



Special Education Update 2016

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Federal Policy & Decisions

Every Student Succeeds Act (ESSA)

- Current version of No Child Left Behind
- Federal law enacted December 10, 2015; new state accountability systems will take effect beginning with the 2017-2018 school year
- ESSA maintains requirement that States administer high quality assessments that meet nationally recognized standards, based on State-determined content
- Requires that states set “ambitious” goals and objectives and file annual reports on performance

ESSA & Students with Disabilities

- Academic Standards
- Accountability Systems
- Assessments
- State Report Cards
- Aversives and Discipline
- Other Provisions

ESSA – Academic Standards

- All students with disabilities, other than those with the most significant cognitive disabilities, must be taught to the state's general challenging academic achievement standards
- States may develop alternate academic standards for students with the most significant cognitive disabilities; must be aligned with the general academic standards
- Alternate standards must promote access to the general curriculum and put students on track to pursue postsecondary education and employment

ESSA – Accountability Systems

- Students with disabilities must be included in state accountability systems
- Students with disabilities must be a subgroup to be compared to overall child achievement
- Goals must be set for the academic achievement of students with disabilities in the following areas:
 - Reading, math, and science academic achievement
 - High school graduation rates
 - At least one non-academic indicator of school quality or child success selected by the state

ESSA – Accountability continued

- If achievement of students with disabilities is meaningfully different than overall student achievement, districts must implement evidence-based interventions designed to improve the achievement of students with disabilities
- Both “meaningfully different” and “interventions” are to be defined by the state and will be described in state plans submitted to the U.S. Department of Education

ESSA - Assessments

- Students with disabilities will take required academic assessments with all other students unless they have been determined by CSE to have a most significant cognitive disability
- Students with disabilities must be provided with appropriate accommodations to participate in the state assessments
- State assessments must use universal design to increase access to the assessments
- State assessments must be able to aggregate the results of students with disabilities and compare them to students without disabilities

ESSA – Assessments, continued

- States may use an alternate assessment to measure the academic achievement of students with the most significant cognitive disabilities being taught the alternate academic achievement standards – no more than 1%
- Families must be informed how participation in the alternate assessment may delay or otherwise affect the student from completing requirements for a regular high school diploma
- Participation in the alternate assessment must not preclude students with the most significant cognitive disabilities from attempting to complete the requirements for a regular high school diploma

ESSA – State Report Cards

- Each state must publish and make easily available a “report card” that includes:
 - The long-term and interim academic goals for students with disabilities
 - The academic and non-academic achievement, by school and district, for all students and for students with disabilities
 - The schools with meaningfully different achievement of students with disabilities compared to all students
 - Progress being made on academic achievement, in the aggregate, for all students and all students with disabilities

ESSA – Aversives & Discipline

- States must report how they will assist schools to reduce:
 - the use of aversive behavioral interventions that compromise students health and safety (e.g., the use of restraints and seclusion)
 - bullying and harassment
 - the use of discipline practices that remove students from the classroom

ESSA – Other Provisions Impacting SWDs

- Supporting Safe and Healthy Students fund can be used to implement school-wide positive behavioral interventions and supports
- A portion of federal charter school funds received by a state must be used to support charter schools to serve students with disabilities; and the state must monitor and support charter schools to recruit, retain, and serve students with disabilities
- Students with disabilities who graduate from high school during their extended IDEA eligibility are included in the school's four-year graduation rate

“Testing Action Plan”

- Released by Obama October 2015; USDOE releases related guidance 2/2/16
- Applies now; additional guidance will be issued for transition to ESSA
- Response to “overemphasis on testing and test preparation has placed a burden on classroom time”
- <https://www2.ed.gov/admins/lead/account/saa/16-0002signedcsso222016ltr.pdf>

"Principles for Good Assessments"

- **Worth taking**: aligned with content and skills a student is learning; assessments that are low quality or redundant should be eliminated.
- **High quality**: elicit complex student demonstrations of knowledge, and provide an accurate measure of student achievement and growth.
- **Time-limited**: States and districts must determine how to best balance instructional time and the need for high-quality assessments by considering whether each assessment serves a unique, essential role in ensuring all students are learning.

"Principles for Good Assessments" (cont'd)

- **Fair – and supportive of fairness – in equity in educational opportunity:** provide fair measures of what all students, including students with disabilities and English learners, are learning. Statewide assessments to provide a clear picture of which schools and students may need targeted interventions and supports.
- **Fully transparent to students and parents**
- **Just one of multiple measures:** No single assessment should ever be the sole factor in making an educational decision about a student, an educator, or a school.
- **Tied to improved learning:** results should inform and guide additional teaching, supports, and interventions.

Testing Action Plan, cont'd

- The responsibility to provide needed accommodations to students with disabilities so that testing shows what they know rather than reflects the limitations of a disability is unchanged and is not conditioned on any particular source of funds.

Students with High Cognition

- June 2015 – NYSED sends reminder of 2013 decision of the USDOE, Office of Special Ed Programs re: eligibility of students with high cognition
- Schools are obligated to evaluate all students suspected of having a disability regardless of perceived cognitive skills
 - Evaluations must assess all areas of suspected disability; cannot rely on single measure
- It would be inconsistent with the IDEA for a child, even if gifted, to be found ineligible for special education solely because the child achieved a score above a cut-off point.
- Eligibility for special ed = disability + need for special ed +/- related services

Effective Communication for Students with Hearing, Vision or Speech Disabilities

- Federal guidance highlighted by NYSED in Feb. 2015 Field Advisory
- Schools must ensure communication with hearing, vision or speech disabilities is as effective as communication with all other students as required by IDEA, ADA & Section 504
- Must give primary consideration to students and parents in determining which aids & services are necessary to provide effective communication; school must provide as requested unless it demonstrates it can provide a different aid or service that is as effective in meeting the student's needs
- Extensive FAQs available at <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-faqs-effective-communication-201411.pdf>

T.K. v. New York City Department of Education (2nd Circuit 2016) – Bullying as Denial of FAPE

- LK (a classified student with an IEP) was reportedly bullied extensively by peers in 3rd grade while in public school (name-calling, demeaning pictures drawn, prank calls, tripping her, laughing and avoiding touching her)
- Teachers reportedly did not intercede- i.e., student was tripped, teacher told her not to “make a scene”, and when kids avoided touching her things, she labeled them with (LK’s) name, making them more identifiable.
- Parents requested meeting to discuss, and wrote to teacher and administration, but no response. CSE refused to discuss topic of bullying at the meeting.
- Parents removed LK and sought tuition reimbursement.
- IHO and SRO denied tuition reimbursement, finding that procedural violations did not deny access to FAPE.
- District court reversed, finding denial by CSE to discuss bullying concerns at CSE were a denial of FAPE; the Second Circuit upheld, finding that the District’s failure to address concerns about bullying at the CSE denied meaningful participation in the process and denied a FAPE to the student.

State Policies & Guidance

Medication Administration

- NYSED issued updated guidance “Guidelines for Medication Management in Schools- October 2015”
- Updated guideline was developed with support of NY Statewide School Health Services and is available online at:
http://www.schoolhealthservicesny.com/laws_guidelines.cfm?subpage=124

New Student Function Categories

- **Nurse Dependent-** Student cannot self-administer their own medication and cannot be considered in need of supervision only.
- **Supervised Student-** student who requires supervision by nurse or other provider and may be assisted by trained, unlicensed personnel to self-administer their medication
- **Independent Student-** Student can administer their medication without any assistance.

See: [Guide to Ascertaining Medication Assistance Level](#)

Independent Student Self-Administration of Emergency and Rescue Medications

- Effective July 1, 2015, schools MUST permit students who have provider order attesting that student is independent, with parent permission, to self-carry and self administer the following:
 - Inhaled Rescue Medications
 - Epinephrine Auto-Injectors
 - Insulin, glucagon and other diabetes supplies to manage diabetes

When a student is self-administer/self-carry, District is not required to monitor or document the student's use or administration of their medication. See:

[Guidance for Implementing New Self-Carry and Self-Administer Requirements](#)

Seizure Management Guidelines

- **Very Low Risk**- no seizures and more than 2 years on or off medication
- **Low Risk**- no seizure in last 12 months on/off medication, seizures only during sleep, seizures w/o loss of consciousness, seizures w/o loss of body control.
- **Medium Risk**- at least 1 seizure in past year, fewer than 1 per month, seizures while awake, seizure w/loss of consciousness or loss of body control
- **High Risk**- occurring 1x per month or more frequent, seizures while awake with loss of body control.
- **Extremely High Risk**- seizures occurring daily or more often, with loss of consciousness or body control.

[Sample Seizure Management Protocol for School Sponsored Activities](#)

Provides new guidance on potential restrictions based on provider orders.

Field Trips and Medication Administration

- School Health personnel need to be notified in advance of field trips to ensure adequate time to arrange for personnel, special orders and consents required for administration of medication on the field trip
 - Parents **may** authorize a designee (family member, friend, school personnel)- SED guidance and sample designation form:
http://www.schoolhealthservicesny.com/tool_kit.cfm?subpage=247
- A student may **NOT** be excluded from a field trip due to disability or the need to access health supports or services
 - Parents cannot be required to attend field trip to permit their child to go.

See FAQ's <http://www.schoolhealthservicesny.com/faq.cfm?subpage=91>

Opioid Overdose Prevention

- Effective 8/11/2015 education and public health law now permits school districts, BOCES and other elementary and secondary schools to provide and maintain on-site opioid antagonists for emergency treatment of opioid overdose
 - Schools that elect to administer Naloxone (opioid antagonist) in cases of overdose may either register with NYSDOH to become a registered program and train unlicensed personnel to administer to individuals with overdose signs;
 - **OR** School Nurse may administer opioid antagonist to anyone at school or school event showing overdose signs under non-patient specific order from School Medical Director.

**District BOE must adopt policies and procedures regarding
Administration of Naloxone in School Settings**

<http://www.schoolhealthservicesny.com/a-zindex.cfm?subpage=367>

Instruction in the Least Restrictive Environment

- Dec. 2015 Field Advisory from NYSED
- NY students disproportionately removed from general ed more than other states. In 2014-2015
 - 31.4% of preschool SWDs placed in separate class, school or residential school
 - 57.8% school age SWDs served in regular classroom for 80% of day or more
 - 6.1% of school age SWDs placed in separate schools, residential placements or homebound/hospital placements
 - Highest rates of placement in separate classes & settings for students with ED, autism, deafness, intellectual disability, multiple disabilities & deaf-blindness

LRE (cont'd)

- Schools should:
 - Review data relating to LRE
 - Ensure continuum of programs & supports are available
 - Assess extent to which they provide “high quality inclusive settings”
- Schools must ensure the CSE, including parents, understand LRE responsibilities and consider services and supports that support the student to receive education in the student’s regular school and in age appropriate general ed classrooms

“High Quality Inclusive Setting”

LRE (cont’d)

- Inclusive instruction & configuration of classrooms & activities
- SWDs held to high expectations for achievement
- Special & general ed teachers intentionally plan lessons to promote participation of all students in learning & activities
- Accommodations, supports & specially designed instruction are provided to SWDs to participate & progress in regular ed
- Evidence-based services & supports are used to foster cognitive, communication, physical, behavioral & social-emotional development

LRE Proposed Policy

- Requires districts to annually report to BOE at public meeting on extent SWDs participate in general ed classrooms & quality of inclusive programs, services & extracurricular activities
- Implement a plan to enhance inclusive opportunities
- Ensuring access to Assistive Technology & supports
- Additional requirements for schools whose data demonstrates higher levels of placement in separate settings
- NYSED seeking stakeholder comments

Extended School Year Services

Students are eligible for ESY if the CSE determines that a student requires the additional instruction time to prevent substantial regression.

Substantial regression – student's inability to maintain developmental levels due to a loss of skill, set of skill competencies or knowledge during July and August.

Requires quantitative and qualitative information to support the need for such services and programs.

ESY services may or may not be the same as school year services- recommendation for ESY focuses on areas where the student is expected to experience regression.

Extended School Year Questions and Answers

<http://www.p12.nysed.gov/specialed/applications/ESY/ESY-2016/documents/ESYQuestionsandAnswers.pdf>

Residential Placement Process/Renewal

- If a student is at risk for residential placement, the CSE is required to consider availability of community supports for families available from other state agency resources, which may allow the student to remain in their home and community. (OMH, OPWDD, DSS, OCFS, Preventive Services, etc.).
- If, after consideration, student still requires residential, then the District **must** explore and exhaust all approved in-state programs (documenting rejection or lack of ability to serve student) before considering and exploring out-of-state programs.
- If student is placed residentially, each year the District must submit application for reimbursement by **June 1 for upcoming school year** (showing timely referrals and documentation of acceptances/declinations) , and out-of-state options may only be approved if there is no in-state option available. If CSE rejects in-state school as not appropriate (in spite of acceptance), District must document rationale before NYSED will approve alternate option out-of-state.
 - If student is placed residentially, the CSE is required to develop a plan and timetable for enabling the student to return to less restrictive environment, or a statement of reasons why such a plan is not appropriate at this time and submit to NYSED.
- <http://www.p12.nysed.gov/specialed/applications/outofstate/documents/Attachment1OOS.pdf>

Testing Accommodations (Feb 2016)

- Field Advisory issued in response to report issued by Common Core Task Force
 - Accommodations provide SWDs with the ability to demonstrate skills & knowledge without being limited or unfairly restricted due to disability
 - Testing accommodations must be recommended & appropriate for all SWDs, including students who are alternately assessed
 - CSE members need to know purpose of tests, need for accommodations & types of accommodations available
 - Every teacher & provider must be informed of responsibilities in implementing test accommodations
 - *A school's failure to provide test accommodations may result in the invalidation of a student's test score*

Appeal of Score on Exams for Local Diploma (January 2016)

- Any SWD may appeal a score off 55 or less on a Regent's exam
 - 3 point maximum change
 - Appeal of up to two exams
 - Student must have a 65 course average in the subject of the exam (and meets or exceeds passing grade for the subject & recorded in official transcript)
 - Student provides evidence the student received academic intervention services in the subject area appealed
 - Student is recommended for an exemption to the passing score by teacher or department chairperson
- Appeal is made to the local school district

Suspension & Expulsion of Preschoolers

- July 2015 NYSED Field Memo
- NY prompted to take action by Dec. 2014 policy statement by federal Depts. of Education & Human Services detailing increases in suspensions and harm to early childhood educational experiences as a result.
- Board of Regents took action in May 2015. Goal for NY: Eliminating disciplinary removals in all early childhood settings by 2017-2018
- Early childhood settings urged to review policies to ensure high quality behavioral & emotional supports and that disciplinary procedures adhere to IDEA for students with disabilities

Links to all policies and documents
discussed in this presentation will
be available on the task force
website at

www.nyspecialtaskforce.org

Thank You!