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REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Sections 207, 3214, 4403, 4404 and 4410 of the Education Law

PART 200
Students with Disabilities

and

PART 201
Procedural Safeguards for Students with Disabilities Subject to Discipline

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Pursuant to Sections 207, 3214, 4403, 4404 and 4410 of the Education Law

PART 200 – STUDENTS WITH DISABILITIES
(Includes all Amendments through August 2014)

Section	Topic	
200.1	Definitions.	1
200.2	Board of education responsibilities.	19
200.3	Committee on special education and committee on preschool special education.	29
200.4	Procedures for referral, evaluation, individualized education program (IEP) development, placement and review.	35
200.5	Due process procedures.	66
200.6	Continuum of services.	100
200.7	Program standards for education programs for students and preschool students with disabilities being educated in private schools and State-operated or State-supported schools.	115
200.8	State assistance for instruction of students with disabilities pursuant to sections 4406 and 4410 of the Education Law.	128
200.9	Tuition rates for approved programs educating students with disabilities ages 3 to 21 years old who have been enrolled pursuant to articles 81 and 89 of the Education Law.	130
200.10	Reimbursement to certain State-operated and State-supported schools for blind, deaf and severely disabled students pursuant to articles 85, 87 and 88 of the Education Law and chapter 1060 of the Laws of 1974 and to facilities approved pursuant to section 4204-a of the Education Law.	150
200.11	Admission to public schools of students residing in facilities of OMH and OPWDD or child care institutions.	152
200.12	State assistance for transportation of students with disabilities pursuant to Education Law, section 4405.	154
200.13	Educational programs for students with autism.	155
200.14	Day treatment programs certified by the Office of Mental Health.	156
200.15	Standards for the protection of day and residential students who attend a residential school governed by this section. The purpose of this section is to protect students in residential schools against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, consistent with the provisions of Chapter 501 of the Laws of 2012 “Protection of People with Special Needs Act,” including Article 20 of the Executive Law, Article 11 of the Social Services Law, and sections 4212, 4314, 4358 and 4403 of the Education Law.	158
200.16	Educational programs for preschool students with disabilities.	172
200.17	Reimbursement of public school district administrative costs and due process costs for education programs or educational services approved pursuant to section 4410 of the Education Law.	185
200.18	Fiscal audits of approved programs operated by private providers, special act school districts, boards of cooperative educational services and public school districts receiving public funds for the education of students with disabilities ages 3 to 21 who have been enrolled pursuant to articles 81 and 89 of the Education Law.	187
200.19	Reimbursement to preschool programs approved under section 4410 of the Education Law.	189

200.20 Approval, operation, and administration of preschool programs funded pursuant to section 4410 of the Education Law. 190
200.21 Impartial hearing officer rates and procedures for suspension or revocation of certification. 197
200.22 Program standards for behavioral interventions. 199

Part 201 - Procedural Safeguards for Students with Disabilities Subject to Discipline (December 2010)

201.1 Purpose. 211
201.2 Definitions. 211
201.3 CSE responsibilities for functional behavioral assessments and behavioral intervention plans. 214
201.4 Manifestation determinations. 214
201.5 Students presumed to have a disability for discipline purposes. 215
201.6 CSE responsibilities for expedited evaluations. 217
201.7 General procedures for suspensions and removals of students with disabilities. 217
201.8 Authority of impartial hearing officer to order a change in placement to an IAES in a dangerous situation. 219
201.9 Coordination with superintendent's hearing and other due process procedures applicable to all students. 220
201.10 Provision of services during suspensions. 222
201.11 Expedited due process hearings. 223

200.1 Definitions.
As used in this Part:

(a) *Adaptive behavior* means the effectiveness with which the individual copes with the natural and social demands of his environment.

(b) *Adapted physical education* means a specially designed program of developmental activities, games, sports and rhythms suited to the interests, capacities and limitations of students with disabilities who may not safely or successfully engage in unrestricted participation in the activities of the regular physical education program.

(c) *Annual review* means an evaluation, conducted at least annually by the committee on special education, of the status of each student with a disability and each student thought to have a disability who resides within the school district for the purpose of recommending the continuation, modification or termination of the provision of special education programs and services for the student to the board of education.

(d) *Approved private school* means a private school which conforms with the requirements of Federal and State laws and regulations governing the education of students with disabilities, and which has been approved by the commissioner for the purpose of contracting with public schools for the instruction of students with disabilities.

(e) *Assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability. Such term does not include a medical device that is surgically implanted, or the replacement of such a device.

(f) *Assistive technology service* means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

(1) the evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment;

(2) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities;

(3) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(4) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) training or technical assistance for a student with a disability or, if appropriate, that student's family; and

(6) training or other technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that student.

(g) *Change in program* means a change in any one of the components of the individualized education program of a student as described in section 200.4(d)(2) of this Part.

(h) *Change in placement* means a transfer of a student to or from a public school, BOCES or schools enumerated in articles 81, 85, 87, 88 or 89 of the Education Law or graduation from high school with a local high school or Regents diploma. For purposes of removal of a student with a disability from the student's current educational placement under Education Law section 3214, change of placement is defined in Part 201 of this Title.

(i) *Class size* means the maximum number of students who can receive instruction together in a special class or resource room program and the number of teachers and supplementary school personnel assigned to the class.

(j) *Committee on preschool special education (CPSE)* means a multidisciplinary team established in accordance with the provisions of section 4410 of the Education Law.

(k) *Committee on special education (CSE)* means a multidisciplinary team established in accordance with the provisions of section 4402 of the Education Law.

(l) *Consent* means:

(1) the parent has been fully informed, in his or her native language or other mode of communication, of all information relevant to the activity for which consent is sought, and has been notified of the records of the student which will be released and to whom they will be released;

(2) the parent understands and agrees in writing to the activity for which consent is sought; and

(3) the parent is made aware that the consent is voluntary on the part of the parent and may be revoked at any time except that, if a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(m) *Consultant teacher services* means direct and/or indirect services, as defined in this subdivision, provided to a student with a disability in the student's regular education classes and/or to such student's regular education teachers.

(1) *Direct consultant teacher services* means specially designed individualized or group instruction provided by a certified special education teacher pursuant to subdivision (yy) of this section, to a student with a disability to aid such student to benefit from the student's regular education classes.

(2) *Indirect consultant teacher services* means consultation provided by a certified special education teacher pursuant to subdivision (yy) of this section to regular education teachers to assist them in adjusting the learning environment and/or modifying their instructional methods to meet the individual needs of a student with a disability who attends their classes.

(n) *Days* means calendar days unless otherwise indicated as school day or business day.

(1) *School day* means any day, including a partial day, that students are in attendance at school for instructional purposes. The term *school day* has the same meaning for all students in school including students with disabilities and students without disabilities, except that, during the months of July and August, *school day* means every day except Saturday, Sunday and legal holidays.

(2) *Business day* means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day).

(o) *Fiscal year* means the period commencing on the 1st day of July in each year and ending on the 30th day of June next following.

(p) *Full-day preschool program* means an approved special education program for preschool students with disabilities that provides instruction for a full-day session as defined in subdivision (q) of this section, provided however that in the event a program is approved by the commissioner to provide instruction for less than a full-day session but more than a half-day session, such program shall be deemed a full-day program solely for purposes of development of a recommendation by the preschool committee on special education pursuant to subparagraph (i) of paragraph b of subdivision 5 of section 4410 of the Education Law and section 200.16(e)(3) of this Part.

(q) *Full-day session* means a school day with not less than five hours of instruction for preschool students with disabilities and for students whose chronological ages are equivalent to those of students in grades K through 6, and not less than

5 1/2 hours of instruction for students whose chronological ages are equivalent to those of students in grades 7 through 12.

(r) *Functional behavioral assessment* means the process of determining why a student engages in behaviors that impede learning and how the student's behavior relates to the environment. The *functional behavioral assessment* shall be developed consistent with the requirements in section 200.22(a) of this Part and shall include, but is not limited to, the identification of the problem behavior, the definition of the behavior in concrete terms, the identification of the contextual factors that contribute to the behavior (including cognitive and affective factors) and the formulation of a hypothesis regarding the general conditions under which a behavior usually occurs and probable consequences that serve to maintain it.

(s) *Guardian ad litem* means a person familiar with the provisions of this Part who is appointed from the list of surrogate parents or who is a pro bono attorney appointed to represent the interests of a student in an impartial hearing pursuant to section 200.5(j)(3)(ix) of this Part and, where appropriate, to join in an appeal to the State Review Officer initiated by the parent or board of education pursuant to section 200.5(k) of this Part. *A guardian ad litem* shall have the right to fully participate in the impartial hearing to the extent indicated in section 200.5(j)(3)(xii) of this Part.

(t) *General curriculum* means the same general education curriculum as for students without disabilities**.**

(u) *Half-day preschool program* means an approved preschool special education program for preschool students with disabilities that provides instruction for a half-day session as defined in subdivision (v) of this section.

(v) *Half-day session* means a morning or afternoon session with not less than 2 1/2 hours of instruction for students whose chronological ages are equivalent to those of students in grades K through 6, and not less than three hours of instruction for students whose chronological ages are equivalent to those of students in grades 7 through 12, provided that for preschool students with disabilities such term shall mean a morning or afternoon session with not more than 2 1/2 hours of instruction per day.

(w) *Home and hospital instruction* means special education provided on an individual basis for a student with a disability confined to the home, hospital or other institution because of a disability.

(x) *Impartial hearing officer* means an individual assigned by a board of education pursuant to Education Law, section 4404(1), or by the commissioner in accordance with section 200.7(d)(1)(i) of this Part, to conduct a hearing and render a decision. No individual employed by a school district, school or program serving students with disabilities placed there by a school district committee on

special education may serve as an impartial hearing officer and no individual employed by such schools or programs may serve as an impartial hearing officer for two years following the termination of such employment, provided that a person who otherwise qualifies to conduct a hearing under this section shall not be deemed an employee of the school district, school or program serving students with disabilities solely because he or she is paid by such schools or programs to serve as an impartial hearing officer. An impartial hearing officer shall:

(1) be an individual admitted to the practice of law in the State of New York who is currently in good standing and who has a minimum of two years practice and/or experience in the areas of education, special education, disability rights or civil rights; or be an individual certified by the State of New York as an impartial hearing officer on September 1, 2001;

(2) have access to the support and equipment necessary to perform the duties of an impartial hearing officer;

(3) be independent, shall not be an officer, employee or agent of the school district or of the board of cooperative educational services of which such school district is a component, or an employee of the Education Department, shall not have a personal or professional interest which would conflict with his or her objectivity in the hearing, and shall not have participated in any manner in the formulation of the recommendation sought to be reviewed; and

(4) be certified by the commissioner as an impartial hearing officer eligible to conduct hearings pursuant to Education Law, section 4404(1) and subject to suspension or revocation of such certification by the commissioner for good cause in accordance with the provisions of section 200.21 of this Part. In order to obtain and retain such a certificate, an individual shall:

(i) successfully complete a training program, conducted by the department, which program provides information regarding State and Federal laws and regulations relating to the education of students with disabilities, the needs of such students, and the procedures involved in conducting a hearing, and in reaching and writing a decision;

(ii) attend such periodic update programs as may be scheduled by the commissioner;

(iii) annually submit, in a format and by a date prescribed by the commissioner, a certification that the impartial hearing officer meets the requirements of paragraphs (1), (2) and (3) of this subdivision;

(iv) possess knowledge of, and the ability to understand, the provisions of Federal and State law and regulations pertaining to the Individuals with Disabilities Education Act and legal interpretations of such law and regulations by Federal and State courts;

(v) possess knowledge of, and the ability to conduct hearings in accordance with appropriate, standard legal practice and to render and write decisions in accordance with appropriate standard legal practice;

(vi) be willing and available to accept appointment to conduct impartial hearings. Notwithstanding the provisions of section 200.21 of this Part, unless good cause has been provided to the commissioner including, but not limited to, cause resulting from poor health as certified by a physician, active military services or other similar extenuating circumstances, the certification of an impartial hearing officer shall be rescinded upon a finding that the impartial hearing officer was not willing or available to conduct an impartial hearing within a two-year period of time.

(y) *Individualized education program* means a written statement, developed, reviewed and revised in accordance with section 200.4 of this Part, which includes the components specified in section 200.4(d)(2) of this Part to be provided to meet the unique educational needs of a student with a disability.

(z) *Independent educational evaluation* means an individual evaluation of a student with a disability or a student thought to have a disability, conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student. Whenever an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria which the school district uses when it initiates an evaluation.

(aa) *Individual evaluation* means any procedures, tests or assessments used selectively with an individual student, including a physical examination in accordance with the provisions of sections 903, 904 and 905 of the Education Law, an individual psychological evaluation, except where a school psychologist has determined pursuant to section 200.4(b) of this Part that a psychological evaluation is unnecessary to evaluate a student of school age, a social history and other appropriate assessments or evaluations as may be necessary to determine whether a student has a disability and the extent of his/her special education needs, but does not include basic tests administered to, or procedures used with, all students in a school grade or class.

(bb) *Individual psychological evaluation* means a process by which a New York State-certified school psychologist or licensed psychologist uses, to the extent deemed

necessary for purposes of educational planning, a variety of psychological and educational techniques and examinations in the student's native language, to study and describe a student's developmental, learning, behavioral and other personality characteristics.

(cc) *Least restrictive environment* means that placement of students with disabilities in special classes, separate schools or other removal from the regular educational environment occurs only when the nature or severity of the disability is such that even with the use of supplementary aids and services, education cannot be satisfactorily achieved. The placement of an individual student with a disability in the least restrictive environment shall:

(1) provide the special education needed by the student;

(2) provide for education of the student to the maximum extent appropriate to the needs of the student with other students who do not have disabilities; and

(3) be as close as possible to the student's home.

(dd) *Mediator* means a qualified and impartial individual who is trained in effective mediation techniques to resolve disputes in accordance with Education Law, section 4404-a and section 200.5(h) of this Part and who is knowledgeable in laws and regulations relating to the provision of special education services. An individual who serves as a mediator may not have a personal or professional interest which would conflict with his or her objectivity in the mediation process and may not be an employee of a State educational agency that is providing direct services to a student who is the subject of the mediation process or a school district or program serving students with disabilities, provided that a person who otherwise qualifies to conduct mediation under section 200.5(h) of this Part shall not be deemed an employee of the State, a school district, school, or a program serving students with disabilities solely because he or she is paid by a community dispute resolution center through grant funds provided by the State Education Department to serve as a mediator.

(ee) *Medical services* means only evaluative and diagnostic services provided by a licensed physician, or by another appropriately licensed or registered health professional in consultation with, or under the supervision of, a licensed physician, to determine whether a student has a medically related disability which may result in the student's need for special education and related services.

(ff) *Native language* means:

(1) if used with reference to an individual of limited English proficiency, the language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student, except that, in all

direct contact with a student (including evaluation of the student), native language means the language normally used by the student in the home or learning environment; and

(2) for an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

(gg) *Occupational therapy* means the functional evaluation of the student and the planning and use of a program of purposeful activities to develop or maintain adaptive skills, designed to achieve maximal physical and mental functioning of the student in his or her daily life tasks.

(hh) *Supplementary school personnel* means a teacher aide or a teaching assistant as described in section 80-5.6(a) through (d) of this Title.

(ii) (1) *Parent* means a birth or adoptive parent, a legally appointed guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child; a person in parental relationship to the child as defined in Education Law, section 3212; an individual designated as a person in parental relation pursuant to title 15-A of the General Obligations Law including an individual so designated who is acting in the place of a birth or adoptive parent (including a grandparent, stepparent, or other relative with whom the child resides); or a surrogate parent who has been appointed in accordance with section 200.5(n) of this Part. The term does not include the State if the student is a ward of the State.

(2) A foster parent may act as a parent unless State law, regulations or contractual obligations with a State or local entity prohibit the foster parent from acting as a parent.

(3) Except as provided in paragraph (4) of this subdivision, when one or more than one party is qualified under paragraph (1) of this subdivision to act as a parent, the birth or adoptive parent must be presumed to be the parent unless the birth or adoptive parent does not have legal authority to make educational decisions for the student.

(4) If a judicial decree or order identifies a specific person or persons to act as the parent or make educational decisions on behalf of the student, then such person or persons shall be determined to be the parent for purposes of this Part, except that a public agency that provides education or care for the student, or a private agency that contracts with a public agency for such purposes, shall not act as the parent.

(jj) *Participating agency* means a State or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(kk) *Parent counseling and training* means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's individualized education program**.**

(ll) *Physical therapy* means a related service provided in accordance with section 6731(a) of the Education Law.

(mm) *Preschool student with a disability* is a preschool child as defined in section 4410(1)(i) of Education Law who is eligible to receive preschool programs and services, is not entitled to attend the public schools of the school district of residence pursuant to section 3202 of the Education Law and who, because of mental, physical, or emotional reasons, has been identified as having a disability and can receive appropriate educational opportunities from special programs and services approved by the department. Eligibility as a preschool student with a disability shall be based on the results of an individual evaluation which is provided in the student's native language, not dependent on a single procedure, and administered by a multidisciplinary team in accordance with all other requirements as described in section 200.4 (b) (1) through (5) of this Part.

(1) Commencing July 1, 1993, to be identified as having a disability a preschool student shall either:

(i) exhibit a significant delay or disorder in one or more functional areas related to cognitive, language and communicative, adaptive, socio-emotional or motor development which adversely affects the student's ability to learn. Such delay or disorder shall be documented by the results of the individual evaluation which includes but is not limited to information in all functional areas obtained from a structured observation of a student's performance and behavior, a parental interview and other individually administered assessment procedures, and, when reviewed in combination and compared to accepted milestones for child development, indicate:

(a) a 12-month delay in one or more functional area(s); or

(b) a 33 percent delay in one functional area, or a 25 percent delay in each of two functional areas; or

(c) if appropriate standardized instruments are individually administered in the evaluation process, a score of 2.0 standard

deviations below the mean in one functional area, or a score of 1.5 standard deviations below the mean in each of two functional areas; or

(ii) meet the criteria set forth in paragraphs (1), (2), (3), (5), (9), (10), (12) or (13) of subdivision (zz) of this section.

(2) Commencing July 1, 1991, in the calendar year in which such preschool student becomes three years of age, a student shall be first eligible for preschool programs and services on January 2nd of such calendar year, if the student's birthday falls before July 1st, otherwise a student shall be first eligible on July 1st of the calendar year; except that a student who, as of his or her third birthday, is already receiving services pursuant to section 236 of the Family Court Act or its successor, or section 4204-a of the Education Law, may, if the parent so chooses, continue to receive such services through August 31st of the calendar year in which the student first becomes eligible to receive services pursuant to section 4410 of the Education Law. A student shall be deemed to be a preschool student with a disability through the month of August of the school year in which the student first becomes eligible to attend school pursuant to section 3202 of the Education Law.

(nn) *Preschool program* means a special education program approved pursuant to section 4410 of the Education Law to provide special education programs and services, from the continuum of services set forth in section 200.16(i) of this Part, and to conduct evaluations of preschool students with disabilities if such program has a multidisciplinary evaluation component.

(oo) *Prior written notice* means written statements developed in accordance with section 200.5(a) of this Part, and provided to the parents of a student with a disability a reasonable time before the school district proposes to or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.

(pp) *Regular education teacher* means:

(1) for a school-age student, a teacher qualified to serve nondisabled students who is providing regular education instruction to the student. If the student is not receiving instruction from one or more regular education teachers, a teacher qualified to provide regular education in the type of program in which the student may be placed may serve as the student’s regular education teacher;

(2) for a preschool child, a regular education teacher qualified to provide regular education services to nondisabled preschool or elementary-level students who is providing regular education instruction to the student. If the

student is not receiving instruction from one or more regular education teachers, a teacher qualified to provide regular education in the type of program in which the student may be placed may serve as the preschool student's regular education teacher.

(qq) *Related services* means developmental, corrective, and other supportive services as are required to assist a student with a disability and includes speech-language pathology, audiology services, interpreting services, psychological services, physical therapy, occupational therapy, counseling services, including rehabilitation counseling services, orientation and mobility services, medical services as defined in this section, parent counseling and training, school health services, school nurse services, school social work, assistive technology services, appropriate access to recreation, including therapeutic recreation, other appropriate developmental or corrective support services, and other appropriate support services and includes the early identification and assessment of disabling conditions in students.

(1) Services that apply to children with surgically implanted devices, including cochlear implants. Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (such as mapping), maintenance of that device, or the replacement of that device, provided that nothing in this paragraph:

(i) limits the right of a student with a surgically implanted device to receive related services that are determined by the CSE or CPSE to be necessary for the student to receive a free appropriate public education; or

(ii) limits the responsibility of a school district to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school; or

(iii) prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

(rr) *Resource room program* means a special education program for a student with a disability registered in either a special class or regular class who is in need of specialized supplementary instruction in an individual or small group setting for a portion of the school day.

(ss) *School health services and school nurse services.*

(1) *School health services* means health services provided by either a qualified school nurse or other qualified person that are designed to enable a student

with a disability to receive a free appropriate public education as described in the individualized education program of the student.

(2) *School nurse services* means services provided by a qualified school nurse pursuant to section 902(2)(b) of the Education Law that are designed to enable a student with a disability to receive a free appropriate public education as described in the individualized education program of the student.

(tt) *Social history* means a report of information gathered and prepared by qualified school district personnel pertaining to the interpersonal, familial and environmental variables which influence a student's general adaptation to school, including but not limited to data on family composition, family history, developmental history of the student, health of the student, family interaction and school adjustment of the student.

(uu) *Special class* means a class consisting of students with disabilities who have been grouped together because of similar individual needs for the purpose of being provided specially designed instruction as defined in subdivision (vv) of this section.

(vv) *Specially-designed instruction* means adapting, as appropriate to the needs of an eligible student under this Part, the content, methodology, or delivery of instruction to address the unique needs that result from the student's disability; and to ensure access of the student to the general curriculum, so that he or she can meet the educational standards that apply to all students.

(ww) S*pecial education* means specially designed individualized or group instruction or special services or programs, as defined in subdivision 2 of section 4401 of the Education Law, and special transportation**,** provided at no cost to the parent, to meet the unique needs of students with disabilities.

(1) Such instruction includes but is not limited to that conducted in classrooms, homes, hospitals, institutions and in other settings.

(2) Such instruction includes specially designed instruction in physical education, including adapted physical education.

(3) For the purposes of this definition:

(i) The individual needs of a student shall be determined by a committee on special education in accordance with the provisions of section 200.4 of this Part upon consideration of the present levels of performance and expected learning outcomes of the student. Such individual-need determinations shall provide the basis for written annual goals, direction for the provision of appropriate educational

programs and services and development of an individualized education program for the student. The areas to be considered shall include:

(a) *academic achievement, functional performance and learning characteristics* which shall mean the levels of knowledge and development in subject and skill areas, including activities of daily living, level of intellectual functioning, adaptive behavior, expected rate of progress in acquiring skills and information, and learning style;

(b) *social development* which shall mean the degree and quality of the student's relationships with peers and adults, feelings about self, and social adjustment to school and community environments;

(c) *physical development* which shall mean the degree or quality of the student's motor and sensory development, health, vitality, and physical skills or limitations which pertain to the learning process; and

(d) *management needs* which shall mean the nature of and degree to which environmental modifications and human or material resources are required to enable the student to benefit from instruction. Management needs shall be determined in accordance with the factors identified in each of the three areas described in clauses (a)-(c) of this subparagraph.

(ii) *Group instruction* means instruction of students grouped together according to similarity of individual needs for the purpose of special education. The curriculum and instruction provided to such groups shall be consistent with the individual needs of each student in the group, and the instruction required to meet the individual needs of any one student in the group shall not consistently detract from the instruction provided other students in the group.

(xx) *Special education provider* means an individual qualified pursuant to section 200.6(b)(3) of this Part who is providing related services, as defined in paragraph (qq) of this section, to the student. If the student is not receiving related services, an individual qualified to provide related services needed by the student may serve as the related service provider of the student.

(yy) *Special education teacher* means a person, including an itinerant teacher, certified or licensed to teach students with disabilities pursuant to Part 80 of this Title who is providing special education to the student. For a student who is being considered for initial placement in special education, a teacher qualified to

provide special education in the type of program in which the student may be placed may serve as the student's special education teacher.

(zz) *Student with a disability* means a student with a disability as defined in section 4401(1) of the Education Law, who has not attained the age of 21 prior to September 1st and who is entitled to attend public schools pursuant to section 3202 of the Education Law and who, because of mental, physical or emotional reasons, has been identified as having a disability and who requires special services and programs approved by the department. The terms used in this definition are defined as follows:

(1) *Autism* means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disturbance as defined in paragraph (4) of this subdivision. A student who manifests the characteristics of autism after age 3 could be diagnosed as having autism if the criteria in this paragraph are otherwise satisfied.

(2) *Deafness* means a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a student's educational performance.

(3) *Deaf-blindness* means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

(4) *Emotional disturbance* means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

(i) an inability to learn that cannot be explained by intellectual, sensory, or health factors.

(ii) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(iii) inappropriate types of behavior or feelings under normal circumstances;

(iv) a generally pervasive mood of unhappiness or depression; or

(v) a tendency to develop physical symptoms or fears associated with personal or school problems.

The term includes schizophrenia. The term does not apply to students who are socially maladjusted**,** unless it is determined that they have an emotional disturbance.

(5) *Hearing impairment* means an impairment in hearing, whether permanent or fluctuating, that adversely affects the child's educational performance but that is not included under the definition of *deafness* in this section.

(6) *Learning disability* means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which manifests itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, as determined in accordance with section 200.4(j) of this Part. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing or motor disabilities, of an intellectual disability, of emotional disturbance, or of environmental, cultural or economic disadvantage.

(7) *Intellectual disability* means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student’s educational performance**.**

(8) *Multiple disabilities* means concomitant impairments (such as intellectual disability-blindness, intellectual disability-orthopedic impairment, etc.), the combination of which cause such severe educational needs that they cannot be accommodated in a special education program solely for one of the impairments. The term does not include deaf-blindness.

(9) *Orthopedic impairment* means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by congenital anomaly (*e.g.*, clubfoot, absence of some member, etc.), impairments caused by disease (*e.g.*, poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (*e.g.*, cerebral palsy, amputation, and fractures or burns which cause contractures).

(10) *Other health-impairment* means having limited strength, vitality or alertness**,** including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems, including but not limited to a heart

condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, attention deficit disorder or attention deficit hyperactivity disorder or tourette syndrome, which adversely affects a student's educational performance.

(11) *Speech or language impairment* means a communication disorder, such as stuttering, impaired articulation, a language impairment or a voice impairment, that adversely affects a student's educational performance.

(12) *Traumatic brain injury* means an acquired injury to the brain caused by an external physical force or by certain medical conditions such as stroke, encephalitis, aneurysm, anoxia or brain tumors with resulting impairments that adversely affect educational performance. The term includes open or closed head injuries or brain injuries from certain medical conditions resulting in mild, moderate or severe impairments in one or more areas, including cognition, language, memory, attention, reasoning, abstract thinking, judgement, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not include injuries that are congenital or caused by birth trauma.

(13) *Visual impairment including blindness* means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

(aaa) *Substantial regression* means a student's inability to maintain developmental levels due to a loss of skill or knowledge during the months of July and August of such severity as to require an inordinate period of review at the beginning of the school year to reestablish and maintain IEP goals and objectives mastered at the end of the previous school year.

(bbb) *Supplementary aids and services* means aids, services, and other supports that are provided in regular education classes, other education-related settings and in extracurricular and nonacademic settings to enable students with disabilities to be educated with nondisabled students to the maximum extent appropriate in accordance with the least restrictive environment.

(ccc) *Surrogate parent* means a person appointed to act in place of parents or guardians when a student's parents or guardians are not known, or when after reasonable efforts, the board of education cannot discover the whereabouts of a parent, the student is an unaccompanied homeless youth or the student is a ward of the State and does not have a parent who meets the definition in subdivision (ii) of this section, or the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law.

(ddd) *Transitional support services* means those temporary services, specified in a student's individualized education program, provided to a regular or special education teacher to aid in the provision of appropriate services to a student with a disability transferring to a regular program or to a program or service in a less restrictive environment.

(eee) *Twelve-month special service and/or program* means a special education service and/or program provided on a year-round basis, for students determined to be eligible in accordance with sections 200.6(k)(1) and 200.16(i)(3)(v) of this Part whose disabilities require a structured learning environment of up to 12 months duration to prevent substantial regression. A special service and/or program shall operate for at least 30 school days during the months of July and August, inclusive of legal holidays, except that a program consisting solely of related service(s) shall be provided with the frequency and duration specified in the student's individualized education program.

(fff) *Transition Services* means a coordinated set of activities for a student with a disability, designed within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities, including, but not limited to, post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based on the student's strengths, preferences and interests, and shall include needed activities in the following areas:

(1) instruction;

(2) related services;

(3) community experiences;

(4) the development of employment and other post-school adult living objectives; and

(5) when appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(ggg) *Travel training* is a special education service that means providing instruction, as appropriate, to students with significant cognitive disabilities, and any other students with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live; and learn the skills to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(hhh) *Homeless youth* means the same as the term *homeless child* as defined in section 100.2(x) of this Title.

(iii) *Limited English proficient student* means the same as the term *pupils with limited English proficiency* as defined in section 154.2(a) of this Title.

(jjj) *Universal design* means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies.

(kkk) *Ward of the State* means a child or youth under the age of 21:

(1) who has been placed or remanded pursuant to section 358-a, 384 or 384-a of the Social Services Law, or article 3, 7, or 10 of the Family Court Act, or freed for adoption pursuant to section 383-c, 384 or 384-b of the Social Services Law; or

(2) who is in the custody of the Commissioner of Social Services or the Office of Children and Family Services; or

(3) who is a destitute child under section 398(1) of the Social Services Law.

(lll) *Aversive intervention* means the same as such term is defined in section 19.5(b)(2) of this Title.

(mmm) *Behavioral intervention plan* means a plan that is based on the results of a functional behavioral assessment and, at a minimum, includes a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs and intervention strategies that include positive behavioral supports and services to address the behavior.

(nnn) Interpreting services means oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services and transcription services, such as communication access real-time translation (CART), C-Print and TypeWell for students who are deaf or hard of hearing; and special interpreting services for students who are deaf-blind.

(ooo) Declassification support services means those services provided by persons appropriately certified or licensed pursuant to Part 80 of this Title in the appropriate area of service, to a student or such student's teacher(s) to aid in such student's transition from special education to full-time regular education, including:

(1) for the student, psychological services, social work services, speech and language services, counseling (other than career counseling), and other appropriate support services; and

(2) for the student's teacher(s), the assistance of supplementary school personnel, and consultation with appropriate personnel.

200.2 Board of education responsibilities.

(a) *Census and register of students with disabilities.* (1) The board of education or trustees of each school district shall conduct a census in accordance with Education Law, sections 3240, 3241 and 3242, to locate and identify all students with disabilities who reside in the district and shall establish a register of such students who are entitled to attend the public schools of the district or are eligible to attend a preschool program in accordance with section 4410 of the Education Law during the next school year, including students with disabilities who are homeless or who are wards of the State. The register of such students and others referred to the committee as possibly having a disability shall be maintained and revised annually by the district committee on special education or the committee on preschool special education, as appropriate. Procedures shall be implemented to assure the availability of statistical data to readily determine the status of each student with a disability in the identification, location, evaluation, placement and program review process. Census data shall be reported by October 1st to the committee on special education or committee on preschool special education, as appropriate.

(2) Data requirements. (i) Procedures shall be designed to record data on each student, and shall include at least the following types of data:

(a) student's name, address and birthdate;

(b) student's parents' names, address(es), and the native language of the student's home;

(c) student's suspected disability;

(d) dates of referral, evaluations, recommendations of the committee on special education, or committee on preschool special education, actual placement, and annual program reviews;

(e) site where the student is currently receiving an educational program;

(f) other student information as required by the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*) and Federal regulations, including but not limited to the student's race,

ethnicity, limited English proficiency status, gender and disability category; and

(g) if the student is not receiving an appropriate public education, the reason shall be described.

(ii) The data shall be organized so that it can readily be determined whether each student is receiving an appropriate public education, a partial education or no education at all.

(3) Data collection. All persons involved in the collection of data shall have received prior training and written information regarding the procedures to be followed in collecting the data.

(4) Data reporting. The reporting of data shall be conducted in accordance with the following policies and procedures:

(i) School districts shall prepare, and keep on file, summary reports of student data, including numbers of students who are:

(a) unserved and the reasons they are unserved; and

(b) served.

(ii) A summary report of the students served shall be submitted by local school districts to the State Education Department in a manner prescribed by the commissioner.

(5) The board of education or trustees of each school district shall keep on file the register and related summary reports which shall be available to the district superintendent of the supervisory district in which the district is located or other representatives of the State Education Department.

(6) Paragraphs (1)-(5) of this subdivision shall not apply to schools and students subject to the provisions of articles 81, 85, 87 and 88 of the Education Law and chapter 1060 of the Laws of 1974. Schools subject to the provisions of such articles and chapter shall keep their own census of students, and shall submit such census directly to the commissioner on forms prescribed by the commissioner.

(7) Procedures to locate, identify, and evaluate all nonpublic private elementary and secondary school students with disabilities, including religious-school children as required by the Education Law must be established to ensure the equitable participation of parentally placed private school students with disabilities and an accurate count of such students. The child find activities must be similar to activities undertaken for students with disabilities in

public schools and must be completed in a time period comparable to that for other students attending public schools in the school district. The school district shall consult with representatives of private schools and representatives of parents of parentally placed private school students with disabilities on the child find process.

(i) If a student is parentally-placed, or is going to be parentally-placed in a private elementary or secondary school that is not located in the student's school district of residence, parental consent, or consent of a student 18 years of age or older, must be obtained before any personally identifiable information about the student is released between officials in the district where the private school is located and officials in the parent's district of residence.

(ii) The school district shall maintain in its records and report to the commissioner, in a manner prescribed by the commissioner, on the number of students enrolled in such private schools by their parents who are evaluated to determine if they are students with disabilities, the number of such students who are determined to have a disability and the number of such students who received special education services under this Part.

(b) *Written policy.* Each board of education or board of trustees shall adopt written policy that establishes administrative practices and procedures:

(1) to ensure that students with disabilities residing in the district have the opportunity to participate in school district programs, to the maximum extent appropriate to the needs of the student including nonacademic and extracurricular programs and activities, which are available to all other students enrolled in the public schools of the district, which may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with disabilities and employment of students, including both employment by the school district and assistance in making outside employment available;

(2) to ensure that each preschool student with a disability residing in the district has the opportunity to participate in preschool programs, including timely evaluation and placement;

(3) for appointing and training appropriately qualified personnel, including the members and chairpersons of the committee on special education and the committee on preschool special education, to carry out the functions identified in this Part;

(4) to implement the provisions of section 200.6(a) of this Part and to provide special services or programs, to the extent appropriate to the needs of the student, to enable the student to be involved in and progress in the general education curriculum;

(5) for the purpose of ensuring that parents have received and understand the request for consent for evaluation of a preschool student;

(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 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, 2009 edition, title 34, sections 300.500 - 300.536, sections 300.610 through 300.625, and Part 99, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 - available at the Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234);

(7) for implementing school-wide approaches, which may include a response to intervention process pursuant to section 100.2(ii) of this Title, and pre-referral interventions in order to remediate a student's performance prior to referral for special education;

(8) for the appropriate declassification of students with disabilities which must include:

(i) the regular consideration for declassifying students when appropriate;

(ii) a reevaluation of the student prior to declassification; and

(iii) the provision of educational and support services to the student upon declassification;

(9) for the selection and board appointment of an impartial hearing officer consistent with the procedures in paragraph (e)(1) of this section and section 200.5(j) of this Part;

(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, 2009 edition, title 34, part 300, appendix C, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 - available at the 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) ensure that the district gives a preference in the purchase of the instructional materials it has selected for its students to those vendors who agree to provide such instructional materials in alternative formats;

(ii) specify, when an electronic file is provided, how the format will be accessed by students and/or how the district will convert to an accessible format;

(iii) specify the process to be used when ordering materials to identify the needs of students with disabilities residing in the district for alternative format materials;

(iv) specify ordering timelines to ensure that alternative format materials are available at the same time as regular format materials are available; and

(v) include procedures so that when students with disabilities move into the school district during the school year, the process to obtain needed materials in alternative formats for such students is initiated without delay;

(11) to ensure that:

(i) each regular education teacher, special education teacher, related service provider and/or other service provider, as defined in clause (a) of this subparagraph, who is responsible for the implementation of a student’s individualized education program (IEP) is provided a paper

or electronic copy of such student's IEP, including amendments to the IEP, made pursuant to section 200.4(g) of this Part, prior to the implementation of such program or shall be able to access such student's IEP electronically. If the policy provides that students' IEPs are to be accessed electronically, then such policy shall also ensure that the individuals responsible for the implementation of a student's IEP shall be notified and trained on how to access such IEPs electronically:

(a) for purposes of this paragraph, *other service provider* means a representative of another public school district, charter school, Board of Cooperative Educational Services (BOCES), or school enumerated in article 81, 85 or 89 of the Education Law where the student receives or will receive IEP services;

(ii) any copy of a student's IEP provided pursuant to this paragraph shall remain confidential and shall not be disclosed to any other person, in accordance with paragraph (6) of this subdivision; an

(iii) the chairperson of the committee on special education designates for each student one, or as appropriate, more than one professional employee of the school district with knowledge of the student's disability and education program to, prior to the implementation of the IEP, inform each regular education teacher, special education teacher, related service provider, other service provider, supplementary school personnel, as defined in section 200.1(hh) of this Part, and other provider and support staff person of his or her responsibility to implement the recommendations on a student's IEP, including the responsibility to provide specific accommodations, program modifications, supports and/or services for the student in accordance with the IEP;

(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, 2009 edition, title 34, section 300.18, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 - available at the 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;

(13) that describe the guidelines for the provision of appropriate accommodations necessary to measure the academic achievement and functional performance of the student in the administration of district-wide assessments;

(14) that identify how the district, to the extent feasible, will use universal design principles in developing and administering any district-wide assessment programs; and

(15) to ensure that the school district publicly reports on revisions to its policies, procedures and/or practices upon a finding by the Department that the district has inappropriate policies, procedures or practices resulting in a significant disproportionality by race/ethnicity in the suspension, identification, classification and/or placement of students with disabilities.

(c) *District plans.* (1) Each board of education which receives an apportionment for eligible students with disabilities, pursuant to 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 keep on file and make available for public inspection and review by the commissioner an acceptable plan as required by subdivision 8(b) of section 3602 of the Education Law.

(2) Each such plan shall include, but need not be limited to, the following:

(i) a description of the nature and scope of special education programs and services currently available to students and preschool students residing in the district, including but not limited to descriptions of the district's resource room programs and each special class program provided by the district in terms of group size and composition;

(ii) identification of the number and age span of students and preschool students to be served by type of disability, and recommended setting;

(iii) the method to be used to evaluate the extent to which the objectives of the program have been achieved;

(iv) a description of the policies and practices of the board of education to ensure the continual allocation of appropriate space within the district for special education programs that meet the needs of students and preschool students with disabilities;

(v) a description of the policies and practices of the board of education to ensure that appropriate space will be continually available to meet the needs of resident students and preschool students with disabilities who attend special education programs provided by boards of cooperative educational services;

(vi) a description of how the district intends to ensure that all instructional materials to be used in the schools of the district will be made

available in a usable alternative format, as such term is defined in paragraph (b)(10) of this section, for each student with a disability at the same time as such instructional materials are available to nondisabled students. To meet this requirement, the district plan may incorporate by reference the plan established by the board of education pursuant to paragraph (b)(10) of this section;

(vii) the estimated budget to support such plan;

(viii) the date on which such plan was adopted by the board of education.

(3) Any change to the allocation of space for special education programs shall be made in consideration of the needs of participating students with disabilities for placement in the least restrictive environment and for the stability and continuity of their program placements.

(4) The district plan, with personally identifiable student information deleted, shall be filed and available for public inspection and review by the commissioner.

(d) *Approval of services.* (1) Approval of services for students with disabilities. The board of education or board of trustees of each school district shall, upon completion of its review of the recommendation of the committee on special education for special education programs and services, including changes to the committee on special education's recommendation made pursuant to section 200.4(g) of this Part, in accordance with section 200.4(e)(1) and (2) of this Part, arrange for the appropriate special education programs and services to be provided to a student with a disability as recommended by the committee on special education. The board shall notify the parent of its action in accordance with section 4402(2)(b)(2) of the Education Law.

(2) Approval of services for preschool students with disabilities. The board of education or the board of trustees of each school district shall, upon completion of the recommendation of the committee on preschool special education for special education programs and services, including changes to the committee's recommendation made pursuant to section 200.4(g) of this Part, arrange for appropriate special education programs and services for a preschool student with a disability, as recommended by the committee on preschool special education, from among the services and programs approved for such purpose by the commissioner. The board shall notify the parent, the municipality and the commissioner of its action in accordance with section 4410 of the Education Law.

(e) *Maintenance of lists.* The board of education or trustees of each school district shall establish a list of:

(1) the name and statement of the qualifications of each impartial hearing officer who is:

(i) certified by the Commissioner of Education pursuant to section 200.1(x)(4) of this Part and;

(ii) available to serve in the district in hearings conducted pursuant to Education Law, section 4404(1). Appointment of impartial hearing officers pursuant to Education Law, section 4404(1) shall be made only from such list and in accordance with the rotation selection process prescribed herein and the timelines and procedures in section 200.5(j) of this Part. Such names will be listed in alphabetical order. Selection from such list shall be made on a rotational basis beginning with the first name appearing after the impartial hearing officer who last served or, in the event no impartial hearing officer on the list has served, beginning with the first name appearing on such list. Should that impartial hearing officer decline appointment, or if, within 24 hours, the impartial hearing officer fails to respond or is unreachable after reasonable efforts by the district that are documented and can be independently verified, each successive impartial hearing officer whose name next appears on the list shall be offered appointment, until such appointment is accepted. The name of any newly certified impartial hearing officer who is available to serve in the district shall be inserted into the list in alphabetical order;

(2) persons from whom the district shall choose a surrogate parent pursuant to section 200.5(n) of this Part; and

(3) preschool programs within the county in which the district is located and preschool programs in adjoining counties, or, in the case of districts located in the City of New York, preschool programs within the City of New York and preschool programs within counties adjoining the City of New York. The list of preschool programs shall be available for dissemination at appropriate sites including, but not limited to, pre-kindergarten, day care and head start programs within the district, and Early Childhood Direction Centers.

(f) *Responsibilities of boards of education which provide education pursuant to part II of article 41 of the Education Law (sections 2040-2045)*. Where a board of education provides for the education of all of its students, or of all of its students of any particular grade, by contracting with another board of education pursuant to section 2040 or 2045 of the Education Law, the committee on special

education of the receiving school district shall serve as the committee on special education for all students so placed in such receiving school district.

(g) Facilities for special education programs. The district superintendent of schools shall determine the adequacy and appropriateness of the facilities space available to house special education programs in the geographic area served by the board of cooperative educational services, consistent with the least restrictive environment requirement and to ensure the stability and continuity of program placements for students with disabilities, including procedures that ensure that special education programs and services located in appropriate facilities will not be relocated without adequate consideration of the needs of participating students with disabilities.(h) The board of education or trustees of each school district and each board of cooperative educational services shall develop and implement a plan as part of the professional development plan pursuant to section 100.2(dd) of this Title that shall include, but is not limited to, a description of the professional development activities provided to all professional staff and supplementary school personnel staff who work with students with disabilities to assure that they have the skills and knowledge necessary to meet the needs of students with disabilities.

(i) *Responsibility of boards of cooperative educational services (BOCES)*. (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, 2009 edition, title 34, part 300, appendix C, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 - available at the 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) ensure that the BOCES gives a preference in the purchase of the instructional materials it has selected for its students to those vendors who agree to provide such instructional materials in alternative formats;

(ii) specify, when an electronic file is provided, how the format will be accessed by students and/or how the BOCES will convert to an accessible format;

(iii) specify the process to be used when ordering materials to identify the needs of students enrolled in the programs of the BOCES for alternative format materials;

(iv) specify ordering timelines to ensure that alternative format materials are available at the same time as regular format materials are available; and

(v) include procedures so that when students with disabilities enroll in a program of the BOCES during the school year, the process to obtain needed materials in alternative format is initiated without delay.

(2) Responsibility to identify and take measurable steps to recruit, hire, train and retain highly qualified personnel. Each BOCES shall identify and take steps to recruit, hire, train and retain highly qualified personnel to provide special education programs and services to students with disabilities served by the BOCES.

200.3 Committee on special education and committee on preschool special education.

(a) Each board of education or board of trustees shall appoint:

(1) committees on special education in accordance with the provisions of Education Law, section 4402, as necessary to ensure timely evaluation and placement of students. The membership of each committee shall include, but not be limited to:

(i) the parents or persons in parental relationship to the student;

(ii) not less than one regular education teacher of the student whenever the student is or may be participating in the regular education environment;

(iii) not less than one special education teacher of the student, or, if appropriate, not less than one special education provider of the student;

(iv) a school psychologist;

(v) a representative of the school district who is qualified to provide or supervise special education and who is knowledgeable about the general education curriculum and the availability of resources of the school district, provided that an individual who meets these qualifications may also be the same individual appointed as the special education teacher or the special education provider of the student or the school psychologist. The representative of the school district shall serve as the chairperson of the committee;

(vi) an individual who can interpret the instructional implications of evaluation results. Such individual may also be the individual appointed as the regular education teacher, the special education teacher or special education provider, the school psychologist, the representative of the school district or a person having knowledge or special expertise regarding the student when such member is determined by the school district to have the knowledge and expertise to fulfill this role on the committee;

(vii) a school physician, if specifically requested in writing by the parent of the student or by a member of the school at least 72 hours prior to the meeting;

(viii) an additional parent member of a student with a disability residing in the school district or a neighboring school district, provided that the additional parent member may be the parent of a student who has been declassified within a period not to exceed five years or the parent of a student who has graduated within a period not to exceed five years, if specifically requested in writing by the parent of the student, the student or by a member of the committee at least 72 hours prior to the meeting;

(ix) other persons having knowledge or special expertise regarding the student, including related services personnel as appropriate, as the school district or the parent(s) shall designate. The determination of knowledge or special expertise of such person shall be made by the party (parents or school district) who invited the individual to be a member of the committee on special education; and

(x) if appropriate, the student.

(2) committees on preschool special education in accordance with provisions of Education Law, section 4410 to implement the provisions of section 200.16 of this Part. The membership of each committee on preschool special education shall include, but not be limited to:

(i) the parents of the preschool child;

(ii) not less than one regular education teacher of the child whenever the child is or may be participating in the regular education environment;

(iii) not less than one special education teacher of the child, or, if appropriate, not less than one special education provider of the child;

(iv) a representative of the school district who is qualified to provide or supervise special education and who is knowledgeable about the general education curriculum and the availability of preschool special education programs and services and other resources of the school district and the municipality. The representative of the school district shall serve as the chairperson of the committee;

(v) an additional parent member of a child with a disability residing in the school district or a neighboring school district and whose child is enrolled in a preschool or elementary level education program, if specifically requested in writing by the parent of the student or by a member of the committee at least 72 hours prior to the meeting;

(vi) an individual who can interpret the instructional implications of evaluation results, provided that such individual may also be the individual appointed as the regular education teacher, the special education teacher or special education provider, the school psychologist, the representative of the school district or a person having knowledge or special expertise regarding the student when such member is determined by the school district to have the knowledge and expertise to fulfill this role on the committee;

(vii) other persons having knowledge or special expertise regarding the child, including related services personnel as appropriate, as the school district or the parents shall designate. The determination of knowledge or special expertise of such person shall be made by the party (parents or school district) who invited the individual to be a member of the committee on special education;

(viii) for a child in transition from early intervention programs and services, at the request of the parent, the appropriate professional designated by the agency that has been charged with the responsibility for the preschool child; and

(ix) a representative of the municipality of the preschool child's residence, provided that the attendance of the appointee of the municipality shall not be required for a quorum.

(b) Each child care institution, as defined in Education Law, section 4001, maintaining a school, shall appoint a committee on special education in accordance with the provisions of Education Law, section 4402.

(c) The board of education in a city school district in a city having a population in excess of 125,000 inhabitants shall appoint subcommittees on special education to the extent necessary to ensure timely evaluation and placement of students with disabilities. Boards of education or trustees of any school district outside of a city having a population in excess of 125,000 inhabitants may appoint subcommittees on special education to assist the board of education in accordance with Education Law section 4402(1)(b)(1)(b) and the provisions of this subdivision.

(1) The board of education shall determine the number of subcommittees to be appointed, upon the recommendation of the committee on special education.

(2) The membership of each subcommittee shall include, but not be limited to:

(i) the parents of the student;

(ii) not less than one regular education teacher of the student whenever the student is or may be participating in the regular education environment;

(iii) not less than one of the student's special education teachers or, if appropriate, not less than one special education provider of the student;

(iv) a representative of the school district who is qualified to provide, administer or supervise special education and who is knowledgeable about the general education curriculum and who is knowledgeable about the availability of resources of the school district, who may also fulfill the requirement of subparagraph (iii) or (v) of this paragraph. The representative of the school district shall serve as the chairperson of the subcommittee;

(v) a school psychologist, whenever a new psychological evaluation is reviewed or a change to a program option with a more intensive staff/student ratio, as set forth in section 200.6(h)(4) of this Part, is considered;

(vi) an individual who can interpret the instructional implications of evaluation results, who may be a member appointed pursuant to subparagraphs (ii) through (v) or (vii) of this paragraph;

(vii) such other persons having knowledge or special expertise regarding the student, including related services personnel as appropriate, as the committee or the parent shall designate. The determination of knowledge or special expertise of such person shall be made by the party (parents or school district) who invited the individual to be a member of the subcommittee on special education; and

(viii) the student, if appropriate.

(3) Each subcommittee may perform the functions of the committee on special education pursuant to the provisions of Education Law, section 4402, except as specified in paragraphs (4) and (5) of this subdivision.

(4) The subcommittee may perform the functions of the committee on special education pursuant to the provisions of Education Law, section 4402, except when a student is considered for initial placement in:

(i) a special class; or

(ii) a special class outside of the student's school of attendance; or

(iii) a school primarily serving students with disabilities or a school outside of the student's district.

(5) Upon receipt of a written request from the parent or legal guardian of a student, the subcommittee shall immediately refer to the committee for its review any recommendation of the subcommittee concerning the identification, evaluation, educational placement or provision of a free appropriate public education to a student that is not acceptable to the parent or person in parental relationship to such student.

(6) Each subcommittee shall report annually the status of each student with a disability within its jurisdiction to the committee on special education.

(d) The regular education teacher of the student with a disability must, to the extent appropriate, participate in the development, review and revision of a student's IEP, including assisting in the determination of:

(1) appropriate positive behavioral interventions and supports and other strategies for the student; and

(2) supplementary aids and services, program modifications and supports for school personnel that will be provided for the student, consistent with section 200.4(d) of this Part.

(e) Role of the chairperson of the committee. The chairperson of the committee on special education, committee on preschool special education and subcommittee on special education shall preside over a meeting of such committee and carry out the functions of a chairperson identified in this Part and in the Education Law, including but not limited to sections 200.2(b)(11)(iii), 200.4(a), 200.5(b)(1)(i)(c) and, as appropriate, 200.16(b)(1) of this Part, and sections 4401-a, 4402(7)(c) and, as appropriate, 4410(3) of the Education Law.

(f) Member attendance. Except as otherwise provided in this section, all members of a committee on special education, a committee on preschool special education, or a subcommittee on special education shall attend a meeting of such committee, except that the parent and the school district may agree that the attendance of a member is not necessary or that a member of the committee may be excused in accordance with the following procedures pursuant to sections 4308(2)(f) through (h), 4355(2)(f) through (h), 4402(1)(b)(1)(b-1) through (b-3), 4402(1)(b)(1)(d), and 4410(3)(a)(3) through (5) of the Education Law:

(1) A member of such committee or subcommittee is not required to attend a meeting of the committee, in whole or in part, if the parent and the school district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting.

(2) A member of such committee may be excused from attending a meeting of the committee or subcommittee, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services if the parent to the student and the school district consent, in writing, to the excusal and the excused member submits to the parent and such committee, written input into the development of the IEP, and in particular written input with respect to their area of curriculum or related services prior to the meeting.

(3) Requests for excusal of a member of a committee as provided for in paragraphs (1) and (2) of this subdivision, and the written input as provided for in paragraph (2) of this subdivision, shall be provided not less than five days prior to the meeting date, in order to afford the parent a reasonable time to review and consider the request. Provided however, that a parent shall retain the right to request and/or agree with the school district to excuse a member of the committee or subcommittee at any time including where the member is unable to attend the meeting because of an emergency or unavoidable scheduling conflict and the school district submits the written input for review and consideration by the parent within a reasonable time prior to the meeting and prior to obtaining written consent of the parent to such excusal.

(4) Requests for excusals do not apply to the parents of the student or the appointee of the municipality in the case of a committee on preschool special education.

200.4 Procedures for referral, evaluation, individualized education program (IEP) development, placement and review.

(a) *Referral*. A student suspected of having a disability shall be referred in writing to the chairperson of the district's committee on special education or to the building administrator of the school which the student attends or is eligible to attend for an individual evaluation and determination of eligibility for special education programs and services. The school district must initiate a referral and promptly request parental consent to evaluate the student to determine if the student needs special education services and programs if a student has not made adequate progress after an appropriate period of time when provided instruction as described in section 100.2(ii) of this Title.

(1) Referral for an initial evaluation. A referral may be made by:

(i) a student's parent as defined in section 200.1(ii) of this Part;

(ii) a designee of the school district in which the student resides, or the public school district the student legally attends or is eligible to attend;

(iii) the commissioner or designee of a public agency with responsibility for the education of the student; and/or

(iv) a designee of an education program affiliated with a child care institution with committee on special education responsibility pursuant to section 4002(3) of the Education Law.

(2) Request for referral for an initial evaluation. (i) A written request that the school district or agency refer the student for an initial evaluation pursuant to paragraph (1) of this subdivision may be made by:

(a) a professional staff member of the school district in which the student resides, or the public or private school the student legally attends or is eligible to attend;

(b) a licensed physician;

(c) a judicial officer;

(d) a professional staff member of a public agency with responsibility for welfare, health or education of children; or

(e) a student who is 18 years of age or older, or an emancipated minor, who is eligible to attend the public schools of the district.

(ii) A written request for referral of a student for an initial evaluation made to the school where the student resides or legally attends or is eligible to attend shall, if received by the building administrator or any other employee of the school, be forwarded to the committee chairperson immediately upon its receipt.

(iii) A written request for referral submitted by persons other than the student or a judicial officer shall:

(a) state the reasons for the referral and include any test results, records or reports upon which the referral is based that may be in the possession of the person submitting the referral;

(b) describe in writing, intervention services, programs or instructional methodologies used to remediate the student's performance prior to referral, including any supplementary aids or support services provided for this purpose, or state the reasons why no such attempts were made; and

(c) describe the extent of parental contact or involvement prior to the referral.

(iv) Upon receipt of a request for a referral that meets the requirements of subparagraph (iii) of this paragraph, the school district shall, within 10 school days, either:

(a) request parent consent to initiate the evaluation; or

(b) provide the parent with a copy of such request for referral; and

(1) inform the parent of his or her right to refer the student for an initial evaluation for special education programs and/or services; and

(2) offer the parent the opportunity to meet to discuss the request for referral and, as appropriate, the availability of appropriate general education support services for the student, with the building administrator or other designee of the school district authorized to make a referral pursuant to paragraph (1) of this subdivision, and the party making the request for referral if a professional staff member of the school district. Upon request of the parent or school

district, any other person making a request for referral shall have the opportunity to attend such meeting.

(3) The *date of receipt of a referral* means the date on which either the committee chairperson or the building administrator receives the referral, whichever is earlier.

(4) If a referral is received by the building administrator, it shall be forwarded to the committee chairperson immediately upon its receipt by the administrator.

(5) If a referral is received by the committee chairperson, a copy shall be forwarded to the building administrator within five school days of its receipt by the committee chairperson.

(6) A committee chairperson who receives a referral shall immediately notify the parent pursuant to section 200.5(a) of this Part.

(7) In the event that the parent and the person submitting the referral pursuant to subparagraphs (ii), (iii) and/or (iv) of paragraph (1) of this subdivision agree in writing pursuant to section 200.5(b)(1)(i)(c) of this Part that the referral shall be withdrawn, the chairperson of the committee on special education shall provide the parent and the referring person a copy of the agreement. Each such agreement shall specify any alternative methods suggested to resolve the identified learning difficulty of the student and shall provide the opportunity for a follow-up conference within an agreed period of time to review the student's progress. A copy of the agreement shall also be placed in the student's cumulative educational record file.

(8) Except as otherwise provided in section 200.5(b)(6) of this Part, in the absence of a written agreement to withdraw a referral, as described in paragraph (7) of this subdivision, and in the event that parental consent to an initial evaluation is not obtained within 30 days of the date of receipt of referral, the chairperson shall document attempts, including, but not limited to, telephone calls made or attempted and the results of those calls and correspondence sent to the parents and any responses received, made by the chairperson or other representatives of the committee to obtain parental consent, and shall notify the board of education that they may utilize the due process procedures described in section 200.5 of this Part to permit the district to conduct an evaluation of the student without the consent of the parent.

(9) The building administrator, upon receipt of a referral or copy of a referral, may request a meeting with the parent and the student, if appropriate, to determine whether the student would benefit from additional general education support services as an alternative to special education, including

the provision of support services, speech and language services, academic intervention services, and any other services designed to address the learning needs of the student and maintain a student's placement in general education with the provision of appropriate educational and support services.

(i) If a professional staff member requested the referral that person shall attend such meeting. The building administrator shall ensure that the parent understands the proceedings of the meeting and shall arrange for the presence of an interpreter, if necessary. If at such meeting the parent and the building administrator agree in writing that, with the provision of additional general education support services, the referral is unwarranted, the referral shall be deemed withdrawn, and the building administrator shall provide the chairperson of the committee on special education, the person who made the request for referral if a professional staff member of the school district, the parent, and the student, if appropriate, with copies of the agreement.

(ii) The copy of the agreement provided to the parent shall be in the native language of such person. Such agreement shall contain a description of the additional general education support services to be provided, instructional strategies to be used and student centered data to be collected and the proposed duration of such program. A copy of the agreement shall also be placed in the student's cumulative education record file.

(iii) The meeting:

(a) shall be conducted within 10 school days of the building administrator's receipt of the referral; and

(b) shall not impede a committee on special education from continuing its duties and functions under this Part.

(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. The individual evaluation shall include a variety of assessment tools and strategies, including information provided by the parent, to gather relevant functional, developmental and academic information about the student that may assist in determining whether the student is a student with a disability and the content of

the student's individualized education program, including information related to enabling the student to participate and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities). The individual evaluation must be at no cost to the parent, and the initial evaluation must include at least:

(i) a physical examination in accordance with the provisions of sections 903, 904 and 905 of the Education Law;

(ii) an individual psychological evaluation, except when a school psychologist determines after an assessment of a school-age student, pursuant to paragraph (2) of this subdivision, that further evaluation is unnecessary;

(iii) a social history;

(iv) an observation of the student in the student's learning environment (including the regular classroom setting) or, in the case of a student of less than school-age or out of school, an environment appropriate for a student of that age, to document the student's academic performance and behavior in the areas of difficulty; and

(v) other appropriate assessments or evaluations, including a functional behavioral assessment for a student whose behavior impedes his or her learning or that of others, as necessary to ascertain the physical, mental, behavioral and emotional factors which contribute to the suspected disabilities.

(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.

(3) Notwithstanding any provisions of this subdivision or section 200.1(aa) of this Part to the contrary, the committee on special education may direct that additional evaluations or assessments be conducted in order to appropriately assess the student in all areas related to the suspected disabilities.

(4) A committee on special education shall arrange for an appropriate reevaluation of each student with a disability if the school district determines

that the educational or related services needs, including improved academic achievement and functional performance of the student, warrant a reevaluation or if the student's parent or teacher requests a reevaluation, but not more frequently than once a year unless the parent and representatives of the school district appointed to the committee on special education agree otherwise; and at least once every three years, except where the school district and the parent agree in writing that such reevaluation is unnecessary. The reevaluation shall be conducted by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of the student's disability. In accordance with paragraph (5) of this subdivision, the reevaluation shall be sufficient to determine the student's individual needs, educational progress and achievement, the student's ability to participate in instructional programs in regular education and the student's continuing eligibility for special education. The results of any reevaluations must be addressed by the committee on special education in a meeting to review and, as appropriate, revise the student's IEP. To the extent possible, the school district shall encourage the consolidation of reevaluation meetings for the student and other committee on special education meetings for the student.

(5) Determination of needed evaluation data.

(i) As a part of an initial evaluation, if appropriate, and as part of any reevaluation in accordance with section 200.4(b)(4) of this Part, a group that includes the committee on special education, and other qualified professionals, as appropriate, shall review existing evaluation data on the student including evaluations and information provided by the parents of the student, current classroom-based assessments, local or State assessments, classroom-based observations, and observations by teachers and related services providers. The group may conduct its review without a meeting.

(ii) On the basis of that review, and input from the student's parents, the committee on special education and other qualified professionals, as appropriate, shall identify what additional data, if any, are needed to determine:

(a) whether the student has a disability as defined in section 200.1(mm) or (zz) of this Part, or, in the case of a reevaluation of a student, whether the student continues to have such a disability;

(b) the present levels of academic achievement and related developmental needs of the student; including the four areas listed in section 200.1(ww)(3)(i) of this Part;

(c) whether the student needs special education, or, in the case of a reevaluation of a student, whether the student continues to need special education; and

(d) whether any additions or modifications to the special education services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general curriculum.

(iii) The school district shall administer tests and other evaluation materials as may be needed to produce the data identified under subparagraph (ii) of the section.

(iv) If additional data are not needed, the school district must notify the parents of that determination and the reasons for it and of the right of the parents to request an assessment to determine whether, for purposes of services under this Part, the student continues to be a student with a disability and to determine the student's educational needs. The school district is not required to conduct the assessment unless requested to do so by the student's parents.

(6) School districts shall ensure that:

(i) assessments and other evaluation materials used to assess a student under this section:

(a) are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally and functionally, unless it is clearly not feasible to so provide or administer;

(b) are used for purposes for which the assessments or measures are valid and reliable;

(c) are administered by trained and knowledgeable personnel in accordance with the instruction provided by those who developed such assessments; and

(d) are selected and administered so as not to be discriminatory on a racial or cultural basis.

(ii) if an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the

method of test administration) must be included in the evaluation report;

(iii) assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a general intelligence quotient;

(iv) assessments are selected and administered to ensure that, when an assessment is administered to a student with impaired sensory, manual or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual or speaking skills, except where those skills are factors which the test purports to measure;

(v) no single measure or assessment is used as the sole criterion for determining whether a student is a student with a disability or for determining an appropriate educational program for a student;

(vi) the evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with certification or knowledge in the area of the suspected disability;

(vii) the student is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, vocational skills, communicative status and motor abilities;

(viii) students age 12 and those referred to special education for the first time who are age 12 and over, shall receive an assessment that includes a review of school records and teacher assessments, and parent and student interviews to determine vocational skills, aptitudes and interests;

(ix) the evaluation is sufficiently comprehensive to identify all of the student's special education needs, whether or not commonly linked to the disability category in which the student has been identified;

(x) technically sound instruments are used that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors;

(xi) assessment tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the student;

(xii) the results of the evaluation are provided to the parents in their native language or mode of communication unless it is clearly not feasible to do so;

(xiii) for purposes of eligibility and continuing eligibility determinations, a copy of the evaluation report and the documentation of determination of eligibility are provided at no cost to the parent;

(xiv) the procedures for evaluating students suspected of having a learning disability are in accordance with subdivision (j) of this section;

(xv) the procedures for conducting expedited evaluations are conducted pursuant to section 201.6 of this Title;

(xvi) materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measure the student's English language skills; and

(xvii) assessments of students with disabilities who transfer from one school district to another school district in the same school year are coordinated with such student's prior and subsequent schools, as necessary, and as expeditiously as possible to ensure prompt completion of full evaluations.

(7) The initial evaluation to determine if a student is a student with a disability must be completed within 60 days of receiving parental consent for the evaluation. The 60-day timeframe shall not apply if:

(i) a student enrolls in a school served by the school district after the relevant timeframe in this paragraph has begun and prior to a determination by the student's previous school district as to whether the student is a student with a disability, but only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree in writing to a specific time when the evaluation will be completed; or

(ii) the parent of a student repeatedly fails or refuses to produce the student for the evaluation.

(8) The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education.

(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) as a condition of receiving an evaluation under this Part (United States Code, 2006 edition, volume 13; Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001; 2008 - available at the Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234).

(c) *Eligibility Determinations.* (1) In interpreting evaluation data for the purpose of determining if a student is a student with a disability, as defined in sections 200.1(mm) or (zz) of this Part, and determining the educational needs of the student, the committee on special education and other qualified individuals must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and ensure that information obtained from all these sources is documented and carefully considered. The school district must provide a copy of the evaluation report and the documentation of eligibility to the student's parent.

(2) A student shall not be determined eligible for special education if the determinant factor is:

(i) lack of appropriate instruction in reading, including explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills) and reading comprehension strategies;

(ii) lack of appropriate instruction in math; or

(iii) limited English proficiency.

(3) A school district must evaluate a student with a disability prior to determining that the student is no longer a student with a disability, in accordance with paragraph (b)(4) of this section, and the school district must provide a copy of the evaluation report and the documentation of eligibility to the student's parent.

(4) A school district is not required to conduct a reevaluation of a student before the termination of a student's eligibility due to graduation with a local high school or Regents diploma or exceeding the age eligibility for a free appropriate public education but is required to provide such student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting his or her postsecondary goals.

(5) A free appropriate public education must be available to any student with a disability who needs special education and related services, even though the student is advancing from grade to grade.

(6) The determination that a student has a learning disability as defined in section 200.1(zz)(6) of this Part shall be made pursuant to subdivision (j) of this section.

(d) *Recommendation.* For a student not previously identified as having a disability, the committee on special education shall provide a recommendation to the board of education which shall arrange for the appropriate special education programs and services to be provided to the student with a disability within 60 school days of the receipt of consent to evaluate. For a student with a disability referred for review pursuant to subdivision (f) of this section, a recommendation shall be provided to the board of education which shall arrange for the appropriate special education programs and services to be provided to the student with a disability within 60 school days of the referral for review of the student with a disability. Prior to the development of a recommendation, the committee shall ensure that the appropriateness of reading and math instruction and other resources of the regular education program, including support services and academic intervention services, has been considered.

(1) If the student has been determined to be ineligible for special education, the recommendation shall indicate the reasons the student was found ineligible.

(i) A copy of the recommendation and appropriate evaluation information shall be provided to the building administrator. The building administrator shall determine which support services, if appropriate, shall be provided to the student.

(ii) A copy of the recommendation shall be provided to the parent pursuant to section 200.5(a) of this Part.

(iii) If the student has been receiving special education services, but it is determined by the committee on special education that the student no longer needs special education services and can be placed in a regular educational program on a full-time basis, the recommendation shall:

(a) identify the declassification support services, as defined in section 200.1(ooo) of this Part, if any, to be provided to the student; and/or the student's teachers; and

(b) indicate the projected date of initiation of such services, the frequency of provision of such services, and the duration of such

services, provided that such services shall not continue for more than one year after the student enters the full-time regular education program.

(2) Individualized education program (IEP). If the student has been determined to be eligible for special education services, the committee shall develop an IEP. IEPs developed for the 2011-12 school year, and thereafter, shall be on a form prescribed by the Commissioner. In developing the recommendations for the IEP, the committee must consider the results of the initial or most recent evaluation; the student's strengths; the concerns of the parents for enhancing the education of their child; the academic, developmental and functional needs of the student, including, as appropriate, the results of the student's performance on any general State or district-wide assessment programs; and any special considerations in paragraph (3) of this subdivision. The IEP recommendation shall include the following:

(i) Present levels of performance. The IEP shall report the present levels of academic achievement and functional performance and indicate the individual needs of the student according to each of the four areas listed in section 200.1(ww)(3)(i) of this Part, including:

(a) how the student's disability affects involvement and progress in the general education curriculum; or

(b) for preschool students, as appropriate, how the disability affects the student's participation in appropriate activities.

(ii) Disability classification. The IEP shall indicate the classification of the disability pursuant to section 200.1(mm) or (zz) of this Part;

(iii) Measurable annual goals. (a) The IEP shall list measurable annual goals, including academic and functional goals, consistent with the student's needs and abilities. The measurable annual goals must relate to:

(1) meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general education curriculum; and

(2) meeting each of the student's other educational needs that result from the student's disability.

(b) Each annual goal shall include the evaluative criteria, evaluation procedures and schedules to be used to measure progress toward meeting the annual goal during the period beginning with

placement and ending with the next scheduled review by the committee.

(c) The IEP shall identify when periodic reports on the progress the student is making toward the annual goals (such as through the use of quarterly or other periodic reports that are concurrent with the issuance of report cards) will be provided to the student's parents.

(iv) Short-term instructional objectives and benchmarks. For a student who takes a New York State alternate assessment and for each preschool student with a disability, the IEP shall include a description of the short-term instructional objectives and/or benchmarks that are the measurable intermediate steps between the student's present level of performance and the measurable annual goal.

(v) Special education program and services. (a) The IEP shall indicate the recommended special education program and services as defined in sections 200.1(qq) and (ww) of this Part from the options set forth in section 200.6 of this Part or, for preschool students from those options set forth in section 200.16(i) of this Part, and the supplementary aids and services as defined in section 200.1(bbb) of this Part that will be provided for the student:

(1) to advance appropriately toward attaining the annual goals;

(2) to be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and

(3) to be educated and participate with other students with disabilities and nondisabled students in the activities described in this section.

(b) The recommended program and services shall, to the extent practicable, be based on peer-reviewed research, and as appropriate indicate:

(1) the regular education classes in which the student will receive consultant teacher services;

(2) the class size, as defined in section 200.1(i) of this Part, if appropriate;

(3) the supplementary aids and services and program modifications to be provided to the student or on behalf of the student;

(4) a statement of supports for school personnel on behalf of the student;

(5) the extent to which the student's parents will receive parent counseling and training as defined in section 200.1(kk) of this part, when appropriate;

(6) any assistive technology devices or services needed for the student to benefit from education, including the use of such devices in the student's home or in other settings;

(7) the anticipated frequency, duration and location and, for a preschool student with a disability, the intensity for each of the recommended programs and services, including the supplementary aids and services and program modifications to be provided to or on behalf of the student;

(8) if the recommendation for a preschool student is for one or more related services selected from the list maintained by the municipality, or itinerant services, the child care location arranged by the parent or other site at which each service shall be provided; and

(9) the projected date for initiation of the recommended special education program and services.

(vi) Testing accommodations. The IEP shall provide a statement of any individual testing accommodations to be used consistently by the student in the recommended educational program and in the administration of districtwide assessments of student achievement and, in accordance with department policy, State assessments of student achievement that are necessary to measure the academic achievement and functional performance of the student.

(vii) Participation in State and districtwide assessments. If the student will participate in an alternate assessment on a particular State or districtwide assessment of student achievement, the IEP shall provide a statement of why the student cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the student.

(viii) Participation in regular class. The IEP shall provide:

(a) an explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in the activities described in subparagraph (v) of this paragraph; or

(b) for preschool students, an explanation of the extent, if any, to which the student will not participate in appropriate activities with age-appropriate nondisabled peers;

(c) identify if the provision of IEP services for a preschool child with a disability will be in a setting with no regular contact with age-appropriate peers without disabilities; and

(d) if a student is not participating in a regular physical education program, the extent to which the student will participate in specially-designed instruction in physical education, including adapted physical education.

(ix) Transition services. For those students beginning not later than the first IEP to be in effect when the student is age 15 (and at a younger age, if determined appropriate), and updated annually, the IEP shall, under the applicable components of the student's IEP, include:

(a) under the student's present levels of performance, a statement of the student's needs, taking into account the student's strengths, preferences and interests, as they relate to transition from school to post-school activities as defined in section 200.1(fff) of this Part;

(b) appropriate measurable postsecondary goals based upon age appropriate transition assessments relating to training, education, employment and, where appropriate, independent living skills;

(c) a statement of the transition service needs of the student that focuses on the student's courses of study, such as participation in advanced-placement courses or a vocational education program;

(d) needed activities to facilitate the student's movement from school to post-school activities, including instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, when appropriate, acquisition of daily living skills and functional vocational evaluation; and

(e) a statement of the responsibilities of the school district and, when applicable, participating agencies for the provision of such services and activities that promote movement from school to post-school opportunities, or both, before the student leaves the school setting.

(x) Twelve-month services. For students eligible for 12-month service and/or program, the IEP shall indicate the identity of the provider of services during the months of July and August, and, for preschool students determined by the committee on preschool special education to require a structured learning environment of 12 months duration to prevent substantial regression, a statement of the reasons for such recommendation.

(xi) Projected date of annual review. The IEP shall indicate the projected date of the review of the student's need for such services.

(xii) Placement. The IEP shall indicate the recommended placement.

(3) Consideration of special factors. The CSE shall:

(i) in the case of a student whose behavior impedes his or her learning or that of others, consider strategies, including positive behavioral interventions, and supports and other strategies to address that behavior that are consistent with the requirements in section 200.22 of this Part;

(ii) in the case of a student with limited English proficiency, consider the language needs of the student as such needs relate to the student's IEP;

(iii) in the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the CSE determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or use of Braille is not appropriate for the student;

(iv) consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, consider the student’s language and communication needs, opportunities for direct communications with peers and professional personnel in the student’s language and communication mode, academic level, and full

range of needs, including opportunities for direct instruction in the student's language and communication mode;

(v) consider whether the student requires assistive technology devices and services, including whether the use of school-purchased assistive technology devices is required to be used in the student's home or in other settings in order for the student to receive a free appropriate public education; and

(vi) include a statement in the IEP if, in considering the special factors described in this paragraph, the committee has determined a student needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the student to receive a free appropriate public education.

(4) Such recommendations shall:

(i) be developed in meetings of the committee on special education.

(a) If the recommended placement is to be in a school operated by an agency or school other than the school district in which the student would normally attend if the student did not have a disability or if the education of a student residing in a facility operated or supervised by a State department or agency is the responsibility of the school district, the school district must ensure that a representative of that agency or school attends. If the private school or facility representative cannot attend, the school district must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(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 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;

(c) if the purpose of the meeting is to consider the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals, the school district shall invite the student. If the student does not attend, the district shall take steps to ensure that the student's preferences and interests are considered. To the extent appropriate and with parental consent or consent of a student 18 years of age or older, the school district must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the district should take steps to involve the other agency in the planning of any transition services;

(d) When conducting a meeting of the committee on special education, the parent and the representative of the school district appointed to the committee on special education may agree to use alternative means of meeting participation, such as videoconferences and conference calls.

(ii) be developed in conformity with the least restrictive environment provisions of this Part:

(a) placement shall be based on the student's individualized education program and determined at least annually;

(b) placement shall be as close as possible to the student's home, and unless the student's individualized education program requires some other arrangement, the student shall be educated in the school he or she would have attended if not disabled;

(c) in selecting the least restrictive environment, consideration must be given to any potential harmful effect on the student or on the quality of services that he or she needs; and

(d) a student with a disability must not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

(5) A report of the evaluation upon which the recommendation is based shall be forwarded to the board of education along with the recommendation.

(6) In the event that the parent does not choose to participate in the development of such recommendations, the committee shall forward its recommendation to the board of education and the parents as otherwise required by this subdivision.

(e) *IEP Implementation.* (1) Within 60 school days of the receipt of consent to evaluate for a student not previously identified as having a disability, or within 60 school days of the referral for review of the student with a disability, the board of education shall arrange for appropriate special programs and services, except that if such recommendation is for placement in an approved in-state or out-of-state private school, the board shall arrange for such programs and services within 30 school days of the board's receipt of the recommendation of the committee.

(i) There may be no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education to the student is being determined.

(ii) The school district shall ensure that each student with a disability has an IEP in effect at the beginning of each school year.

(2) If on review of the recommendation of a committee on special education or a subcommittee on special education, the board of education disagrees with such recommendation, the board of education shall follow one of the following procedures:

(i) The board may remand the recommendation to the committee or subcommittee with a statement of the board's objections or concerns and a request that a timely meeting be held to review and consider such objections or concerns. The committee or subcommittee shall consider the board's objections or concerns, revise the IEP where appropriate, and resubmit a recommendation to the board. If the board continues to disagree with the recommendation of the committee or subcommittee, the board may either continue to remand the recommendation to the original committee or subcommittee for additional reviews of its objections or concerns, or establish a second committee or subcommittee to develop a new recommendation in accordance with subparagraph (ii) of this paragraph, provided that the board arranges for the programs and services in accordance with the student's IEP within 60 school days of receipt of consent to evaluate for a student not previously identified as having a disability, or within 60 school days of the referral for review of the student with a disability; or

(ii) The board may establish a second committee on special education or subcommittee to develop a new recommendation for the student at a

meeting held in accordance with the procedures prescribed in this Part. If the board disagrees with such new recommendation, the board may remand the recommendation to such second committee or subcommittee with a statement of the board's objections or concerns and a request that a timely meeting be held to review and consider such objections or concerns. Such second committee or subcommittee shall consider the board's objections or concerns, revise the IEP where appropriate, and resubmit a recommendation to the board. If the board continues to disagree with the recommendation of such second committee or subcommittee, the board may continue to remand the recommendation for additional reviews of its objections or concerns by such second committee or subcommittee, provided that the board arranges for the programs and services in accordance with the student's IEP, as developed by such second committee or subcommittee, within 60 school days of receipt of consent to evaluate for a student not previously identified as having a disability, or within 60 school days of the referral for review of the student with a disability. Nothing in this paragraph shall be construed to authorize the board to select the recommendation of the original committee or subcommittee once it has established a second committee or subcommittee to make a new recommendation for the student pursuant to this subparagraph.

(3) The school district shall ensure that the recommendations on a student's IEP, including changes to the IEP made pursuant to subdivision (g) of this section, are implemented, including but not limited to:

(i) ensuring that each regular education teacher, special education teacher, related service provider, and/or other service provider, as defined in section 200.2(b)(11)(i)(a) of this Part, who is responsible for the implementation of a student's IEP, is provided a paper or electronic copy of the IEP prior to the implementation of such IEP or shall be able to access such student's IEP electronically. If the board of education or board of trustees adopts a policy that the student's IEP is to be accessed electronically, then such policy shall also ensure that the individuals responsible for the implementation of a student's IEP shall be notified and trained on how to access such IEPs electronically;

(ii) ensuring that supplementary school personnel, as defined in section 200.1(hh) of this Part, and each other provider responsible for assisting in the implementation of a student's IEP, has the opportunity to review a copy of the student's IEP, prior to the implementation of such program, and has ongoing access to a copy of the IEP, which may be the copy provided to the student's special education teacher

or the teacher or related service provider under whose direction such supplementary school personnel or other provider works;

(iii) ensuring that each regular education teacher, special education teacher, related service provider, other service provider, supplementary school personnel as defined in section 200.1(hh) of this Part, and other provider and support staff person has been informed, prior to the implementation of the IEP, of his or her responsibility to implement the recommendations on the student's IEP, including the responsibility to provide specific accommodations, program modifications, supports and/or services for the student in accordance with the IEP; and

(iv) ensuring that a copy of the IEP is provided to the student's parents, including a revised copy of the IEP at the parent's request with the amendments developed pursuant to subdivision (g) of this section incorporated, at no cost to the student's parents.

(4) If the student's parent, teacher or an administrator of the school or agency believes that the program or placement recommended in the IEP is no longer appropriate, such party may refer the student to the committee on special education for review, provided that the student shall remain in the current placement pending a new recommendation of the committee on special education, unless the board and parent otherwise agree.

(5) When consultant teacher services are specified in a student's IEP, the regular education teachers of the student for whom the service will be provided shall be given the opportunity to participate in the instructional planning process with the consultant teacher to discuss the objectives and to determine the methods and schedules for such services following the development of the IEP.

(6) If a participating agency fails to provide agreed-upon transition services contained in the student's IEP, the district responsible for the student's education shall, as soon as possible, initiate a meeting to identify alternative strategies to meet the transition objectives and, if necessary, revise the student's IEP. Nothing in this Part shall relieve any participating agency of its responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet its eligibility criteria.

(7) The school district must provide special education and related services to a student with a disability in accordance with the student's IEP and must make a good faith effort to assist the student to achieve the annual goals and, if appropriate, short-term instructional objectives or benchmarks listed in the student's IEP.

(8) Students with disabilities who transfer school districts. (i) Transfer within New York State. In the case of a student with a disability who had an IEP that was in effect in this State and who transfers from one school district and enrolls in a new school district within the same school year, the new school district shall provide such student with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents, until such time as the school district adopts the previously held IEP or develops, adopts and implements a new IEP that is consistent with Federal and State law and regulations.

(ii) Transfer from outside New York State. In the case of a student with a disability who transfers school districts within the same school year, who enrolls in a new school district and who had an IEP that was in effect in another State, the school district shall provide such student with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents, until such time as the school district conducts an evaluation pursuant to this section, if determined to be necessary by such school district, and develops a new IEP, if appropriate, that is consistent with Federal and State law and regulation.

(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, 2009 edition, Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001: 2009 – available at the Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234).

(b) The previous school in which the student was enrolled shall take reasonable steps to promptly respond to such request from the new school.

(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) as a condition of receiving services under this Part (United States Code, 2006 edition, volume 13; Superintendent of Documents, U.S.

Government Printing Office, Stop SSOP, Washington, DC 20402-0001; 2008 – available at the Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234).

(f) *Annual review.* The individualized education program (IEP) of each student with a disability shall be reviewed and, if appropriate, revised, periodically but not less than annually to determine if the annual goals for the student are being achieved. Any meeting to develop, review or revise the IEP of each student with a disability to be conducted by the committee on special education or subcommittee thereof, pursuant to section 4402(1)(b)(2) of the Education Law, shall be based upon review of a student's IEP and other current information pertaining to the student's performance.

(1) Such review shall consider the following factors:

(i) the strengths of the student;

(ii) the concerns of the parents for enhancing the education of their child;

(iii) the results of the initial or most recent evaluation of the student;

(iv) as appropriate, the results of the student's performance on any general State or district-wide assessment programs;

(v) the academic, developmental and functional needs of the student;

(vi) the special factors described in paragraph (d)(3) of this section; and

(vii) the educational progress and achievement of the student with a disability and the student's ability to participate in instructional programs in regular education and in the least restrictive environment.

(2) If appropriate, the IEP must be revised to address:

(i) any lack of expected progress toward the annual goals and in the general education curriculum or participation in appropriate activities for preschool students with disabilities, if appropriate;

(ii) the results of any reevaluation conducted pursuant to this Part and any information about the student provided to, or by, the parents;

(iii) the student’s anticipated needs;

(iv) or other matters, including a student’s need for test accommodations and/or modifications and the student’s need for a particular device or

service (including an intervention, accommodation or other program) in consideration of the special factors contained in paragraph (d)(3) of this section in order for the student to receive a free appropriate public education.

(3) Prior to the annual review, the committee on special education shall notify the parent of its intent to review the student's program and placement in accordance with section 200.5(c) of this Part.

(4) Upon completion of the annual review, the committee on special education shall notify the parents of the committee's recommendation in accordance with section 200.5(a) of this Part.

(g) *Amendments to the IEP*.

(1) Amendments to an IEP made after the annual review may be made by rewriting the IEP or by developing a written document to amend or modify the student's current IEP, provided that:

(i) the parent shall receive prior written notice of any changes to the IEP pursuant to section 200.5(a) of this Part;

(ii) the committee on special education shall be notified of any changes made to the IEP pursuant to paragraph (2) of this subdivision; and

(iii) the parent shall receive a copy of the document that amends or modifies the IEP or, upon request, the parent shall be provided a revised copy of the entire IEP with the amendments incorporated.

(2) In making changes to a student's IEP after the annual review has been conducted, consistent with the procedures established in sections 4308(2)(i), 4355(2)(i), 4402(1)(b)(3)(b) and 4410(3)(a)(6) of the Education Law, the parent and the school district may agree not to convene a meeting of the committee on special education for the purpose of making those changes, and instead may develop a written document to amend or modify the student's current IEP under the following circumstances:

(i) the parent makes a request to the school district for an amendment to the IEP and the school district and such parent agree in writing; or

(ii) the school district provides the parent with a written proposal to amend a provision or provisions of the IEP that is conveyed in language understandable to the parent and in such parent's native language or other dominant mode of communication, informs and allows the parent the opportunity to consult with the appropriate

personnel or related service providers concerning the proposed changes and the parent agrees in writing to such amendments.

(3) Amendments to an IEP pursuant to paragraph (2) of this subdivision shall not affect the requirement that the committee on special education review the IEP at least annually, or more often if necessary.

(h) *Requests to the committee on special education pursuant to section 4005 of the Education Law.* (1) If, pursuant to section 4005 of the Education Law, a committee on special education receives a written request for evaluative information and program recommendations for a student from a Family Court judge, a probation department, a social services district, the Office of Children and Family Services, or a preadmission certification committee established pursuant to section 9.51(d) of the Mental Hygiene Law, the committee shall, with parental consent or consent of a student 18 years of age or older, provide such information and recommendation to the requesting agency within 42 days of the date of receipt of such a request, provided that the committee on special education can obtain the consent of the student's parent to conduct an evaluation.

(2) A committee on special education which receives such a request shall:

(i) forward a copy of the agency's request, as well as a request for parental consent for an evaluation, to the parent of the student at the address indicated in the request from the agency;

(ii) in the event that the parent does not grant consent or fails to respond to a request for consent, the committee shall notify the board of education that they may utilize the procedures described in section 200.5 of this Part to permit the district to conduct an evaluation of the student without the consent of the parent;

(iii) if consent has been obtained, conduct an evaluation comparable to that described in subdivision (b) of this section; and

(iv) develop a written recommendation which:

(a) indicates the reasons for determining that no disability exists; or

(b) if the student is determined to have a disability, provides a recommendation in accordance with paragraphs (d)(2) through (4) of this section.

(3) The committee shall forward a copy of the evaluation and recommendation to the requesting agency and to the board of education.

(i) *Written notice upon graduation or aging out.* Pursuant to Education Law, section 4402(1)(b)(5), the committee on special education or, in the case of a State-operated school, the multidisciplinary team, shall provide written notice to the parents or guardian of each student specified in subparagraphs (1)(i) and (ii) of this subdivision and, if such student is 18 years of age or older, to the student, of the date upon which the student will no longer be entitled to receive tuition free educational services by reason of receipt of a high school diploma or in accordance with Education Law, section 4402(5), whichever is earlier.

(1) The notice shall be provided:

(i) by November 1st of the school year within which a student who is placed in an in-state or out-of-state residential school program in accordance with article 81 or 89 of the Education Law will attain the age of 18 or, if such student is over the age of 18 when placed in such a residential program, at the time of placement; and

(ii) upon the first annual review after attaining the age of 15 for a student who is receiving nonresidential special services or programs in accordance with article 89 of the Education Law, or is receiving special services or programs in a day program at the Henry Viscardi School, and who:

(a) is receiving such special services or programs 100 percent of the school day;

(b) is receiving individualized attention or intervention because of intensive management needs or a severe disability; and

(c) may need adult services as determined by the committee on special education or multidisciplinary team following appropriate review of the student's physical, mental, emotional and educational history.

(2) The notice, which shall be in a form prescribed by the Commissioner of Education, shall:

(i) describe in detail the opportunity and procedure for obtaining from a State agency specified in Education Law, section 4402(1)(b)(5)(a), at least six months before such student attains the age of 21, a determination of the student's need for adult services and a recommendation of all appropriate programs operated, approved, authorized, or licensed by that agency which may be available when the student becomes ineligible for tuition-free educational services;

(ii) provide that:

(a) (1) within 20 days of receipt of notice by a student 18 years of age or older, the committee on special education or multidisciplinary team shall give the student the opportunity to consent or withhold consent to the release of relevant information as such term is defined in section 4402(1)(b)(5)(a) of the Education Law; or

(2) within 20 days of receipt of notice by the parent or guardian of a student less than 18 years of age, the committee on special education or multidisciplinary team shall give the parent or guardian the opportunity to consent or withhold consent to the release of relevant information; or

(3) within 30 days after receipt of notice by a student over the age of 18 years, if such student exercises neither option set forth in subclause (1) of this clause and a designated staff member of the staff of the educational facility has reason to believe that the student may not be able to understand the purpose of the form, the committee on special education or the multidisciplinary team shall give the parent or guardian the opportunity to consent or withhold consent to the release of relevant information;

(b) the committee on special education or multidisciplinary team, upon receipt of consent, shall forward the student's name and other relevant information in a report to the Commissioner of Mental Health, Commissioner of the Office for People With Developmental Disabilities, Commissioner of Social Services or Commissioner of Education or their designees. The committee on special education or multidisciplinary team shall determine which commissioner shall receive the report; and

(c) such information shall be released to the Council on Children and Families if there is a dispute as to the appropriate agency;

(iii) state that:

(a) within 10 school days of the date of receipt of consent, the committee on special education or multidisciplinary team shall forward the report, including all relevant information in its possession, to the commissioner of the appropriate agency or such commissioner's designee; and

(b) in the event that the committee on special education or multidisciplinary team is notified by the commissioner of the State agency receiving the report that such agency is not responsible for determining the need for and recommending adult services for the student, the committee on special education or multidisciplinary team shall forward the report to another of the commissioners identified in clause (ii)(b) of this paragraph, or, if there exists a dispute as to which agency may be responsible, shall forward the report to the Council on Children and Families for resolution of the dispute; and

(iv) state that in the event that consent is withheld, the notice shall be renewed each year until consent is granted or until the student is no longer eligible for tuition-free educational services.

(3) In addition to the requirements of paragraph (2) of this subdivision, the notice to the parent, or student, where appropriate, shall:

(i) identify all the documents to be forwarded by the committee on special education or multidisciplinary team pursuant to paragraph (2) of this subdivision;

(ii) inform the person notified of the opportunity to review the information to be forwarded and to provide additional relevant information that may be in that person's possession; and

(iii) provide assurances of the confidentiality of personally identifiable data which shall be in accordance with section 200.5(e) of this Part and section 247.5 of this Title, as applicable.

(4) The committee on special education or the multidisciplinary team shall forward additional and updated relevant information to the Commissioner of Mental Health, Commissioner of the Office for People With Developmental Disabilities, Commissioner of the Office of Children and Family Services or Commissioner of Education, or their designees, upon the request for such information by such commissioner or designee, and upon obtaining appropriate consent.

(5) On or before October 1st of each year, the committee on special education or the multidisciplinary team shall prepare and submit an annual report to the State Education Department, the form and content of which shall be prescribed by the Commissioner of Education in accordance with the provisions of section 4402(1)(b)(5)(e) of the Education Law.

(j) Additional procedures for identifying students with learning disabilities.

(1) A student suspected of having a learning disability as defined in section 200.1(zz)(6) of this Part must receive an individual evaluation that includes a variety of assessment tools and strategies pursuant to subdivision (b) of this section. The CSE may not rely on any single procedure as the sole criterion for determining whether a student has a learning disability. The individual evaluation shall be completed within 60 days of receipt of consent, unless extended by mutual written agreement of the student's parent and the CSE.

(i) The individual evaluation must include information from an observation of the student in routine classroom instruction and monitoring of the student's performance that was either done before the student was referred for an evaluation or from an observation of the student's academic performance in the regular classroom after the student has been referred for an evaluation and parental consent, consistent with section 200.5(b) of this Part, is obtained. Such observation shall be conducted by an individual specified in paragraph (2) of this subdivision.

(ii) To ensure that underachievement in a student suspected of having a learning disability is not due to lack of appropriate instruction in reading or mathematics, the CSE must, as part of the evaluation procedures pursuant to section 200.4(b) and (c) of this Part, consider,

(a) data that demonstrate that prior to, or as part of, the referral process, the student was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(b) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents.

(2) The determination of eligibility for special education for a student suspected of having a learning disability must be made by the CSE, which shall include the student's regular education teacher as defined in section 200.1(pp) of this Part and at least one person qualified to conduct individual diagnostic examinations of students (such as a school psychologist, teacher of speech and language disabilities, speech/language pathologist or reading teacher),

(3) A student may be determined to have a learning disability if, when provided with learning experiences and instruction appropriate for the student's age or State-approved grade-level standards, the student does not achieve

adequately for the student's age or to meet State-approved grade-level standards in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading fluency skills, reading comprehension, mathematics calculation, mathematics problem solving; and

(i) The student either:

(a) does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified in this paragraph when using a process based on the student's response to scientific, research-based intervention pursuant to section 100.2(ii) of this Title; or

(b) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development that is determined by the CSE to be relevant to the identification of a learning disability, using appropriate assessments consistent with section 200.4(b) of this Part; and

(ii) The CSE determines that its findings under this paragraph are not primarily the result of a visual, hearing, or motor disability; an intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency.

(4) In addition to the criteria in paragraph (3) of this subdivision, the CSE is not prohibited from considering whether there is a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematical calculation and/or mathematical problem solving; provided that effective on and after July 1, 2012, a school district shall not use the severe discrepancy criteria to determine that a student in kindergarten through grade four has a learning disability in the area of reading.

(5) Specific documentation for the eligibility determination.

(i) When determining eligibility for a student suspected of having a learning disability, the CSE shall prepare a written report containing a statement of:

(a) whether the student has a learning disability;

(b) the basis for making the determination, including an assurance that the determination has been made in accordance with section 200.4(c)(1) of this Part;

(c) the relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student's academic functioning;

(d) the educationally relevant medical findings, if any;

(e) whether, consistent with paragraph (3) of this subdivision:

(1) the student does not achieve adequately for the student's age or to meet State-approved grade-level standards; and

(2) the student

(i) does not make sufficient progress to meet age or State-approved grade-level standards; or

(ii) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development;

(f) the determination of the CSE concerning the effects of a visual, hearing, or motor disability; an intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student's achievement level; and

(g) if the student has participated in a process that assesses the student's response to scientific, research-based intervention pursuant to section 100.2(ii) of this Title:

(1) the instructional strategies used and the student-centered data collected; and

(2) the documentation that the student's parents were notified in accordance with section 100.2(ii)(1)(vi) of this Title.

(ii) Each CSE member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the CSE member must submit a separate statement presenting the member's conclusions.

200.5 Due process procedures.

(a) *Prior written notice (notice of recommendation) and other written notifications.* (1) Prior written notice (notice of recommendation) that meets the requirements of section 200.1(oo) of this Part must be given to the parents of a student with a disability a reasonable time before the school district proposes to or refuses to initiate or change the identification, evaluation, educational placement of the student or the provision of a free appropriate public education to the student. Prior written notices issued during the 2011-12 school year, and thereafter, shall be on a form prescribed by the commissioner.

(2) If the prior written notice relates to an action proposed by the school district that also requires parental consent under subdivision (b) of this section, the district must give notice at the same time it requests parent consent.

(3) The prior written notice must include:

(i) a description of the action proposed or refused by the district;

(ii) an explanation of why the district proposes or refuses to take the action;

(iii) a description of other options that the CSE considered and the reasons why those options were rejected;

(iv) a description of each evaluation procedure, assessment, record, or report the CSE used as a basis for the proposed or refused action;

(v) a description of other factors that are relevant to the CSE's proposal or refusal;

(vi) a statement that the parents of a student with a disability have protection under the procedural safeguards of this Part, and, if this notice is not an initial referral for an evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

(vii) sources for parents to contact to obtain assistance in understanding the provisions of this Part.

(4) The prior written notice must be written in language understandable to the general public, and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the school district shall take steps to ensure that the notice is translated orally or by other means to the parent in

his or her native language or other mode of communication; that the parent understands the content of the notice; and that there is written evidence that the requirements of this section have been met.

(5) In addition to the requirements of paragraphs (3) and (4) of this subdivision:

(i) Upon receipt of a referral for initial evaluation or prior to conducting a reevaluation, such prior written notice shall include a description of the proposed evaluation or reevaluation and the uses to be made of the information and indicate that the parent may submit evaluation information which, if submitted, shall be considered by the committee on special education as part of its evaluation or review.

(ii) Prior to the student's graduation with a local high school or Regents diploma, such prior written notice must indicate that the student is not eligible to receive a free appropriate public education after graduation with the receipt of the local high school or Regents diploma.

(iii) Prior to the student's graduation with an individualized education program (IEP) diploma or, beginning with the 2013-14 school year, prior to a student's exit with a skills and achievement commencement credential or a career development and occupational studies commencement credential as set forth in section 100.6 of this Title, such prior written notice must indicate that the student continues to be eligible for a free appropriate public education until the end of the school year in which the student turns age 21 or until the receipt of a Regents or local high school diploma.

(6) Other required notifications. A parent of a student with a disability shall also be provided written notification as follows:

(i) If the committee on special education and other qualified professionals, as appropriate, determine in accordance with section 200.4(b)(5) of this Part that no additional data are needed to determine whether the student continues to be a student with a disability and to determine the student's educational needs, the school district must notify the parents of that determination and the reasons for the determination and the right of such parents to request an assessment to determine whether the student continues to be a student with a disability and to determine the student's education needs.

(ii) Upon a board of education's disagreement with the recommendation of the committee on special education pursuant to section 200.4(e)(2) of this Part, the notice to the parent and to the committee shall set forth in writing a statement of the board of education's reasons and

indicate that the recommendation will be sent back to committee, with notice of the need to schedule a timely meeting to review the board's concerns and to revise the IEP as deemed appropriate.

(iii) For students described in section 200.4(i)(1), notice must be provided to the parent and, beginning at age 18 to the student, in accordance with section 200.4(i)(2) and (3) of this Part.

(iv) For a student whom the committee on special education has determined to be at risk of a future residential placement, information must be provided to the parent on community support services that may be available to the family, including the name and address of agencies which can perform an assessment of a family's community support needs, where such list has been made available to the committee.

(v) For students recommended for an approved private school, a copy of the approved private school's policy on the use of psychotropic medication must be provided to the student's parents if the school uses psychotropic medication.

(7) A parent of a student with a disability may elect to receive prior written notice and other required notifications by an electronic mail (e-mail) communication if the school district makes this option available.

(b) *Consent.* (1) The school district must make reasonable efforts to obtain written informed consent of the parent, as such term is defined in section 200.1(l) of this Part, and must have a detailed record of its attempts, and the results of those attempts. Written consent of the parent is required:

(i) prior to conducting an initial evaluation or reevaluation, except that:

(a) parental consent is not required before reviewing existing data as part of an evaluation or a reevaluation or administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students;

(b) parental consent need not be obtained for a reevaluation if the school district can demonstrate that it has made reasonable efforts to obtain that consent, and the student's parents failed to respond;

(c) in the event the parent of the student to be evaluated does not grant consent for an initial evaluation, such parent shall be informed by the committee chairperson that, upon request, the

parent will be given an opportunity to attend an informal conference with the committee or designated professionals most familiar with the proposed evaluation, the person who referred the student for such an evaluation pursuant to section 200.4(a)(1)(ii), (iii) and/or (iv) of this Part, and counsel or an advisor of the parent's choice, at which time the parent shall be afforded an opportunity to ask questions regarding the proposed evaluation. If at this meeting the parent and such person initiating the referral agree in writing that the referral is not warranted, the referral shall be withdrawn. Except in the case of a preschool child, a student who is home instructed pursuant to section 100.10 of this Title or a student placed in a private school by the parents at their own expense, if the parent does not request or attend such a conference, or continues to withhold consent for evaluation otherwise required for a period of 30 days after the date of receipt of a referral, the board of education may pursue the initial evaluation of the student by utilizing the due process procedures described in this section;

(ii) prior to the initial provision of special education to a student who has not previously been identified as having a disability. Consent for initial evaluation may not be construed as consent for initial provision of special education services; and

(iii) prior to releasing any personally identifiable information as described in subdivision (e) of this section, in accordance with sections 200.2(b)(6) and 200.4(h) of this Part;

(2) A school district may not use a parent's refusal to consent to one service or activity under paragraph (1) of this subdivision to deny the parent or child any other services, benefit, or activity of the school district, except for the conditions under paragraph (1) of this subdivision for which consent is required.

(3) If the parents of a student with a disability refuse to give consent for an initial evaluation or reevaluation or fail to respond to a request to provide consent for an initial evaluation, the school district may, but is not required to, continue to pursue those evaluations by using the due process procedures described in subdivisions (h) through (k) of this section. The school district does not violate its obligation to locate, identify, and evaluate a student in accordance with sections 200.2(a) and 200.4(b) and (c) of this Part if it declines to pursue the evaluation.

(4) If the parent of the student refuses to consent or fails to respond to a request to provide such consent to the initial provision of special education programs and services, the school district shall not provide the special

education programs and services to the student and shall not use the due process procedures described in subdivisions (h) through (k) of this section to challenge the parent's refusal to consent.

(i) the school district shall not be considered to be in violation of the requirements to make available a free appropriate public education to the student because of the failure to provide such student with the special education program and services for which the parent refuses to or fails to provide consent; and

(ii) the school district shall not be required to convene a meeting of the committee on special education or develop an IEP under section 200.4 of this Part for the student.

(5) If, at any time subsequent to the initial provision of special education programs and services, the parent of a student revokes consent in writing for the continued provision of special education programs and services, the school district;

(i) shall not continue to provide any special education programs and services to the student, but must provide prior written notice in accordance with subdivision (a) of this section before ceasing the provision of special education programs and services;

(ii) shall not use the due process procedures described in subdivisions (h) through (k) of this section to obtain agreement or a ruling that the services may be provided to the student;

(iii) shall not be considered to be in violation of the requirement to make available a free appropriate public education to the student because of the failure to provide the student with further special education programs and services;

(iv) is not required to convene a meeting of the committee on special education or develop an IEP for the student for further provision of special education programs and services; and

(v) is not required to amend the student’s education records to remove any references to the student’s receipt of special education programs and services because of the revocation of consent.

(6) Consent for a ward of the State. If the student is a ward of the State and is not residing with the student's parent, the school district shall make reasonable efforts to obtain the informed consent from the parent of the student for an initial evaluation to determine whether the student is a student with a disability. The school district is not required to obtain

informed consent from the parent of a student, as defined in section 200.1(ii) of this Part, for an initial evaluation to determine eligibility for special education services if:

(i) despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the student; or

(ii) the rights of the parents of the student have been terminated in accordance with State law; or

(iii) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student.

(7) Consent for a student who is home instructed, pursuant to section 100.10 of this Title, or placed in a private school by parents at their own expense. If a parent of student who is home instructed or placed in a private school by their parents at their own expense does not provide consent for an initial evaluation or reevaluation, or the parent fails to respond to a request to provide consent, the school district may not continue to pursue those evaluations by using the due process procedures described in this section; and the school district is not required to consider the student as eligible for special education services.

(8) Students with disabilities who are covered by public benefits or insurance.

(i) Consent. Prior to accessing a student's or parent's public benefits or insurance for the first time, after providing notification to the student's parents consistent with subparagraph (ii) of this paragraph, the school district must obtain the written consent of the parent, consistent with the confidentiality requirements of sections 99.30 and 300.622 of the Code of Federal Regulations (Code of Federal Regulations, 2013 edition, title 34, sections 99.30 and 300.622, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2013 - available at the Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234), which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular student), the purpose of the disclosure (e.g., billing for special education services), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program, such as Medicaid or Supplemental Security Insurance); and specify that the parent understands and agrees that the public agency may

access the parent's or student's public benefits or insurance to pay for services under this Part.

(ii) Notification. Prior to accessing a student's or parent's public benefits or insurance for the first time, and annually thereafter, the school district must provide the student's parents with written notification, consistent with the requirements of subdivision (a)(4) of this section, that includes:

(a) a statement of the parental consent provisions in subparagraph (i) of this paragraph;

(b) a statement that the parents are not required to sign up for or enroll in public benefits or insurance programs in order for their child to receive a free appropriate public education under Part B of the Individuals with Disabilities Education Act;

(c) a statement that the parents are not required to incur an out-of-pocket expense, such as the payment of a deductible or co-pay amount, incurred in filing a claim for services pursuant to this Part;

(d) a statement that the school district may not use the student's benefits under a public benefits or insurance program if that use would:

(1) decrease available lifetime coverage or any other insured benefit;

(2) result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;

(3) increase premiums or lead to the discontinuation of benefits or insurance; or

(4) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures;

(e) a statement that the parents have the right, pursuant to Parts 99 and 300 of Title 34 of the Code of Federal Regulations, to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and

(f) a statement that the withdrawal of consent or refusal to provide consent under Parts 99 and 300 of Title 34 of the Code of Federal Regulations to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

(9) Students with disabilities who are covered by private insurance. With regard to services required to provide a free appropriate public education to an eligible student under this Part, a school district may access the parents' private insurance proceeds only if the parents provide consent consistent with section 200.1(l) of this Part. Each time the school district proposes to access the parents' private insurance proceeds, the school district must obtain such parental consent, and inform the parents that their refusal to permit the school district to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

(c) *Meeting notice.* (1) Whenever the committee on special education proposes to conduct a meeting related to the development or review of a student's IEP, or the provision of a free appropriate public education to the student, the parent must receive notification in writing at least five days prior to the meeting. The meeting notice may be provided to the parent less than five days prior to the meeting to meet the timelines in accordance with Part 201 of this Title and in situations in which the parent and the school district agree to a meeting that will occur within five days. The parent may elect to receive the notice of meetings by an electronic mail (e-mail) communication if the school district makes such option available. Meeting notices issued during the 2011-12 school year, and thereafter, shall be on a form prescribed by the commissioner.

(2) Such notice shall:

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

(ii) indicate that the parent(s) has the right to participate as a member of the committee on special education with respect to the identification, evaluation and educational placement of his or her child;

(iii) state that the parent(s) has the right to invite such individuals with knowledge or special expertise about his or her child, including related service personnel as appropriate, as determined by the parent(s);

(iv) for meetings of the committee on special education, inform the parent(s) of his or her right to request, in writing at least 72 hours before the meeting, the attendance of the school physician member and an additional parent member of the committee on special education at any meeting of such committee pursuant to section 4402(1)(b) of the Education Law and include a statement, prepared by the State Education Department, explaining the role of having the additional parent member attend the meeting;

(v) for meetings of the committee on preschool special education, inform the parent(s) of his or her right to request, in writing at least 72 hours before the meeting, the attendance of an additional parent member at any meeting of such committee pursuant to section 4410(3)(a)(1) of the Education Law and include a statement, prepared by the State Education Department, explaining the role of having the additional parent member attend the meeting;

(vi) if the meeting is being conducted by a subcommittee on special education, inform the parent(s) that, upon receipt of a written request from the parent, the subcommittee shall refer to the committee on special education any matter on which the parent(s) disagrees with the subcommittee's recommendation concerning a modification or change in the identification, evaluation, educational placement or provision of a free appropriate public education to the student; and

(vii) if the purpose of the meeting is to consider postsecondary goals and transition services, the meeting notice must also:

(a) indicate this purpose;

(b) indicate that the district will invite the student; and

(c) identify any other agency that will be invited to send a representative.

(viii) in the case of a child who was previously served under Part C (early intervention services), inform the parent(s) of his or her right to request an invitation to an initial CPSE meeting be sent to the early intervention service coordinator or other representatives of the early intervention system to assist with the smooth transition of services.

(d) *Parent participation in CSE meetings*. (1) Each school district shall take steps to ensure that one or both of the student's parents are present at each committee on special education meeting or are afforded the opportunity to participate, including:

(i) notifying the parent(s) of the meeting, consistent with subdivision (c) of this section prior to the meeting to ensure that he or she will have an opportunity to attend;

(ii) scheduling the meeting at a mutually agreed on time and place and in a location that is physically accessible to the parents; and

(iii) using other methods to ensure parent participation, including individual or conference telephone calls pursuant to paragraph (7) of this subdivision.

(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. 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.

(3) A school district may conduct a CSE meeting without a parent in attendance if the school is unable to convince the parents that they should attend. In this case, the school must have a detailed record of its attempts, and the results of those attempts to arrange a mutually agreed on time and place.

(4) A decision may be made by the committee on special education without the involvement of the parents, if the school is unable to obtain the parents' participation in the decision. In this case, the school must have a record of its attempt to ensure their involvement.

(5) The school district must take whatever action is necessary to ensure that the parent understands the proceedings at the meetings of the committee on special education, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(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, 2009 edition, title 34, sections 300.613 – 300.625, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 - available at the Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234).

(7) When conducting a meeting of the committee on special education, the school district and the parent may agree to use alternative means of participation, such as videoconferences or conference telephone calls.

(e) *Confidentiality of personally identifiable data*. (1) *Personally identifiable* means:

(i) the name of the student, the student's parent, or other family member;

(ii) the address of the student;

(iii) a personal identifier, such as the student's social security number or student number; or

(iv) a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

(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 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, 2006 edition, volume 12; 2008; Superintendent of Documents, U.S. Government Printing Office, Stop SSOP Washington, DC 20402-9328: 2004; Code of Federal Regulations, 2009 edition, title 34, part 99, Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001; Code of Federal Regulations, 2009 edition, title 34, sections 300.610-300.625, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 – available at the Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234).

(f) *Procedural safeguards notice*. (1) A school district must use the procedural safeguards notice prescribed by the Commissioner of Education.

(2) The school district must ensure that the procedural safeguards notice is provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the school district shall take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; that the parent understands the content of the notice; and that there is written evidence that the requirements of this section have been met.

(3) A copy of such notice must be given to the parents of a student with a disability, at a minimum one time per year and also:

(i) upon initial referral or parental request for evaluation;

(ii) upon the first filing of a due process complaint notice to request mediation or an impartial hearing as described in subdivisions (h) and (j) of this section;

(iii) upon request by a parent;

(iv) upon a decision to impose a suspension or removal that constitutes a disciplinary change in placement pursuant to section 201.2(e) of this Title; and

(v) upon first receipt of a State complaint pursuant to section 200.5(l) of this Part.

(4) A school district may place a current copy of the procedural safeguards notice on its Internet website if such website exists.

(5) A parent of a student with a disability may elect to receive the procedural safeguards notice by an electronic mail (e-mail) communication if the school district makes such an option available.

(g) *Independent educational evaluations*. (1) Requests by parents. If the parent disagrees with an evaluation obtained by the school district, the parent has a right to obtain an independent educational evaluation at public expense. A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

(i) If requested by the parent, the school district shall provide to parents, information about where an independent educational evaluation may be obtained, and the school district's criteria applicable for independent educational evaluations, as described in subparagraph (ii) of this section.

(ii) The criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria which the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. A school district may not impose additional conditions or timelines related to obtaining an independent educational evaluation at public expense.

(iii) If a parent requests an independent educational evaluation at public expense, the school district may ask for the parent's reason why he or she objects to the public evaluation.

(a) The explanation by the parent in subparagraph (iii) of this paragraph may not be required and the school district may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint notice to request a hearing to defend the public evaluation.

(iv) If a parent requests an independent educational evaluation at public expense, the school district must, without unnecessary delay, either ensure an independent educational evaluation is provided at public expense or file a due process complaint notice to request a hearing to show that its evaluation is appropriate or that the evaluation obtained by the parent does not meet the school district criteria.

(v) If the school district files a due process complaint notice to request an impartial hearing and the final decision is that the school district's evaluation is appropriate, or that the evaluation obtained by the parent did not meet school district criteria, the parent has the right to an independent educational evaluation, but not at public expense.

(vi) If the parent obtains an independent educational evaluation at public expense or shares with the school district an evaluation obtained at private expense, the results of the evaluation:

(a) must be considered by the school district, if it meets the school district's criteria, in any decisions made with respect to the provision of a free appropriate public education for the student; and

(b) may be presented by any party as evidence at an impartial hearing for that student.

(2) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(h) *Mediation.* (1) Each school district must ensure that procedures are established and implemented to allow parties to resolve disputes involving any matter for which an impartial due process hearing may be brought through a mediation process, including matters arising prior to the filing of a due process complaint notice. Such procedures must ensure that:

(i) the mediation process is voluntary on the part of the parties;

(ii) the mediation process is not used to deny or delay a parent's right to a hearing on the parent's due process complaint or to deny any other rights afforded under this Part;

(iii) the mediation session is conducted by a qualified and impartial mediator, as defined in section 200.1(dd) of this Part, who is trained in effective mediation techniques, is knowledgeable in laws and regulations relating to the provision of special education services and who is selected by the community dispute resolution center on a random, i.e., rotation basis or, if not selected on a random basis, then by mutual agreement of both parties. An individual who serves as a mediator may not be the employee of any school district or State agency that is involved in the education or care of the student and must not have a personal or professional interest that conflicts with the individual's objectivity;

(iv) each session in the mediation process is scheduled in a timely manner and is held in a location that is convenient to the parties to the dispute;

(v) discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings; and

(vi) in the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding written agreement that sets forth the resolution and that states that all discussions that occurred during the mediation process shall remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal or State court. The agreement shall be signed by both the parent and a representative of the school district who has the authority to bind the school district. The written, signed agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(2) Opportunity to meet with a disinterested party. A school district may establish procedures that provide parents and schools who elect not to use the mediation process the opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is from a community dispute resolution center who would explain the benefits of the mediation process, and encourage the parents to use the process; except that, a school district may not deny or delay a parent's right to a due

process hearing under this section if the parent elects not to participate in this meeting.

(3) If the written agreement reached by the parties in mediation is inconsistent with the student's IEP then the student's IEP must be immediately amended to be consistent with the mediation agreement.

(4) Mediation, including meetings with the parent(s) described in paragraph (2) of this subdivision, shall be provided by community dispute resolution centers through a contract with the State Education Department.

(5) When conducting meetings and carrying out administrative matters under this subdivision, the parent and the school district may agree to use alternative means of meeting participation, such as video conferences and conference calls.

(i) *Due process complaint notification requirements.* (1) A parent or school district may file a due process complaint with respect to any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student. The party presenting the complaint, or the attorney representing such party, shall provide a written due process complaint notice to the party, which shall include:

(i) the name of the student;

(ii) the address of the residence of the student or in the case of a homeless student as defined in section 200.1(hhh) of this Part, available contact information for the student and the name of the school the student is attending;

(iii) the name of the school the student is attending;

(iv) a description of the nature of the problem of the student relating to such proposed or refused initiation or change, including facts relating to such problem; and

(v) a proposed resolution of the problem to the extent known and available to the party at the time.

(2) A party may not have an impartial due process hearing until the party, or the attorney representing the party, files a due process complaint notice that meets the requirements of paragraph (1) of this subdivision.

(3) The due process complaint notice shall be deemed to be sufficient unless the party receiving the notice notifies the impartial hearing officer, appointed

in accordance with the rotational selection process in section 200.2(e)(1) of this Part and the requirements in subparagraphs (3)(i) and (ii) of subdivision (j) of this Part, and the other party in writing, within 15 days of the receipt of the due process complaint notice, that the receiving party believes the notice has not met the requirements of paragraph (1) of this subdivision. No party may challenge the sufficiency of a due process complaint using this procedure for expedited impartial hearings conducted pursuant to section 201.11 of this Title.

(4) School district response to the parent. (i) If the school district has not sent a prior written notice pursuant to subdivision (a) of this section to the parent regarding the subject matter in the parent's due process complaint notice, such school district shall, within 10 days of receiving the complaint, send to the parent a response that shall include:

(a) an explanation of why the school district proposed or refused to take the action raised in the complaint;

(b) a description of other options that the committee on special education considered and the reasons why those options were rejected;

(c) a description of each evaluation procedure, assessment, record or report the school district used as a basis for the proposed or refused action; and

(d) a description of the factors that are relevant to the school district's proposal or refusal.

(ii) A response filed by the school district pursuant to this paragraph shall not be construed to preclude such school district from asserting that the parent's due process complaint notice was insufficient where appropriate.

(5) Other party response. Except as provided in paragraph (4) of this subdivision, the noncomplaining party shall, within 10 days of receiving the due process complaint notice, send to the complaining party a response that specifically addresses the issues raised in the notice.

(6) Allegation of insufficient due process complaint notice. (i) Timing. If the party receiving the due process complaint notice believes the notice has not met the requirements of paragraph (1) of this subdivision, it shall notify the impartial hearing officer and the other party in writing within 15 days of receiving the due process complaint notice.

(ii) Determination. Within five days of the receipt of the notice of insufficiency, the impartial hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of paragraph (1) of this subdivision and shall immediately notify the parties in writing of such determination.

(7) Amended due process complaint notice. (i) A party may amend its due process complaint notice only if:

(a) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subdivision (j)(2) of this section; or

(b) the impartial hearing officer grants permission, except that the impartial hearing officer may only grant such permission at any time not later than five days before an impartial due process hearing commences.

(ii) The applicable timelines for an impartial due process hearing, including the timelines for the resolution process, shall recommence at the time the party files an amended due process complaint notice.

(j) *Impartial due process hearings*. (1) A parent or a school district must submit a complete due process complaint notice pursuant to subdivision (i) of this section prior to initiation of an impartial due process hearing on matters relating to the identification, evaluation or educational placement of a student with a disability, or the provision of a free appropriate public education to the child.

(i) Timeline for requesting an impartial hearing. The request for an impartial due process hearing must be submitted within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, except that the two-year timeline shall not apply to a parent if the parent was prevented from requesting the impartial hearing due to specific misrepresentations by the school district that it had resolved the problem forming the basis of the complaint or the school district's withholding of information from the parent that was required to be provided to the parent under this Part or under Part 201 of this Title.

(ii) Subject matter of the impartial due process hearing. The party requesting the impartial due process hearing shall not be allowed to raise issues at the impartial due process hearing that were not raised in the notice filed under subdivision (i) of this section, unless the other party agrees otherwise.

(iii) The school district shall inform the parent in writing of the availability of mediation and of any free or low-cost legal and other relevant services, such as parent centers, available in the area:

(a) when an impartial due process hearing is requested; or

(b) at the parent's request.

(2) Resolution process. (i) Resolution meeting. Prior to the opportunity for an impartial due process hearing under paragraph (1) of this subdivision, the school district shall, within 15 days of receiving the due process complaint notice from the parent, convene a meeting with the parents and the relevant member or members of the committee on special education, as determined by the school district and the parent, who have specific knowledge of the facts identified in the complaint, which shall include a representative of the school district who has decision-making authority on behalf of the school district and may not include an attorney of the school district unless the parent is accompanied by an attorney, where the parents of the student discuss their complaint and the facts that form the basis of the complaint, and the school district has the opportunity to resolve the complaint. The school district shall take steps to ensure that one or both of the parents of the student with a disability are present at the resolution meeting, including notifying parents of the meeting early enough to ensure that they will have the opportunity to attend and scheduling the resolution meeting at a mutually agreed on time and place and in a location that is physically accessible to the parents.

(ii) When conducting meetings and carrying out administrative matters (such as scheduling) under this paragraph, the parent and the school district may agree to use alternative means of meeting participation, such as video conferences and conference calls.

(iii) Waiver of resolution process. The parent and the school district may agree, in writing, to waive the resolution process or agree to use the mediation process described in subdivision (h) of this section to resolve the dispute.

(iv) Written settlement agreement. If, during the resolution process, the parent and school district reach an agreement to resolve the complaint, the parties shall execute a legally binding agreement that is signed by both the parent and a representative of the school district who has the authority to bind the school district. Such agreement shall be enforceable in any State court of competent jurisdiction or in a district court of the United States. A party may void such agreement within three business days of the agreement's execution.

(v) Resolution period. If the school district has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint notice, the impartial due process hearing may occur consistent with the time period provided in section 200.5(j)(3)(iii) of this Part.

(vi) Failure to convene or participate. Except where the parties have jointly agreed to waive the resolution process or use mediation, the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timeline for the resolution process and due process hearing until the meeting is held.

(a) If the school district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented), the school district may, at the conclusion of the 30-day period, request that an impartial hearing officer dismiss the parents' due process complaint.

(b) If the school district fails to hold the resolution meeting within 15 days of receipt of the parents' due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of the impartial hearing officer to begin the due process hearing timeline.

(3) Initiation of an impartial due process hearing. Upon receipt of the parent's due process complaint notice, or the filing of the school district's due process complaint notice, the board of education shall arrange for an impartial due process hearing to be conducted in accordance with the following rules:

(i) Except as provided in subparagraph (ii) of this paragraph and paragraph (6) of this subdivision, appointment from the impartial hearing officer list must be made in accordance with the rotational selection process established in section 200.2(e)(1) of this Part and the administrative procedures established by the board of education pursuant to section 200.2(b)(9) of this Part.

(a) The rotational selection process must be initiated immediately, but not later than two business days after receipt by the school district of the due process complaint notice or mailing of the due process complaint notice to the parent.

(b) The impartial hearing officer may not accept appointment unless he or she is available to make a determination of sufficiency of a due process complaint notice within five days of receiving such a request and to initiate the hearing within the first 14 days of the

time period specified in clause (a) or (b) of subparagraph (iii) of this paragraph.

(c) The impartial hearing officer shall not accept appointment if he or she is serving as the attorney in a due process complaint in the same school district or has served as the attorney in a due process complaint in the same school district within a two-year period of time preceding the offer of appointment; or if he or she is an individual with special knowledge or training with respect to the problems of children with disabilities who has accompanied and advised a party from the same school district in a due process complaint within a two-year period.

(ii) The board of education or trustees shall immediately appoint an impartial hearing officer to conduct the hearing. A board of education may designate one or more of its members to appoint the impartial hearing officer.

(a) Consolidation and multiple due process hearing requests. For a subsequent due process complaint notice filed while a due process complaint is pending before an impartial hearing officer involving the same parties and student with a disability:

(1) Once appointed to a case in accordance with the rotational selection process established in section 200.2(e)(1) of this Part, the impartial hearing officer with the pending due process complaint shall be appointed to a subsequent due process complaint involving the same parties and student with a disability, unless that impartial hearing officer is unavailable.

(2) The impartial hearing officer may consolidate the new complaint with the pending complaint or provide that the new complaint proceed separately as an individual complaint before the same impartial hearing officer.

(3) Consolidation of such complaints or the denial of such consolidation shall be by written order.

(4) When considering whether to consolidate one or more separate requests for due process, in the interests of judicial economy and the interests of the student, the impartial hearing officer shall consider relevant factors that include, but are not limited to:

(i) the potential negative effects on the child's educational interests or well-being which may result from the consolidation;

(ii) any adverse financial or other detrimental consequence which may result from the consolidation of the due process complaints; and

(iii) whether consolidation would:

(a) impede a party's right to participate in the resolution process prescribed in paragraph (2) of this subdivision;

(b) prevent a party from receiving a reasonable opportunity to present its case in accordance with subparagraph (xiii) of this paragraph; or

(c) prevent the impartial hearing officer from timely rendering a decision pursuant to paragraph (5) of this subdivision.

(5) If the due process complaints are consolidated, the timeline for issuance of a decision in the earliest pending due process complaint shall apply.

(6) Nothing in this section shall be construed to preclude a parent from filing a due process complaint on an issue separate from a due process complaint already filed.

(iii) Timeline for commencing the hearing or pre-hearing conference. Unless an extension is granted pursuant to subparagraph (5)(i) of this subdivision:

(a) when a school district files a due process complaint notice, the hearing or pre-hearing conference shall commence within the first 14 days after the date upon which the impartial hearing officer is appointed.

(b) when a parent files a due process complaint notice, the hearing or a pre-hearing conference shall commence within the first 14 days after:

(1) the date upon which the impartial hearing officer receives the parties' written waiver of the resolution meeting; or

(2) the impartial hearing officer receives the parties' written confirmation that a mediation or resolution meeting was held but no agreement could be reached; or

(3) the expiration of the 30-day resolution period, whichever shall occur first, unless

(4) the parties agree in writing to continue mediation at the end of the 30-day resolution period, in which case, the hearing or pre-hearing conference shall commence within the first 14 days after the impartial hearing officer is notified in writing that either party withdrew from mediation.

(iv) The impartial hearing officer shall be authorized to administer oaths and to issue subpoenas in connection with the administrative proceedings before him/her.

(v) A written or, at the option of the parents, electronic verbatim record of the proceedings before the impartial hearing officer shall be maintained and made available to the parties.

(vi) At all stages of the proceeding, where required, interpreters of the deaf, or interpreters fluent in the native language of the student's parent, shall be provided at district expense.

(vii) 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.

(viii) In the event the impartial hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(ix) In the event the impartial hearing officer determines that the interests of the parent are opposed to or are inconsistent with those of the student, or that for any other reason the interests of the student would best be protected by appointment of a guardian *ad litem*, the impartial hearing officer shall appoint a guardian *ad litem* to protect the interests of such student, unless a surrogate parent shall have previously been assigned. The impartial hearing officer shall ensure that the

procedural due process rights afforded to the student's parent pursuant to this section are preserved throughout the hearing whenever a guardian *ad litem* is appointed.

(x) The hearing shall be conducted at a time and place which is reasonably convenient to the parent and student involved and shall be closed to the public unless the parent requests an open hearing.

(xi) A prehearing conference with the parties may be scheduled. Such conference may be conducted by telephone. A transcript or a written summary of the prehearing conference shall be entered into the record by the impartial hearing officer. A prehearing conference is for the purposes of:

(a) simplifying or clarifying the issues;

(b) establishing date(s) for the completion of the hearing;

(c) identifying evidence to be entered into the record;

(d) identifying witnesses expected to provide testimony; and/or

(e) addressing other administrative matters as the impartial hearing officer deems necessary to complete a timely hearing.

(xii) 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.

(a) Additional disclosure of information. Not less than five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. An impartial hearing officer may bar any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(b) The impartial hearing officer, wherever practicable, shall enter into the record a stipulation of facts and/or joint exhibits agreed to by the parties.

(c) The impartial hearing officer may receive any oral, documentary or tangible evidence except that the impartial hearing officer shall exclude evidence that he or she determines to be irrelevant, immaterial, unreliable or unduly repetitious. The impartial hearing officer may receive testimony by telephone, provided that such testimony shall be made under oath and shall be subject to cross-examination.

(d) The impartial hearing officer may limit examination of a witness by either party whose testimony the impartial hearing officer determines to be irrelevant, immaterial or unduly repetitious.

(e) The impartial hearing officer may limit the number of additional witnesses to avoid unduly repetitious testimony.

(f) The impartial hearing officer may take direct testimony by affidavit in lieu of in-hearing testimony, provided that the witness giving such testimony shall be made available for cross-examination.

(g) The impartial hearing officer may receive memoranda of law from the parties not to exceed 30 pages in length, with typed material in minimum 12-point type (footnotes minimum 10 point type) and not exceeding 6 1/2 by 9 1/2 inches on each page.

(xiii) Each party shall have up to one day to present its case unless the impartial hearing officer determines that additional time is necessary for a full, fair disclosure of the facts required to arrive at a decision. Additional hearing days, if required, shall be scheduled on consecutive days wherever practicable.

(xiv) The parents shall have the right to determine whether the student shall attend the hearing.

(xv) If, by mutual agreement of the parties, the impartial hearing officer is deemed incapacitated or otherwise unavailable or unwilling to continue the hearing or issue the decision, the board of education shall rescind the appointment of the impartial hearing officer and appoint a new impartial hearing officer in accordance with the procedures as set forth in this subdivision.

(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 Special Education of the State Education

Department in a format and at an interval prescribed by the commissioner.

(xvii) When carrying out administrative matters relating to an impartial due process hearing, such as scheduling, exchange of witness lists and status conferences, the parent and the school district may agree to use alternative means of meeting participation, such as video conferences and conference calls.

(4) Decision of the impartial hearing officer. (i) In general. Subject to subparagraph (ii), a decision made by an impartial hearing officer shall be made on substantive grounds based on a determination of whether the student received a free appropriate public education.

(ii) Procedural issues. In matters alleging a procedural violation, an impartial hearing officer may find that a student did not receive a free appropriate public education only if the procedural inadequacies impeded the student's right to a free appropriate public education, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parent's child, or caused a deprivation of educational benefits. Nothing in this paragraph shall be construed to preclude an impartial hearing officer from ordering a school district to comply with procedural requirements under this Part and Part 201 of this Title.

(iii) Settlement agreements. An impartial hearing officer shall not issue a so-ordered decision on the terms of a settlement agreement reached by the parties in other matters not before the impartial hearing officer in the due process complaint or amended due process complaint. Nothing in this subdivision shall preclude a party from seeking to admit a settlement agreement or administrative decision into evidence.

(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, if a school district files the due process complaint, 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 and to the board of education not later than 45 days from the day after the public agency's due process complaint is received by the other party and the State Education Department. Except as provided in section 200.16(h)(9) of this Part and section 201.11 of this Title, if the parent files the due process complaint notice, the decision is due not later than 45 days from the day after one of the following events, whichever shall occur first: (a) both parties agree in writing to waive the resolution meeting; (b) after either the mediation or resolution meeting starts but before the end of the 30-day period, the

parties agree in writing that no agreement is possible; (c) if both parties agree in writing to continue the mediation at 13 the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process or (d) the expiration of the 30-day resolution period . 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. After a final decision has been rendered, the impartial hearing officer shall promptly transmit the record to the school district together with a certification of the materials included in the record. The record of the hearing and the findings of fact and the decision shall be provided at no cost to the parents. Within 15 days of mailing the decision to the parties, the impartial hearing officer shall submit the decision to the Office of Special Education of the State Education Department. All personally identifiable information, in accordance with the guidelines provided by the commissioner, shall be deleted from the copy forwarded to the Office of Special Education.

(i) An impartial hearing officer may grant specific extensions of time beyond the periods set out in this paragraph, in subparagraph (3)(iii) of this subdivision, or in section 200.16(h)(9) of this Part at the request of either the school district or the parent. The impartial hearing officer shall not solicit extension requests or grant extensions on his or her own behalf or unilaterally issue extensions for any reason. Each extension shall be for no more than 30 days. Not more than one extension at a time may be granted. The reason for each extension must be documented in the hearing record.

(ii) The impartial hearing officer may grant a request for an extension only after fully considering the cumulative impact of the following factors:

(a) whether the delay in the hearing will positively contribute to, or adversely affect, the child's educational interest or;

(b) whether a party has been afforded a fair opportunity to present its case at the hearing in accordance with the requirements of due process;

(c) any adverse financial or other detrimental consequences likely to be suffered by a party in the event of delay; and

(d) whether there has already been a delay in the proceeding through the actions of one of the parties.

(iii) Absent a compelling reason or a specific showing of substantial hardship, a request for an extension shall not be granted because of

school vacations, a lack of availability resulting from the parties' and/or representatives' scheduling conflicts, avoidable witness scheduling conflicts or other similar reasons. Upon a finding of good cause based on the likelihood that a settlement may be reached, an extension may be granted for settlement discussions between the parties. The impartial hearing officer shall not rely on the agreement of the parties as a basis for granting an extension. No extension shall be granted after the record close date.

(iv) The impartial hearing officer shall promptly respond in writing to each request for an extension and shall set forth the facts relied upon for each extension granted. The response shall become part of the record. The impartial hearing officer may render an oral decision to an oral request for an extension if the discussions are conducted on the record, but shall subsequently provide that decision in writing and include it as part of the record. For each extension granted, the impartial hearing officer shall set a new date for rendering his or her decision, and notify the parties in writing of such date, and as required, revise the schedule of remaining hearing dates set forth in the written prehearing order issued pursuant to clause (xi)(b) of paragraph (3) of this subdivision to ensure that the impartial hearing officer's decision is issued by the revised decision due date.

(v) The impartial hearing officer shall determine when the record is closed and notify the parties of the date the record is closed. The decision of the impartial hearing officer shall be based solely upon the record of the proceeding before the impartial hearing officer, and shall set forth the reasons and the factual basis for the determination. The decision shall reference the hearing record to support the findings of fact. The impartial hearing officer shall attach to the decision a list identifying each exhibit admitted into evidence. Such list shall identify each exhibit by date, number of pages and exhibit number or letter. In addition, the decision shall include an identification of all other items the impartial hearing officer has entered into the record. The decision shall also include a statement advising the parents and the board of education of the right of any party involved in the hearing to obtain a review of such a decision by the State review officer in accordance with subdivision (k) of this section. The decision of the impartial hearing officer shall be binding upon both parties unless appealed to the State review officer.

(vi) For purposes of this section, the record shall include copies of:

(a) the due process complaint notice and any response to the complaint pursuant to paragraphs (4) and (5) of subdivision (i) of this Part;

(b) all briefs, arguments or written requests for an order filed by the parties for consideration by the impartial hearing officer;

(c) all written orders, rulings or decisions issued in the case including an order granting or denying a party's request for an order and an order granting or denying an extension of the time in which to issue a final decision in the matter;

(d) any subpoenas issued by the impartial hearing officer in the case;

(e) all written and electronic transcripts of the hearing;

(f) any and all exhibits admitted into evidence at the hearing, including documentary, photographic, audio, video, and physical exhibits;

(g) any other documentation deemed relevant and material by the impartial hearing officer; and

(h) any other documentation as may be otherwise required by this section.

(6) Withdrawal of a Due Process Complaint. A due process complaint may be withdrawn by the party requesting a hearing as follows:

(i) Prior to the commencement of the hearing, a voluntary withdrawal by the party requesting the hearing shall be without prejudice unless the parties otherwise agree. For purposes of this paragraph, the commencement of the hearing shall not mean the initial prehearing conference if one is conducted, but shall mean the first date the hearing is held after such conference.

(ii) Except for withdrawals in accordance with subparagraph (i) of this paragraph, a party seeking to withdraw a due process complaint shall immediately notify the impartial hearing officer and the other party. The impartial hearing officer shall issue an order of termination. A withdrawal shall be presumed to be without prejudice except that the impartial hearing officer may, at the request of the other party and upon notice and an opportunity for the parties to be heard, issue a written decision that the withdrawal shall be with prejudice. The decision of an impartial hearing officer that a withdrawal shall be with or without prejudice is binding upon the parties unless appealed to the State review officer.

(iii) The withdrawal of a due process complaint does not alter the timeline pursuant to paragraph (1)(i) of this section for requesting an impartial hearing.

(iv) If the party subsequently files a due process complaint within one year of the withdrawal of a complaint that is based on or includes the same or substantially similar claims as made in a prior due process complaint that was previously withdrawn by the party, the school district shall appoint the same impartial hearing officer appointed to the prior complaint unless that impartial hearing officer is no longer available to hear the re-filed due process complaint.

(v) Nothing in this section shall preclude an impartial hearing officer, in his or her discretion, from issuing a decision in the form of a consent order that resolves matters in dispute in the proceeding.

(k) *Appeal to a State review officer of the State Education Department*. (1) Any party aggrieved by the findings of fact and the decisions of an impartial hearing officer rendered in accordance with subdivision (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.

(2) The State review officer must ensure that, not later than 30 days after the receipt of a request for a review, a final decision is reached and a copy of the written decision, or at the option of the parents, electronic findings of fact and the decisions, is mailed to each of the parties, except that a State review officer may grant specific extensions of time beyond the periods set out in this paragraph at the request of either party. The reason for the extension must be documented in the record.

(3) The written decision of the State review officer shall be final, provided that either party may seek judicial review by means of a proceeding pursuant to article 4 of the Civil Practice Law and Rules or 20 U.S.C. section 1415.

(l) *State complaint procedures.* (1) Filing a complaint.

(i) An organization or individual, including those from another state, may file a signed written complaint under the procedures described in this paragraph.

(ii) The complaint must include:

(a) a statement that the school district or the State Education Department has violated a Federal or State law or regulation relating to the education of students with disabilities;

(b) the facts upon which the statement is based;

(c) the signature and contact information for the complainant; and

(d) if alleging violations with respect to a specific student:

(1) the name and address of the residence of the student;

(2) the name of the school the student is attending;

(3) in the case of a homeless child or youth as defined in section 200.1(hhh) of this Part, available contact information for the student, and the name of the school the student is attending;

(4) a description of the nature of the problem of the student, including facts relating to the problem; and

(5) a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(iii) Limitation of time for filing a complaint.

(a) The complaint must allege a violation that occurred not more than one year prior to the date that the State complaint is received.

(iv) The original signed complaint shall be filed with the Office of Special Education, New York State Education Department, State Education Building Room 307, 89 Washington Avenue, Albany, New York, 12234.

(v) The party filing the State complaint must forward a copy of the State complaint to the school district or public agency serving the student at the same time the party files the State complaint with the State Education Department.

(vi) The school district, or public agency when appropriate, must provide a procedural safeguards notice to the parent filing the State complaint upon receipt of the parent's first State complaint in a school year.

(2) Complaint process. Upon receipt of a complaint the State Education Department:

(i) shall provide complainant written notice of receipt of the complaint and the complainant's right to submit additional information, either orally or in writing, regarding the allegations in the complaint;

(ii) may require a school district or other public agency to submit a written reply to the complaint which could include, at the discretion of the school district or other public agency, a proposal to resolve the complaint or notification to the Department that the parent who has filed the State complaint and the school district or other public agency have agreed to voluntarily engage in mediation;

(iii) may conduct an on-site investigation where the department determines such investigation is necessary;

(iv) shall review all relevant information; and

(v) shall issue a written final decision that:

(a) addresses each allegation in the complaint;

(b) contains findings of fact and conclusions;

(c) sets forth the reasons for the final decision;

(d) upon a finding of a violation of a Federal or State law or regulation relating to the education of students with disabilities, includes, if necessary for implementation of the decision:

(1) technical assistance activities;

(2) negotiations; and

(3) corrective actions to achieve compliance;

(e) upon a finding of failure to provide appropriate services to an individual student with a disability, includes:

(1) remediation of the denial of services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student; and

(2) appropriate future provision of services for all students with disabilities;

(vi) shall issue the decision in subdivision (v) of this paragraph within 60 days of receipt of the complaint except:

(a) where exceptional circumstances exist with respect to a particular complaint; or

(b) when the parent and school district or other public agency involved agree to extend the time to engage in mediation pursuant to section 200.5(h) of this Part;

(vii) shall set aside any part of the complaint that is currently being addressed in an impartial hearing held pursuant to Education Law section 4404; and

(viii) shall, where an issue raised in a complaint has been previously decided in an impartial hearing held pursuant to Education Law section 4404 involving the same parties, notify the complainant that the impartial hearing decision is binding.

(3) Nothing in this section shall abrogate the right of an individual student with a disability to due process under Education Law section 4404, including the right to initiate an impartial hearing to address issues previously raised in a complaint decided pursuant to this section.

(4) Where a complaint involves the rights of an individual student under Education Law, article 89, upon receipt of an adverse decision rendered pursuant to this section, the complainant or the school district may initiate an impartial hearing pursuant to Education Law section 4404(1) to address the issues raised in the complaint.

(m) *Student's status during proceedings*. (1) Except as otherwise provided in paragraph (2) of this subdivision and section 200.16 of this Part and Part 201 of this Title, during the pendency of any proceedings conducted pursuant to subdivisions (j) or (k) of this section, unless the local board of education and the parents otherwise agree, the student shall remain in the then current placement of such student. During the pendency for any due process proceeding relating to the evaluation and initial placement in special education, unless the local board of education and the parents otherwise agree, the student shall not be evaluated and shall remain in the then current educational placement of such student or, if applying for initial admission to a public school, shall be placed in the public school program until all such proceedings have been completed.

(2) If a decision of a State review officer, pursuant to subdivision (k) of this section, agrees with the student's parents that a change of placement is appropriate, that placement must be treated as an agreement between the

State or school district and the parents for purposes of pendency during any subsequent appeals pursuant to paragraph (k)(3) of this section.

(3) If the complaint involves an application for initial services as a preschool student with a disability from a child who is transitioning from early intervention to preschool special education and related services, the school district is not required to provide the early intervention services that the child had been receiving. If the child is found eligible for special education and related services as a preschool student with a disability and the parent consents to the initial provision of special education and related services consistent with section 200.16(h)(7) of this Part, then the school district must provide those special education and related services that are not in dispute between the parent and the school district.

(n) *Surrogate parents*. (1) Duty of the board of education. The board of education or other appropriate body shall select a surrogate parent from a list of individuals who are eligible and willing to serve as surrogate parents in order to ensure that the rights of a student are protected if:

(i) no parent, as defined in section 200.1(ii) of this Part, can be identified;

(ii) the school district, after reasonable efforts, cannot discover the whereabouts of a parent, or the student is an unaccompanied homeless youth, as such term is defined in section 100.2(x)(1)(vi) of this Title; or

(iii) the student is a ward of the State and does not have a parent as defined in section 200.1(ii) of this Part or the rights of the parent to make educational decisions on behalf of the student have been subrogated by a judge in accordance with State law.

(2) Qualifications. Persons selected as surrogate parents:

(i) shall not be officers, employees or agents of the local school district or State Education Department or other agency involved in the education or care of the student. A school district may select as a surrogate a person who is an employee of a nonpublic agency that only provides noneducational care for the student and who meets the standards in this paragraph. A surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent;

(ii) shall have no other interest which could conflict with their primary allegiance to the student they would represent; and

(iii) shall have knowledge and skills that ensure adequate representation of the student.

(3) Procedures for assigning surrogates. Assignment of a surrogate parent to a particular student shall be made in accordance with the following procedures:

(i) Any person whose work involves education or treatment of students and who knows of a student who may need special education services, and who knows that the student meets the criteria in paragraph (1) of this subdivision, may file a request for assignment of a surrogate parent to the student with the committee on special education to which the student may be appropriately referred.

(ii) The committee on special education shall send notice of the possible need for a surrogate parent to the adult in charge of the student's place of residence and to the parents at their last known address.

(iii) The committee on special education shall determine whether the student's parents can be identified or located, or whether the student is a ward of the State, consistent with paragraph (1) of this subdivision. Where the student is known to the school district to be a ward of the State, such reasonable efforts to discover the whereabouts of a parent shall include consultation with the local social services district or other agency responsible for the care of the student. The determination of the need for a surrogate parent shall be completed within a reasonable time following the receipt of a referral for an initial evaluation, reevaluation or services. If the committee on special education finds that there is a need for a surrogate parent, a surrogate parent who meets the qualifications identified in paragraph (2) of this subdivision shall be selected from the list approved by the board of education, except as otherwise provided in subparagraph (v) through (vii) of this paragraph, within 10 business days of the date of the determination by the committee of the need for the surrogate parent.

(iv) A surrogate parent shall be assigned to represent the student in all matters relating to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student for as long as a surrogate parent is required under this Part.

(v) The foster parent of the student, who otherwise meets the qualifications in paragraph (2) of this section, may be appointed as the surrogate parent of the student without being appointed from a list approved by the board of education.

(vi) The surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate parent meets the requirements in paragraph (2) of this subdivision. The individual appointed by the judge need not be appointed from a list approved by the board of education.

(vii) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (2) of this section, until a surrogate can be appointed that meets the appropriate qualifications.

200.6 Continuum of services.

(a) A student with a disability shall be provided with appropriate special education.

(1) Students with disabilities shall be provided special education in the least restrictive environment, as defined in section 200.1(cc) of this Part. To enable students with disabilities to be educated with nondisabled students to the maximum extent appropriate, specially designed instruction and supplementary services may be provided in the regular class, including, as appropriate, providing related services, resource room programs and special class programs within the general education classroom.

(2) A student with a disability shall be provided the special education specified on the student's IEP to be necessary to meet the student's unique needs.

(3) Students with disabilities placed together for purposes of special education shall be grouped by similarity of individual needs as defined in section 200.1(ww) of this Part, in accordance with the following:

(i) The range of academic or educational achievement of such students shall be limited to assure that instruction provides each student appropriate opportunities to achieve his or her annual goals. The learning characteristics of students in the group shall be sufficiently similar to assure that this range of academic or educational achievement is at least maintained.

(ii) The social development of each student shall be considered prior to placement in any instructional group to assure that the social interaction within the group is beneficial to each student, contributes to each student's social growth and maturity, and does not consistently interfere with the instruction being provided. The social needs of a student shall not be the sole determinant of such placement.