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April 2012

### SPECIAL EDUCATION FIELD ADVISORY

FROM: James P. DeLorenzo

SUBJECT: New Requirements for Special Education Programs and Services:  
Amendment to Sections 200.4 and 200.16 of the Regulations of the  
Commissioner of Education Relating to Preschool and School-Age Individual  
Evaluations (Effective April 11, 2012)

This memorandum is to inform you that the Board of Regents has approved for permanent adoption the amendment of sections 200.4 and 200.16 of the Regulations of the Commissioner of Education. The proposals to amend the regulations relating to preschool and school-age individual evaluations were part of the broader mandate relief discussion by the Board of Regents at their February, May, and November 2011 meetings.

Attached is a summary of the changes to the Regulations of the Commissioner of Education that were adopted at the March 2012 Regents meeting. A copy of the amended regulations, which become permanently effective April 11, 2012, can also be found at <http://www.regents.nysed.gov/meetings/2012Meetings/March2012/312brca5.pdf>

To ensure dissemination to appropriate individuals within a school district, I ask Superintendents to please share this memorandum with individuals such as Directors of Special Education, School Psychologists, Committee on Special Education and Committee on Preschool Special Education Chairpersons, Guidance Counselors and Directors of Pupil Personnel and Parent Teacher Associations. Questions regarding this memorandum may be directed to the Special Education Policy Unit at 518-473-2878 or to the Special Education Quality Assurance Office in your region:

Central Regional Office	(315) 476-5081
Eastern Regional Office	(518) 486-6366
Hudson Valley Regional Office	(518) 473-1185
Long Island Regional Office	(631) 952-3352
New York City Regional Office	(718) 722-4544
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Attachment

## Amendment to Sections 200.4 and 200.16 of the Regulations of the Commissioner of Education Relating to Preschool and School-Age Individual Evaluations

Effective April 11, 2012

The following is a summary of the new regulatory requirements. A copy of the regulations, as amended, can be found at <http://www.regents.nysed.gov/meetings/2012Meetings/March2012/312brca5.pdf>

**Underlined language is new language.**

**Bracketed [ ] language is repealed language.**

### SECTION 200.4

#### Procedures for Referral, Evaluation, Individualized Education Program (IEP) Development, Placement and Review

##### ***Timeline for initial evaluations – section 200.4(b)(1)***

Section 200.4(b)(1) of the Regulations of the Commissioner of Education has been amended to clarify that the 60-day timeline to complete an evaluation pertains to an initial evaluation of a student suspected of having a disability.

*200.4(b) Individual evaluation and reevaluation. (1) Unless a referral for an evaluation submitted by a parent or a school district is withdrawn pursuant to paragraph (a)(7) or (9) of this section, after parental consent has been obtained or a parental refusal to consent is overridden, an individual evaluation of the referred student shall be initiated by a committee on special education. The **initial** individual evaluation shall be completed within 60 days of receipt of consent unless extended by mutual agreement of the student's parents and the CSE pursuant to subparagraph (7)(i) and paragraph (j)(1) of this subdivision...*

##### ***Individual psychological evaluation – section 200.4(b)(2)***

Section 200.4(b)(2) has been amended to repeal the requirement that a school psychologist prepare a written report of his/her determination of the need to administer an individual psychological evaluation for a reevaluation of a student with a disability.

*200.4(b)(2) A determination by a school psychologist of the need to administer an individual psychological evaluation to a student of school age pursuant to Education Law, section 4402(1)(b)(3)(a) and section 200.1(aa) and (bb) of this Part, shall be based upon an assessment conducted by the school psychologist to substantiate his or her determination. Whenever a school psychologist determines that a psychological evaluation is unnecessary **as a component of the initial evaluation,***

*the psychologist shall prepare a written report of such assessment, including a statement of the reasons such evaluation is unnecessary, which shall be reviewed by the committee.*

**Notes:**

- ✓ *School psychologists must conduct an assessment to determine the need to administer a psychological evaluation to a school-age student as part of a student's initial or reevaluation.*
- ✓ *A school psychologist must prepare a written report for consideration by the committee on special education (CSE) when he or she determines that a psychological evaluation is not necessary as a component of a student's initial evaluation.*
- ✓ *A school psychologist is no longer required to prepare a written report when he or she determines that a psychological evaluation is not a needed component of a student's reevaluation.*
- ✓ *A school psychologist's determination that a psychological evaluation is not necessary as part of a student's reevaluation must, consistent with federal and State regulations, still continue to be considered by the CSE. It is the CSE's decision as to whether the psychological evaluation will be conducted as part of the student's reevaluation.*
- ✓ *Nothing in the amended regulations would alter the requirement that a psychologist prepare a written report when he/she does conduct an individual psychological evaluation as part of a student's initial evaluation or reevaluation.*

## **SECTION 200.16**

### **Educational Programs for Preschool Students with Disabilities**

#### ***Preschool evaluations – sections 200.16(c), (e) and (f)***

Sections 200.16(c),(e) and (f) of the Regulations of the Commissioner of Education have been amended to require that a preschool evaluation be completed within 60 calendar days of a parent's consent for the evaluation. The timeline for IEP implementation has not been extended (see 200.16(f) below).

*200.16(c)(2) **Except as provided in section 200.4(b)(7) of this Part, [The] the initial individual evaluation shall be completed within 60 days of receipt of consent to evaluate and** conducted in accordance with section 200.4(b) of this Part...*

*200.16(e) Recommendation. (1) The committee on preschool special education shall [provide a] **meet to review the results of the initial evaluation and develop***

**a recommendation [to the board of education] within [30 school days] 60 calendar days of the date of the receipt of consent to evaluate.**

200.16(f) Provision of services for preschool students with disabilities. (1) Upon receipt of the recommendation of the committee, the board of education shall arrange for the preschool student with a disability to receive such programs and services commencing with the July, September or January starting date for the approved program, unless such services are recommended by the committee less than 30 school days prior to, or after, such appropriate starting date selected for such preschool student, in which case, such services shall be provided as soon as possible following development of the IEP, but no later than 30 school days from the recommendation of the committee **and within 60 school days from receipt of consent to evaluate...**

**Notes:**

- ✓ Exceptions to the 60 calendar day timeline for preschool initial evaluations would apply if the:
  - student enrolls in a different school after timeframe has begun and the parent and district agree in writing to another timeframe; or
  - parent of the student repeatedly fails or refuses to produce the student for the evaluation.
- ✓ The CPSE must meet to review the results of the initial evaluation within 60 calendar days of the parent's consent to evaluate.