

**SPECIAL EDUCATION MANDATE RELIEF PROPOSALS  
FOR PUBLIC COMMENT: JUNE 2011**

**COMMITTEE ON SPECIAL EDUCATION (CSE) MEMBERSHIP**

**1. Conform the membership of the CSE to the federal individualized education program (IEP) team membership by repealing the requirement that CSE membership include: a school psychologist; a parent of a student with a disability; and a physician if requested by the school or parent 72 hours before the meeting.**

Federal Requirement	How NYS' Requirement is Different from the Federal Requirement	Justification for the Change
<p>The federally required IEP team members include:</p> <ul style="list-style-type: none"> <li>● the parents of the child;</li> <li>● a regular education teacher (under certain circumstances);</li> <li>● a special education teacher or related service provider*;</li> <li>● a representative of the school district;</li> <li>● an individual who can interpret the instructional implications of evaluation results*;</li> <li>● other individuals with knowledge or special expertise regarding the child (as determined by the parent or school district)*;</li> <li>● whenever appropriate, the student; and</li> <li>● with the consent of the parent, representative(s) from other agencies likely to provide transition services.</li> </ul> <p>*added with the reauthorization of the Individuals with Disabilities Education Act (IDEA) in 1997</p>	<p>In addition to the federal IEP team members, the CSE membership must include:</p> <ul style="list-style-type: none"> <li>● a school psychologist;</li> <li>● a parent of a student with disability (in addition to the student's parent), except that the parent of the student may decline the participation of the additional parent member; and</li> <li>● a physician if requested by the school or parent 72 hours before the meeting.</li> </ul> <p>Education Law §4402(1)(b)(1)(a) and (b) 8 NYCRR §200.3(a)(1)</p>	<p>Consistent with the federal IEP team requirements, State Regulations allow parents and school districts the discretion to bring other individuals who have knowledge or special expertise regarding the student to CSE meetings. The determination of whether an individual possesses knowledge or special expertise regarding the student is made on a case-by-case basis by the parent or school district inviting such individual to be a member of the committee. The United States Education Department has opined that it would be inappropriate to require additional individuals with specific professional knowledge or expertise attend all students' IEP meetings and that a decision to include other individuals to attend an IEP meeting should be made on a case-by-case basis.</p> <p>Even if the NYS membership of the CSE is aligned to the federal IEP team membership, the parent and/or district could, in light of the needs of a particular student, continue to include such members as the school psychologist, another parent or a physician. In addition, the State Education Department (SED) anticipates that, for most CSE meetings, the school psychologist will</p>

		continue to be a regular member, serving as one of the federally mandated participants including the representative of the school district and/or the individual who can interpret the instructional implications of evaluations.
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**Repeal the statutory requirements for Subcommittees on Special Education. (Contingent upon Proposal #1 to change State law to conform the CSE membership to the federal IEP team)**

<b>Federal Requirement</b>	<b>How NYS' Requirement is Different from the Federal Requirement</b>	<b>Justification for the Change</b>
There is no federal requirement for Subcommittees on Special Education.	<p>Subcommittees on Special Education - School districts with more than 125,000 inhabitants must appoint subcommittees to the extent necessary to ensure timely evaluation and placement of students with disabilities. Other school districts may, but are not required to, have subcommittees. Subcommittee membership is the same as federal IEP team membership, except a school psychologist is a required member of a subcommittee whenever a new psychological evaluation is reviewed or a change to a program option with a more intensive staff-to-student ratio is recommended. Subcommittees must submit an annual report to CSE. The parent has the right to disagree with Subcommittee recommendations and refer to CSE.</p> <p>Education Law §4402(1)(b)(1)(d)</p> <p>8 NYCRR §200.3(c)</p>	This proposal is only viable if the State aligns its CSE membership to federal standard. If the membership of the CSE is aligned to the federal IEP team membership, Subcommittees on Special Education would no longer be necessary.

**COMMITTEE ON PRESCHOOL SPECIAL EDUCATION (CPSE)**

**2. Align CPSE membership with the federal IEP team, by repealing the requirement that CPSE membership must include an additional parent member, but continue the municipality representative until such time that the county no longer has a role in the provision or payment of special education to preschool students.**

Federal Requirement	How NYS' Requirement is Different from the Federal Requirement	Justification for the Change
<p>The federally required IEP team members include:</p> <ul style="list-style-type: none"> <li>● the parents of the child;</li> <li>● a regular education teacher (under certain circumstances);</li> <li>● a special education teacher or related service provider*;</li> <li>● a representative of the school district;</li> <li>● an individual who can interpret the instructional implications of evaluation results*;</li> <li>● other individuals with knowledge or special expertise regarding the child (as determined by the parent or school district)*;</li> <li>● whenever appropriate, the student; and</li> <li>● with the consent of the parent, representative(s) from other agencies likely to provide transition services.</li> </ul> <p>*added with the reauthorization of the Individuals with Disabilities Education Act (IDEA) in 1997</p>	<p>In addition to the federal IEP team members, membership of the CPSE includes an additional parent member (except that the parent can decline the participation of the additional parent member) and a municipality representative, except the attendance of the municipality representative is not required for a quorum.</p> <p>Education Law §4410(3)(a)(1)</p> <p>8 NYCRR §200.3(a)(2)</p>	<p>Consistent with the federal IEP team requirements, section 200.3(a)(1)(ix) of the Regulations of the Commissioner of Education, allows parents and school districts the discretion to bring to CPSE meetings as committee members other individuals who have knowledge or special expertise regarding the student. The determination of whether an individual possesses knowledge or special expertise regarding the student is made on a case-by-case basis by the parent or school district inviting such individual to be a member of the committee. When asked to add additional required members to the federal IEP team, the United States Education Department has opined that it would be inappropriate to require additional individuals with specific professional knowledge or expertise attend all students' IEP meetings and that a decision to include other individuals to attend an IEP meeting should be made on a case-by-case basis. Even if the membership of the CPSE is aligned to the federal IEP team membership, the parent and/or district could, in light of the needs of a particular student, continue to include such members as the school psychologist, another parent or a physician. In addition, SED anticipates that, for most</p>

		CPSE meetings, the school psychologist will continue to be a regular member, serving as one of the federally mandated participants including the representative of the school district and/or the individual who can interpret the instructional implications of evaluations.
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<b>INDIVIDUAL EVALUATIONS</b>		
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<p><b>3. Repeal the requirement that the parent(s) selects the preschool evaluator and replace it with the requirement that the school district, after providing the parent(s) with a list of approved evaluators, must consult with the parent(s) regarding the selection of an evaluator that can provide a timely evaluation of the preschool child. All school districts would be approved preschool evaluators.</b></p>		
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<b>Federal Requirement</b>	<b>How NYS' Requirement is Different from the Federal Requirement</b>	<b>Justification for the Change</b>
Federal law imposes evaluation responsibilities on the public school district, with parental right to independent evaluation under limited circumstances.	<p>For preschool students, the parent selects the evaluator from a list of approved evaluators.</p> <p>Education Law §4410(4)(b)</p> <p>8 NYCRR §200.16 (c)(1)</p>	<p>This requirement has contributed to significant noncompliance in NYS for timely evaluations of preschool students, as parents do not always select approved evaluators who are able to complete the individual evaluation within the State's required timeline. Districts would select an approved evaluator (which could be the district) in consultation with the parent and in consideration of the availability of the approved evaluator to complete the evaluation within the time period required by State law.</p> <p>Parents would be provided a list of approved evaluators and informed of their right to request an independent educational evaluation if they disagree with the evaluation that is completed or contracted for by the school district.</p>

<b>4. Align the preschool initial evaluation timeline to be the same as the evaluation timeline for school-age students, which is 60 calendar days.</b>		
<b>Federal Requirement</b>	<b>How NYS' Requirement is Different from the Federal Requirement</b>	<b>Justification for the Change</b>
Federal regulations require the initial evaluation to be conducted within 60 calendar days of receiving parental consent for the evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe.	The initial evaluation of a preschool student must be conducted within 30 school days of the date of parental consent to conduct the evaluation.  8 NYCRR §200.16(c)(2)	Our current requirements provide for less time for preschool students' evaluations to be completed than school-age evaluations, even though the preschool evaluation system is more complex and dependent upon approved evaluators and parental choice of evaluators.

<b>5. Adopt the federal standard for initial evaluations by repealing the requirement that each individual evaluation of a student suspected of having a disability must include a physical examination, individual psychological evaluation, social history, observation, other appropriate evaluations and functional behavioral assessment (FBA) when behavior impedes learning.</b>		
<b>Federal Requirement</b>	<b>How NYS' Requirement is Different from the Federal Requirement</b>	<b>Justification for the Change</b>
Federal requirements do not prescribe specific types of assessments that must be conducted as part of an initial evaluation except that a classroom observation is a federal requirement for students with specific learning disabilities. The terms psychological evaluation, social history and FBA are not defined in federal law or regulation.	Each initial individual evaluation of a student suspected of having a disability must include a physical examination, individual psychological evaluation, social history, observation, other appropriate evaluations and functional behavioral assessment (FBA) when behavior impedes learning.  Education Law §4402(1)(b)(3)(a)	Federal regulations require a school district to conduct a full and individual initial evaluation before providing initial special education and related services to the child. This must include an assessment in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities.  For a student suspected of having a learning disability, the initial evaluation must also include an observation of the student's learning environment. In assessing the student in these areas. The Committee must draw upon information from a variety of sources, including aptitude and achievement tests, parent input and teacher

		<p>recommendations, as well as information about the student's physical condition, social or cultural background and adaptive behavior. Evaluations must be sufficiently comprehensive to identify all of the student's special education and related services needs.</p> <p>Federal law also gives the right to the parent to request additional evaluations and, upon disagreement with the assessment conducted by the school district, to obtain an independent educational evaluation which must be considered by the CSE or CPSE. The parent could also request that the independent evaluation be at public expense.</p> <p>Aligning the State's requirements relating to individual evaluations with the federal requirements would provide flexibility to Committees to determine most appropriate evaluations (e.g., not every student would require a physical evaluation) and could prevent administration of unnecessary evaluations.</p>
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<b>Repeal the requirement that establishes a process for a school psychologist to determine the need to administer an individual psychological evaluation and to provide a written report when such evaluation is determined not to be necessary.</b>		
<b>Federal Requirement</b>	<b>How NYS' Requirement is Different from the Federal Requirement</b>	<b>Justification for the Change</b>
There is no comparable federal requirement.	Establishes the process for a school psychologist to determine the need to administer an individual psychological evaluation and requires a written report when such evaluation is determined not to be necessary.  Education Law §4402(1)(b)(3)(a)  8 NYCRR §200.4(b)(2)	Only viable if the definition of "individual evaluation" is changed to conform to the federal standard for individual evaluations.

**PLANNING AND REPORTING REQUIREMENTS**

**6. Repeal the outdated requirement that the school district must provide a form to parents of certain children with disabilities who are veterans of the Vietnam War for a report to the Division of Veterans' Affairs for research purposes.**

<b>Federal Requirement</b>	<b>How NYS' Requirement is Different from the Federal Requirement</b>	<b>Justification for the Change</b>
There is no comparable federal requirement	Requires the school district to provide a form to parents of certain children with disabilities who are veterans of the Vietnam war for a report to the Division of Veterans' Affairs for research purposes.  Education Law §4402(1)(b)(3)(h)  Executive Law §353(14)	There are no longer significant numbers of school-age students of veterans of the Vietnam War.

**POLICIES AND PROCEDURES**

**7. Repeal the requirement for Boards of Education to have plans and policies for appropriate declassification of students with disabilities.**

Federal Requirement	How NYS' Requirement is Different from the Federal Requirement	Justification for the Change
There is no comparable federal requirement.	Requires Boards of Education to have plans and policies for appropriate declassification of students with disabilities – regular consideration for declassifying students when appropriate and the provision of educational and support services upon declassification.  Education Law §4402(1)(b)(3)(d-2)  8 NYCRR §200.2(b)(8)	CSE/CPSEs must still determine whether a student with a disability continues to need special education services as one component of every annual review. This has not been an effective requirement that has led to an increase in declassification rates.

**APPROVAL OF CERTAIN EARLY INTERVENTION PROGRAMS**

**8. Repeal the requirement that the Commissioner of Education must approve the provision of early intervention services by approved preschool providers. Transfer responsibility to the Department of Health, which is the lead State agency for Early Intervention Services.**

Federal Requirement	How NYS' Requirement is Different from the Federal Requirement	Justification for the Change
Federal law does not require the State Educational Agency to approve providers of early intervention services.	The Commissioner approves the provision of early intervention services by approved preschool providers.  Education Law §4403(18)	The Department of Health (DOH) under the Early Intervention Program provides services to children with disabilities, birth to two in NYS. This requirement is a duplicative burden to SED for a responsibility that resides in the first instance with DOH.

**COMMISSIONER'S APPOINTMENT TO STATE-SUPPORTED SCHOOLS**

**9. Repeal the Commissioner of Education's role in appointments to State-supported schools and the requirement that the State-supported school evaluate the student in addition to the evaluation conducted by the school district.**

<b>Federal Requirement</b>	<b>How NYS' Requirement is Different from the Federal Requirement</b>	<b>Justification for the Change</b>
There are no federal requirements relating to appointment to state-supported schools.	Procedures for the appointment of students to State-supported schools.  8 NYCRR §200.7(d)(1)(ii) and (iii)	This would eliminate unnecessary administrative procedures that were established before the federal and State laws were enacted and are duplicative costly evaluations of the student for admission to such schools.