



DISTRICT OF COLUMBIA

OFFICE OF THE STATE SUPERINTENDENT OF

EDUCATION

TO: Local Education Agencies and Education Stakeholders

FROM: Nikki Stewart, Assistant Superintendent
Division of Systems and Supports, K-12

DATE: November 14, 2019

SUBJECT: Notice of Proposed Rulemaking – Special Education

On Friday, November 8, 2019, the Office of the State Superintendent of Education (OSSE) posted in the DC Register a Notice of Proposed Rulemaking proposing amendments to Chapter 30 of Title 5-A in the District of Columbia Municipal Regulations governing the education of students with disabilities. The proposed regulations will be posted for a 60 day public comment period commencing Friday, November 8, 2019 and closing Tuesday, January 7, 2020, including three public hearings for the public to provide oral or written comment. All comments received by 5:00pm on Tuesday, January 7, 2020 will be considered. This memorandum is intended to provide local education agencies (LEAs), parents, and stakeholders with additional context to understand the background, purpose, and content of the proposed regulations.

I. Background of Chapter 30 (Special Education)

The current Chapter 30 special education regulations were largely enacted in 2003, while the federal law governing the education of students with disabilities, the Individuals with Disabilities Education Act (IDEA) was reauthorized in 2004 with updated federal regulations released in 2006. Updates to the local regulations have occurred in sporadic rulemakings that only addressed a few sections at a time. Additionally, the District has made impactful changes in practice through formal policymaking, including the issuance of over a dozen state-level policies over the last decade. The proposed regulations are reflective of years of research and engagement with stakeholders, including focus groups conducted in 2014. The proposed regulations also reflect stakeholder comments and feedback received from the Advanced Notice of Proposed Rulemaking released in 2017, and the interim special education rulemaking proposed and finalized in 2018.

II. Goals of the Proposed Regulations

The proposed regulations are not intended to effectuate a large shift in practice, but rather incorporate existing policy requirements while clarifying existing language and removing confusing or outdated references. New content or requirements in the proposed regulations are intended to improve the provision of special education and related services to students with disabilities and provide clarity on largely existing LEA responsibilities. The chapter has also been reordered to more closely align to IDEA and the natural progression of the special education process. It is OSSE's goal to issue final regulations effective for the 2021-22 school year.

III. Overview of the Proposed Regulations

Overall, the proposed regulations seek to address regulatory gaps identified through engagement with LEAs and other stakeholders seeking clarification on LEA responsibilities. In most cases, the new sections include formalization of existing LEA responsibilities established in IDEA or local law (DC Code). However, some sections, such as IEP Certificate of Completion and Paraprofessionals, seek to establish new requirements to improve services and outcomes for students with disabilities. The subsections below are intended to assist stakeholders in differentiating between sections containing new requirements, sections formalizing existing requirements currently found in policy, and sections with substantive changes in existing requirements.

A. New Regulatory Requirements

The following sections are new additions to the special education regulations, in some cases incorporating existing IDEA requirements or establishing new LEA obligations:

- §3023 Homebound Services and Hospital Instruction (Not Required for FAPE) – addresses general requirements for LEA provision of services.
- §3024 Home and Hospital Instruction (Required for FAPE) – addresses general requirements for LEA provision of services.
- §3027 IEP Certificate of Completion for Special Education – provides a framework for awarding a certificate to encourage meaningfulness of this alternative track as deemed appropriate by the student's IEP team; does not affect access to FAPE.
- §3028 Exit from Special Education – centralizes LEA requirements related to a student's exit from eligibility for special education and related services.
- §3031 Paraprofessionals – establishes framework and minimum qualifications for personnel providing paraprofessional/ aide services.
- §3041 Private Placement of Children by Parents When FAPE Is Not At Issue – incorporates IDEA requirements and existing processes for parentally-placed private school students.
- §3042 Parent Observation – incorporates existing law (DC Code) related to parent observation of classrooms, and establishes requirements for LEAs to develop policies regarding observation.
- §3044 Disciplinary Removal – incorporates IDEA requirements for disciplinary removals and manifestation determinations.

- §§3045-3047 Restraint; Seclusion; Restraint and Seclusion: Reporting – establishes requirements related to the seclusion and restraint consistent with current requirements for students attending nonpublic special education schools and programs, including documentation and reporting of seclusion and restraint incidents.
- §3055 Expert Witness Fees – incorporates requirements established in DC Code related to the award of reasonable expert witness fees in due process complaints.

B. New Sections Based on Current Policy

The proposed regulations incorporate many existing requirements familiar to LEAs and the community and reflective of well-established policy and practice. The proposed regulations address requirements imposed by the series of special education bills passed by the DC Council in 2014: the Special Education Student Rights Act of 2014, the Enhanced Special Education Services Act of 2014, and the Special Education Quality Improvement Act of 2014. The proposed regulations also incorporate requirements currently found in longstanding District of Columbia special education policies, which can be found on [OSSE's website](#). Policies will be updated, and in some cases rescinded, in accordance with the final regulations.

- §3009 Parent Participation in IEP Team Meetings – incorporates existing requirements found in law (DC Code) and OSSE's [IEP Process Policy](#), and expands upon LEA responsibilities for conducting reasonable efforts to ensure meaningful parent participation.
- §3015 Extended School Year Services – incorporates existing eligibility requirements and IEP team review processes found in OSSE's [Extended School Year \(ESY\) Policy](#).
- §3019 Individualized Education Program Amendment – incorporates existing requirements found in OSSE's [Individualized Education Program \(IEP\) Amendment Policy](#) related to amendments to a student's IEP after the finalization of the annual IEP review.
- §3020 Individualized Education Program in Effect – incorporates existing requirements found in OSSE's [Individualized Education Program \(IEP\) Implementation for Transfer Students Policy](#) related to requirements and processes for students transferring between LEAs.
- §3025 Placement Outside of the LEA – incorporates and expands upon requirements found in OSSE's [Policies and Procedures for Placement Review, Revised](#) for the placement of students in more restrictive environments outside of the LEA, including nonpublic special education schools and programs, residential facilities, and psychiatric residential treatment facilities.
- §3049 State Complaints Under IDEA – incorporates requirements and procedures consistent with IDEA and OSSE's [Specialized Education State Complaints Policy and Procedure](#) for the investigation and resolution of state complaints.

C. Highlights of Sections with Substantive Changes to Current Requirements

The proposed regulations reflect significant changes in wording, with the goal of providing additional clarity to assist LEAs in executing their responsibilities under IDEA and local laws. Such revisions can be found throughout the regulations, but OSSE highlights the following areas in

addition to those listed above to assist in orienting readers to the most substantial changes in the proposed regulations:

- §3001 Provision of Free Appropriate Public Education – clarifies general LEA responsibilities for making FAPE available to students with disabilities, including students enrolled in an LEA, students in the care or custody of District agencies, and public charter school closure responsibilities.
- §3011 Disability Categories – updates definitions and eligibility criteria in accordance with IDEA requirements, and establishes considerations for IEP teams when making eligibility determinations.
 - Autism Spectrum Disorder: under current policy, a child must demonstrate at least three of six specific criteria to be eligible under this category. The proposed regulations require IEP teams to consider assessments and child data related to each of the criteria, but do not establish specific minimum required criteria for eligibility.
 - Deaf-Blindness: the proposed regulations require IEP teams to consider medical documentation if available, eliminating the current policy requirement that the child has a current (within one year) medical examination and report completed by specific medical personnel confirming a visual impairment and a hearing impairment.
 - Deafness: the proposed regulations eliminate specific decibel-level criterion for determining a student’s eligibility for deafness.
 - Developmental Delay: the proposed regulations require IEP teams to consider assessments and child data related to the components of developmental delay, but does not mandate delays of two years below the student’s chronological age or two standard deviations below the mean.
 - Emotional Disturbance: the proposed regulations require that the student experience the qualifying characteristics for a minimum duration of at least three months, and eliminates the current requirement to review or conduct two scientific research-based interventions prior to the eligibility determination.
 - Hearing Impairment: the proposed regulations eliminate specific decibel-level criterion for determining a student’s eligibility for hearing impairment.
 - Intellectual Disability: the proposed regulations eliminate distinctions between mild, moderate, and profound intellectual disabilities, and establishes conditions that are excluded from intellectual disability but that may be considered for eligibility under another disability category.
 - Multiple Disabilities: the proposed regulations eliminate the groupings currently found in policy, and gives flexibility to IEP teams to determine eligibility across all eligibility categories (except developmental delay).
 - Orthopedic Impairment: no substantive change.
 - Other Health Impairment: no substantive change.
 - Specific Learning Disability: the proposed regulations incorporate current eligibility criteria

into a list of considerations for the IEP team. When using the discrepancy model to determine eligibility, IEP teams are required to determine that the discrepancy between achievement and measured ability is at least two standard deviations below the mean, eliminating the option of relying on a discrepancy of at least two years below the child's chronological age.

- Speech or Language Impairment: the proposed regulations eliminate the requirement that a speech-language pathologist determine the presence or absence of a speech or language impairment.
- Traumatic brain injury: no substantive change.
- Visual Impairment: the proposed regulations eliminate specific acuity requirements, eliminates and adapt existing eligibility criteria into considerations for IEP teams when making eligibility determinations.
- §3014 Physical Education & Adapted Physical Education – provides clarity around expectations for adapted physical education.
- §3026 Secondary Transition – accounts for change in secondary transition planning age from 16 to 14.
- §3029 System of Record – establishes in regulation the state-level system (currently the Special Education Data System [SEDS]) as the system of record.
- §3035 Educational Surrogate Parent – expands upon processes and responsibilities for OSSE's appointment of an educational surrogate parent.
- §3099 Definitions – updates language in accordance with IDEA.

IV. Additional Resources

To assist stakeholders in accessing and understanding the proposed regulations, OSSE will post a variety of resources on its website, [available here](#). OSSE invites stakeholders to review a recorded webinar providing an overview of the draft proposed regulations and public comment process, available on the OSSE website. Further, the November LEA Special Education Points of Contact webinar, scheduled for Wednesday, Nov. 20, 2019, will provide an abridged overview for LEA staff, and will be recorded and posted on OSSE's website.

To assist stakeholders in comparing the proposed regulations with existing requirements, OSSE has made available on its website a subsection-by-subsection crosswalk of the proposed regulations with current DCMR, Title 5-E, Chapter 30 language, existing District of Columbia special education policies, and federal IDEA regulations.

Finally, OSSE has developed guided questions to assist stakeholders in developing public comment on the areas of the proposed regulations that would effectuate the most significant changes in requirements, and for which OSSE is especially interested in gathering feedback. Stakeholders are invited and encouraged to comment on the entirety of the regulations, but may use this document to guide their review of the regulations and drafting of public comment.

Stakeholders can access the recorded webinar, regulatory crosswalk, and guided questions on OSSE's website here. For more information or questions regarding the proposed special education regulations, please contact Christie Weaver-Harris at Christie.Weaver-Harris@dc.gov.

V. Public Hearing and Comments

Through this proposed rulemaking, OSSE seeks input from stakeholders to assist in developing regulations that reflect current and best practices and meet the needs of District of Columbia students with disabilities, their families, and their schools. The proposed regulations are open for public comment through Tuesday, Jan. 7, 2020. Three public hearings will be held at OSSE, First Floor, 1050 1st Street NE, Washington, DC 20002 on Thursday, Nov. 21, 2019 from 5-7p.m.; Monday, Dec. 2, 2019 from 5-7p.m.; and Thursday, Dec. 12, 2019 from 6-8p.m.. The public hearing scheduled for Thursday, Dec. 12, 2019 is being held in conjunction with the State Advisory Panel for Special Education and is intended for parents and students to provide input on the proposed regulations, but is open to all interested.

Notwithstanding the information above, OSSE encourages stakeholders to provide comment on the entirety of the proposed regulations and looks forward to receiving your input. The public comment period is open from Friday, Nov. 8, 2019 through 5:00pm on Tuesday, Jan. 7, 2020. Please submit your written comments to the attention of Christie Weaver-Harris, policy manager, via email at OSSE.Publiccomment@dc.gov, or via mail or hand delivery at 1050 First St. NE, Fifth Floor, Washington, DC 20002.