

# The Top 10 Most Important Procedural Rules in the CSE Process

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# 1. A Parental Request is Required for Special Education Services for Students Attending Nonpublic School

- Under Education Law 3602-c, the parent must request special education services in writing to the school district of location by June 1 preceding the school year for which the request for services is made, except that when a student is first identified as a student with a disability after the first day of June preceding the school year for which the request is made and prior to the first day of April of such current school year, the parent must submit the written request for services within 30 days after the student was first identified.
- *Related rule:* Under subdivision 2-c of Education Law 3602-c, home-schooled students with disabilities and students suspected of having a disability shall be deemed nonpublic school students solely for the purpose of receiving special education services during the regular school year.

## 2. Definition of Least Restrictive Environment

- 8 NYCRR § 200.1(cc) defines least restrictive environment as the placement of students with disabilities in special classes, separate schools or other removal from the regular or educational environment occurs only when the nature or severity of the disability is such that ***even with the use of supplementary aids and services***, education cannot be satisfactorily achieved. The placement of an individual student with a disability in the least restrictive environment shall:
  1. provide the special education needed by the student;
  2. provide for education of the student to the maximum extent appropriate to the needs of the student with other students who do not have disabilities; and
  3. be as close as possible to the student's home.
- *Related rule:* Every special education student is entitled to a free appropriate public education.

## Least Restrictive Environment (continued)

- The district must comply with the procedural requirements set forth in the Individuals with Disabilities Education Act (IDEA)
- The student's Individualized Education Program must be developed through the IDEA's procedures and reasonably calculated to enable the child to receive educational benefits
- The CSE must balance the two legal requirements of placing a special education student in the least restrictive environment and providing an appropriate program that meets the student's needs.

### 3. Timelines for Initial Evaluations and Services

- Under 8 NYCRR § 200.4(b)(1), unless extended by mutual agreement of the parent and district, initial CSE evaluations must be completed within 60 calendar days of the district's receipt of consent to evaluate.
- *Related rule:* For students found initially eligible for an IEP, the CSE shall provide a recommendation to the board of education, which shall arrange for the appropriate special education programs and services to be provided to a student with a disability within 60 school days of the receipt of consent to evaluate. 8 NYCRR § 200.4(d)
- *(Not so) Related Rule:* Parental consent need not be obtained for a reevaluation if the school district can demonstrate that it has made reasonable efforts to obtain that consent, and the student's parents failed to respond. 8 NYCRR § 200.5(b)(1)(i)(b)

## 4. Discretionary Members of the CSE

- In addition to the mandatory members of the CSE (School District Representative, Parent, Regular Education Teacher, Special Education Teacher, Evaluation Interpreter, School Psychologist and (if appropriate) Student), both the district and parent may invite other individuals whom they determine to have knowledge or special expertise regarding the student. See 8 NYCRR § 200.3(a)(1)(ix)
- *Key point:* The regulations do not expressly provide language for one party to object to the other party's invitation of a CSE member.

## 5. Less Common Mandatory CSE Members

- Parent may request in writing, within 72 hours of CSE meeting, that a physician attend the meeting. 8 NYCRR § 200.3(a)(1)(vii)
- Parent may request in writing, within 72 hours of CSE meeting, that an additional parent member of a student with a disability attend. 8 NYCRR § 200.3(a)(1)(viii)
- When the CSE recommends an out-of-district placement, a representative from the out-of-district placement must attend the meeting. 8 NYCRR § 200.4(d)(4)(1)(a)
- When the student is determined to be at risk of a future residential placement, the CSE must (with parental consent) request in writing that a designee of the appropriate county or State agency participate in the CSE. 8 NYCRR § 200.4(d)(4)(1)(b)

## 6. Holding a CSE Meeting without the Parent

- CSE may meet without the parent, but only if:
  - The district is unable to convince the parent to attend; and
  - The district maintains a detailed record of its attempts to arrange a mutually agreed upon time and place for the meeting. At a minimum, a district should cancel and reschedule a CSE meeting three times – while continuing to attempt to convince the parent to attend – before going forward without the parent.
  - This is very risky – proceed with caution.
- Practical Tip: School districts should schedule CSE meetings well in advance of any deadlines so they have sufficient time to cancel and reschedule meetings whenever necessary.



## 7. Notice of Intent to Seek Tuition Reimbursement

- In order for parents of students with disabilities to pursue a claim for tuition reimbursement for a unilateral nonpublic school placement through the impartial hearing process, they must either:
  - a) Inform the CSE (at a CSE meeting) that they are rejecting the CSE's recommended placement for the student and intend to enroll their child in a private school at public expense; or
  - b) At least ten business days prior to the removal of the child from the public school, provide written notice of their intent to seek tuition reimbursement. 34 CFR 300.148(d)(1)
- Practical Tip: This “ten-day rule” gives the school district at least ten days to convene the CSE to review and, to the extent deemed necessary, revise the student's IEP to give the district the best chance possible to prevail at the future impartial hearing.

## 8. Independent Educational Evaluation Procedures

- Upon receipt of a parent's request for an independent educational evaluation for a student with a disability, the district must respond without unnecessary delay. The district has two options:
  - a) Grant the request and ensure that the evaluation is provided at public expense; or
  - b) File a due process complaint to request an impartial hearing to show that its evaluation is appropriate.
- Related rule: The district may challenge the parent's request on other grounds, including that the proposed independent evaluator is unqualified, the cost of the proposed evaluation exceeds the competitive rate for such an evaluation within the immediate geographic area or the proposed evaluator is located outside of the geographic parameters of the district. 8 NYCRR § 200.5(g)(1)(iv)

## 9. Provision of Services During Suspension from School

- **Rule #1:** During suspensions or removals of up to 10 school days in a school year, students with disabilities shall be provided with alternative instruction on the same basis as nondisabled students. 8 NYCRR § 201.10(b)
- **Rule #2:** During subsequent suspensions or removals for periods of 10 consecutive school days or less that in the aggregate total more than 10 school days in a school year but do not constitute a disciplinary change in placement (i.e., not connected by a pattern), students with disabilities shall be provided with services necessary to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP and to receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications that are designed to address the behavior violation so it does not recur. **School personnel, in consultation with at least one of the student's teachers,** shall determine the extent to which services are needed, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress in meeting the goals set out in the student's IEP. 8 NYCRR § 201.10(c)

## Services During Suspension from School (continued)

- **Rule #3:** During suspensions or other disciplinary removals for periods in excess of 10 school days in a school year which constitute a disciplinary change in placement (i.e., more than 10 consecutive school days or more than 10 nonconsecutive school days in a school year connected by a pattern), regardless of the manifestation determination, students with disabilities shall be provided with services necessary to enable the student to continue to participate in the general education curriculum, to progress toward meeting the goals set out in the student's IEP, and to receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications that are designed to address the behavior violation so it does not recur. ***The IAES and services shall be determined by the CSE.*** 8 NYCRR § 201.10(d)

## 10. Reevaluations

- Under 8 NYCRR § 200.4(b)(4), a CSE shall arrange for an appropriate reevaluation of each student with a disability if the school district determines that the educational needs or related services needs of the student, including improved academic achievement and functional performance, warrant a reevaluation or if the student's parent or teacher requests a reevaluation
  - Not more frequently than once per year unless district representative and parent agree
  - At least once every three years unless district and parent agree in writing it is not necessary

# Reevaluations (continued)

## **Related Rule: Who Shall Conduct the Reevaluation?**

- The reevaluation shall be conducted by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of the student's disability.
- The reevaluation shall be sufficient to determine the student's individual needs, educational progress and achievement, the student's ability to participate in instructional programs in regular education, and the student's continuing eligibility for special education.
- The results of any reevaluations must be addressed by the CSE in a meeting to review and, as appropriate, revise the student's IEP.
- When possible, encourage the consolidation of reevaluation meetings with other CSE meetings for the student. 8 NYCRR § 200.4(b)(4)

# Honorable Mention

## A. Prior Written Notice Requirements

When must Prior Written Notice be Provided?

- A reasonable time before the district proposes or refuses to initiate or change the
  - Identification;
  - Evaluation;
  - Educational placement; or
  - The provision of FAPE to the student. 8 NYCRR § 200.5(a)(1)
- ***Any action*** proposed by the district that requires parental consent must be accompanied by prior written notice.
- PWN must be provided to the parents a sufficient time before the district may start implementing the CSE's recommendations.

# Prior Written Notice Requirements (continued)

## Required Information

- Description of the action(s) proposed or refuse
- Explanation of why the action is proposed or refused
- Description of each evaluation procedure, assessment, record, or report used as a basis for the proposed or refused action
- Description of other options considered and the reasons why those options were rejected
- Description of other factors that are relevant to the proposed or refused action
- A statement about parent protections under Procedural Safeguards and means by which a copy can be obtained
- Sources for parents to contact to obtain assistance
- Additional information related to the subject of the Notice.

8 NYCRR § 200.5(a)(3)



# Honorable Mention

## B. Timing of CSE Meeting Notice

- When scheduling a CSE meeting, 8 NYCRR § 200.5(c)(1) requires the district to arrange for the parent to receive notice in writing at least five days before the meeting.
- ***Related rule #1:*** The parent and district may agree to hold a CSE meeting within five days.
- ***Related rule #2:*** Meeting notice may be provided to the parent less than five days prior to the meeting to meet the timelines in accordance with Part 201 of the Commissioner's Regulations (e.g., CSE meetings to determine services to be provided during suspensions from school; manifestation-determination-review meetings).

# Questions?

# Thank You

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