



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: VESID Committee
FROM: Rebecca H. Cort
SUBJECT: Cost Containment Proposals Relating to Special Education Requirements
DATE: April 1, 2010
STRATEGIC GOAL: Goals 1 and 2
AUTHORIZATION(S):

Issue for Discussion

Do the Regents support additional legislative and/or regulatory amendments that potentially may provide cost-saving mandate relief in special education?

Reason for Consideration

Policy discussion.

Proposed Handling

This item will come before the Committee for discussion at its April 2010 meeting.

Background Information

In April 2009, the Board of Regents discussed specific State law/regulation requirements in special education that, if repealed or amended, may result in administrative relief and/or cost savings to school districts. The proposals included only those areas that, given other safeguards in place, were not expected to significantly impact the quality of special education supports and services available to students with disabilities. Some of the proposed areas would have provided administrative relief to school districts; others may have had a more direct cost-saving effect. As a result of

this discussion, and in consideration of public comment, the Regents provided support for legislative proposals on a limited number of these proposals including:

1. Repeal of certain regulatory space planning requirements while retaining the requirement to ensure stability of space for students with disabilities.
2. Repeal of the requirement for parental consent for initial provision of July/August special education services.
3. Amendment of the due process statute of limitations (time period to request an impartial hearing from the date the parent or public agency knew or should have known about the action that forms the basis of the complaint) only for impartial hearing requests for tuition reimbursement when a parent unilaterally places his/her child in a private school.
4. Changes to section 3602-c relating to billing procedures, the continuum of special education services and due process for parentally placed nonpublic school students.
5. Repeal of certain 'aging out' notifications that are duplicative of the required transition planning requirements for students with disabilities.

The above proposals were submitted to the legislature in 2009, but were not enacted. They will be resubmitted for consideration during the 2010 legislative session.

Consideration of Additional Mandate Relief Proposals

Given the current fiscal climate for school districts, organizations representing public school districts have requested that the Department reconsider additional cost-containment recommendations relating to special education. These recommendations include relief from minimum service delivery, maximum caseload and instructional group size requirements for certain special education services.

Upon review of the State requirements that exceed the federal requirements, we are bringing the issue of mandate relief in special education back to the Regents to determine if there is support to advance additional cost-containment proposals that would not diminish a district's responsibility to provide a free appropriate public education to all students with disabilities.

The following cost-containment recommendations are submitted for further consideration.

1. Amend regulations relating to integrated co-teaching to authorize a variance to the maximum number of students with disabilities (12) in an integrated co-teaching class upon notification to the Commissioner that includes documented educational justification. The maximum number of students with disabilities in such classes was selected after substantial public comment on this issue. However, current

regulations do not provide for exceptional circumstances that may result in the need to place an additional student with a disability in a co-teaching class. (Regulation)

2. Amend §200.13 to repeal the minimum daily frequency and duration for instructional services to address a student with autism's individual needs, while retaining the general requirement that the IEP of the student include instructional services to meet the individual student's language needs. While difficulty in the area of communication is a manifestation of the disability for most students with autism, we know now that not all students classified with autism (e.g., not all students with Asperger Syndrome) will need this intensity of speech and language instructional services. (Regulation)
3. Repeal the minimum frequency/duration requirements for speech and language related services while retaining the minimum service level requirements to be eligible for public excess cost aid. (Regulation)
4. Repeal the requirement in law that every teacher of the student be provided a copy of the student's individualized education program (IEP), while retaining the requirement that each teacher have access to the IEP and be informed of his/her responsibilities to implement the IEP. (Statute and regulation)
5. To reduce the costs for due process hearings, the Regents could recommend that the Department propose legislation to reinstate the one year statute of limitations to request a due process hearing. (Statute and regulation)

The Department is actively exploring and promoting other systems of conflict resolution, and through contract with the New York State Dispute Resolution Association (NYSDRA), and in collaboration with the State's special education parent centers, will conduct 15 regional sessions annually to promote the early resolution of disputes and use of mediation. NYSDRA will also be piloting individualized education program (IEP) mediators and the Department will explore other options used by other states such as third-party assistance and advisory opinions.

Next Steps:

With support of the Regents, the Department would propose revised regulations and/or legislative amendments and seek public comment on the above recommendations.