

THE REAUTHORIZED IDEA OF 2004 AND RECENT CHANGES IN NYS LAW



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New York State Education Law was amended, effective June 30, 2007, by Chapter 378 of the Laws of 2007 to conform to the reauthorized Individuals with Disabilities Education Act (IDEA) of 2004 and the final federal regulations that implement the reauthorized IDEA. Prior to the passage of this state legislation, NYSUT identified those areas in the reauthorized IDEA law and regulations that would change current New York state practice and significantly impact on the role of teachers and other education professionals in meeting the needs of students with disabilities and their families. NYSUT worked extensively with the Governor's Office, the State Legislature, and the State Education Department to support legislative language that met federal requirements while still preserving long-standing protections and practices in New York state.

This NYSUT Fact Sheet provides changes in New York State law, including:

- An overview of Chapter 378 of the Laws of 2007
- A discussion of significant changes in the following specific areas:
 - The excusal of certain Committee on Special Education (CSE) members in Individualized Education Program (IEP) team meetings
 - The revision of IEPs without a CSE meeting after the annual review
 - Limiting school staff in making initial referrals to special education
 - Limiting the CSE role in reevaluation decisions
- Advice to local leaders
- Web-Based Resources

OVERVIEW OF CHAPTER 378 OF THE LAWS OF 2007

Chapter 378 of the Laws of 2007 amended State law to implement a number of changes required in the reauthorized Individuals with Disabilities Education Act (IDEA) of 2004 and the final federal regulations that implement the reauthorized IDEA. Among the topics addressed by these amendments:

- Students with disabilities attending charter schools;
- Students with disabilities enrolled in nonpublic schools by their parents;
- Definitions of "related services" and "transition"; and
- Due process procedures.

It is important to note that the statutory definition of "related services" now includes the term "school nurse services." NYSUT had advocated on behalf of school nurses for the recognition of school nurse services as an acceptable related service for students with disabilities based upon a student's individual needs.

Certain additional provisions required by IDEA establish significant changes in prior practice will have a serious impact on teachers and other professionals serving students with disabilities and their families. This NYSUT Fact Sheet will specifically address those items as follows:

- The excusal of certain Committee on Special Education (CSE)¹ members in Individualized Education Program (IEP) Team meetings;
- The revision of IEPs without a CSE meeting after the annual review;²
- Limiting school staff in making initial referrals to special education; and
- Limiting the CSE role in reevaluation decisions.

The use of a Response-to-Intervention (RTI) process in identifying specific learning disabilities is also a significant change in the 2004 IDEA Reauthorization. However, it was not necessary to amend NYS law to implement this requirement and, as a result, was not part of Chapter 378. The identification of specific learning disabilities and RTI were addressed by the Board of Regents through recent amendments to the Regulations of the Commissioner of Education. While this NYSUT Fact Sheet includes electronic links to the [NYSUT Fact Sheet: “Response-to-Intervention”](#) and [“NYSUT IDEA Fact Sheet 3: Identification of Specific Learning Disabilities & Response to Intervention \(RTI\)”](#) as a resource, this issue will not be discussed in this document.

DISCUSSION OF SIGNIFICANT CHANGES

EXCUSAL OF CSE MEMBERS FROM IEP TEAM MEETINGS

IDEA requires that states allow parents and school districts to agree in writing to the excusal of a required member of the IEP Team. In New York state, the IEP Team is identified as the Committee on Special Education (CSE). Previously under NYS law, all members of the CSE were required to be in attendance at all meetings. The statute even allows a CSE member to be excused when that individual’s curriculum area is to be discussed by the CSE. However, in this situation the excused CSE member must provide written input to the CSE and parent prior to the meeting.

NYSUT is concerned with this IDEA provision for the following reasons:

- Opportunities to share and discuss information that supports the decision-making process affecting a student’s educational program are now limited since members of the CSE intended to provide professional expertise at the meeting may not be in attendance;
- Teachers and other required members of the CSE could be denied the opportunity to actively participate in special education program planning affecting the programs and services of children they have in their classrooms;
- The form and content of the written input provided by an excused member whose curriculum area is to be discussed was not defined in IDEA;
- The timeline in which to provide written input by the excused member is not prescribed in IDEA; and
- School districts could use this flexibility as an administrative convenience in order to manage the participation and costs associated with the CSE process.

Chapter 378 of the Laws of 2007 amended state law to implement the following federal requirements:

- ***Parents and school districts can agree in writing to the excusal of a required member of the CSE, if the excused member’s curriculum area is not to be discussed; and***

¹ The excusal provisions also apply to Subcommittees on Special Education and Committees on Preschool Special Education.

² An annual review is an evaluation of the status of a student with a disability conducted at least annually by the CSE.

- *Parents and school districts can obtain consent in writing to excuse a CSE member when the excused member's curriculum area is to be discussed. The excused CSE member, however, must provide written input to the CSE and the parent prior to the meeting.*

However, Chapter 378 also included the following changes that are specific to New York state:

- *All excusal requests of CSE members by the district are limited to no less than five calendar days prior to the CSE meeting;*
- *Parents retain the right to excuse a CSE member at any time including when an emergency or unavoidable scheduling conflict arises; and*
- *Written consent for an excusal can only be obtained after written input has been provided to the parent for review and consideration.*

The specific Chapter 378 language [Section 4402(1)(b)(1)] is as follows:

(b-1) Notwithstanding any provision of law, rule or regulation to the contrary, a member of the committee on special education, other than the parents or persons in parental relation to the student is not required to attend a meeting of the team, in whole or in part, if the parent or person in parental relation to the student and the school district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting.

(b-2) Notwithstanding any provision of law, rule or regulation to the contrary, a member of the committee on special education, other than the parents or persons in parental relation to the student, may be excused from attending a meeting of the committee, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services if the parent or person in parental relation to the student and the school district consent, in writing, to the excusal and the excused member submits to the parent or person in parental relation to the student and such committee, written input into the development of the individualized education program, and in particular written input with respect to their area of curriculum or related services prior to the meeting.

(b-3) Requests for excusal of a member of the committee as provided for in clauses (b-1) and (b-2) of this subparagraph, and the written input as provided for in clause (b-2) of this subparagraph, shall be provided not less than five calendar days prior to the meeting date, in order to afford the parent or person in parental relation a reasonable time to review and consider the request. Provided however, that a parent or person in parental relation shall retain the right to request and/or agree with the school district to excuse a member of the special education committee at any time including where the member is unable to attend the meeting because of an emergency or unavoidable scheduling conflict and the school district submits the written input for review and consideration by the parent or person in parental relation within a reasonable time prior to the meeting and prior to obtaining written consent of the parent or person in parental relation to such excusal.

REVISION OF IEPs AFTER THE ANNUAL REVIEW

The IDEA requires that states allow parents and school districts to agree to change a student's IEP after the annual review without holding a CSE meeting. Previously under NYS law, any changes to an IEP needed to occur at a meeting of the CSE with all members in attendance.

NYSUT is concerned with this IDEA provision for the following reasons:

- The agreement to change the IEP without holding a CSE meeting does not have to be in writing;
- There is no required participation of the members of the CSE;
- Opportunities for parents to share and discuss information with members of the CSE would be limited if a CSE meeting was no longer required;

- The parents do not receive a copy of the IEP changes unless they request it from the district; and
- There are no additional protections in IDEA for parents that would hold the district accountable for IEP changes.

Chapter 378 of the Laws of 2007 amended state law to implement the following federal requirement:

- *Parents and the school district can agree to change a student's IEP after the annual review without holding CSE meeting.*

However, Chapter 378 also included the following changes that are specific to New York State:

- *Parents must receive a written proposal from the school district to amend the IEP;*
- *The school district must inform the parents of the right to consult with the child's teacher or related service provider to discuss the proposed changes;*
- *Prior written notice is required of any agreed-upon IEP changes;³ and*
- *A copy of the amended IEP or amended portions of the IEP must be provided to the parent without having to request it.*

It is important to note that flexibility to make amendments to an IEP does not change the requirement that the CSE must review a student's IEP at least annually.

The specific Chapter 378 language [Section 4402(1)(b)(3)(b)] is as follows:

(ii) Notwithstanding any provisions of this clause or clause (a) of this subparagraph to the contrary, in making changes to a student's individualized education program after the annual review has been conducted, the parent or person in parental relation to the student and the school district may agree not to convene a meeting of the committee on special education for the purpose of making those changes, and instead may develop a written document to amend or modify the student's current individualized education program under the following circumstances:

(A) The parent or person in parental relation makes a request to the school district for an amendment to the individualized education program and the school district and such parent or person in parental relation agree in writing; or

(B) The school district provides the parent or person in parental relation with a written proposal to amend a provision or provisions of the individualized education program that is conveyed in language understandable to the parent or person in parental relation in such parent's or such person's native language or other dominant mode of communication, informs and allows the parent or person in parental relation the opportunity to consult with the appropriate personnel or related service providers concerning the proposed changes and the parent or person in parental relation agrees in writing to such amendments.

(C) If the parent or person in parental relation agrees to amend the individualized education program without a meeting, the parent or person in parental relation shall be provided prior written notice of the changes to the individualized education program resulting from such written document and the special education committee shall be notified of such changes. If the school district makes such changes by rewriting the entire individualized education program, it shall provide the parent or person in parental relation with a copy of the rewritten individualized education program. If the school district amends the individualized education program without rewriting the entire document, the school district shall provide the parent or person in parental relation with a copy of the document that amends or modifies

³ Prior written notice means statements of the agreed upon changes to the IEP are provided to the parents of a student with a disability a reasonable time before the school district initiates such changes.

the individualized education program or, upon request of the parent or person in parental relation, a revised copy of the individualized education program with the amendments incorporated.

Amendments to an individualized education program pursuant to this subitem shall not affect the requirement that the special education committee review the individualized education program at the annual meeting, or more often if necessary.

INITIAL REFERRALS OF STUDENTS SUSPECTED OF HAVING A DISABILITY

IDEA requires that states limit initial referrals of students suspected of having a disability to either a parent or the school district. Previously under NYS law, any professional staff member of a school district who suspects that the student has a disability could initiate a referral to the CSE thereby starting the evaluation process for determining special education eligibility.

NYSUT is concerned with this IDEA provision for the following reasons:

- School districts could limit referrals to special education as gatekeepers to the process;
- The provision of appropriate special education programs and services to students could be delayed if timely referrals are not made to the CSE; and
- Teachers and other professional staff could be denied the opportunity to advocate for appropriate services for students.

Chapter 378 of the Laws of 2007 amended state law to implement the following federal requirement:

- ***Only parents, a designee of the school district, or Commissioner of a public agency responsible for providing education to students with disabilities can initiate a direct referral to the CSE for a student suspected of having a disability.***

However, Chapter 378 also included the following change that is specific to New York State:

- ***Teachers or other professional members can request that the school district make a referral for an initial evaluation.***

The Board of Regents subsequently amended the Regulations of the Commissioner of Education to include the following additional provisions:

- ***Upon a request for a referral by a professional staff member, the school district must, within ten school days, either:***
 - ***Request parent consent to initiate the evaluation;***
~ Or ~
 - ***Provide the parent with a copy of the request;***
 - ***Inform the parent of his or her right to refer the student for an initial evaluation; and***
 - ***Offer the parent an opportunity to meet to discuss the request for referral with the district administrator and the professional staff member making the request for the referral.***

The specific Chapter 378 language [Section 4401-a] is as follows:

§ 4401-a. Referral and evaluation for special education services or programs.

1. Any student suspected of having a disability may be referred for initial evaluation to determine if the student is a student with a disability by the parent or person in parental relation, the commissioner or a designee of a public agency responsible for providing education to students with disabilities, including but not limited to the school district in which the student resides. In addition, a professional staff member of the school which the student attends or professional staff member of the school district in which the student resides, physician, judicial officer, professional staff member of a public agency, or the pupil himself or herself if such pupil is eighteen years of age or older or is an emancipated minor may request that the school district in which the student resides refer the student for initial evaluation.

2. A request for referral submitted by an individual other than the student or a judicial officer shall:

- state the reasons in writing for the referral and include any test results, records or reports upon which the referral is based unless such test results, records or reports are unavailable;
- describe in writing, intervention services programs or instructional methodologies to remediate the student's performance prior to referral including any supplementary aids or support services provided for this purpose or state the reason why no such attempts were made; and
- describe the extent of contact or involvement prior to the referral with the parent or person in parental relationship.

3. A referral submitted by a parent or person in parental relation shall be submitted in writing to the chairperson of the committee on special education or the building administrator of the school which the student attends or is eligible to attend. If such referral is submitted to the building administrator, the building administrator shall forward a copy to the chairperson of the committee on special education. If such referral is submitted to the chairperson of the committee such chairperson shall forward a copy of such referral to the building administrator of the school which the student attends or is eligible to attend. A referral submitted by any other individual shall be submitted in writing to the chairperson of the committee on special education or the building administrator of the school which the student attends or is eligible to attend. The building administrator may request a meeting with the parent or person in parental relation to the student for the purpose of discussing educational alternatives to special education. Such alternatives may include the provision of services designed to address the learning needs of the student and maintain a child's placement in general education with the provision of appropriate educational and support services. Nothing contained in this section shall in any way impede a committee on special education from continuing its duties and functions under this article with regard to a student referred for special education or a parent's access to the committee, except that, if the parent concurs in writing with the building administrator to the provision of educational alternatives to special education, the referral shall be deemed withdrawn.

REEVALUATIONS OF STUDENTS WITH DISABILITIES

IDEA requires that states allow the school district and parents to agree not to conduct a reevaluation of a student with a disability. The need for a reevaluation must be considered once every three years. Previously in NYS, members of the CSE had an opportunity to discuss the need for a reevaluation, consult with the parents, and participate in the reevaluation decision-making process.

NYSUT is concerned with this IDEA provision for the following reasons:

- The agreement between the school district and the parents regarding the need for a reevaluation does not have to be in writing;
- There is no required participation of the members of the CSE to consider the necessity of a reevaluation;
- Opportunities for parents to share and discuss information with members of the CSE are now limited since the CSE members are not included in the reevaluation process; and
- There are no additional protections in IDEA for parents that would hold the district accountable for such decision-making flexibility.

Chapter 378 of the Laws of 2007 amended state law to implement the following federal requirement:

- ***The school district and parents can agree not to conduct a reevaluation of a student with a disability.***

However, Chapter 378 also included the following change that is specific to New York State:

- ***The agreement not to conduct a reevaluation must be in writing.***

The specific Chapter 378 language [Section 4402(1)(b)(3)] is as follows:

(d) Advise the board of education or trustees concerning the frequency and nature of periodic reevaluations of students with disabilities by appropriate specialists, provided, however, that each student in a special program or a special class shall be reevaluated by qualified appropriate school personnel at least once every three years, except where the school district and the parent or person in parental relation to the student agree in writing that such a reevaluation is unnecessary. A reevaluation of a student with a disability shall be conducted by qualified individuals, in accordance with regulations of the commissioner consistent with the requirements of a reevaluation as defined by the applicable federal regulation. A reevaluation may not be conducted more than once a year unless the parent or person in parental relation to the student and the school district otherwise agree.

Advice to Local Leaders

- Local leaders should educate their members in regard to these significant changes in IDEA requirements.
- Local leaders should make parent groups, such as the PTA, as well as disability advocacy groups aware of these IDEA changes and any potential impact on the provision of appropriate special education programs and services for their children.
- Local leaders should stress the benefits of the partnership between parents and teachers. Several of these benefits are described below:
 - Teachers, school psychologists and other service providers who know the student and the curriculum are vital to the initial referral process as well as the collaborative planning that occurs at IEP meetings.
 - IEP meetings are often the only time that parents, teachers and service providers meet to collaboratively discuss the student's learning and behavioral needs.
 - The attendance of teachers at meetings when their curriculum is being discussed will ensure that student needs are being appropriately presented.
- Since the IDEA allows school districts but not states to exceed the federal requirements, local leaders should work with school administrators to continue previous practice. For example, a district may choose to not allow the excusal of members from CSE meetings. A district may also continue to allow CSE referrals for special education evaluations from teachers and other professional staff of the district.
- Local leaders should examine their collective bargaining agreements to determine whether any of these changes, such as the submission of written information prior to the CSE meeting if an excused teacher's curriculum area is discussed, would constitute changes in terms and conditions of employment.
- Local leaders should monitor district compliance with these new procedures.

WEB-BASED RESOURCES

- Chapter 378 of the Laws of 2007:
<http://www.p12.nysed.gov/specialed/idea/chap378text.doc>
- NYSUT Fact Sheet: Response-to-Intervention
http://www.nysut.org/cps/rde/xchg/nysut/hs.xsl/bulletins_9954.htm
- NYSUT IDEA Fact Sheet 1: Excluding Committee On Special Education Members From Attending Individualized Education Program Team Meeting and Subsequent Changes to the IEP
http://www.nysut.org/cps/rde/xchg/nysut/hs.xsl/bulletins_7402.htm
- NYSUT IDEA Fact Sheet 2: Initial Evaluation And Reevaluation For Special Education Services
http://www.nysut.org/cps/rde/xchg/nysut/hs.xsl/bulletins_7400.htm
- NYSUT IDEA Fact Sheet 3: Identification of Specific Learning Disabilities & Response to Intervention (RTI)
http://www.nysut.org/cps/rde/xchg/nysut/hs.xsl/bulletins_7397.htm
- New York State Education Department Field Memo: Chapter 378 of the Laws of 2007: Conforming State Law to Meet the Requirements of the 2004 Reauthorization of the Individuals with Disabilities Education Act
<http://www.p12.nysed.gov/specialed/idea/chap378memo.htm>
- Parts 200 and 201 of the Regulations of the Commissioner of Education: State regulations addressing the education of students with disabilities and procedural safeguards pertaining to discipline
<http://www.p12.nysed.gov/specialed/lawsregs/part200.htm>
- Title 34 of the Code of Federal Regulations-Parts 300 and 301: Federal regulations implementing changes made to the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004
<http://idea.ed.gov/download/finalregulations.html>
- Individuals with Disabilities Education Improvement Act of 2004: Full text of the federal law
<http://idea.ed.gov/download/statute.html>