISSIONER OF EDUCATION**

*Pursuant to Sections 207, 3214, 4403, 4404 and 4410 of the Education Law*

## **PART 200** **Students with Disabilities**

and

## **PART 201** **Procedural Safeguards for Students with Disabilities Subject to Discipline**

### **GENERAL DISCLAIMER**

This copy of Parts 200 and 201 of the Regulations of the Commissioner of Education is presented for general informational purposes as a public service. Although reasonable efforts have been made to ensure that this copy is current, complete and accurate, the State Education Department does not warrant or represent that this information is current, complete and accurate. The Commissioner's Regulations are subject to change on a regular basis. Readers are advised to consult Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York (8 NYCRR), published by the Department of State, and the State Register for the official exposition of the text of these amendments and any subsequent changes or revisions.

A district providing such a description shall also inform the parent of each student in such class that, upon request, the parent shall be afforded the opportunity to discuss the description with an appropriate representative of the district. A copy of such description shall also be included in the district plan required by section 200.2(c) of this Part.

- (8) For parents of students placed in special classes described in subparagraphs (4)(ii) and (iii) of this subdivision, provision shall be made for parent counseling and training as defined in section 200.1 (kk) of this Part for the purpose of enabling parents to perform appropriate follow-up intervention activities at home.
- (i) *Home and hospital instruction.* Students with disabilities who are recommended for home and/or hospital instruction by the committee on special education shall be provided instruction and appropriate related services as determined by the committee on special education in consideration of the student's unique needs. Home and hospital instruction shall only be recommended if such placement is in the least restrictive environment and must be provided:
  - (1) a minimum of five hours per week at the elementary level, preferably one hour daily; or
  - (2) a minimum of 10 hours per week at the secondary level, preferably two hours daily.
- (j) *In-state or out-of-state private schools.* (1) State assistance for instruction of public school students placed in approved private schools. An application by a board of education for State reimbursement pursuant to section 4405 of the Education Law for a student in an in-state or out-of-state private school shall be approved by the commissioner provided that:
  - (i) The committee on special education of the school district in which the student resides has provided a current individual evaluation or reevaluation of the student, as prescribed by section 200.4(b) of this Part. For purposes of this subparagraph, the individual evaluation and the classroom observation where applicable, and any other evaluations necessary to describe the relevant circumstances leading up to the recommendation and the basis for the recommendation for change of placement shall have been completed within six months prior to the committee on special education's initial recommendation for private school placement.
  - (ii) The committee on special education has provided a current individualized education program (IEP) for the student as required by section 200.4(d)(2) of this Part.

- (iii) The committee on special education has certified that the student is of school-age and has a disability or combination of disabilities, and has further documented that the nature or severity of the student's disability is such that appropriate public facilities for instruction are not available. This documentation shall include, but need not be limited to:
  - (a) documentation of efforts to place the student in a public facility and the outcomes of those efforts, and/or of committee on special education findings regarding the lack of suitability of each currently available and geographically accessible public placement;
  - (b) documentation of all efforts to enable the student to benefit from instruction in less restrictive settings using support services and supplementary aids and special education services as set forth in subdivisions (d), (e), (f), (g) and (h) of this section, and/or for those services not used, a statement of reasons why such services were not recommended;
  - (c) detailed evidence of the student's lack of progress in previous less restrictive programs and placements or a statement of reasons that such evidence is not available;
  - (d) in the case of a recommendation by the committee on special education for placement of a student in a residential program, documentation that residential services are necessary to meet the student's educational needs as identified in the student's IEP, including a proposed plan and timetable for enabling the student to return to a less restrictive environment or a statement of reasons why such a plan is not currently appropriate;
  - (e) in the case of a recommendation by the committee on special education for placement of a student in an educational facility outside of the State, documentation that there are no appropriate public or private facilities for instruction available within this State; and
  - (f) in the case of a reapplication for reimbursement, documentation of the continuing need for placement of the student in a private school.
- (iv) The application includes a statement that the placement is for the entire school year or the balance thereof.

- (2) Criteria for approval. No contract for the placement of a student with a disability shall be approved for purposes of State reimbursement unless:
- (i) the application for reimbursement contains the documentation required in paragraph (1) of this subdivision; and
  - (ii) such placement will be in a private school approved by the commissioner for the education of students with disabilities; and
  - (iii) the proposed placement offers the instruction and services recommended in the student's IEP.
- (3) Procedure for approval for reimbursement.
- (i) In order to obtain a timely determination, an application for State reimbursement shall be received by the department within six business days of the recommendation by the committee on special education that the student be placed in a private school. An annual re-application for reimbursement in a subsequent year shall be submitted prior to June 1st preceding the school year for which funding is sought.
  - (ii) Initial agency determination. Within 15 business days of receipt of an application for State reimbursement, the commissioner's designee shall give notice to the board of education orally or by facsimile machine, and in writing by mail of the approval or initial denial of the application. Written notice of the denial of an application shall be accompanied by a statement of reasons for denial, including specific findings of deficiencies in the application, a statement of additional documentation or information requested and notice to the board of education of the opportunity to cure deficiencies in its application and of the availability of administrative review of the denial.
  - (iii) Opportunity to cure deficiencies. Within 20 business days after written notice of the denial of an application is sent pursuant to subparagraph (ii) of this paragraph, the board of education may submit a revised application which addresses any deficiencies in its initial application identified in the statement of reasons for the denial. Within 10 business days of receipt of a revised application, the commissioner's designee shall send notice to the board of education orally or by facsimile machine, and in writing by mail, of the action taken on the revised application. Written notice of a denial of a revised application shall be accompanied by a statement of reasons for denial including findings of deficiencies in the revised application and shall inform the board of education of the availability of administrative review of the denial.
  - (iv) Administrative review.

- (a) No later than 40 days after written notice of the initial denial of an application for reimbursement is sent pursuant to subparagraph (ii) of this paragraph, the board of education may request administrative review of such initial denial, or the denial of a revised application, by the commissioner, or his or her designee. The board of education shall submit with such request a response to the statement of reasons for the denial and findings of deficiencies, and may submit with the request additional evidence in support of its application.
- (b) Within 10 business days of receipt of a request for administrative review, the assistant commissioner or his or her designee shall render a final agency determination on the application for State reimbursement and shall notify the board of education in writing of such determination. The decision shall include a statement of relevant findings and deficiencies, and a concise statement of conclusions, including the legal basis for such conclusions.
- (v) Where an application for reimbursement is approved by the commissioner's designee, or upon review, the board of education shall be entitled to receive reimbursement as of the date the student commenced actual attendance in the recommended private school placement, except that where the board of education fails to submit a timely application, as prescribed by subparagraph (3)(i) of this subdivision, State reimbursement shall commence on the date the application for reimbursement is received by the department.
- (4) Implementation of placement. (i) It shall be the duty of the local board of education to implement a board-approved committee on special education recommendation for placement in an approved private school within the time prescribed by section 200.4(e)(1) of this Part.
  - (ii) Neither the filing of an application or revised application for reimbursement, nor the filing of a request for review, shall be deemed to relieve the board of education of its responsibility to provide appropriate special programs and services within 30 school days of receipt of the recommendation of its committee on special education.
- (5) Additional procedures for private school placements. (i) In the event that the department, in reviewing private school placements made by school districts, determines that a board of education has engaged in a pattern or practice of placing students with disabilities in private day or residential schools when appropriate placements were available in public facilities, or of failing to make residential and/or nonresidential private school placements in a timely manner, or of failing to submit timely applications

pursuant to subparagraph (3)(i) of this subdivision, the department shall advise the board and direct the board to take corrective action, including but not limited to:

- (a) review by the district's committee on special education of all private placements deemed by the department to be inconsistent with the right to placement in the least restrictive environment; and
    - (b) compliance with recommendations by the department to develop programs in the public school setting to enable students to remain in public facilities; and
    - (c) establishment of an agreed upon deadline for filing applications as a precondition for obtaining reimbursement.
  - (ii) Upon a finding of noncompliance with a prior directive of the department for corrective action pursuant to subparagraph (i) of this paragraph, the department may require prior approval by the department of individual placements in private and residential school programs for a period prescribed by the department.
  - (iii) Where the department requires, as corrective action, that a board of education obtain prior approval for private day and residential school placements, the department's determination to approve or deny any such application shall be made within 10 business days of a request by the board of education for such approval. Where the department disapproves such a placement recommendation for an individual student, the parent may file with the department a written request for a hearing before an impartial hearing officer who will be designated by the department. The procedures relating to notice and review of the disapproval of the recommended private or residential school placement shall be comparable to those set forth in section 200.5 of this Part, and shall be provided by the department. Review of the determination of the hearing officer shall be available by means of a proceeding pursuant to article 4 of the Civil Practice Law and Rules or 20 U.S.C. 1415, and may be instituted by any party to the hearing.
- (k) *Twelve-month special service and/or program.* (1) Eligibility of students for 12-month special services and/or programs. Students shall be considered for 12-month special services and/or programs in accordance with their need to prevent substantial regression, if they are:
- (i) students whose management needs are determined to be highly intensive and require a high degree of individualized attention and