




October 2018

TO: District Superintendents  
Superintendents of Public Schools  
Public School Administrators  
Charter School Administrators  
Superintendents of State-Operated and State-Supported Schools  
Executive Directors of Approved Private Schools  
Nonpublic School Administrators  
Directors of Special Education  
Directors of Pupil Personnel Services  
Chairpersons of Committees on Special Education  
Organizations, Parents, and Individuals Concerned with Special Education

FROM: Christopher Suriano 

SUBJECT: Chapter 428 of the Laws of 2017 Relating to Referrals to State Adult Service Agencies for Certain Students with Disabilities Who Have Reached the Age of 18 and the Requirement for Boards of Education to Have Plans and Policies for Appropriate Declassification of Students with Disabilities

The purpose of this memorandum is to inform you that, at its September 2018 meeting, the Board of Regents proposed regulations to conform section 200.4 of the Commissioner's Regulations to Chapter 428 of the Laws of 2017 (Chapter 428). Chapter 428 amended New York State Education Law section 4402 relating to the aging out notification requirements for students needing adult residential services and the requirement for boards of education to develop plans and policies for appropriate declassification of students with disabilities. Although the regulations are currently proposed, these changes have been in effect since the Governor signed Chapter 428 into law on November 29, 2017. A copy of the full text of the proposed regulations developed consistent with the requirements of Chapter 428 can be found at the [Board of Regents website](http://www.regents.nysed.gov/common/regents/files/918p12d1.pdf) (<http://www.regents.nysed.gov/common/regents/files/918p12d1.pdf>). For your reference, a copy of the full text of Chapter 428 is attached.

### **Aging-Out Notification Requirements**

Federal law establishes transition planning requirements for school districts, including the requirement that the school district invite, to the extent appropriate and with parental consent (or consent of a student 18 years of age or older), a representative of any participating agency that is likely to be responsible for providing or paying for transition

services, which could include adult service State agency representatives, to committee on special education (CSE) meetings to prepare a student for transition to adult life. Consistent with this requirement, to streamline the transition planning process, Chapter 428 amended Education Law section 4402 to eliminate and/or simplify certain requirements.

Chapter 428 amended the requirement that the CSE provide notification about adult services to the parents of students with disabilities who receive residential special education services or nonresidential special education services 100 percent of the school day, have intensive management needs or a severe disability, and may need adult services. It also eliminated the requirement that CSEs submit an annual report to the New York State Education Department (NYSED) regarding the number of these students who were referred to State adult service agencies. Pursuant to Chapter 428, the CSE, with the consent of the parents (or the student if over the age of 18), is now required to notify and invite a representative from the Office of Mental Health, Office for People with Developmental Disabilities, or NYSED's Office of Adult Career and Continuing Education Services-Vocational Rehabilitation (ACCES-VR) to participate in the development of adult service recommendations not later than the first annual review prior to the eighteenth birthday of a student with a disability who is placed by the CSE in a:

- residential program; or
- day program, but the CSE has determined that the student is likely to require adult residential services.

In addition, with the consent of the parents (or the student if over the age of 18), the CSE must release the student's name and other relevant student information in a report to the appropriate public agency(ies), upon the request of such agency(ies), for purposes of determining appropriateness of an adult program for the student.

Please note, Chapter 428 did not change the requirement that if a CSE is notified that the public agency that received the report is not responsible for determining and recommending adult services for the student, the CSE must refer the student to another public agency. In addition, in the event that there is a dispute as to which public agency has responsibility for determining and recommending adult services for the student, the CSE can refer the report to the [Council on Children and Families](http://ccf.ny.gov/) (<http://ccf.ny.gov/>) for resolution of the dispute.

## **Plans and Policies for Appropriate Declassification**

Chapter 428 amended Education Law section 4402 to eliminate the requirement that boards of education develop plans and policies for appropriate declassification of students with disabilities. However, consistent with federal and State requirements, committees on preschool special education (CPSEs)/CSEs must still meet at least annually (i.e., annual review) to determine a student's continuing eligibility for special education services. In addition, all students with disabilities must continue to receive a reevaluation prior to a recommendation for declassification.

The Department is accepting public comment on the proposed amendment. Written comment may be submitted on or before December 3, 2018 to: Christopher Suriano, Assistant Commissioner, Office of Special Education, 89 Washington Avenue, Room 309

EB, Albany, NY 12234, Attention: Public Comment - Proposed Amendment Chapter 428. Comments may also be e-mailed to [spedpubliccomment@nysed.gov](mailto:spedpubliccomment@nysed.gov) or faxed to 518-473-5387.

Questions regarding this memorandum may be directed to the Office of Special Education Policy Unit at 518-473-2878 or [SPECED@nysed.gov](mailto:SPECED@nysed.gov).

Attachment - Chapter 428 of the Laws of 2017

## CHAPTER 428

AN ACT to amend the education law, in relation to referrals to state adult service agencies for certain students with disabilities who have reached the age of 18; and to repeal clause (d-2) of subparagraph 3 of paragraph b of subdivision 1 of section 4402 of the education law relating to the requirement that boards of education develop plans and policies for appropriate declassification of students with disabilities

Became a law November 29, 2017, with the approval of the Governor.  
Passed by a majority vote, three-fifths being present.

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Subparagraphs 5 and 7 of paragraph b of subdivision 1 of section 4402 of the education law, subparagraph 5 as amended by chapter 256 of the laws of 1988 and subparagraph 7 as amended by chapter 194 of the laws of 1991, are amended to read as follows:

(5) The committee on special education or, in the case of a state operated school, the multidisciplinary team shall ~~[provide written notice that a child who is placed in those residential programs specified in paragraphs d, g, h and l of subdivision two of section forty-four hundred one of this article is not entitled to receive tuition free educational services after the age of twenty-one, the receipt of a high school diploma or the time described in subdivision five of this section. Such written notice shall be provided to the child and to the parents or legal guardian of such child when such child attains the age of eighteen or, if such child is over the age of eighteen when placed in such a residential program, at the time of placement. Upon the first annual review after the age of fifteen of a child who is receiving non-residential special services or programs as specified in paragraph a, b, c, d, e, f, i, j, l or m of subdivision two of section forty-four hundred one of this article, or is receiving special services or programs in a day program at the human resources school; is receiving such special services or programs one hundred per centum of the school day; is receiving individualized attention or intervention because of intensive management needs or a severe handicap; and, as determined by the committee on special education or multidisciplinary team pursuant to regulations promulgated by the commissioner, may need adult services from the office of mental health, office of mental retardation and developmental disabilities, the state department of social services, a social services district, or the state education department, the committee or multidisciplinary team shall provide to such child's parent or guardian, and if such child is eighteen years of age or older, to the child, written notice that such child is not entitled to receive tuition free educational services after the receipt of a high school diploma, the age of twenty-one or the time described in subdivision five of this section.]~~ not later than the annual review prior to the eighteenth birthday of a student with a disability who is placed in a residential

EXPLANATION--Matter in *italics* is new; matter in brackets [-] is old law to be omitted.

program by the committee or multidisciplinary team, or a student with a disability who is placed in a day program but the committee or multidisciplinary team has determined that the student is likely to require adult residential services, with the consent of the parents, notify and invite a representative of the office of mental health, office for people with developmental disabilities, or the state education department, as appropriate, to participate in the committee on special education meeting for the development of a recommendation for adult services pursuant to section 7.37 or 13.37 of the mental hygiene law, section three hundred ninety-eight-c of the social services law or section forty-four hundred three of this article. The committee or multidisciplinary team shall give the parent or guardian of the child, the opportunity to consent in writing to the release of relevant information to such other public agency or agencies, upon request of such agency or agencies, for purposes of determining appropriateness of an adult program for such student.

(a) [~~Written notice given pursuant to this subparagraph shall describe in detail the opportunity to consent to have the child's name and other relevant information forwarded in a report to the commissioner of mental health, commissioner of mental retardation and developmental disabilities, commissioner of social services, or commissioner of education, or their designees, for the purpose of determining whether such child will likely need adult services and, if so, recommending possible adult services.~~] For the purposes of this subparagraph "relevant information" shall be defined as that information in the possession of and used by the committee or the multidisciplinary team to ascertain the physical, mental, emotional and cultural-educational factors which contribute to the [~~child's handicapping condition~~] student's disability, including but not limited to: (i) results of physical and psychological examinations performed by private and school district physicians and psychologists; (ii) relevant information presented by the parent, guardian and teacher; (iii) school data which bear on the [~~child's~~] student's progress including the [~~child's~~] student's most recent individualized education program; (iv) results of the most recent examinations and evaluations performed pursuant to clause (d) of subparagraph three of this paragraph; and (v) results of other suitable evaluations and examinations possessed by the committee or multidisciplinary team. Nothing in this subparagraph shall be construed to require any committee or multidisciplinary team to perform any examination or evaluation not otherwise required by law.

(b) Upon consent obtained pursuant to [~~clause (c) of~~] this subparagraph, the committee or multidisciplinary team shall forward the [~~child's~~] student's name and other relevant information in a report to the [~~commissioner of mental health, commissioner of mental retardation and developmental disabilities, commissioner of social services, or commissioner of education, or their designees, for the development of a recommendation for adult services pursuant to section 7.37 or 13.37 of the mental hygiene law, section three hundred ninety-eight-c of the social services law or subdivision ten of section forty-four hundred three of this article. The~~] appropriate public agency as determined by the committee or multidisciplinary team [~~shall determine which commissioner shall receive the report by considering~~], based upon the [~~child's handicapping condition~~] student's disability and physical, mental, emotional and social needs. The committee shall forward additional and updated relevant information to the [~~commissioner of mental health, commissioner of mental retardation and developmental disabilities,~~

~~commissioner of social services, or commissioner of education, or their designees,] appropriate public agency upon the request for such information by such ~~[commissioner or designee]~~ agency, with the consent of the parents, or the student, if such student is eighteen years or older.~~

~~(c) [Upon receipt of the notice by the child pursuant to this subparagraph, the child, if eighteen years of age or older, shall be given the opportunity to consent or withhold consent to the release of the relevant information. Such opportunity shall be given within twenty days of the receipt of the notice. An appropriate member of the staff of the educational facility shall be available to assist the child, if necessary, to understand the contents of the notice and the need for his or her consent for the release of the relevant information. A form, prescribed by the commissioner, shall be presented to the child for response, which shall clearly set forth the options of giving consent or withholding consent. In the event that the child exercises neither option, and the designated member of the staff of the educational facility has reason to believe that the child may not be able to understand the purpose of the form, or in the event that the child is less than eighteen years of age, the committee on special education or the multidisciplinary team shall give the parent or guardian of the child the opportunity to consent in writing to the release of the relevant information. Nothing in this clause shall be construed to be a determination of the child's mental capacity.~~

~~(d)]~~ When the committee or multidisciplinary team is notified by the ~~[commissioner who]~~ public agency which received the report that such state agency is not responsible for determining and recommending adult services for the child, the committee or multidisciplinary team shall forward the report to another ~~[commissioner]~~ public agency; or, if the committee or multidisciplinary team determines that there exists a dispute as to which state agency has the responsibility for determining and recommending adult services, the committee or multidisciplinary team may forward the report to the council on children and families for a resolution of such dispute.

~~[(e) The committee and multidisciplinary team shall prepare and submit an annual report to the state education department on or before October first of each year. Such annual report shall contain the number of cases submitted to each commissioner pursuant to clause (b) or (d) of this subparagraph, the type and severity of the handicapping condition involved with each such case, the number of notices received which deny responsibility for determining and recommending adult services, and other information necessary for the state education department and the council on children and families to monitor the need for adult services. Such annual report shall not contain individually identifying information. The state education department shall forward a copy of such annual report to the council on children and families. All information received by the council on children and families pursuant to this subparagraph shall be subject to the confidentiality requirements of the department.~~

~~(f) For purposes of this subparagraph, the term "multidisciplinary team" refers to the unit which operates in lieu of a committee on special education with respect to children in state operated schools.~~

~~(7)]~~ (6) The committee on special education shall provide a copy of the handbook for parents of children with ~~[handicapping conditions]~~ disabilities established under subdivision eight of section four thousand four hundred three of this article or a locally approved ~~[handicapped]~~ booklet for parents of children with disabilities to the

parents or person in parental relationship to a child as soon as practi-  
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cable after such child has been referred for evaluation to the committee on special education.

§ 2. Clause (d-2) of subparagraph 3 of paragraph b of subdivision 1 of section 4402 of the education law is REPEALED.

§ 3. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOHN J. FLANAGAN  
**Temporary President of the Senate**

CARL E. HEASTIE  
**Speaker of the Assembly**