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SPECIAL EDUCATION FIELD ADVISORY

FROM: James P. DeLorenzo

SUBJECT: Placements of Students with Disabilities in Approved Out-of-State Residential Schools

The purpose of this memorandum is to provide updated procedures, forms and policy relating to a school district's responsibility to submit timely and complete applications, as prescribed in section 200.6(j) of the Regulations of the Commissioner of Education, for approval of State reimbursement of tuition costs for placements of students with disabilities in out-of-State approved residential programs. **The information in this memorandum updates guidance previously issued yearly since 2011.**

In accordance with these procedures, the Commissioner or a designee must make a determination of approval of State assistance for instruction of all public school students placed in approved private schools, including out-of-State programs. Approval of the System to Track and Account for Children (STAC) form is necessary to ensure timely State reimbursement of tuition costs to the public school and to provide the necessary authorization to municipalities to pay their portion of maintenance costs for a student's placement in a residential school[1]. Failure to follow the procedures outlined in this memo may result in denial of all or a portion of State reimbursement of tuition costs.

Important policy and procedural information on the following topics is included in this memorandum:

I. Interagency Services for Students At Risk for Placement or Placed in a Residential School
II. Initial Applications for Private School Residential Placements
III. Reapplication Process for Placement of Students in Out-of-State Residential Schools
   - Out-of-State Residential Placements
   - Application Submission Information
IV. Notification of Approval or Denial of State Reimbursement of Tuition Costs
V. Referral and Placement Process

[1] See the July 2013 Special Education Field Advisory, *State Reimbursement for Placement of Students with Disabilities in Approved Private School In-State and Out-of-State Day and Residential School Placements*, available at www.p12.nysed.gov/specialed/publications/statereimbursement-residentialplacements.htm

VI. Sharing of Student Records
VII. Placement of Students with Disabilities in Children's Residential Project (CRP) Programs
VIII. Technical Assistance

Please share this memorandum with staff responsible for the residential placements of students and others responsible for preparing application materials for State reimbursement of tuition costs.

I. Interagency Services for Students At Risk for Placement or Placed in a Residential School

Students at risk of residential placement:

The decision that a student needs an educational placement in a residential school, either in or out of State, must be based on the committee on special education's (CSE) determination that there is no appropriate nonresidential school available to meet the educational needs of the student. Pursuant to Chapter 600 of the Laws of 1994, the State developed "Considerations for Determining That A Child is At Risk of Residential School Placement." State law and regulations require the school district to identify needed support services that may help families maintain children in their own homes and communities, and avoid placement in residential care, for as long as possible. School districts have an important role in working with other child care systems to collaboratively address the needs of children and their families. For additional information, see Attachment 1 and http://www.p12.nysed.gov/specialed/publications/policy/chap600.pdf.

For each student at risk of residential placement, the CSE must:

- provide information to the parent on community support services that may be available to the family; and
- with the consent of the parent (or student if age 18 or older), invite the appropriate county or State agency to participate in CSE meetings concerning the appropriateness of residential placement and other programs and placement alternatives.

Each application for private school tuition reimbursement for the 2016-17 school year requires the school district to provide, for each student recommended for initial placement in residential care, written assurance[2] that it has:

- sought parental consent (or consent of the student if age 18 or older) to invite county or State agency representatives to the CSE meeting to make recommendations concerning the appropriateness of residential placement and other programs and placement alternatives. (For students in a foster care placement, the local social services district must be notified when the student is determined to be at risk of residential placement.)
- upon receipt of parental (or student) consent, invited other agency representative(s) to participate in the CSE meeting.

[2] See http://www.oms.nysed.gov/stac/guide_DCERT.pdf

Transition services and adult service planning:

To ensure appropriate and timely adult service planning for students who are at risk of or who are placed in residential schools, the district must also:

- with the consent of the parent (or student if age 18 or older), invite appropriate community and State agency representatives when the purpose of the meeting is to consider postsecondary goals and transition services;
- provide written notice to the parent of the date upon which the student will no longer be entitled to receive tuition free educational services and describe the opportunity and procedure for obtaining adult services, see 8 NYCRR section 200.4(i); and
- seek parental/student consent and share records with the adult service agency from which the student may be eligible to receive adult services. See 8 NYCRR section 200.4(i). For those students who are eligible for services from the Office for People with Developmental Disabilities (OPWDD), information about adult service planning is available at http://www.opwdd.ny.gov/opwdd_services_supports/children/transition-students-developmental-disabilities.

II. Initial Applications for Approved Private School Residential Placements

Applications for initial placements in approved private residential schools approved after April 1, 2016 will include approval of the time period on or after April 1, 2016 – June 30, 2017. Any initial applications approved prior to April 1, 2016 require that the district submit a reapplication no later than June 1, 2016 for the 2016-17 school year (July 1, 2016 – June 30, 2017) (8 NYCRR section 200.6(j)(3)(i)).

In order to obtain a timely determination of approval for State reimbursement of tuition costs for the initial placement of a student in an approved private residential school, the application for State reimbursement must be received by the New York State Education Department's (NYSED) Special Education Quality Assurance Nondistrict Unit within six business days of the student's start date in the approved private residential school. State regulations require NYSED to conduct a review of the student's application to ensure that it meets criteria for approval of State reimbursement of tuition costs, including documentation that the CSE's proposed placement offers the instruction and services recommended in the student's individualized education program (IEP) and that such placement is in the least restrictive environment.

Regardless of the State's determination regarding approval of State reimbursement of tuition costs, the district is responsible to implement the CSE's recommendation for timely placement in an approved private school.

For any initial or change of placement of a student with a disability under the age of 18 to an out-of-State residential school, a school district must submit an *Interstate Compact on the Placement of Children (ICPC) Referral Packet* to the New York State (NYS) Office of Children and Family Services (OCFS). Attachment 2 provides information on the Interstate Compact requirements.

III. Reapplication Process for Placement of Students in Out-of-State Residential Schools

NYSED is required to make a determination of approval of State assistance for instruction of public school students with disabilities placed in approved out-of-State private residential schools on a year-by-year basis. Therefore, districts must submit an annual reapplication for State reimbursement of a student in a private school. **Reapplications must be submitted prior to June 1 of the year preceding the school year for which funding is sought**. Initial approval of State reimbursement of tuition costs for a private school placement does not automatically mean that the application will be approved for subsequent years.

Reapplications to NYSED for a student who is currently placed in an out-of-State approved private residential school must include annual documentation that there are no appropriate public or approved private facilities for instruction available within New York State (NYS).

The CSE must adhere to all reapplication requirements as follows:

1. The district must seek placement of the student in an in-State school early enough in the school year in order to submit its application for State reimbursement of tuition costs to NYSED prior to June 1 of the year preceding the school year for which funding is sought. Therefore, the CSE must make **timely** referrals to appropriate in-State programs to ensure that documentation of acceptances and/or declinations from the in-State programs may be provided to the State prior to June 1 preceding the school year for which funding is sought.

2. At each student's annual review, the CSE must consider placement of the student in the least restrictive environment. State law requires that districts annually seek placement in appropriate in-State programs prior to placement in out-of-State programs, and for each student, there must be a proposed plan and timetable for enabling the student to return to a less restrictive environment. State reimbursement of tuition costs for out-of-State placements is contingent upon documentation that there are no appropriate public or approved private facilities for instruction within NYS available for the student.

3. The district must submit written documentation to NYSED, in the form of acceptance and declination letters, from all approved in-State schools that are potentially appropriate to implement the student's IEP.

4. In those cases where the CSE rejects a proposed placement for the student in a particular school that has accepted the student because the in-State school is unable to meet the student's IEP needs, the district must provide NYSED with information and documentation which support the CSE's actions based on sound educational reasons consistent with the student's IEP. While the concerns of the parent for the education of their child must be considered, a parent's disagreement with a placement or preference for another school is not, in and of itself, justification for the CSE not recommending an approved in-State program that has accepted the student.

5. For students who were placed out-of-State and for whom the CSE recommends a change in placement to an in-State program, the district must notify NYSED's Nondistrict Unit in writing prior to June 1, specifying the entry date and name of the new placement (e.g., XYZ School) and type of placement (e.g., in-State public or approved private school).

6. The following documentation must accompany the district's application for State reimbursement of tuition costs for out-of-State residential placements. Forms necessary to provide this documentation are available on the Office of Special Education's website at http://www.p12.nysed.gov/specialed/applications. For students turning age 21 during July or August, the only required documentation is a cover letter, application checklist and summer STAC-1.

   Out-of-State Residential Placements (Initial and Reapplications)

   1. CSE cover letter[3]
   2. Application checklist
   3. 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 currently not appropriate.
   4. Statement of Assurance for Out-of-State Residential Placement, including the listing of the in-State schools that are unable to meet the student's educational needs (referral chart and copies of all acceptance and rejection letters from the in-State private schools must be submitted; letters within six months are acceptable).
   5. For initial applications of students for residential placement, Statement of Assurance that the school district sought parental (or student) consent to invite county or State agency representatives to the CSE meeting.
   6. Student Profile
   7. Signed STAC-1 with the date of placement. A separate STAC-1 is required for July/August placements.
   8. DCERT screen shot (Online STAC screen where school district's enter their private placement certifications)

Application Submission Information

The district must submit *initial applications* to the Nondistrict Unit and electronically file the STAC-1 with the STAC Unit **within six business days of the date the student enrolled in a particular NYS approved private residential school** based on the recommendation of the CSE.

The district can submit *reapplications* to the Nondistrict Unit and electronically file the STAC-1 with the STAC Unit anytime following a student's annual review, but prior to **June 1 of the year preceding the school year for which placement is sought (i.e., June 1, 2016 for the 2016-17 school year).**

[3] At a minimum includes: reason for the application to a residential school and the steps the CSE took to ensure that the screening and referral process was completed.

technology staff, and if your email server allows for transmitting electronic messages securely via Transport Layer Security (TLS) protocols, you can submit applications electronically. If you cannot send an email securely via TLS, in order to protect student confidential information, you must mail or fax the application. Select **one** method for submission (email or mail or fax).

Email **or** mail **or** fax initial and reapplications for residential placements to:

Email: OOSAPP@nysed.gov

OR

New York State Education Department
Office of Special Education
Nondistrict Unit
1 Park Place, 3rd Floor
Peekskill, NY 10566
Attn: 2016-17 Out-of-State Residential Application

OR

Fax: (914) 402-2180

IV. Notification of Approval or Denial of State Reimbursement of Tuition Costs

Upon receipt of the initial application or reapplication, NYSED will notify the CSE of its determination within 15 business days. If State reimbursement of tuition costs for the placement is approved, the district will receive a copy of the approved STAC-1 from NYSED. It is the district's responsibility to forward a copy of the signed STAC-1 to the approved private school confirming funding approval of tuition costs for the 2016-17 school year. If NYSED denies State reimbursement of tuition costs for the placement, the district will have 20 business days to correct the deficiencies.

Regardless of the State's determination regarding approval of State reimbursement of tuition costs, the district is responsible to implement the CSE's recommendation for placement in an approved private school. Therefore, the district cannot use State disapproval of State reimbursement of tuition costs as a reason not to secure a timely placement of the student in a NYS approved private school. Regardless of the State's approval of reimbursement of tuition costs, the State will process the STAC-1 that authorizes municipalities to fund their portion of the maintenance costs.

If a school district submits a reapplication for reimbursement **after June 1** of the year preceding the school year for which funding is sought, the district is only entitled to receive State reimbursement of tuition costs (if approved) as of the date the application was received by NYSED, rather than the date the student commenced actual attendance in the CSE-recommended private school placement. [8 NYCRR section 200.6(j)(3)(v)]

A district may submit a request to NYSED for an administrative review of a denial of an application for State reimbursement of tuition costs no later than 40 days after written notice of the initial denial of the district's application (8 NYCRR section 200.6(j)(3)(iv)). If

districts do not follow the administrative review timelines, NYSED will dismiss the review as untimely.

V. Referral and Placement Process

It is the responsibility of CSEs to recommend placement of students in the least restrictive environment. However, the referral and placement process for private residential schools requires the cooperation of the NYS approved private schools and parents.

Each NYS approved out-of-State residential school serving students from NYS must fully cooperate with the efforts of school districts seeking to place students in approved private schools within NYS. Out-of-State schools must make students available for screening and intake procedures, provide access to educational records and facilitate observation of the student in his/her current educational setting at the request of the district.

Parents are integral partners in the referral process and are expected to cooperate fully in the intake interview and screening process for the residential school. While the CSE must consider the concerns of the parents in the placement process, the district must take responsibility to secure an appropriate placement for the student in the least restrictive environment, even in the instance where a parent does not fully engage with the referral and placement process. In-State and out-of-State schools should notify school districts if this is occurring.

VI. Sharing of Student Records

Pursuant to 34 CFR section 99.34 implementing the Family Educational Rights and Privacy Act (FERPA), an agency or institution subject to these requirements, such as a local educational agency, may disclose educational records of a student receiving services under Part B of the Individuals with Disabilities Education Act to a school in which the student seeks or intends to enroll, provided that (1) the agency makes a reasonable attempt to notify the parent (unless the disclosure is initiated by the parent) or (2) it is the policy of the agency or institution to forward education records to other agencies or institutions that have requested records and in which the student seeks or intends to enroll. Under these circumstances, prior consent of the parent is not required for the sharing of student education records pursuant to section 99.31 of FERPA.

VII. Placement of Students with Disabilities in Children's Residential Project (CRP) Programs

Placement of students in CRP[4] programs requires special procedures. Documents to request a CRP placement may be obtained by contacting the Nondistrict Unit at (518) 486-6260 or emailing OOSAPP@nysed.gov.

CRP programs are interagency education and residential programs approved by NYSED and the Office for People With Developmental Disabilities (OPWDD) to provide in-State

[4] NYS CRP Programs: Birch Family Services, AHRC – Nassau Brookville Center for Children's Services, Center for Discovery, Developmental Disabilities Institute, Devereux Red Hook, Easter Seals New York, Heartshare Human Services of New York, Maryhaven, SCO Family of Services-The Christopher School, UCP of Ulster Co, UCP of Greater Suffolk, Upstate Cerebral Palsy.

educational and residential programs for students with severe developmental disabilities currently in out-of-State residential schools or at risk of placement in out-of-State schools. Admission to CRP programs is limited to those children identified through the education system as needing educational and residential services who also meet the residential eligibility criteria for the Intermediate Care Facility for the Developmentally Disabled (ICFDD) as established by OPWDD. The placement of students in such programs is contingent on approval by NYSED and OPWDD that the student meets the criteria for CRP eligibility.

If a CSE is considering a residential placement for a student in a CRP program, the district must discuss this option with the parent and obtain parental consent to participate in the CRP. The district then contacts the local OPWDD Developmental Disabilities Regional Office concerning the referral of the student to the CRP program. The district should assist the parent in the application process to OPWDD to determine eligibility for services. (see http://www.opwdd.ny.gov/node/871). The district can email OOSAPP@mail.nysed.gov to request the form for placement in a CRP. To ensure timely review of this request, electronic submissions are preferred, but only permitted if your email server can transmit secure messages (see page 6 for further explanation). Select **one** method for submission (email or mail or fax).

Email: OOSAPP@mail.nysed.gov

OR

New York State Education Department
Office of Special Education
Nondistrict Unit
1 Park Place, 3rd Floor
Peekskill, NY 10566
Attn: 2016-17 CRP Request

OR

Fax: (914) 402-2180

VIII. Technical Assistance

NYSED does not provide a service by which it matches students to approved private schools for a district. It is the district's responsibility to access the list of in-State and out-of-State approved private schools through NYSED's website at http://www.p12.nysed.gov/specialed/privateschools/home.html and to contact each school directly to obtain information to assist in the referral and placement process. However, staff from the Office of Special Education, Special Education Quality Assurance Nondistrict Unit are available to provide technical assistance to school districts regarding the residential placement process and may be able to assist school districts to identify potential residential programs for students who may be difficult to place.

Questions concerning these procedures should be directed to the Nondistrict Unit at (518) 486-6260. Thank you for your cooperation and attention to this matter.

Attachments

- Attachment 1 – Questions and Answers
- Attachment 2 – Interstate Compact Requirements

Questions and Answers

1. **What factors should a Committee on Special Education consider prior to recommending a student for a residential placement?**

   The determination that a residential school placement is the least restrictive environment for the student, thus removing a child from his/her home and community, must come only after a committee on special education (CSE) has made the least restrictive environment considerations required for all placement recommendations. In accordance with State law and regulations, school districts must also consider the availability of community support services where students could access additional support for families and the supports and services that may be available from other State agency resources. For additional information on students at risk of residential placement, see http://www.p12.nysed.gov/specialed/publications/policy/chap600.pdf.

2. **What information should the district know about an approved out-of-State residential school prior to making a placement recommendation for a student with a disability?**

   While the State approves certain schools and provides general supervision of such schools, it is the district's responsibility to ensure that a particular residential school program is appropriate to implement the student's individualized education program (IEP). Districts should consider information provided by the school which includes, but is not limited to:
   - the school's intake process for determining a student's current educational status (e.g., earned credit, courses taken, assessments completed, etc.);
   - how the school will provide education consistent with New York State's (NYS) Common Core Learning Standards and Part 100 (general education) course requirements;
   - whether the student will receive the required 5½ hours of instruction at the secondary level (grades 7-12) and 5 hours at the elementary level;
   - the school's system of positive behavior management and how the school will provide functional behavioral assessment information and implementation of behavioral intervention programs consistent across residential and school programs;
   - how the student can take State assessments and the required coursework for credit toward a regular diploma;
   - whether the district of residence must make arrangements for a student to take NYS assessments in a district closer to the out-of-State school, travel back to the district of residence to take the State test or send a NYS-certified teacher to the out-of-State school to administer the State test;
   - how the student can be awarded a diploma, either from NYS or from the host state;
   - how and when the residential school will provide regular student progress reports to the district and to the student's parent;
   - how the student's teacher(s) will participate in the required CSE meetings; and

- how the district ensures teachers have access to a copy of the student's IEP and are informed of their IEP implementation responsibilities.

3. **If a student earns a diploma from an out-of-State school, does this end his/her eligibility for schooling with NYS?**

   Yes, if the diploma is considered a regular high school diploma. Earning a high school equivalency diploma does not terminate a student's entitlement to a free appropriate public education.

4. **If a student is eligible for a diploma from an out-of-State school, who makes the arrangements?**

   These arrangements would be the responsibility of the approved private school where the student is enrolled.

5. **What are the district's responsibilities to ensure a student placed in an out-of-State residential school takes NYS assessments?**

   The district of residence is responsible to arrange for a student to take NYS assessments. They may do so through arrangements in a public school district closer to the out-of-State school, returning the student to the district of residence to take the State test or sending a NYS certified teacher to the out-of-State school to administer the State test. Contact the NYS Education Department's (NYSED) Office of State Assessment to obtain technical assistance in making such arrangements (www.p12.nysed.gov/assessment/).

6. **What recourse does a district have if a parent impedes the district in its effort to secure a placement of the student in an in-State program?**

   In the unusual circumstance that a parent is impeding the referral process of a student to an approved private school program, the district should meet with the parent to discuss his/her concerns and explain why the district is seeking a less restrictive placement for the student. Ultimately, the district must take affirmative actions to make arrangements for the student to complete the referral process. If an in-State program accepts the student, the CSE must consider the concerns of the parent in making the placement recommendation. However, a parent's refusal to accept a placement recommended by the CSE cannot be the sole reason to continue a student in an out-of-State placement. Continuing placement of a student in an out-of-State program when there is an appropriate in-State program available is likely to result in the denial of State reimbursement of tuition costs for the placement.

7. **If the student's placement recommendation changes from an out-of-State program to an in-State program, must the district provide the parent with prior written notice?**

   Yes

8. **Must the parent provide written consent for a particular placement?**

   Except for placement in a Children's Residential Project (CRP), the district does not need parental consent for a change in placement. However, as stated above, the district must provide the parent with prior written notice of its recommendation and the parent has due process rights to disagree with the CSE's recommended placement.

9. **In the event a prospective school conducting the intake process does not have all the necessary student records from the student's current school of attendance, should the approved private school make its decision regarding acceptance based on the information available as submitted by the public school district?**

   The district is responsible to ensure that the prospective private school has the appropriate information from the student's record. In the event the application to the private school is incomplete, the approved private school should respond in writing to the district that it is unable to make a decision based on insufficient student records.

10. **Which district is responsible for the CSE functions when a student is placed in an out-of-State child care institution by a local Department of Social Services (DSS)?**

    The school district where the child is living at the time the child is placed in the out-of-State facility is responsible for the provision of education services, including CSE functions, if the student is a student with a disability. Education services for these children may be provided by a tutor, by contract with a school connected with the residential program or by contract with the local public school district in which the facility is located. Fiscal responsibility for the education of the student is a cost to the social services district, except that the district where the student resided at the time of placement in the care and custody of social services is responsible for a basic contribution deduction for students with disabilities placed in a NYSED approved out-of-State school. (See page 26 of *Education Responsibilities for School-Age Children in Residential Care* http://www.p12.nysed.gov/specialed/publications/EducResponsSchoolAgeResidence.pdf).

Attachment 2

Interstate Compact on the Placement of Children

For any initial or change of placement of students with disabilities under the age of 18 in out-of-State residential schools, a school district must submit an *Interstate Compact on the Placement of Children (ICPC) Referral Packet* to the New York State (NYS) Office of Children and Family Services (OCFS). The referral packet must include:

- Cover letter (3 copies) explaining the reasons for the request;
- Completed ICPC-100A (5 copies) with signatures from an authorized school official AND one of the custodial parents (Section III); **(please note the section that is specific to medical coverage while the student is placed out-of-State, which the committee on special education should discuss with the parent as part of the placement process)**
- Social summary (3 copies) may be one or more of the following that describes the student's current functioning and need for residential placement: individualized education program, psychological evaluation or psychiatric report; and
- Birth certificate and facility acceptance letter (3 copies of each) (this applies only for referrals to Connecticut and Massachusetts).

The form and directions may be found at:
http://www.ocfs.state.ny.us/main/Forms/adoption/ICPC-100B%20Instructions%20for%20completing%20Form%20ICPC-100B%20Interstate%20Compact%20on%20the%20Placement%20of%20Childs%20Placement%20Status.pdf

Submit the ICPC Referral Packet to:

Interstate Compact on the Placement of Children
NYS Office of Children and Family Services
52 Washington Street
Room 323 North Building
Rensselaer, NY 12144

If you have questions or need a copy of the ICPC Referral Packet, contact Marie Wiley at OCFS at Marie.Wiley@ocfs.ny.us or (518) 473-1512.