

THE OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The Acting State Superintendent of Education, pursuant to the authority set forth in section 3(b)(11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(11)(2008 Supp.), and Sections 101 through 111 of the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code § 38-2561.01 through § 38-2561.11) (2008 Supp.) hereby gives notice of her intent to repeal section 3813, chapter 38 of Title 5, “Certificates of Approval for Nonpublic and Contractual Providers Serving Students with Disabilities Funded by the District Government” of the District of Columbia Municipal Regulations (DCMR), and replace it in Title 5 of the DCMR with a new chapter A28, with the same title “Certificates of Approval for Nonpublic and Contractual Providers Serving Students with Disabilities Funded by the District Government” in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The proposed new chapter creates uniform requirements for nonpublic special education schools that serve a District of Columbia “child with a disability” as defined by the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401(3).

Section 3813 of Chapter 38 of Title 5 of the DCMR is deleted.

Chapter A28 of Title 5 of the DCMR is added to read as follows:

**CHAPTER A28 CERTIFICATES OF APPROVAL FOR NONPUBLIC
SCHOOLS SERVING STUDENTS WITH
DISABILITIES FUNDED BY THE DISTRICT
GOVERNMENT.**

A2800 AUTHORITY, SCOPE, AND PURPOSE

A2800.1 This Chapter is promulgated pursuant to the Sections 101 through 111 of the Placement of Students with Disabilities in Nonpublic Special Schools Act, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code § 38-2561.01 through 38-2561.11 (2008 Supp.).

A2800.2 Pursuant to its responsibilities as the State Education Agency, the Office of the State Superintendent of Education (“the OSSE”), may issue a Certificate of Approval to a special education nonpublic school, including a residential facility operating an educational program, serving District of Columbia students with disabilities. The purpose of the Certificate of Approval process is to maintain oversight of special education nonpublic schools, including residential facilities, to ensure that every District of Columbia student with a disability is afforded a high quality education in the least restrictive environment.

A2800.3 Any school defined within this Chapter as a nonpublic special education school or program shall not accept any referral or placement of a District of Columbia student with a disability funded by the District of Columbia government unless it receives and maintains a Certificate of Approval issued by the OSSE; except insofar as a student is placed at an uncertified school by order of a court of law, a due process hearing officer decision pursuant to 34 C.F.R. 300.513, or a Settlement Agreement entered into pursuant to 34 C.F.R. 300.510(d).

A2800.4 A nonpublic special education school with a current Certificate of Approval issued by the OSSE shall adhere to the provisions of this chapter unless otherwise exempted by District of Columbia laws or regulations.

A2800.5 A nonpublic special education school without a Certificate of Approval, that accepts a District of Columbia child placed by a court of law, a due process hearing officer decision, or a settlement agreement, must apply for a Certificate of Approval within ninety (90) days from the date of accepting that child, and must comply at a minimum with the following sections of this chapter: A2805 through A2823; A2831 through A2835; A2837; A2838; and A2845, unless otherwise exempted by the OSSE.

A2801 AWARD OF A CERTIFICATE OF APPROVAL

A2801.1 In determining whether to grant or renew a Certificate of Approval, the OSSE shall review the school's program for compliance with the standards of this Section, the requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 *et seq.*; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; and the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* A nonpublic special education school or program shall not be granted a Certificate of Approval unless it obtains and maintains documentation verifying compliance with all applicable fire safety, building code, health and sanitation requirements.

A2801.2 Approval does not relieve a nonpublic special education school of its obligation to comply with all applicable local or federal statutory or regulatory requirements. The OSSE reserves the right to withhold or deny approval consistent with the provisions of this chapter if, in its discretion, circumstances warrant such action.

A2802 VALIDITY OF CERTIFICATE OF APPROVAL

A2802.1 A Certificate of Approval is valid for up to three years from the date of issuance. The expiration date shall be clearly indicated on the Certificate. In its discretion, the OSSE may grant a Certificate of Approval for a period shorter than three years. In such circumstances, the school or program shall be informed in writing of the reasons for the decision.

A2802.2 A Certificate of Approval is considered void if:

- (a) The nonpublic special education school ceases operating educational programs;
- (b) It expires and an application has not been made within the applicable timelines for a renewed Certificate; or
- (c) It is revoked by the OSSE due to noncompliance with the standards set forth in this Section.

A2803 LEVELS OF APPROVAL

- A2803.1 A nonpublic special education school may be placed by the OSSE on Full Approval status, Probationary status, or Provisional Approval status. In no case shall approval at any level be awarded unless the school can demonstrate to the satisfaction of the OSSE that the health and safety of students is protected and that the school is able to implement the provision of each student's individualized education program (IEP).
- A2803.2 If a nonpublic special education school meets all of the standards and requirements of this chapter, the OSSE may grant Full Approval status.
- A2803.3 The OSSE may place an approved school on Probationary status at any time during the validity of the school's Certificate of Approval if it becomes aware of circumstances which, in the OSSE's judgment, compromise the school's ability to provide a safe, healthy and appropriate educational environment, or to comply with the standards of this Section. A school in Probationary status must complete and document in writing specific corrective actions within timelines specified by the OSSE. Based on compliance with the corrective actions, the OSSE may reinstate full approval, maintain the school in Probationary status with specific timelines for correction, or revoke the Certificate of Approval.
- A2803.4 Provisional approval status may be granted for a time period not to exceed six months from an initial application for approval. If provisional approval is granted, the OSSE shall indicate the specific conditions that must be met to establish full approval and put forth a schedule by which it expects the school to have met those conditions.

A2804 PUBLICATION OF A CERTIFICATE OF APPROVAL INFORMATION BY THE OSSE

- A2804.1 The OSSE shall produce at least one monitoring report for each approved nonpublic special education school during the period of the school's Certificate of Approval, which shall not contain personally identifiable student information and shall be made available to the public.

A2804.2 The OSSE shall publish and make available the list of approved special education nonpublic schools and the current level of approval of each school.

A2805 CERTIFICATE OF APPROVAL STANDARDS

A2805.1 Each nonpublic special education school approved by the OSSE shall provide a program of instruction that promotes each student’s academic achievement and developmental growth.

A2805.2 Instruction shall be designed to accommodate and foster each student’s abilities, interests, educational and vocational needs, and to transition each student with an IEP into a more integrated environment as soon as possible.

A2806 CURRICULUM REQUIREMENTS

A2806.1 Students with disabilities in attendance at an approved nonpublic special education school seeking a high school diploma shall receive instruction leading to the achievement of the District of Columbia’s learning standards, consistent with Title 5 of the District of Columbia Municipal Regulations, Chapter 22, including compliance with any amendments to these respective policies, procedures and regulations.

A2806.2 Students with disabilities in attendance at an approved nonpublic special education school pursuing a certificate of attainment shall receive instruction leading to the achievement of the District of Columbia’s learning standards to the extent of their ability and as indicated by their IEP, consistent with Title 5 of the District of Columbia Municipal Regulations, Chapter 22, including compliance with any amendments to these respective policies, procedures and regulations.

A2806.3 The approved nonpublic special education school shall ensure that all teaching staff has a sufficient understanding and knowledge of the District of Columbia learning standards to prepare students effectively for the DC-CAS and/or the DC-CAS ALT where appropriate.

A2807 LEARNING TIME

A2807.1 The school year of an approved nonpublic special education school or program shall include a minimum of one hundred eighty (180) regular instructional school days.

A2807.2 Each regular instructional school day shall be at least six (6) hours in length for students, inclusive of time allotted for lunch periods, recesses, and class breaks, except that the six-hour minimum instructional school day requirement shall not

be applicable to any evening school program, prekindergarten program, or kindergarten program.

A2808 RESOURCES AND MATERIALS

A2808.1 An approved nonpublic special education school shall provide the facilities, textbooks, equipment, technology, materials and supplies needed to provide the special education and related services specified by the IEPs of enrolled students.

A2809 INDIVIDUALIZED EDUCATION PROGRAMS

A2809.1 An approved nonpublic special education school shall ensure that each District student with a disability referred by an LEA has a complete, up to date, IEP on file that:

- (a) Has been issued by the responsible Local Education Agency (LEA);
- (b) Has been agreed to in writing by the student's parent(s) (or student, where applicable);
- (c) Contains the special education and related services necessary to allow the student access to the general curriculum to the maximum extent appropriate; and
- (d) Meets the unique needs of the student.

A2809.2 An approved nonpublic special education school shall be provided access to the District of Columbia's Special Education Data System (SEDS) as appropriate, and shall maintain each District student's IEP in that data system, except that under no circumstances shall a nonpublic special education school issue a change in location using the SEDS..

A2809.3 An approved nonpublic special education school shall implement all items of specialized instruction and related services on each student's IEP, including any items of compensatory education, unless it has been specifically agreed by the IEP team that an entity other than the school will implement an item or items on the IEP (e.g. after-school tutoring).

A2809.4 Pursuant to 34 C.F.R. 300.325(c), compliance with the requirements of the IDEA for students served by nonpublic providers remains the responsibility of the sending LEA and the OSSE. An approved nonpublic special education school shall work with the LEA to maintain compliance with IDEA, as follows:

- (a) In the event that the approved nonpublic special education school becomes unable to implement any portion of the student's IEP, including compensatory education, the school shall immediately notify the LEA;

- (b) In the event that the approved nonpublic special education school becomes aware that the student's IEP is not being fully implemented due to factors beyond its control (e.g., transportation), the school shall immediately notify the LEA; and
- (c) If it appears to the school that a required timeline for an evaluation, reevaluation or any other timeline specified in the Individuals with Disabilities Act has lapsed or will imminently lapse, the school shall immediately notify the LEA;

A2809.5 In the event that the LEA has an agreement with the approved nonpublic special education school for the school to conduct or arrange for the provision of assessments:

- (a) The school shall conduct or arrange for an assessment when requested by the LEA, in compliance with the timelines for evaluation and reevaluation set by the IDEA and/or by any Hearing Officer Decision pursuant to 34 C.F.R. 300.513 or a Settlement Agreement entered into pursuant to 34 C.F.R. 300.510(d) governing the assessment;
- (b) The school shall submit an invoice for the assessment in the next invoicing period at the established rate; and
- (c) The school shall not conduct an assessment of a student without prior notification to and agreement of the LEA.

A2809.6 Pursuant to 34 C.F.R. 300.325(b), IEP meetings may be initiated and conducted by the approved nonpublic special education school at the request or discretion of the LEA.

A2809.7 As part of the IEP team process, staff members of the nonpublic special education school who are members of the student's IEP team shall ensure that each IEP:

- (a) Meets all the requirements of IDEA, Section 614(d) and 34 C.F.R. 300.324;
- (b) Includes specialized instruction and related services that are allocated with specific scope, frequency and duration within the Least Restrictive Environment (LRE) and are specific to the student's needs;
- (c) Contains a Functional Behavioral Assessment (FBA) and Behavior Implementation Plan (BIP), whenever appropriate, including a plan for crisis management, pursuant to IDEA, Section 614(d)(3)(B)(i);

- (d) For a student sixteen years or older, contains specific, measurable, achievable, relevant transition goals and services, in accordance with IDEA Section 614(d)(1)(A)(i)(VIII); and
- (e) Provides for Extended School Year (ESY) services only if the IEP team decides, on an individual basis, that they are necessary for the provision of a Free Appropriate Public Education (FAPE) to the student.

A2809.8 An approved nonpublic special education school shall ensure that the appropriate members of its staff attend all IEP meetings related to District of Columbia students.

A2809.9 An approved nonpublic special education school shall monitor how each student is making progress toward meeting the annual goals of the IEP and produce reports to the parent(s) and LEA on at least a quarterly basis.

A2809.10 An approved nonpublic special education school shall ensure that confidentiality of student records is strictly kept in accordance with the Family Educational Rights and Privacy Act (FERPA) and any other applicable laws and regulations.

A2810 IMPLEMENTATION OF HEARING OFFICER DECISIONS AND SETTLEMENT AGREEMENTS

A2810.1 An approved nonpublic special education school shall implement all services ordered by any Hearing Officer Decisions (HOD) pursuant to 34 C.F.R. 300.513 and/or a Settlement Agreement (SA) entered into pursuant to 34 C.F.R. 300.510(d) with respect to each attending student, including all assessments and any items of compensatory education, unless it is specifically agreed and documented by the IEP team that a service or services shall be provided by an entity other than the attending nonpublic special education school (e.g., after-school tutoring).

A2810.2 In the event that the approved nonpublic special education school becomes unable to implement any aspect of a student’s HOD or SA, including by reason that the language of a HOD or SA is unclear, not sufficiently specific or not in accordance with subsequent decisions made by the IEP team, the school shall notify the LEA in writing.

A2810.3 An approved nonpublic special education school shall immediately notify the LEA, in writing, if it appears to the school that a required timeline for an evaluation, reevaluation or other compliance requirement of a Hearing Officer Decision or Settlement Agreement has lapsed or will imminently lapse.

A2811 TRANSITIONS TO A MORE INTEGRATED SETTING.

A2811.1 In accordance with the Least Restrictive Environment (LRE) tenets of IDEA, IEP planning and service delivery shall be designed to support a transition to a less restrictive setting as soon as possible. Consideration of a student's transition status shall occur at least annually as a component of IEP review.

A2811.2 An approved nonpublic special education school which believes that a District of Columbia student is ready for a more integrated setting shall promptly notify the LEA in order to convene the IEP team for a discussion of a change in location as soon as possible. An approved residential school shall include the LEA in transition planning relating to any District of Columbia student.

A2812 REPORTING SUSPECTED ABUSE OR NEGLECT

A2812.1 An approved nonpublic special education school shall make reports of suspected abuse or neglect (including compliance with the law on compulsory school attendance) as required by all relevant federal, state and local law.

A2813 STATE-WIDE ASSESSMENTS

A2813.1 In accordance with applicable law and regulations, an approved nonpublic special education school shall ensure that every District of Columbia student with an IEP participates in the annual District of Columbia Comprehensive Assessment System (DCCAS), or, when permitted, the DCCAS Alt or alternate assessment, according to the procedures issued by the OSSE's Office of Assessment and Accountability.

A2813.2 An approved nonpublic special education school shall ensure that State-wide assessments are administered according to the *Test Security Guidelines* published by the OSSE.

A2813.3 A student may only be administered the DCCAS Alt in the limited circumstances defined by the OSSE. Under no circumstances may the alternative assessment be administered in place of the DCCAS unless it is specifically provided for in the IEP, in compliance with all relevant procedures and guidance.

A2814 GRADES AND PROMOTIONS

A2814.1 An approved nonpublic special education school shall adhere to the grades and promotion policies and procedures of the LEA in which each student is enrolled.

A2815 POSITIVE BEHAVIOR SUPPORT

A2815.1 Behavior support programs and plans used by an approved nonpublic special education school shall be based on functional assessments of behavior and utilize school-wide and individualized positive behavioral supports.

A2815.2 All students attending an approved nonpublic special education school shall be free from demeaning, violent or coercive treatment, including the use of restraints or seclusion in any form other than in an emergency circumstance as defined below. Seclusion and restraint shall not be used, under any circumstances, as a means of coercion, discipline, convenience or retaliation by staff. When an emergency intervention is needed to address problem behavior, the type of intervention chosen shall be the least intrusive necessary.

A2815.3 Pursuant to D.C. Official Code § 38-2561.03, an approved nonpublic special education school shall prohibit aversive intervention by policy and practice.

A2816 PHYSICAL RESTRAINT

A2816.1 The use of physical restraint is prohibited in approved nonpublic special education schools except in an emergency circumstance, which is defined as a circumstance that meets all of the following criteria:

- (a) The intervention is necessary to protect the student or other person from imminent, serious physical harm;
- (b) Other less intrusive, nonphysical interventions have failed or been determined inappropriate; and
- (c) The student's behavior intervention plan and IEP describe the specific behaviors and circumstances in which physical restraint may be used.

A2816.2 Any physical restraint shall be applied only by school personnel who are trained in the appropriate use of specific, planned techniques.

A2816.3 The use of physical restraint shall be limited to the use of reasonable force and to the shortest time period necessary to protect the student or other person from imminent, serious physical harm. The restraint must end as soon as the student is no longer in imminent danger of causing physical harm to a person.

A2816.4 Physical restraint is prohibited as a means of punishment or as a response to property destruction, disruption of school order, a student's refusal to comply with a school rule or staff directive, or language that does not constitute a threat of imminent, serious physical harm.

A2816.5 No physical restraint shall be administered in such a way that the student's breathing or speaking is restricted. During the restraint, a staff member shall continuously monitor the physical status of the student, including skin color and respiration. The restraint shall be released immediately upon a determination by a staff member that the student is no longer at risk of causing imminent, serious physical harm to him or herself or others.

A2816.6 If the student uses sign language or an augmentative mode of primary communication, the student shall be permitted to have the student's hands free of restraint for brief periods, unless the adult determines that such freedom appears likely to result in harm to self or others. The restraint must end as soon as the student is no longer in imminent danger of causing physical harm to persons.

A2817 MECHANICAL RESTRAINT.

A2817.1 The use of mechanical restraint is prohibited in an approved nonpublic special education school unless the school is accredited by and meets the requirements of the Joint Commission for the Accreditation of Health Care Organizations.

A2818. PRONE RESTRAINT

A2818.1 The use of prone restraint is prohibited in an approved nonpublic special education school.

A2819 SECLUSION.

A2819.1 The use of seclusion is prohibited in an approved nonpublic special education school unless it is an emergency circumstance, which is defined as a circumstance that meets all of the following criteria:

- (a) The intervention is necessary to protect the student or other person from imminent, serious physical harm;
- (b) Other less restrictive interventions have failed or been determined inappropriate; and
- (c) The student's behavior intervention plan and IEP describe the specific behaviors and circumstances in which seclusion may be used;

A2819.2 A space used for seclusion shall, at a minimum, be free of objects and fixtures with which a student could self-inflict bodily harm; shall provide school personnel an adequate view of the student from an adjacent area; and shall provide adequate lighting and ventilation.

A2919.3 In the event of seclusion, school personnel shall view a student placed in seclusion at all times by remaining within sight of the student and shall provide the student with an explanation of the behavior that resulted in the seclusion and instructions on the behavior required to be released from the seclusion.

A2919.4 Seclusion shall only be applied by school personnel trained in the appropriate use of seclusion.

A2919.5 School personnel shall continuously monitor a student placed in seclusion and

Speak with the student every ten (10) minutes at minimum. After thirty (30) minutes, the Director, Head of Special Education or other senior member of the staff shall personally observe the student to assess the need for continued seclusion. No seclusion shall continue longer than one hour.

A2919.6 If the space used for seclusion has a locking mechanism, it must only be engaged when it is held in position by a person, or if electronically engaged, must automatically release if the building's fire alarm system is activated.

A2820 TIME OUT

A2820.1 The use of time out is permitted in an approved nonpublic special education school as a means of allowing a student to regain self-control and not as a form of punishment.

A2821 RESTRAINT/SECLUSION REPORTING AND FOLLOWUP

A2821.1 If any form of restraint or seclusion is used, the approved nonpublic special education school shall file a written report.

A2821.2 A written incident report shall include the following information:

- (a) The student's name;
- (b) The date of the incident;
- (c) The beginning and ending times of the incident and beginning and ending times of actual restraint or seclusion;
- (d) A description of relevant events leading up to the incident;
- (e) A description of any interventions used prior to the implementation of restraint or seclusion;
- (f) A log of events during the restraint, including the restraint technique(s) used;
- (g) A log of events during the seclusion;
- (h) A description of any injuries (whether to students, staff or others) and/or property damage;
- (i) A list and signatures of the school personnel who participated in the Implementation, monitoring, and supervision of the restraint or seclusion event; and

- (j) A description of the planned approach to dealing with the student's behavior in the future.

A2821.3 The written incident report shall be prepared for each individual incident involving a restraint or seclusion, and shall be placed in the student's permanent file within twenty four (24) hours of the incident.

A2821.4 A copy of the written incident report shall be sent within twenty-four hours of the incident to the student's parent(s), the student's LEA and any other District of Columbia agency involved in the student's placement.

A2821.5 The IEP team shall meet within ten (10) calendar days of the incident to consider the need for a functional behavioral assessment and behavior implementation plan and to discuss non-physical and non-restrictive de-escalation strategies.

A2822 ATTENDANCE AND TRUANCY

A2822.1 An approved nonpublic special education school shall require that District students enrolled in its program attend every official school day and remain in school until the official closure of the school day.

A2822.2 An approved nonpublic special education school shall adhere to the attendance and truancy policies and procedures of the LEA and the attendance and truancy regulations of the District of Columbia set forth in Title 5 of the District of Columbia Municipal Regulations, including compliance with any amendments to these respective policies, procedures and regulations.

A2822.3 Absence of a student from a nonpublic school due to hospitalization, incarceration, detention, or other absences of the student for thirty (30) or more consecutive days shall raise a presumption of termination of placement and District funding, unless the IEP team, including LEA representative, has made and documented a specific plan and timeline for the student to return to the school. In the event of any such absence, including without limitation absence as a result of truancy, the nonpublic school and LEA shall assure that the IDEA requirements and procedures have been complied with prior to any termination of placement.

A2822.4 Upon notification that an enrolled District of Columbia student with a disability has been hospitalized, incarcerated, detained, placed at a residential facility, or has been absent from the nonpublic special education school for more than five (5) consecutive calendar days, an approved nonpublic school shall:

- (a) Immediately notify the LEA in writing;
- (b) Immediately notify the parent (if applicable/appropriate); and

- (c) Exercise all due diligence to:
- (1) Comply with any requests by the receiving facility or the LEA for records, or other input for the purpose of providing appropriate academic instruction and related services;
 - (2) Ensure that a written plan is developed by the IEP team within thirty (30) days of the hospitalization, detention/incarceration or other absences to specify whether or not the student will return to the nonpublic school, and, if so, by what date; and
 - (3) Inform the OSSE, in the attendance report accompanying its next invoice, of the student's status, plan and timeline for return to the nonpublic school.

A2823 TERMINATION OF ENROLLMENT.

- A2823.1 An approved nonpublic special education school shall not terminate the enrollment of any student, unless and until the student's LEA has been informed in writing no less than fifteen (15) school days prior to the proposed date of termination.
- A2823.2 In the event of emergency circumstances, an approved nonpublic special education school shall not terminate the enrollment of any student, unless and until the student's LEA has been informed by the most expedient and appropriate means of communication with a follow up in writing.

A2824 PERSONNEL QUALIFICATIONS.

- A2824. 1 An approved nonpublic special education school shall ensure that its organizational structure provides for the effective and efficient operation of the school, supervision of the school staff and supervision of students.
- A2824.2 Effective no later than School Year 2010-11, each member of the teaching staff shall hold a teaching certification from the state or district in which the school is located, to the same level as required for teaching staff in public schools of that state or district.
- A2824.3 Related service providers, whether employed or contracted by the approved nonpublic special education school, shall be appropriately certified, licensed or registered in their professional areas.
- A2824.4 An approved nonpublic special education school shall maintain personnel files including, at minimum, resumes, attendance records, contracts, driver's licenses, and evidence of child protective service and criminal background checks. Access

to personnel policies and files shall be available to the OSSE upon request, for the purposes of monitoring compliance with the requirements of this Section.

A2824.5 All approved nonpublic special education schools must conduct a background check on school personnel. An approved nonpublic special education school shall make criminal background checks consistent with the District of Columbia requirements.

A2824.6 An approved nonpublic special education school shall not employ or use as a consultant or contractor, any attorney or advocate that represents the parent of any student with a disability in an IDEA proceeding under 34 C.F.R. 300.500 through 300.538.

A2825 POLICIES AND PROCEDURES

A2825.1 An approved nonpublic special education school shall maintain on file, at minimum, the following written policies:

- (a) Mission statement;
- (b) Positive behavior support policy statement and behavior plan, including school-wide crisis plan;
- (c) Emergency behavioral interventions;
- (d) Participation of all District of Columbia students in state-wide assessments;
- (e) Opportunities for enrolled students to interact maximally with their non-disabled peers during such time as they are enrolled in the nonpublic special education school;
- (f) Postsecondary transition services and transition planning;
- (g) Truancy (day schools)/ Runaway students (residential schools);
- (h) Records management and confidentiality of student records;
- (i) Process for a student or parent to make a complaint to the nonpublic special education school about the services the student is receiving;
- (j) Employee policies including position descriptions, staff evaluation policies, staff discipline policies (including suspensions and dismissals), procedures for handling complaints by staff, and a statement of equal employment/educational opportunities in regard to race, color, creed, religion, national origin, sex, sexual orientation and disability.

- (k) A plan for meaningful participation by the parent and other family members authorized by the parent;
- (l) Supervision of students;
- (m) A plan for serving limited English proficiency students;
- (n) Admissions and termination criteria;
- (o) Reporting of suspected child abuse or neglect;
- (p) IEP meetings, including conducting IEP meetings and including Manifestation Determination Reviews;
- (q) Conducting evaluations and reevaluations; and
- (r) Professional development plan which ensures adequate staff education on policies and procedures.

A2826 PROFESSIONAL DEVELOPMENT AND TRAINING

A2826.1 An approved nonpublic special education school shall conduct staff training at least once annually, regarding:

- (a) Research-based interventions and alignment of curriculum to state standards, including District Learning Standards;
- (b) Confidentiality of student information;
- (c) Positive behavior support;
- (d) Restraints/seclusion policies in accordance with this Section;
- (e) Reporting of suspected abuse or neglect;
- (f) Emergency procedures including evacuation and fire drills;
- (g) The school's truancy/runaway policies; and
- (h) Equal Employment opportunities.

A2827 INFORMATION FOR STUDENTS

A2827.1 An approved nonpublic special education school shall provide each student with full and up to date information about its program, including at minimum its

academic policies, IEP process, policies on behavior management, student rights and privileges and the process for making a confidential complaint about the services or treatment he or she is receiving at the school.

A2828 INFORMATION FOR PARENTS

A2828.1 An approved nonpublic special education school shall provide every parent with complete and up to date information about its program, including at minimum its academic policies, IEP process, policies on behavior management, student rights and privileges and the process for a parent to make a complaint about the services or treatment a student is receiving at the school.

A2828.2 In addition to the information set forth in the above subsection, the school shall provide information to all parents regarding monitoring by the OSSE, including the fact that students may be subject to private interviews by OSSE representatives in connection with monitoring.

A2829 FACILITIES

A2829.1 An approved nonpublic special education school shall have current licenses, approvals, and certificate of inspection by state and local agencies, covering safety, fire, lead paint, health, building code, Americans with Disabilities Act and other inspections that may be required by local or state authorities.

A2830 PUBLIC ACCOUNTABILITY

A2830.1 An approved nonpublic special education school shall maintain and keep up to date on an internet website, and make available for public review upon request, the following information:

- (a) Statement of purpose, including the number of students served and disability categories served;
- (b) Description of the education program;
- (c) Organizational chart and student/teacher ratios;
- (d) Discipline and behavior management policies;
- (e) Rates and tuition information;
- (f) Professional staff listing, including qualifications;
- (g) Licensure, certifications and accreditation status; and
- (h) Management and ownership.

A2830.2 The following documents shall be up to date, maintained onsite at the school and available for review upon request:

- (a) Documentation of current approval by the District of Columbia and all other relevant approval/licensing bodies; and
- (b) Documents granting authority to operate the school, including documents that fully identify ownership, and, as applicable, the names of officers, boards, charters, partnership agreements, articles of organization, and by-laws.

A2831 INCIDENT REPORTING

A2831.1 As noted above, a separate written incident report shall be prepared for each child subject to the use of restraints or seclusion in accordance with this chapter.

A2831.2 Any other incident causing serious physical injury to a student shall be reported in writing within twenty four (24) hours to the LEA, any other involved District agencies, and parent(s).

A2832 EMERGENCY REPORTING

A2832.1 In the event of fire or any other form of emergency situation, the approved nonpublic special education school must provide the LEA and the OSSE with written notification as soon as is feasible, and status reports thereafter as requested by the OSSE.

A2833 MATERIAL EVENTS REPORTING

A2833.1 In the event of a material event or change of circumstances at an approved nonpublic special education school shall notify the LEA and the OSSE in writing no later than fifteen (15) calendar days from the date of such event.

A2833.2 A material event shall include without limitation changes related to or conditions placed upon a school's permit or licensing status; a change in accreditation status; change of financial status or court protection; a major change in its program offerings; a change of school management or leadership including administrative director, principal or Chief Executive Officer (CEO),

A2834 INVOICING

A2834.1 An approved nonpublic special education school shall invoice the OSSE according to the District of Columbia's rates, policies and procedures for payment

of nonpublic special education providers. Such rates, policies and procedures shall be published and made available by the OSSE.

A2834.2 An approved nonpublic special education school shall not use any bundled or packaged rate methodology when invoicing the District of Columbia government.

A2835 MEDICAID

A2835.1 An approved nonpublic special education school shall adhere to all federal and District of Columbia laws and regulations governing Medicaid reimbursable services, including, but not limited to, documentation of all instances of IEP health-related services delivered to District of Columbia students enrolled in Medicaid.

A2835.2 An approved nonpublic special education school shall keep organized and confidential records that detail client specific information regarding all specific services provided for each individual recipient of services and retain those records for review. All such documentation shall include:

- (a) Recipient's name, date of birth, and Medicaid or unique identification number;
- (b) Date, time, and location of the services;
- (c) Provider of the services;
- (d) A description of the services provided, including diagnosis code and level of service;
- (e) Duration (or unit) of service, with start time;
- (f) Progress notes with an original signature by the service provider, including credentials (and signature of qualified supervisors for service providers requiring supervision);
- (g) Original/copy of provider health evaluation(s)/assessments(s);
- (h) Original/copy of IEP authorizing related service(s); and
- (i) Individual service provider daily documentation of the nature of the service encounters and progress notes, signed and dated by the provider, and listing the provider's credentials.

A2835.3 The frequency, duration and scope of services shall be specified in the student's IEP.

A2835.4 All services shall be logged within fifteen (15) calendar days of delivery and submitted using the format required by the District of Columbia government.

A2835.5 As requested by the OSSE, an approved nonpublic special education school shall enter into a contract confirming its rates for Medicaid purposes.

A2836 ANNUAL CERTIFICATE OF COMPLIANCE

A2836.1 Pursuant to D.C. Official Code § 38-2561.08, an approved nonpublic special education school shall certify compliance with this chapter not less than forty-five (45) calendar days prior to the start of the school year, using such forms as shall be provided by the OSSE.

A2837 DISCLOSURE OF INFORMATION

A2837.1 An approved nonpublic special education school shall make available to the OSSE, on request, information on all aspects of the school's program(s), staff credentials, certification by agencies other than the OSSE, information regarding any complaints made, health and safety information, the individual records of District of Columbia students, and any other information that the OSSE may reasonably require in exercising its duties as State Education Agency (SEA).

A2838 MONITORING

A2838.1 Pursuant to D.C. Official Code § 38-2561.09, the OSSE shall schedule periodic monitoring visits to each nonpublic special education school or program at least once during the validity of each Certificate of Approval, to verify compliance with this chapter, federal and local law. An approved nonpublic special education school shall inform all parents of enrolled District of Columbia students that a scheduled monitoring visit shall occur, prior to the monitoring visit.

A2838.2 OSSE representatives may make unannounced visits to a nonpublic special education school or program, review student records, and conduct private interviews with students and staff.

A2838.3 The OSSE shall issue to the nonpublic special education school a monitoring report at least once in every period of validity for a Certificate of Approval, to include any findings of noncompliance with D.C. Official Code § 38-2561 and/or this Section.

A2839 INITIAL APPLICATION FOR CERTIFICATE OF APPROVAL

A2839.1 A nonpublic special education school seeking a Certificate of Approval from the OSSE shall complete an initial application. Any application shall be made on the OSSE's standard form, which shall comply with the requirements of D.C. Official Code § 38-2561.07(e).

- A2839.2 An initial application by a nonpublic special education school shall be made by the nonpublic school itself. The OSSE will not accept an application for a Certificate of Approval by a parent, advocate, or LEA.
- A2839.3 Incomplete applications shall not be accepted.
- A2839.4 The OSSE shall review each application submitted for an initial Certificate of Approval according to the criteria specified in this chapter and shall consult with other District agencies and agencies of other state and local governments as applicable.
- A2839.5 The OSSE shall not grant approval to the educational component of a residential school until all licenses required by local or state law have been awarded. The OSSE shall not grant approval to any school or program lacking a physical location at the time of its application.
- A2839.6 Unless exceptional circumstances apply, a Certificate of Approval will enter into effect at the start of the official DCPS school year. An initial application for a Certificate of Approval must be made no later than forty-five (45) calendar days prior to the start of July 1 each school year. The OSSE may, at its discretion, schedule site visits, interviews, or other inspections, and/or consult with counterparts in the host state, District agencies or other relevant stakeholders prior to granting a Certificate of Approval. The OSSE shall provide the applicant with written notice of its actions and the reasons for such actions.

A2840 EXPIRATION OF A CERTIFICATE OF APPROVAL.

- A2840.1 If a Certificate of Approval has not been renewed by the OSSE on or before its expiration date, it is void. It is the responsibility of the nonpublic special education school to submit an application for renewal of its Certificate of Approval.

A2841 RENEWAL OF AN EXISTING CERTIFICATE OF APPROVAL

- A2841.1 An approved nonpublic special education school may have its Certificate of Approval renewed for up to three years at a time. An application for renewal must be submitted not less than one hundred and eighty (180) calendar days prior to the expiration date of the current Certificate of Approval using a standard renewal form which shall be published on the OSSE's website. It is the responsibility of the nonpublic school to apply for renewal of certification.
- A2841.2 Any corrective actions in place at the time of application for renewal must be completed as a condition of renewal.
- A2841.3 The OSSE may revoke or decline to renew a Certificate of Approval for any of

the reasons pursuant to D.C. Official Code § 38-2561.11 and this chapter.

A2842 EXTENSION OF A CERTIFICATE OF APPROVAL

A2842.1 The OSSE may extend or modify a Certificate of Approval to allow a nonpublic special education school to reflect a material change at the school, to incorporate campus or program additions or changes, or as otherwise deemed appropriate.

A2840.2 An approved nonpublic special education school must submit an application form for any new branch or campus not covered by the existing Certificate of Approval.

A2843 FINDINGS, CORRECTIVE ACTIONS AND REVOCATION OF A CERTIFICATE OF APPROVAL

A2843.1 At least once within the period of validity for each Certificate of Approval, the OSSE shall, based on its monitoring activities, make written findings, documenting any noncompliance with D.C. Official Code § 38-2561 *et seq.* and/or this chapter.

A2843.2 Any finding of noncompliance that constitutes a violation of D.C. Official Code § 38-2561.11(a), shall be clearly documented as such, including the specific subsection of D.C. Official Code § 38-2561.11(a) found to be violated.

A2843.3 If the OSSE makes one or more findings of noncompliance, whether or not such findings constitute violations of D.C. Official Code § 38-2561.11(a), the OSSE shall order the school to correct each item within specific timeframes, or order the school to produce a written plan for correction of items of noncompliance.

A2843.4 If a school fails to correct items of noncompliance within the timeframes agreed with or imposed by the OSSE, the OSSE may, in its discretion, place the school into Probationary Approval status.

A2843.5 A school in probationary approval status shall be ordered to take specific corrective actions within thirty (30) days as a condition of continued certification. Failure to comply with a corrective action may, at the OSSE's discretion, result in revocation of the school's Certificate of Approval.

A2843.6 Pursuant to D.C. Official Code § 38-2561.11(b), the OSSE may, in its discretion, deny, revoke, refuse to renew or suspend a Certificate of Approval at any time, with or without an intervening imposition of probationary approval status, in the event of a finding of a violation of D.C. Official Code § 38-2561.11(a).

A2843.7 Pursuant to D.C. Official Code § 38-2561.11(b), the OSSE shall issue a written notification to the school of the violations of D.C. Official Code § 38-2561.11(a)

and its intention to deny, revoke, or refuse to renew or suspend a Certificate of Approval (Notice).

A2844 ANNUAL CERTIFICATION OF COMPLIANCE

A2844.1 Pursuant to D.C. Official Code § 38-2561.08, a nonpublic special education school with a Certificate of Approval, shall file with the OSSE, an annual certificate of compliance to certify its compliance with this chapter, no later than forty-five (45) days after the start of each official DCPS school year.

A2845 HEARING AND APPEAL PROCESS

A2845.1 A nonpublic special education school may appeal an OSSE finding(s) that it is in violation of D.C. Official Code, §38-2561.11(a).

A2845.2 The right to a hearing and the appeal process shall be conducted by an OSSE independent panel in accordance with D.C. Official Code, §38-2561.11(b) and this chapter.

A2845.3 A nonpublic special education school may request a hearing in writing, no later than thirty (30) calendar days after the date of the receipt of OSSE's Notice (with three days added to that date in the event the request is mailed to the OSSE).

A2845.4 The hearing request shall be addressed to the attention of the: State Superintendent of Education, Certificate of Approval Independent Panel Hearing and Appeal Process.

A2845.5 The nonpublic special education school's written appeal and request for a hearing shall include the following:

- (a) A concise statement outlining each issue to be addressed on appeal;
- (b) An index of the documents provided; and
- (c) The specific basis for opposing each OSSE finding or action subject to appeal; including the identification of the specific document provided to support the school's position; and
- (d) The basis for the relief requested.

A2845.6 The hearing on appeal shall be based upon the written record including the school's written submission in support of its appeal; the OSSE monitoring report including any attachments; the OSSE Notice and other documentation requested by the independent panel with copies provided to the respective parties.

- A2845.7 Any such hearing shall occur no more than thirty (30) calendar days after the request for a hearing.
- A2845.8 The nonpublic special education school and the OSSE shall have an opportunity for oral argument before the OSSE independent panel before a final decision is rendered. The length of the oral argument shall be limited to thirty (30) minutes.
- A2845.9 All appeals shall be conducted by an OSSE independent panel as follows:
- (a) An appeal with regard to a finding other than a decision to revoke a Certificate of Approval shall be heard by a standard independent panel consisting of three members:
 - (1) A designee of the State Superintendent of Education;
 - (2) A designee of the OSSE General Counsel; and
 - (3) An OSSE Department of Special Education representative;
 - (b) An appeal regarding a finding and notification by the OSSE of its intention to revoke a Certificate of Approval shall be reviewed by a full independent OSSE panel consisting of the following five members:
 - (1) A designee of the State Superintendent of Education;
 - (2) The OSSE General Counsel or designee;
 - (3) An OSSE Department of Special Education representative;
 - (4) An OSSE Department of Elementary and Secondary Education representative; and
 - (5) The Executive Director or designee of the District of Columbia Association for Special Education (DCASE) not associated with the school in question;
 - (c) An OSSE independent panel in either (a) or (b) above shall select a chairperson; and shall not contain any person who participated in, or had direct knowledge of the OSSE's original decision or underlying monitoring report and findings.
- A2845.10 While the appeal is pending, the nonpublic special education school shall continue to provide special education and related services to enrolled students.
- A2845.11 The decision of the OSSE independent panel shall be issued within ten (10) calendar days of the hearing.

A2845.12 Pursuant to D.C. Official Code § 38-2561.11(b), the decision of the OSSE panel is final and not appealable.

A2845.13 The OSSE shall publish the final decision issued by the independent panel, and take appropriate action in conformance with the final decision, including specific notification to the nonpublic school, and other interested parties as deemed appropriate including LEAs, and other government officials within or outside the District of Columbia.

A2846 RATE SETTING

A2846.1 The fees for services provided by a nonpublic special education school to District of Columbia children shall conform to the rates established by the District of Columbia.

2899 DEFINITIONS

Any term used in this chapter that is not otherwise defined herein, has the same meaning as the D.C. Official Code § 38-2561 *et seq.* and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1401 *et seq.*, and its implementing regulations, 34 C.F.R. Part 300.

“Mechanical restraint” means the use of a physical device to restrict the movement of a student or the movement or normal function of a portion of his or her body. A protective or stabilizing device ordered by a physician shall not be considered mechanical restraint.

“Nonpublic special education school or program,” “school” or “program” means a privately owned or operated preschool, school, educational organization, or program, no matter how titled, that maintains or conducts classes for the purpose of offering instruction, for a consideration, profit, or tuition, to students with disabilities; provided that the term "nonpublic special education school or program" shall not include a privately owned or operated preschool, elementary, middle, or secondary school whose primary purpose is to provide educational services to students without disabilities, even though the school may serve students with disabilities in a regular academic setting.

“Parent” shall have the same meaning as in the Individuals with Disabilities Education Act, Section 602(23).

“Physical restraint” means the use of bodily force to limit a student’s freedom of movement.

“Prone restraint” means the use of force and/or a physical device to hold a student face down on the floor.

“Seclusion” means the involuntary confinement of a student alone in a room or area from which he or she is physically prevented from leaving, whether or not in a locked area.

“Student” or “student with a disability” means “child” or “child with a disability” as defined by the Individuals with Disabilities Education Act (IDEA), Section 602(3).

“Time Out” means the exclusion of a student from the classroom or other area to a removed, supervised area, for a limited period of time during which the student has the opportunity to regain self-control.

“Truancy” is the willful absence from school by a student five (5) through seventeen (17) years of age) with or without approval, parental knowledge, or consent

Persons wishing to comment on this rule should submit their comments in writing to Kerri L. Briggs, PhD., Acting State Superintendent of Education, 441 4th Street, NW, Room 350N, Washington, D.C. 20001, Attn: Tamera Lewis, Assistant Superintendent, Department of Special Education. All comments must be received by the Office of the State Superintendent of Education not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of this rulemaking may be obtained from the OSSE website at www.osse.dc.gov or upon request at the above referenced location.