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DEPUTY COMMISSIONER FOR VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES
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TO: District Superintendents
Presidents of Boards of Education
New York City Department of Education
Superintendents of Schools
Superintendents of State-Operated and State-Supported Schools
Superintendents of Special Act Schools
Organizations, Parents & Individuals Concerned with Special Education
Presidents, Local Teachers Associations
Directors of Special Education
Executive Directors of Approved Private Schools
Directors of Pupil Personnel Services
Chairpersons of Committees on Special Education
Chairpersons of Committees on Preschool Special Education
Directors of Approved Preschool Programs and Preschool Educators
New York City Committee on Preschool Special Education Chairpersons and Administrators
New York City Committee on Special Education Chairpersons and Administrators
Early Childhood Direction Centers
School Psychologists
Impartial Hearing Officers
New York State Community Dispute Resolution Centers
Commissioner's Advisory Panel for Special Education Services
SETRC Project Directors and Professional Development Specialists
Independent Living Centers
Colleges with Special Education Teacher Training
Other State Agency Programs

FROM: Lawrence C. Gloeckler

SUBJECT: Providing copies of the individualized education programs (IEPs) for students with disabilities (amendments to sections 200.2, 200.4 and 200.16 of the Regulations of the Commissioner of Education)

The Board of Regents approved amendments to sections 200.2, 200.4 and 200.16 of the Regulations of the Commissioner of Education to implement section 4402(7) of the Education Law, as amended by Chapter 408 of the Laws of 2002 (Attachment 1). These regulations were adopted as an emergency action at the Board's February meeting and as



final regulations at its March 2003 meeting. The regulations are effective on a permanent basis as of April 17, 2003.

This memorandum provides information and technical assistance regarding these requirements and includes:

- pertinent background information;
- regulatory requirements; and
- questions and answers.

Background Information

Each student with a disability who needs special education services must have an IEP developed by a Committee on Special Education (CSE), Subcommittee on Special Education or a Committee on Preschool Special Education (CPSE). The IEP is the document that guides the delivery of specially designed instruction to meet the student's needs. Therefore, school personnel with responsibility for implementing a student's IEP must have that information readily available to them.

Section 4402(7) of the Education Law, as amended by Chapter 408 of the Laws of 2002, addresses a school district's and charter school's responsibility to ensure that copies of IEPs are provided and individuals informed of IEP implementation responsibilities prior to the implementation of a student's IEP. The Board of Regents adopted regulations to implement the requirements of Chapter 408 to ensure that school personnel and other service providers that are charged with the implementation of a student's IEP have the information necessary to fulfill their IEP responsibilities for each student.

Regulatory Requirements

Below is a summary of the regulatory requirements. A copy of the amendments is provided in Attachment 2.

Board of Education Policy

Section 200.2 of the Regulations of the Commissioner has been amended to add that each board of education or board of trustees must adopt a written policy that establishes administrative practices and procedures relating to implementation of a student's IEP, including requirements to:

1. prior to the implementation of the IEP, provide copies (electronic or paper) of each student's IEP to a student's regular education teacher(s), special education teacher(s), related service provider(s) and other service provider who is responsible for the implementation of a student's IEP. For purposes of these regulations, "other service provider" means a representative of another public school district, charter school, Board of Cooperative Educational Services (BOCES), a school affiliated with a child care institution (article 81), a State-supported school (article 85) and an approved private school (article 89) where the student receives or will receive IEP services.

2. require that any copy of a student's IEP remains confidential and not disclosed to any other person consistent with the school district's policy for ensuring the confidentiality of student records. Such policy must be developed in accordance with the confidentiality requirements in the Individuals with Disabilities Education Act (IDEA) and the Family Educational Rights and Privacy Act (FERPA).
3. require the chairperson of the CSE, Subcommittee or CPSE to designate 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 who will be responsible to inform school personnel of their IEP implementation responsibilities. This individual(s) must, prior to the implementation of the IEP, inform each regular education teacher, special education teacher, related service provider, other service provider, paraprofessional (i.e., teaching assistant or teacher aide), 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.

IEP Implementation

Section 200.4(e) of the Regulations of the Commissioner of Education has been amended to require that a school district ensure that the recommendations on a student's IEP are implemented. A school must:

1. provide a paper or electronic copy of a student's IEP to each regular education teacher, special education teacher, related service provider, and/or other service provider, who is responsible for the implementation of a student's IEP prior to the implementation of such IEP;
2. provide the opportunity for each teaching assistant, teacher aide and other provider responsible for assisting in the implementation of a student's IEP to review a copy of the student's IEP, prior to the implementation of such program;
3. provide each teaching assistant, teacher aide and other provider responsible for assisting in the implementation of a student's IEP 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 the paraprofessional or other provider works;
4. ensure that each regular education teacher, special education teacher, related service provider, other service provider, teaching assistant and teacher aide, 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

5. ensure that a copy of the IEP is provided to the student's parents at no cost to the student's parents.

Preschool Students with Disabilities

Section 200.16 of the Regulations of the Commissioner of Education has been amended to clarify that the requirements in section 200.4 regarding IEP implementation also pertain to the implementation of an IEP of a preschool student with a disability.

Questions and Answers

Board of Education Policy

1. **What factors should a school district or charter school consider in the development of administrative practices and procedures to ensure copies of students' IEPs are provided and school personnel informed of the IEP implementation responsibilities?**

A school district and charter school should consider the following issues as they relate to administrative practices and procedures in their written policy to provide copies of IEPs and to inform appropriate school personnel of their IEP implementation responsibilities.

- ☐ Will copies of a student's IEP be provided in electronic or paper format?
- ☐ What process (e.g., at the CSE or CPSE meeting) will be used to determine for each student which general education teachers, special education teachers, related service providers and other service providers (as defined in the regulations) have responsibility to implement the recommendations on a student's IEP?
- ☐ What factors (e.g., administrative, supervisory, timelines) or procedures (e.g., documentation, timelines) should the chairperson of the CSE or CPSE consider in the designation of the professional employee(s) of the school district who will inform the teachers and others of their IEP implementation responsibilities?
- ☐ What procedures will be used to ensure paraprofessionals and each other provider responsible for assisting in the implementation of a student's IEP have an opportunity to review the IEP, prior to its implementation, and have ongoing access to a copy provided to the special education teachers or related service providers?
- ☐ What documentation will the district use to maintain a record of the personnel who have received IEP copies for each student?
- ☐ What training and information will the school district provide to school personnel to ensure the confidentiality of such information (see question and answer #2 below)?
- ☐ What procedures will be followed to ensure that copies of students' IEPs are stored in secure locations and retrieved or destroyed when such professionals are no longer responsible for implementing a student's IEP?

Confidentiality

2. What are the confidentiality requirements that relate to giving copies of IEPs to teachers, related service providers and other service providers?

Under FERPA, school districts may disclose personally identifiable information in a student's education records, including the student's IEP, to school personnel with "legitimate educational interests." An IEP contains important instructional information that teachers, related service providers, paraprofessionals and others need to know to implement the IEP. An IEP often also contains sensitive personal information about the student. As paper or electronic copies of IEPs are provided and individuals are informed of their IEP implementation responsibilities, school personnel must take steps to protect the student's right to confidentiality.

Sections 300.500 and sections 300.560 through 300.577 of the Code of Federal Regulations (CFR) relate to the implementation of the confidentiality requirements of the IDEA and 34 CFR Part 99 implements FERPA (20 U.S.C. 1232g as amended December 31, 1974). These regulations can be found at:

<http://www.ideapractices.org/law/regulations/topicIndex.php>
<http://www.ed.gov/offices/OM/fpco/ferpa/ferparegs.html>

Consistent with the federal confidentiality requirements, a school or agency must minimally:

- ☐ protect the confidentiality of the IEPs provided to teachers and others at collection, storage, disclosure and destruction stages;
- ☐ designate the official at the district who retains responsibility to ensure the confidentiality of the IEPs;
- ☐ ensure that all persons collecting or using the IEPs receive training or instruction regarding FERPA requirements;
- ☐ ensure that the teachers, related service providers and other service providers who the district determines to have a legitimate educational interest and who receive a copy of the IEP do not disclose personally identifiable information from the IEP of a student without consent of the parent; and
- ☐ upon request, provide the parents with a list of the types and locations of education records, including the IEPs collected, maintained or used by the school district.

Providing Copies of IEPs

- 3. The regulations clarify that a copy of the IEP can be provided to the teacher in electronic format. What is considered an electronic copy of an IEP?**

An electronic copy of an IEP could be a copy provided on a computer disc or in a computer file that provides the means to either print the document or to readily reference it on an ongoing basis. The format of the copy must be considered by the teacher, related service provider or other service provider to be his or her copy by which he or she can readily refer to implement the student's IEP. To ensure confidentiality, security systems must be implemented to prevent unauthorized internal and external access to the student's IEP when copies are transmitted and/or provided electronically.

- 4. Can a summarized version of an IEP (e.g., "IEP at a Glance") be provided to the teachers and other providers to comply with this requirement?**

No.

- 5. May a school delay providing a student his or her special education programs and services until such time as copies of the IEP can be disseminated to the teachers, related service providers and other service providers?**

No. A district's policy must ensure that IEP copies are provided and individuals informed in a timely manner so as not to delay the provision of IEP services to a student with a disability.

- 6. Teachers with responsibility for IEP implementation must receive a copy of the IEP. Does this include special area teachers such as art, music and physical education?**

Each teacher who is specifically responsible for implementing a service, accommodation and/or program modification to a student with a disability in accordance with the student's IEP must be provided a copy of the student's IEP. This may include any or all of the student's general education subject area teachers. The school district would not be required to provide a copy of a student's IEP to a general education teacher if that teacher is not required to implement a service, accommodation and/or program modification on the student's IEP. The determination of those teachers who will need to have a copy of the student's confidential IEP should be made on a case-by-case basis. It is recommended that this determination be made at the CSE or CPSE meeting for each student.

- 7. Who are the "other service providers" that must receive a copy of the IEP?**

"Other service providers" for the purposes of implementing Chapter 408 of the Laws of 2002 means a representative of another public school district, charter school, BOCES

program, child care institution school, Special Act school district, State-supported school, approved private in-state or out-of-state school and an approved preschool provider where the student receives or will receive IEP services. The school district must ensure that there is no delay in the implementation of the IEP and, therefore, must provide a copy of the student's IEP to the representative of the other service provider prior to the student's enrollment.

- 8. What responsibility does the district have to provide copies of the IEP and inform others when the student is placed by a CSE outside the district (e.g., in an approved private school, BOCES, preschool program, or out-of-state residential program)?**

The school district must provide one copy of the student's IEP, prior to implementation, to such programs. It is then the responsibility of these other service providers to implement the IEP requirements of section 200.4, including providing copies of the IEP to teachers and related service providers with IEP implementation responsibility, providing ongoing access to the IEP by paraprofessionals and other providers responsible for the implementation of the IEP and informing all individuals of their specific IEP implementation responsibilities.

- 9. May a BOCES provide copies of a student's IEP to general education teachers of the student in another public school where the BOCES program is located?**

Yes. When a student has been placed in another program, such as a BOCES program that is located in another public school, it is incumbent upon the BOCES to ensure that the IEP is implemented. Therefore, the other service provider (e.g., BOCES) must provide a copy of the IEP to the student's teachers and related service providers, as appropriate, and ensure that all individuals with IEP implementation responsibilities are informed of the student's specific accommodations, program modifications and supports that must be provided for the student.

- 10. Must teaching assistants and teacher aides receive their own copies of a student's IEP?**

No. However, a paraprofessional who has IEP implementation responsibilities for the student must, prior to implementation, have the opportunity to review the student's IEP and be informed of his or her specific IEP responsibilities by the professional staff person designated by the chairperson of the CSE/CPSE prior to the implementation of the IEP. In addition, the paraprofessional must have ongoing access to a copy of the IEP, which may be the IEP copy provided to the teacher or related service provider under whose direction the paraprofessional works. A school district may, at its discretion, provide a copy of the IEP to a paraprofessional.

11. If special transportation is listed on the IEP, must the bus driver receive a copy of the student's IEP?

No. As a support staff, a bus driver must be informed of his or her specific IEP implementation responsibilities relevant to his or her assigned duties that result in direct contact with that student. However, a school district would not be required to provide a copy of the student's IEP.

12. Must school districts provide a copy of a student's IEP to each teacher of the student who is enrolled by a parent in a nonpublic school such as a religiously affiliated school or a day care center?

No. The school district is responsible to provide the special education teachers and related service providers who are responsible to provide IEP programs and services to a student with a disability enrolled in a nonpublic school program with IEP copies and ensure paraprofessionals and other providers with IEP implementation responsibilities have access to a copy of the IEP. The nonpublic school receives a copy of the student's school record and, for a student with a disability, a copy of the IEP would be included in the school record.

13. Do the requirements to provide copies of IEPs pertain when a student is declassified and is receiving declassification support services?

Yes. When a CSE recommends that a student be declassified and continue to receive accommodations, modifications and/or other support services, such recommendation must be documented on the student's last IEP, which must be made available to teachers and other service providers consistent with Chapter 408 and the implementing sections of Part 200 of the Regulations.

14. Must a district disseminate copies of a student's IEP when the IEP has been revised during the school year?

Yes.

Informing School Personnel of IEP Responsibilities

15. Who should the chairperson designate to ensure that school personnel have been informed of their specific responsibilities in relation to the student's IEP?

According to section 200.2 of the Regulations, the chairperson must designate one, or as appropriate more than one, professional staff person who will be responsible to inform school personnel of their IEP implementation responsibilities. This designation should be made on a student-by-student basis, based on who has knowledge of the student's disability and education program. In selecting the professional staff person(s), the chairperson could select him/herself for this responsibility, another administrator, or a teacher, related service provider or other professional.

The regulations allow more than one individual to be designated, thereby providing flexibility to address administrative, supervisory, timeliness, workload responsibilities, unique needs of the student and other issues. For example, the chairperson could designate the special education teacher to inform teaching assistants and teacher aides, the school psychologist to inform related service providers, the school principal to inform the regular education teachers and auxiliary school personnel, and the special education director to inform transportation personnel. If a paraprofessional is assigned IEP implementation responsibilities related to assisting in the provision of a related service (e.g., mobility assistance to a student), the related service provider may be the most appropriate individual to provide the IEP information to the paraprofessional.

16. Who must be informed about their IEP implementation responsibilities?

Disseminating copies of the student's IEP, as appropriate, is one step to ensure the recommendations of the Committee for the student will be implemented. However, each individual with responsibility to provide a program, service, accommodation, modification or support must also be directly informed on his or her specific responsibilities. This includes the student's special education teachers, related service providers, regular education teachers, paraprofessionals and other service providers who must receive copies of the IEP, as well as other school support personnel (e.g., bus drivers, cafeteria workers) who will have direct contact with the student based on his or her assigned duties and will have a responsibility to provide a service, accommodation and/or program modification for the student in accordance with the IEP.

17. How should school personnel be informed of their IEP implementation responsibilities?

The manner by which teachers, related service providers, other service providers, paraprofessionals, support staff and other providers are informed about the IEP relevant to their individual responsibilities is left to the discretion of the school, consistent with the administrative practices and procedures in board of education policy. If information is provided in a written format and it contains confidential student information, steps must be taken to ensure the confidentiality of that information.

18. Must a school district document that it has informed appropriate personnel of their IEP responsibilities?

It is recommended that a school district include in its administrative practices and procedures a means to document who and how professional staff and others were informed of their IEP implementation responsibilities to the extent it demonstrates compliance with board of education policy.

Questions regarding this law may be directed to the Special Education Policy Development Unit at (518) 473-2878 or to your Special Education Quality Assurance Regional Office at:

Central New York Regional Office	(315) 428-3287
Eastern Regional Office	(518) 486-6366
Hudson Valley Regional Office	(914) 245-0010
Long Island Regional Office	(631) 884-8530
New York City Regional Office	(718) 722-4544
Western Regional Office	(585) 344-2112, ext. 420

Attachments

1. Chapter 408 of the Laws of 2002
2. Amendments to Sections 200.2, 200.4 and 200.16 of the Regulations of the Commissioner of Education

CHAPTER 408 OF THE LAWS OF 2002

LAWS OF NEW YORK, 2002 CHAPTER 408 AN ACT to amend the education law, in relation to providing teachers and other service providers with a copy of a student's individualized education program.

Became a law August 13, 2002, with the approval of the Governor. Passed by a majority vote, three-fifths being present.

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

Section 1. Section 4402 of the education law is amended by adding a new subdivision 7 to read as follows:

7. a. The board of education or trustees of each school district and the board of trustees of each charter school shall adopt a policy to ensure that each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for the implementation of a student's individualized education program shall be given a copy of such student's individualized education program prior to the implementation of such program.

b. Such policy shall require that any copy of a student's individualized education program provided pursuant to this subdivision shall remain confidential and shall not be redisclosed to any other person, in compliance with federal and state laws and regulations, including the Individuals with Disabilities Education Act and the Family Educational Rights and Privacy Act.

c. Such policy shall require the chair of the committee on special education to designate a professional employee of the school district with knowledge of the student's disability and education program to, prior to the implementation of the individualized education program, inform each teacher, assistant and support staff person of his or her responsibility relating to the implementation of the individualized education program and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the individualized education program.

§ 2. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that effective immediately, the amendment, addition and/or repeal of any rule or regulation necessary for the timely implementation of this act on its effective date is hereby authorized and directed to be made on or before such effective date.

Amendment to the Regulations of the Commissioner of Education

(Underlined language is new language added; [bracketed] language is language repealed)

Subdivision (b) of section 200.2 of the Regulations of the Commissioner of Education is amended, effective April 17, 2003, by the addition of a new paragraph (11):

(11) establishes administrative practices and procedures 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 prior to the implementation of such program.

(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 articles 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; and

(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, paraprofessional, 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.

Paragraph (3) of subdivision (e) of section 200.4 of the Regulations of the Commissioner of Education is repealed and a new paragraph (3) added, effective April 17, 2003:

[(3)]

(3) The school district shall ensure that the recommendations on a student's IEP are implemented, including but not limited to:

(a) ensuring that each regular education teacher, special education teacher, related service provider, and/or other service provider, as defined in section 200.2(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;

(b) ensuring that a paraprofessional, 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 paraprofessional or other provider works;

(c) ensuring that each regular education teacher, special education teacher, related service provider, other service provider, paraprofessional 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

(d) ensuring that a copy of the IEP is provided to the student's parents at no cost to the student's parents.

Paragraph (6) of subdivision (e) of section 200.16 of the Regulations of the Commissioner of Education is added, effective April 17, 2003:

(6) The IEP of a preschool student with a disability shall be implemented in accordance with section 200.4(e)(1)(i), (3), (4) and (7) of this Part, except that during the pendency of proceedings conducted pursuant to paragraphs (9) and (10) of subdivision (g) of this section, the placement of a preschool student shall be as provided in paragraph (3) of subdivision (g) of this section.