State Regulations: 8 NYCRR §200.4(d)

(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 decategorization support services, as defined in section 200.1(c)(3) 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 (w) 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(ddb) 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 of Mental Retardation and 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.