

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 305, 3214, 4402, 4403, 4410 and Chapter 410 of the Laws of 1978.

1. Paragraphs (6), (10) and (12) of subdivision (b) of section 200.2 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(6) for the purpose of ensuring the confidentiality of personally identifiable data, information or records pertaining to a student with a disability. Such personally identifiable information shall not be disclosed by any officer or employee of the State Education Department or any school district, or member of a committee on special education or committee on preschool special education to any person other than the parent of such student, except in accordance with [section 300.500] sections 300.500 through 300.536 and sections 300.610 through 300.625 and Part 99 of title 34 of the Code of Federal Regulations (Code of Federal Regulations, [2006] 2009 edition, title 34, [section 300.500,] sections 300.500 - 300.536, sections 300.610 through 300.625, and [Federal Register/ Vol. 71 No. 156/ August 14, 2006/ p. 46791; title 34, sections 300.610-300.625, Federal Register/ Vol. 71, No. 156/ August 14, 2006/ pp. 46802-46804 - Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington DC 20001; Code of Federal Regulations, 2006 edition, title 34,] Part 99, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 - available at the [Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624, One Commerce Plaza,] Office of Counsel, New York State Education

Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234);

(10) and establishes a plan, pursuant to sections 1604(29-a), 1709(4-a), 2503(7-a) and 2554(7-a) of the Education Law, to ensure that all instructional materials to be used in the schools of the district are available in a usable alternative format, which shall meet the National Instructional Materials Accessibility Standard; in accordance with appendix C to part 300 of title 34 of the Code of Federal Regulations (Code of Federal Regulations, [2006] 2009 edition, title 34, part 300, appendix C, [Federal Register/ Vol. 71, No. 156/ August 14, 2006/ pp. 46814-46817 – Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington, DC 20001;] Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 - available at the [Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624, One Commerce Plaza,] Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234), for each student with a disability in accordance with the student's educational needs and course selections at the same time that such materials are available to nondisabled students. For purposes of this paragraph, alternative format is defined as any medium or format for the presentation of instructional materials, other than a traditional print textbook, that is needed as an accommodation for a student with a disability enrolled in the school district, including but not limited to Braille, large print, open and closed captioned, audio, or an electronic file. An electronic file must be compatible with at least one alternative

format conversion software program that is appropriate to meet the needs of the individual student. The plan shall:

- (i) . . .
- (ii) . . .
- (iii) . . .
- (iv) . . .
- (v) . . .

(12) that identify the measurable steps it shall take to recruit, hire, train and retain highly qualified personnel, as defined in section 120.6 of this Title and 34 CFR 300.18 (Code of Federal Regulations, [2006] 2009 edition, title 34, section 300.18, [Federal Register/ Vol. 71, No. 156/ August 14, 2006/ pp. 46758-46759 – Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington, DC 20001;] Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 - available at the [Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624, One Commerce Plaza,] Office of Counsel, New York State Education Department, Room 148, State Education Building 89 Washington Avenue, Albany, NY 12234), to provide special education programs and services;

2. Section 200.2(c)(1) of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(1) Each board of education which receives an apportionment for eligible students with disabilities, pursuant to [subdivision 19 of] section 3602 of the Education Law, or preschool students with disabilities pursuant to section 4410 of the Education

Law shall use such apportionments for special education programs and services which are in accordance with the provisions of this Part. Each board of education which receives such apportionment shall [prepare satisfactory plans periodically at the intervals] keep on file and make available for public inspection and review by the commissioner an acceptable plan as required by subdivision [10] 8(b) of section 3602 of the Education Law.

3. Paragraph (1) of subdivision (i) of section 200.2 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(1) Responsibility for ensuring the availability of instructional materials in alternative formats for students with disabilities. By July 1, 2002, each BOCES shall establish a plan to ensure that all instructional materials to be used in the programs of the BOCES are available in a usable alternative format, which shall meet National Instructional Materials Accessibility Standard in accordance with appendix C to part 300 of title 34 of the Code of Federal Regulations (Code of Federal Regulations, [2006] 2009 edition, title 34, part 300, appendix C, [Federal Register/ Vol. 71, No. 156/ August 14, 2006/ pp. 46814-46817 - Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington DC 20001;] Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 - available at the [Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624, One Commerce Plaza,] Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, New York 12234), for each student with a disability in accordance with the student's educational needs and course selections at the same

time that such materials are available to nondisabled students. For purposes of this subdivision, alternative format is defined as any medium or format for the presentation of instructional materials, other than a traditional print textbook, that is needed as an accommodation for a student with a disability enrolled in a program of the BOCES, including but not limited to Braille, large print, open and closed captioned, audio, or an electronic file. An electronic file must be compatible with at least one alternative format conversion software program that is appropriate to meet the needs of the individual student. The plan shall:

- (i) . . .
- (ii) . . .
- (iii) . . .
- (iv) . . .
- (v) . . .

4. Paragraph (9) of subdivision (b) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(9) No student shall be required to obtain a prescription for a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812[c]) as a condition of receiving an evaluation under this Part (United States Code, [2000] 2006 edition, volume [11] 13; Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001; 2008 - available at the [Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624, One Commerce Plaza,] Office of Counsel,

New York State Education Department, State Education Building Room 148, 89
Washington Avenue, Albany, NY 12234).

5. Clause (b) of subparagraph (i) of paragraph (4) of subdivision (d) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(b) where a child is determined to be at risk of a future placement in a residential school, the committee must, with parental consent or consent of a student 18 years of age or older, request in writing that a designee of the appropriate county or State agency participate in any proceeding of the committee to make recommendations concerning the appropriateness of residential placement and other programs and placement alternatives, including but not limited to, community support services that may be available to the family. The committee must notify the local social services district when a student who is in a foster care placement is at risk of a future placement in a residential school. A copy of such request must be forwarded to the Office of Mental Health and the [Office of Mental Retardation and Developmental Disabilities] Office for People With Developmental Disabilities. In the event that such persons are unable to attend such meetings, the committee shall attempt alternative means allowing for their participation, such as individual or conference telephone discussions, and such attempts shall be documented;

6. Subparagraph (iii) of paragraph (8) of subdivision (d) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(iii) Transmittal of Records. (a) To facilitate the transition for a student described in this paragraph, the new school district in which the student enrolls shall take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education services to the student, from the previous school in which the student was enrolled pursuant to 34 C.F.R. section 99.31(a)(2) (Code of Federal Regulations, [2004] 2009 edition, Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001: [2004] 2009 – available at the [Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624, One Commerce Plaza,] Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234).

7. Paragraph (9) of subdivision (d) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(9) The school district shall not require a student with a disability to obtain a prescription for a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. section 812[c]) as a condition of receiving services under this Part (United States Code, [2000] 2006 edition, volume [11] 13; Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001 [:2001] ; 2008 – available at the [Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624, One Commerce Plaza,] Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234).

8. Subparagraph (v) of paragraph (1) of subdivision (b) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(v) prior to each time the school district accesses a parent's private or public insurance proceeds in accordance with the requirements of 34 CFR sections 300.154(d)(2)(iv)(A) and (e)(1) and (e)(2)(i) (Code of Federal Regulations, [2006] 2009 edition, title 34, section 300.154, [Federal Register/ Vol. 71, No. 156/ August 14, 2006/ pp. 46771-46772, Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington, DC 20001;] Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 - available at the [Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624 One Commerce Plaza,] Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234);

(a) . . .

9. Subparagraph (i) of paragraph (2) of subdivision (c) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(i) inform the parent(s) of the purpose, date, time, and location of the meeting and the name and title of those persons [expected to attend] who will be in attendance at the meeting;

10. Paragraphs (2) and (6) of subdivision (d) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(2) A meeting does not include informal or unscheduled conversations involving school personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision [if those issues are not addressed in the student's IEP]. A meeting also does not include preparatory activities that school personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(6) The parents of a student with a disability must be afforded an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student, in accordance with the requirements of 34 C.F.R. sections 300.613 through 300.625 (Code of Federal Regulations, [2006] 2009 edition, title 34, sections 300.613 – 300.625, [Federal Register/ Vol. 71, No. 156/ August 14, 2006/ pp. 46803-46804, Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington, DC 20001;] Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 - available at the [Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624 One Commerce Plaza,] Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234).

11. Paragraph (2) of subdivision (e) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(2) Each public school, public agency and approved private school subject to the provisions of this Part shall preserve the confidentiality of personally identifiable data,

information or records pertaining to students with disabilities. Such confidentiality must be preserved in a manner consistent with the procedures adopted pursuant to section 200.2(b)(6) of this Part and/or in accordance with [20 USC 1232(g)] 20 USC 1232g and the provisions of part 99 of title 34 of the Code of Federal Regulations or its successor and sections 300.610 through 300.625. (United States Code, [2000] 2006 edition, volume [11] 12; [,2001] 2008; [United States Code, 2000 edition, supplement III, volume two, 2005,] Superintendent of Documents, U.S. Government Printing Office, Stop SSOP Washington, DC 20402-9328: 2004; Code of Federal Regulations, [2006] 2009 edition, title 34, part 99, Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001; Code of Federal Regulations, [2006] 2009 edition, title 34, sections 300.610-300.625, [Federal Register/ vol. 71, No. 156/ August 14, 2006/ pp. 46802-46804 - Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington, DC 20001] Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 – available at the [Office of Vocational and Educational Services for Individuals with Disabilities; Room 1624, One Commerce Plaza,] Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234).

12. Subparagraph (xvi) of paragraph (3) of subdivision (j) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(xvi) Commencing July 1, 2002, each board of education shall report information relating to the impartial hearing process, including but not limited to the request for,

initiation and completion of each impartial hearing, to the Office of [Vocational and Educational Services for Individuals with Disabilities] Special Education of the State Education Department in a format and at an interval prescribed by the commissioner.

13. Paragraph (5) of subdivision (j) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(5) Timeline to render a decision. Except as provided in section 200.16(h)(9) of this Part and section 201.11 of this Title, the impartial hearing officer shall render a decision, and mail a copy of the written, or at the option of the parents, electronic findings of fact and the decision to the parents, to the board of education, and to the Office of [Vocational and Educational Services for Individuals with Disabilities (VESID)] Special Education of the State Education Department, not later than 45 days from the date required for commencement of the impartial hearing in accordance with subparagraph (3)(iii) of this subdivision. In cases where extensions of time have been granted beyond the applicable required timelines, the decision must be rendered and mailed no later than 14 days from the date the impartial hearing officer closes the record. The date the record is closed shall be indicated in the decision. The record of the hearing and the findings of fact and the decision shall be provided at no cost to the parents. All personally identifiable information shall be deleted from the copy forwarded to [VESID] the Office of Special Education.

14. Paragraph (1) of subdivision (k) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(1) Any party aggrieved by the findings of fact and the decisions of an impartial hearing officer rendered in accordance with subdivision [(i)] (j) of this section may

appeal to a State review officer of the State Education Department. Such a review shall be initiated and conducted in accordance with the provisions of Part 279 of this Title.

15. Subparagraph (iv) of paragraph (1) of subdivision (l) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(iv) The original signed complaint shall be filed with the [Office of Vocational and Educational Services for Individuals with Disabilities, New York State Education Department, One Commerce Plaza, Room 1624,] Office of Special Education, New York State Education Department, State Education Building Room 307, 89 Washington Avenue, Albany, New York, 12234.

16. Paragraph (2) of subdivision (e) of section 200.6 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(2) For students with disabilities determined to need speech and language services, [such services shall be provided for a minimum of two 30-minute sessions each week, and] the total caseload of such students for teachers providing such services shall not exceed 65.

17. Paragraph (1) of subdivision (g) of section 200.6 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(1) The maximum number of students with disabilities receiving integrated co-teaching services in a class shall be determined in accordance with the students' individual needs as recommended on their IEPs, provided that [effective July 1, 2008,] the number of students with disabilities in such classes shall not exceed 12 students, unless a variance is provided pursuant to subparagraph (i) or (ii) of this paragraph.

(i) Variance by notification. A board of education or trustees of a school district may submit written notice to the commissioner to temporarily add one additional student with a disability to an integrated co-teaching class for the remainder of the school year, provided that at the start of classes in September of the current school year it is in compliance with the standards specified in this paragraph. Written notice to the commissioner shall be submitted on a form prescribed by the commissioner and shall sufficiently demonstrate educational justification and consistency with providing an appropriate education for all children affected.

(ii) Variance with Commissioner approval. If the school district has enrolled one student with a disability beyond the maximum 12 students with disabilities in an integrated co-teaching services class pursuant to the procedures established in subparagraph (i) of this paragraph, and it determines there is a need to temporarily add one additional student to such class, the school district may submit to the commissioner for approval an application for a variance to enroll the one additional student in the same class for the remainder of the school year. The application to the commissioner shall be on a form prescribed by the commissioner and shall sufficiently demonstrate educational justification and consistency with providing an appropriate education for all children affected.

18. Paragraphs (2) and (3) of subdivision (m) of section 200.6 of the Regulations of the Commissioner of Education are amended, effective December 8, 2010, as follows:

(2) Claims for State excess cost aid shall be based upon the minimum levels of service established in [subdivision 19 of] section 3602 of the Education Law.

(3) A child with a disability under the age of seven who is eligible for school-age services, not subject to compulsory attendance requirements and not on a regular school attendance register for school-age children shall be deemed enrolled for the purpose of claiming State aid pursuant to [subdivision 19 of] section 3602 of the Education Law for the provision of special education and related services in accordance with subdivision 2 of section 4401 of the Education Law as recommended by the committee on special education at a site to be arranged by the board of education.

19. Subdivision (g) of section 200.9 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(g) Procedures during close-down period. The owner(s) or operator(s) of an approved private program electing to cease operation, transfer ownership or [voluntary] voluntarily terminate the status as an approved program shall comply with the requirements of section 200.7(e) of this Part. For purposes of this subdivision, the close-down period means the period of time beginning with the date of the commissioner's receipt of notice and ending on the date of the program's cessation of operation, transfer of ownership or voluntary termination of its status as an approved program. Reimbursement shall be determined in accordance with the provisions set forth in paragraphs (f)(1) and (2) of this section. Financial reporting requirements following close down shall be in accordance with the provisions set forth in paragraph (e)(1) of this section. Such financial reports and financial statements shall be submitted to the commissioner no later than 90 days following close down.

20. Subdivision (e) of section 200.10 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(e) Budgets approved by the commissioner for a particular school year represent the maximum support for that year. State-supported schools shall limit items of expenditure and positions to those approved by the commissioner. Any transfer between line items of expenditure exceeding 10 percent [of] or \$1,000, whichever is greater, of the approved budget authorization for the school year shall have prior approval of the commissioner.

21. Section 200.11 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

200.11 Admission to public schools of students residing in facilities of OMH and [OMRDD] OPWDD or child care institutions.

(a) Students residing in hospitals of the Office of Mental Health (OMH) and schools of the [Office of Mental Retardation and Developmental Disabilities (OMRDD)] Office for People With Developmental Disabilities (OPWDD) shall be identified, evaluated and provided with special education and related services in accordance with the provisions of section 116.6 of this Chapter.

(1) . . .

(2) The school district committee on special education shall review the recommendation of the facility's committee, and all relevant supporting information and data, to determine whether the school district has an educational program appropriate to the needs of each student so recommended, or whether an appropriate program can be provided by a board of cooperative educational services or another school district by agreement with the school district in which the facility is located.

(i) . . .

(ii) . . .

(iii) If the committee on special education concludes that placement in a private school for students with a disability is the appropriate educational placement for the student, the committee's report to the board of education may include a recommendation that the board of education recommend that the Office of Mental Health or the [Office of Mental Retardation and Developmental Disabilities] Office for People With Developmental Disabilities place such a student in a private, nonresidential school for students with disabilities.

(b) . . .

(c) . . .

22. Paragraph (4) of subdivision (a) of section 200.13 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(4) Instructional services shall be provided to meet the individual language needs of a student with autism [for a minimum of 30 minutes daily in groups not to exceed two, or 60 minutes daily in groups not to exceed six].

23. Paragraph (5) of subdivision (a) of section 200.20 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(5) Notwithstanding the provisions of section 200.7(a)(2)(ii) of this Part, final approval of preschool programs shall be based on at least one site visit by program or fiscal staff of the [Office of Vocational and Educational Services for Individuals with Disabilities] State Education Department during the period of conditional approval and will take effect as of the date that a final approval letter is issued by the commissioner, or the commissioner's designee. No such final approval shall be granted for new or

expanded programs subject to the moratorium established by subparagraph (iii) of paragraph [a] (a) of subdivision [9] (9) of section 4410 of the Education Law, except as authorized by such subparagraph.

24. Subdivision (c) of section 201.2 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(c) Controlled substance means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. section 812(c)) (United States Code, [1994] 2006 edition, volume [11] 13 ; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328 [: 1995] ; 2008 - available at the [Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624, One Commerce Plaza,] Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234).

25. Paragraph (5) of subdivision (b) of section 201.11 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(5) The impartial hearing officer shall mail a copy of the written, or at the option of the parents, electronic findings of fact and the decision to the parents, to the board of education and the Office of [Vocational and Educational Services for Individuals with Disabilities (VESID)] Special Education of the New York State Education Department within 10 school days after the hearing.