

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 305, 4402 and 4403.

1. Subparagraph (v) of paragraph (1) of subdivision (b) of section 200.5 of the Regulations of the Commissioner of Education is repealed, effective July 3, 2013.

2. Paragraphs (8) and (9) of subdivision (b) of section 200.5 of the Regulations of the Commissioner of Education are added, effective July 3, 2013, as follows:

8. Students with disabilities who are covered by public benefits or insurance.

(i) Consent. Prior to accessing a student's or parent's public benefits or insurance for the first time, after providing notification to the student's parents consistent with subparagraph (ii) of this paragraph, the school district must obtain the written consent of the parent, consistent with the confidentiality requirements of sections 99.30 and 300.622 of the Code of Federal Regulations (Code of Federal Regulations, 2012 edition, title 34, sections 99.30 and 300.622, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2012 - available at the Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234), which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular student), the purpose of the disclosure (e.g., billing for special education services), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program, such as Medicaid or Supplemental Security Insurance); and specify that the parent understands and agrees that the public agency may access the parent's or student's public benefits or insurance to pay for services under this Part.

(ii) Notification. Prior to accessing a student's or parent's public benefits or insurance for the first time, and annually thereafter, the school district must provide the student's parents with written notification, consistent with the requirements of subdivision (a)(4) of this section, that includes:

(a) a statement of the parental consent provisions in subparagraph (i) of this paragraph;

(b) a statement that the parents are not required to sign up for or enroll in public benefits or insurance programs in order for their child to receive a free appropriate public education under Part B of the Individuals with Disabilities Education Act;

(c) a statement that the parents are not required to incur an out-of-pocket expense, such as the payment of a deductible or co-pay amount, incurred in filing a claim for services pursuant to this Part;

(d) a statement that the school district may not use the student's benefits under a public benefits or insurance program if that use would:

(1) decrease available lifetime coverage or any other insured benefit;

(2) result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;

(3) increase premiums or lead to the discontinuation of benefits or insurance; or

(4) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures;

(e) a statement that the parents have the right, pursuant to Parts 99 and 300 of Title 34 of the Code of Federal Regulations, to withdraw their consent to disclosure of

their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and

(f) a statement that the withdrawal of consent or refusal to provide consent under Parts 99 and 300 of Title 34 of the Code of Federal Regulations to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

(9) Students with disabilities who are covered by private insurance. With regard to services required to provide a free appropriate public education to an eligible student under this Part, a school district may access the parents' private insurance proceeds only if the parents provide consent consistent with section 200.1(l) of this Part. Each time the school district proposes to access the parents' private insurance proceeds, the school district must obtain such parental consent, and inform the parents that their refusal to permit the school district to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.