



May 2009

To: District Superintendents
Superintendent of Schools
New York City Board of Education
Principals of Public Schools
Directors of Pupil Personnel Services
Directors of Special Education
Impartial Hearing Officers
Commissioner's Advisory Panel for Special Education Services
Commissioner's Advisory Panel for Nonpublic Schools
SETRC Professional Development Specialists
Regional School Support Centers

From: James P. DeLorenzo

Subject: Individuals with Disabilities Education Act (IDEA) Part B Final Supplemental Regulations Issued December 1, 2008 and Effective December 31, 2008 – Non-Regulatory Guidance

This is to inform you that the United States Department of Education (USDOE) has issued non-regulatory guidance on the Part B final supplemental regulations, which implement IDEA 2004. The supplemental regulations, which went into effect December 31, 2008, clarified and strengthened Part 300 of the Code of Federal Regulations (34 CFR) in the areas of parental revocation of consent for continued special education and related services; positive efforts to employ and advance qualified individuals with disabilities; non-attorney representation in due process hearings; State monitoring and enforcement; State use of targets and reporting; public attention; and subgrants to local educational agencies (LEAs), base payment adjustments, and reallocation of LEA funds. A copy of the supplemental regulations is available at <http://edocket.access.gpo.gov/2008/pdf/E8-28175.pdf>.

The federal non-regulatory guidance provides detailed information, including implementation considerations, concerning the supplemental regulations. Section I of the non-regulatory guidance may be of considerable interest to school districts and parents as it relates to parental revocation of consent and includes implementation considerations for:

- amendment of records;
- procedures;
- age of majority;
- revocation of consent for a particular service;
- subsequent parent request;
- discipline;



- accommodations; and
- accountability.

In review of the attached federal guidance, please note the following New York State (NYS) requirements:

- Age of Majority: NYS law does not grant a child who has reached the age of majority all rights previously granted to parents under IDEA.
- Non-attorney representation in due process hearings: NYS regulations in section 200.5(j)(3)(xii) states that "The parents, school authorities, and their respective counsel or **representative**, shall have an opportunity to present evidence, compel the attendance of witnesses and to confront and question all witnesses at the hearing. Each party shall have the right to prohibit the introduction of any evidence the substance of which has not been disclosed to such party at least five business days before the hearing." In addition, section 200.5(j)(3)(vii) provides that "The parties to the proceeding may be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities. At all stages of the proceeding, the impartial hearing officer may assist an unrepresented party by providing information relating only to the hearing process. Nothing contained in this subparagraph shall be construed to impair or limit the authority of an impartial hearing officer to ask questions of counsel or witnesses for the purpose of clarification or completeness of the record."
- State monitoring and enforcement: NYS' criteria for the IDEA determination of a school district as "meets requirements", "needs assistance", "needs intervention" or "needs substantial intervention" are based on a school district's performance in relation to the State's targets for improvement in the areas of graduation and drop out rates for students with disabilities and performance on grades 3-8 State assessments, as well as the school district's rates of compliance on State Performance Plan indicators (SPP).
<http://www.vesid.nysed.gov/specialed/spp/home.html>.
- State use of targets and reporting: NYS will post each school district's performance toward State SPP targets by June 1, 2009 (<http://eservices.nysed.gov/sepubrep/>).

Please share this information with Directors of Special Education, Pupil Personnel Directors, Chairpersons of Committees on Special Education and Committees on Preschool Special Education and other interested individuals. Questions may be directed to the Special Education Policy Unit at (518) 473-2878 or your local Special Education Quality Assurance Regional Office:

Eastern Regional Office	(518) 486-6366
Western Regional Office	(585) 344-2002
Hudson Valley Regional Office	(518) 473-1185
Central Regional Office	(315) 476-5081
Long Island Regional Office	(631) 884-8530
New York City Regional Office	(718) 722-4544
Nondistrict Unit	(518) 473-1185