

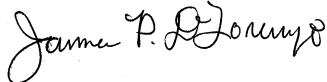


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November 2012

SPECIAL EDUCATION FIELD ADVISORY

From: James P. DeLorenzo 

Subject: School Districts Impacted by Hurricane Sandy and Requests for Flexibility in Special Education Requirements

Several school districts impacted by the devastating effects of Hurricane Sandy have contacted the New York State Education Department's (NYSED) P-12: Office of Special Education seeking waivers and/or flexibility relating to their responsibilities for special education. We recognize the challenges schools and families are facing and appreciate the efforts of school districts to provide as much continuity and support to address the needs of students with disabilities disrupted by Hurricane Sandy.

Because the waivers/flexibility requests we have received relate directly to requirements under the Individuals with Disabilities Education Act (IDEA), we have been in contact with the United States Department of Education (USDOE) on this matter. Specifically we have been asked to provide flexibility to school districts on their responsibilities to conduct Committee on Special Education meetings and timelines to complete special education evaluations and secure special education placements. The following is consistent with the guidance that the Office of Special Education Programs (OSEP) of USDOE has provided to New York State at this time.

The State is not authorized to provide waivers to federal law and regulation requirements, nor may USDOE. However, in an emergency situation where the acts of nature prevent a school district from meeting its IDEA requirements, the State will not issue findings of noncompliance to a school district because of its failure to meet these requirements when it is evident that they are the direct result of the State disaster emergency. It is expected that school districts will use such flexibility only to the extent and for the duration as absolutely necessary and consistent with the conditions they are facing to bring normalcy back to the education programs for their students with disabilities.

We understand that many students with disabilities will be displaced from their regular school placements during the emergency situation. In some cases, the new school may not be able to meet all of the student's individualized education program (IEP) recommendations. In these cases, the provisions of section 200.4(e)(8) of the Regulations

of the Commissioner of Education relating to transfer students could apply. This provision would allow a school district, during the temporary transfer of a student displaced because of the disaster emergency, to provide a student with services comparable to those described in the IEP, in consultation with the parent, until the student could return to his previous placement or until a new IEP can be developed. In accordance with the federal McKinney-Vento Homeless Education Assistance Improvements Act, the Regulations of the Commissioner of Education require that school districts ensure that a homeless student with a disability who transfers school districts within the same academic year is provided with a free appropriate public education, including services comparable to those described in the previously held IEP pursuant to section 200.4(e)(8) of the Regulations of the Commissioner of Education (8 NYCRR section 100.2[x][7][i][c]; see 42 USC section 11432[g][4][B]).

We have also received requests for flexibility relating to due process timelines. In these cases, we ask that you work with the impartial hearing officer (IHO) assigned to the due process hearing who would make case-by-case determinations as necessary to address the emergency situation while ensuring a fair hearing for the parties. We are concerned that many parents and school districts may not be able to conduct resolution sessions because of the emergency situation. Federal law provides that, prior to an opportunity for a due process hearing, the district has the right to meet with the parent prior to the commencement of the hearing to discuss and try to resolve the issues in the due process complaint. Failure of the parent to participate in the resolution meeting could affect the parent's right to a hearing. Therefore, under these emergency circumstances, we ask parents and districts to be accommodating to emergency factors that may interfere with either party's ability to participate in the resolution session.

Please contact the P-12: Office of Special Education at (518) 473-2878 if you have any questions regarding this memorandum. School districts should discuss district-specific concerns that are a direct result of the emergency disaster situation with the Regional Associate from their respective NYSED Special Education Quality Assurance Office at:

Central Regional Office	(315) 428-4556
Eastern Regional Office	(518) 486-6366
Hudson Valley Regional Office	(518) 473-1185
Long Island Regional Office	(631) 952-3352
New York City Regional Office	(718) 722-4544
Western Regional Office	(585) 344-2002
Nondistrict Unit	(518) 473-1185

We will update this communication should we receive additional authority to provide flexibility on special education requirements. We recognize and thank you for your efforts to maintain high quality education programs and stability for all of your students during this difficult time.