

## New York State

### **New York State Law, Regulations and Policy Not Required by Federal Law/Regulation/Policy March 2024**

20 United States Code (USC) §1407(a)(2) requires that each state identify in writing to local educational agencies (LEAs) located in the state and the Secretary any rule, regulation or policy as a state-imposed requirement that is not required by the Individuals with Disabilities Education Act (IDEA) and federal regulations. The New York State Education Department has taken steps to conduct a comprehensive and thorough review of its laws and regulations that apply to the education of students with disabilities. The following summary provides a list of New York State (NYS) laws and regulations that differ from federal requirements in effect on the date of the analysis. Items are included in the list where there are no comparable federal requirements because the federal statute and regulations are silent on the subject (e.g., provisions governing rae are

| <b>NYS Requirement</b>  | <b>Citation</b>                                  | <b>How NYS Requirement is Different from Federal Requirement</b> |
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| <p>District superintendents of Boards of Cooperative Educational Services (BOCES) must determine the adequacy and appropriateness of the facilities space available to house special education programs in the geographic area served by the BOCES.</p> | <p>Ed. L. §2215(17) (as added by Chapter 57)</p> |  |

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| <p>Students with disabilities who are residents of the State attending nonpublic schools located in the State are dually enrolled in the public schools for purposes of special education and receive services pursuant to an individualized education service program (IESP) developed by the CSE of the school district of location in the same manner and with the same contents as an IEP. Special education services provided to parentally-placed students with disabilities must be provided on an equitable basis. Parents must request special education services before June 1 preceding the school year for which the request is made subject to certain exceptions.</p> <p>Parents of students attending nonpublic schools may bring an impartial hearing to challenge their IESP.</p> <p>Requires regulations for procedures for the district of location to recover costs for nonresident New York State (NYS) students.</p> | <p>Ed. L. §3602-c (2)(a) and (b) and (7) (as amended by Chapter 378 of the Laws of 2007)</p> | <p>Federal law requires that the school district in which the nonpublic school is located use a proportionate share of its Individuals with Disabilities Education Act (IDEA) funds to provide services to nonpublic school students, based on consultation with nonpublic school representatives. Districts develop a Services Plan (SP) for a student that does not create an individual right to services.</p> <p>Nonpublic school students do not have an individual right to services under IDEA and therefore are not entitled to a due process hearing.</p> <p>There are no federal procedures for the recovery of tuition costs incurred by the school district in which the nonpublic school is located for nonresident students, where the services required under state law exceed the federal minimum and require a substantial state and local contribution.</p> |
| <p>Home-schooled students with disabilities are deemed to be nonpublic school students solely for the purpose of receiving special education services during the regular school year. Parents must request special education services before June 1 preceding the school year for which the request is made subject to certain exceptions.</p>   | <p>Ed. L. §3602-c(2-c) (as amended by Chapter 217 of the Laws of 2008)</p>                   | <p>Federal law requires home-schooled students to receive special education services to the same extent that other parentally-placed private school students receive services only if the home schools are recognized under State law as private elementary or secondary schools.</p>   |
| <p>Establishes a timeline of 42 days from the date of receipt of a request by a CSE for evaluative information for the</p>   | <p>Ed. L. §4005(1)<br/>8 NYCRR §200.4(h)</p>   |   |

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| CSE to provide such information and recommendation to the requesting agency. Establishes procedures for the CSE receiving such a request to obtain parental consent for the evaluation to develop a written recommendation.   |  |   |
| Reimbursement of costs of tuition and maintenance for students attending a State-supported school for the deaf or blind.  | Ed. L. Law §§4204,4207; 4204-b; 4211   | Federal law does not require that states set tuition or maintenance rates for schools and leaves it to the states to assign fiscal responsibility for special education programs and services among school districts and other public agencies.       |
| Deaf infant definition includes infants who are unable to respond to sounds presented at intensities of 60 decibels sound pressure level.   | Ed L §4204-a<br>8 NYCRR §200.7 (d)(7)(i)(a)  | The federal definition of deaf infant does not include a decibel sound pressure standard.   |
| Admission to State-operated schools for the blind and deaf through appointment by the Commissioner.   | Ed L §§4308(1)-(2)(a); 4351-4355 (a)(2)<br>8 NYCRR §200.7(d)(1)  | There are no federal requirements regarding appointment to State-operated schools.  |
| Requires school psychologist as member of the multidisciplinary team (MDT) at the State-operated schools. Requires a physician and additional parent member to be members of the MDT if requested by the school or parent 3 days before the meeting.                              | Ed L §§4308(2)(b)-(c); 4355(2)(b)-(c);<br>Chapter 276 of the Laws of 2012  | Federal law and regulations do not require a school psychologist, additional parent member or physician.  |
| Additional MDT members may be appointed by the school district of residence.  | 8 NYCRR §200.7(d)(1)   | 34 Code of Federal Regulations (CFR) §300.118 requires the State educational agency (SEA) to ensure that the least restrictive environment (LRE) requirements in §300.114 are effectively implemented for children in public or private institutions. |
| Procedures requiring school districts to inform parents at least five days in advance regarding excusal of a member of the MDT or agreement that the attendance of a member is not necessary, except for requests by parents, and emergency and unavoidable scheduling conflicts. | Ed. L. §§4308(2)(f)-(h); 4355(2)(f)-(h)<br>(as amended by Chapter 378 of the Laws of 2007)<br>8 NYCRR §200.7(d)(1)(i)(c) | There is no comparable federal requirement.   |

**NYS Requirement**

**Citation**

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forwarded to the CSE chairperson

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| <p>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 and refer to CSE.</p> <p>Individual evaluation requires specific assessments to be conducted as part of the initial evaluation: physical examination, individual psychological evaluation, social history and functional behavioral assessment (FBA).</p> | <p>Ed. L.<br/>§4402(1)(b)(3)(a)</p> |  |





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| after consideration of public school options.  |   |  |
| The BOE must provide written notice of its determination if the BOE is inconsistent with the recommendation of the CSE. The notice must provide the reasons for the board's determination and identify the factors considered by the CSE in its evaluations. | Ed. L. §4402(2)(b)(2)<br>8 NYCRR §§200.2(d);<br>200.5(a)(6)(ii) | There are no federal requirements relating to notices from the BOE. Federal law and regulations require that parents receive prior written notice of a proposed action or refusal of an action relating to the provision of FAPE to their child. |
| If the BOE disagrees with the recommendation of the CSE, the BOE may remand the recommendation to the CSE or subcommittee or establish a second CSE or subcommittee to develop a new recommendation for the student.   | Ed. L. §4402(2)(b)(2)<br><br>8 NYCRR<br>§200.4(e)(2)            | There is no comparable federal requirement.  |

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|                 |          | through 21 residing in the state have a right to FAPE.    |

BOEs in a city school district with a population of 125,000 or more inhabitants (except for NYC) are permitted to increase class sizes in middle/secondary special classes. The authorization terminates on June 30<sup>th</sup> of the school year. Districts must implement a study of attendance problems at the secondary level and implement a corrective action plan to increase the rate of attendance to at

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| With approval of SED, school districts may contract with educational facilities located outside of the State where there are no appropriate public or private facilities for instruction of the student because of the student's unusual type of disability or combination of disabilities.  | Ed. L. §4407(1)   | Federal law does not establish a specific standard for out-of-state placements of students with disabilities.  |
| SED must maintain a register of approved out-of-State schools and, to be included on such registry, approved residential schools must meet the core requirements of the out-of-State placement committee established by § 483-d of the Social Services Law (e.g., site visit, licensed or chartered by agency of state of location, appropriate laws and regulation relating to allegations of abuse or neglect, types of services consistent with NYS law). | Ed. L. §4407(2);<br>Social Services Law §483-d(2)(b)<br><br>8 NYCRR §200.1(d) | Federal law does not require states to establish registries of approved out-of-state schools and does not prescribe criteria or procedures to be used by states in approving out-of-state schools. |

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| <p>Costs of translating summary report and evaluation separately reimbursed.</p> <p>CPSE must recommend intensity of services in the IEP and consider single services, or half-day programs, or related services only, or SEIT only, or</p> | <p>Ed L §4410(4)(d)</p> | <p>Federal law is silent on method of reimbursement of translation costs.</p> |



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| or licensed professionals or agencies employing them.  |  |   |
| Approved providers may conduct a program that relies on written agreements or affiliations with other approved programs or appropriately certified or licensed professionals.        | Ed L §4410(9)(d)   | Federal law leaves program approval up to the states.   |
| Provides that groups of appropriately licensed and/or certified professionals may apply for approval as an evaluator, including provision of multi-disciplinary evaluation services. | Ed L §4410(9-a)(a) (as amended by Chapter 429 of the Laws of 2017) | Although 20 USC section 1412(a)(11) requires the SEA to exercise general supervision over all educational programs in the State, federal law does not require SEA approval of groups of professionals to conduct an evaluation. |
| Commissioner shall establish a billing and reimbursement system for approved evaluators.   | Ed L §4410(9-a)(c)<br><br>8 NYCRR §200.9                           | Federal law is silent about reimbursement and billing systems.  |

Commissioner shall establish a process for reapproval of preschool programs and review of evaluator8 50.64 reW\*nBT/I

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| Commissioner provides for reimbursement of municipality's administrative costs. | Ed L §4410(10)(d)(iii) |  |

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| practitioner or other health care provider.  |   |  |
| School bus used to transport children with disabilities, with parental consent, must have information on the name of the student, the nature of the student's disability and a contact in case of emergency. | Vehicle and Traffic Law §375(20)(1)   | Federal law does not require that information on students with disabilities be maintained on school buses.         |
| Training in cardiopulmonary resuscitation (CPR) is required for school bus attendants who serve students with disabilities whose IEPs require school bus attendants.   | Vehicle & Traffic Law §1229-d(3)  | Federal law does not prescribe training requirements for school bus attendants serving students with disabilities. |
| Establishes training for school bus drivers and attendants relating to the needs of students with disabilities.  | Vehicle & Traffic Law §1229-d(4) as amended by Chapter 181 of the Laws of 2007 Ed L §3650 | There is no comparable federal requirement.  |
| Prohibits use of corporal punishment, aversive interventions, seclusion and prone restraint. Defines aversive intervention.  | 8 NYCRR §19.5(b) and (c)<br><br>8 NYCRR §200.1(III)                                       | There is no comparable federal requirement.  |

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| designed to achieve maximal physical and mental functioning of the student in his or her daily life tasks.   |                          | or restoring functions impaired or lost through illness, injury or deprivation; improving ability to perform tasks for independent functioning if functions are impaired or lost; and preventing, through early intervention, initial or further impairment or loss of function. |
| Group instruction means instruction of students grouped together according to similarity of individual needs for the purpose of special education and requires the curriculum and instruction provided to such groups to be consistent with the individual needs of each student in the group and that the instruction needed 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. | 8 NYCRR §200.1(w)(3)(ii) | There is no comparable federal requirement.  |
| Definition of other health impaired.   | 8 NYCRR §200.1(z)(10)    | The State's definition includes tuberculosis.  |
| Definition of traumatic brain injury.  | 8 NYCRR §200.1(z)(12)    | The State's definition includes injuries caused by certain medical conditions; does not exclude degenerative brain injuries and omits from its definition that the injury must result in total or partial functional disability or psychosocial impairment.                      |

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| approaches and prereferral interventions. |                 | policy for implementation of school-                             |

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| interviews to determine vocational skills, aptitudes and interests.   |  |   |
| The results of the evaluation are provided to the parents in their native language or other mode of communication unless it is clearly not feasible to do so.   | 8 NYCRR §200.4(b)(6)(xii)                | Federal regulations require that the public agency take reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter if needed. |
| Requires the recommendation of the CSE be provided to the BOE which must arrange for 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. | 8 NYCRR §§200.4(d); 200.4(e)(1)          | 34 CFR §300.323(c) requires a meeting to develop the IEP be conducted within 30 days of the date of eligibility and for the IEP to be implemented as soon as possible following development of the IEP but does not specify a specific timeframe for implementation of the IEP. |
| IEPs developed for the 2011-12 school year, and thereafter, must be on a form prescribed by the Commissioner of Education.  | 8 NYCRR §200.4(d)(2)                     | There is no federal law or regulation requiring LEAs to use a state-mandated IEP form.  |
| The IEP must indicate the individual needs of the student in accordance with the four need areas academic, social, physical and management needs.   | 8 NYCRR §§200.1(w)(3)(i); 200.4(d)(2)(i) | Federal law and regulations require a statement of present levels of academic achievement and functional performance but do not specify the need areas that must be addressed.  |
| The IEP must indicate the classification of the disability.   | 8 NYCRR §200.4(d)(2)(ii)                 | There is no federal requirement that the classification of the student's disability be indicated in the IEP.  |

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| The IEP must indicate the regular classes in which the student will receive consultant teacher services, the class size, and the extent to which the counseling and training.   | 8 NYCRR §200.4(d)(2)(v)(b)(1), (2) and (5)                    | There are no comparable federal requirements, except that parent counseling and training is a related service, and for all related services, the IEP must specify the duration, frequency and location of services. |
| For preschool students, indicate the childcare location arranged by the parent or other site if the recommendation is for one or more related services or itinerant services. Transition services must be included in<br><br>than the first IEP to be in effect when the student is age 15. | 8 NYCRR §200.4(d)(2)(v)(b)(8)<br><br>8 NYCRR §200.4(d)(2)(ix) | There is no comparable federal requirement.<br><br>Federal requirements are that transition services must be documented in the student's  |

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|  |                                  | why the district proposes to take the action.  |
| <p>graduation with an IEP diploma or, beginning with the 2013- exit with a skills and achievement commencement credential or a career development and occupational studies commencement credential, prior written notice must indicate that the student continues to be eligible for FAPE 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.</p> | <p>8 NYCRR §200.5(a)(5)(iii)</p> | <p>Federal regulations require prior written notice prior to a school with a regular high school diploma.</p>                            |
| <p>Parent can agree in writing to withdraw a referral for special education.</p>   | <p>8 NYCRR §200.5(b)(1)</p>      | <p>There are no comparable federal requirements.</p>   |
| <p>Meeting notices issued during the 2011-12 school year, and thereafter, must be on a form prescribed by the Commissioner of Education.</p>   | <p>8 NYCRR §200.5(c)(1)</p>      | <p>There is no federal law or regulation requiring LEAs to use a state-mandated meeting notice form.</p>                                 |
| <p>The parent must receive notification in writing at least five days prior to a CSE or CPSE 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.</p>   | <p>8 NYCRR §200.5(c)(1)</p>      | <p>Federal regulations require a parent be notified early enough to ensure that they will have an opportunity to attend the meeting.</p> |
| <p>Meeting notice must inform the parent(s) of the names and titles of those persons who will be in attendance at the meeting.</p>   | <p>8 NYCRR §200.5(c)(2)(i)</p>   |  |

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| <p>of the CSE or the additional parent member of the CPSE. Parents must also receive proper written notice of their right to have an additional parent member attend any CSE or CPSE meeting along with a statement, prepared by the SED, explaining the role of having the additional parent attend the meeting.</p> <p>If the meeting is being conducted by a subcommittee on special education, the meeting notice must inform the parent(s) that, upon receipt of a written request from the parent, the subcommittee shall refer to the CSE any matter on which the parent(s) disagrees</p> <p>recommendation concerning a modification or change in the</p> | <p>8 NYCRR §200.5(c)(2)(iv)</p> |  |

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| <p>The IHO may appoint a guardian ad litem to protect the interests of the student if the IHO 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. Requires guardian ad litem to be appointed from a list of surrogate parents or be a pro bono attorney.</p> | <p>8 NYCRR §200.5(j)(3)(ix); 200.1(s)</p> | <p>There is no comparable federal requirement.</p>               |

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| Establishes maximum caseload and minimum level of service requirements for consultant teacher services.  | 8 NYCRR §§200.1(m); 200.6(d)(1)-(3)   | There are no specific federal caseload or minimum levels of service requirements.  |
| Establishes a maximum caseload for teachers providing speech and language services, and maximum instructional group size for related services.   | 8 NYCRR §200.6(e)(2) and (3)  | There are no specific federal requirements on group size for instructional purposes or caseloads for speech and language therapists.   |
| Establishes minimum level of service, maximum amount of time per day, maximum instructional group size and maximum caseload for resource room services. Requires the composition of instructional groups in a resource room program be based on a similarity of needs.   | 8 NYCRR §§200.1(rr); 200.6(f)(1)-(6); 200.1(i); 200.1(w)(3)(ii)   | There are no specific federal requirements relating to minimum frequency or duration of services, instructional group sizes, or criteria for grouping students receiving resource room services. |
| Establishes maximum number of students in co-teaching classes, with variance procedures to temporarily exceed the maximum by one or two students.  | 8 NYCRR §200.6(g)   | There is no comparable federal requirement or variances for co-taught classes.   |
| <p>The size and composition of a special class must be based on the similarity of the individual needs of the students and be composed of students with disabilities with similar individual needs.</p> <p>Maximum special class sizes based on learning and management needs of the students.</p> <p>Chronological age range within special classes of students with disabilities who are less than 16 years of age shall not exceed 36 months.</p> <p>Variance approval process for the special class sizes and chronological age range requirements.</p> <p>Home and hospital instruction must be provided a minimum of ten hours per week at the elementary level, preferably two hours daily; or a minimum of 15 hours per week at the secondary level, preferably three hours daily.</p> | <p>8 NYCRR §§200.6(h)(2)-(8); 200.1(i), (uu) and (w)(3)(ii)</p> <p>8 NYCRR §§200.6(i); 100.22(e)(2)</p> | There are no comparable federal requirements for grouping students for instructional purposes, maximum class sizes, chronological age ranges or variances for special classes.                   |

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| <p>State may require a BOE to take corrective action if it determines that a BOE has engaged in a pattern or practice of placing students with disabilities in private day or residential schools when appropriate placements were available in public facilities or of failing to make residential and/or nonresidential private school placements in a timely manner or of failing to submit timely applications for State approval of reimbursement.</p> |                 |  |



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| education itinerant services (SEIS), and the frequency, duration and location of indirect SEIS, must be identified in a  |                               |  |
| For preschool students with disabilities grouped together in a special class the chronological age range shall not exceed 36 months.   | 8 NYCRR §200.16(i)(3)(iii)(a) | There are no federal requirements for age ranges for instructional groupings.                |
| Class size shall not exceed 12 preschool students with disabilities with one teacher and one or more supplementary personnel, with a variance process to temporarily exceed the maximum class size by one student. | 8 NYCRR §200.16(i)(3)(iii)(b) | Federal law and regulation do not impose class size limitations.                             |
| Approved programs shall provide services for not less than 2 1/2 hours a day, 2 days a week.   | 8 NYCRR §200.16(i)(3)(iii)(c) | Federal law and regulation do not prescribe minimum days or hours of operation of providers. |
| Approved in-state residential programs shall provide services for a minimum of 5 hours a day, 5 days a week.   | 8 NYCRR §200.16(i)(3)(iv)     | Federal law and regulation do not prescribe minimum days or hours of operation of providers. |

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| <p>The parent must receive written notice of the manifestation determination meeting.</p> <p>An expedited evaluation must be completed no later than 15 school days after receipt of the request for evaluation. The CSE must make a determination of eligibility of such student in a meeting held no later than 5 school days after completion of the expedited evaluation.</p> | <p>8 NYCRR §201.6(b)</p> | <p>decision in a meeting or that the parent receive written notice of the meeting.</p> |