

PRESCHOOL SPECIAL EDUCATION REGULATION

I. The Committee on Preschool Special Education (CPSE)

The Board of Education shall appoint a Committee on Preschool Special Education (CPSE) composed of:

1. An appropriate professional employed by the school district who shall serve as the chairperson of the committee. This person must be:
 - qualified to provide or supervise the provision of specifically designed instruction to meet the unique needs of children with disabilities;
 - knowledgeable about the general curriculum; and
 - knowledgeable about the availability of resources of the district.
2. The parent of the child with a disability.
3. A regular education teacher (if the child is, or may be, participating in the regular education environment).
4. A special education teacher, or where appropriate, a special education provider of such child.
5. An individual who can interpret the instructional implications of evaluation results (may also be one of the above district team members).
6. At the discretion of the parent or the district, other individuals who have knowledge or special expertise regarding the child, including related services personnel.
7. For a child evaluated for the first time, the CPSE must also include a professional who has evaluated the child or an appropriate professional employed by the school district who is knowledgeable about the evaluation procedures used with the child and familiar with the results of the evaluation. This individual must be someone other than the CPSE chairperson, the child's teacher or other person present at the meeting.
8. For a child in transition from early intervention programs and services, the appropriately licensed or certified professional from the Department of Health's Early Intervention Program. This professional must attend all meetings of the CPSE conducted prior to the child's initial receipt of services.
9. Whenever appropriate, the student with a disability.

The chief executive officer of the municipality in which the district is located also may appoint an appropriately licensed or certified professional to the CPSE. However, the attendance of the appointee of the municipality shall not be required for a quorum for the CPSE to act.

The Board directs the Superintendent of Schools to ensure that all members of the CPSE are appropriately trained for their responsibilities on the CPSE.

II. Identifying and Evaluating Preschool Children with Disabilities

The district shall conduct a census in accordance with the Education Law to locate and identify all children with disabilities who reside in the district and establish a register of children who are eligible to attend a preschool program in accordance with Section 4410 of the Education Law. The register shall be maintained and revised annually by the CPSE. Census data shall be compiled and maintained in accordance with Section 200.2(a) of the Regulations of the Commissioner.

Age eligibility for preschool special education will be determined in the following manner: if the child turns three between January 1 and June 30 of a calendar year, the child will be eligible for special education as of January 2 of that year; if the child turns three on or after July 1 during that year, the child will be eligible as of July 1.

Upon the receipt of written notification that a preschool child is suspected of having a disability, the chairperson of the CPSE shall notify the child's parent(s)/guardian(s) that a referral has been made and request consent for the child's evaluation. Such notification must include the following information: the right to consent or withhold consent to an initial evaluation or placement; the right to a hearing; procedures for appeal; the availability of mediation to resolve complaints regarding the education of a preschool child with a disability; an acknowledgment that if consent is refused, there will be no evaluation and the student shall remain in his/her current placement, or receive admittance to the requested school pending the outcome of a hearing; the availability of free or low cost legal aid and reimbursement of reasonable attorney's fees if the parent(s)/guardian(s) win their hearing. The notification shall be in the dominant language or mode of communication of the parent(s)/guardian(s).

If parental consent is not obtained within 30 days of receipt of referral, the Board shall initiate an impartial hearing to determine if the individual evaluation shall be conducted. The CPSE chairperson shall notify the parent(s)/guardian(s) of his/her right to request an informal conference at which the parent(s)/guardian(s) may ask questions regarding the evaluation.

III. Individual Evaluation

The CPSE shall ensure an individual evaluation of the preschool child is conducted at no cost to the parent(s)/guardian(s). The district shall maintain a list of approved evaluators which shall be provided to the parent(s)/guardian(s). The parents may select the evaluator from the list. The evaluation shall include: a physical examination; a social history; a psychological evaluation unless determined to be unnecessary by the school psychologist; and other appropriate assessments or evaluations as necessary to ascertain the physical, mental and emotional factors which contribute to the suspected disabilities.

The evaluator shall submit a written report to the members of the CPSE and to a person designated by the county in which the preschool child resides. The report shall include a detailed statement of the preschool child's individual needs, if any. The report shall not recommend the type, frequency and duration of service; the manner in which the

child could be provided with instruction and/or related services; nor refer to any specific service provider. The parent(s)/guardian(s) shall receive a summary of the evaluator's findings. Upon request, the parent(s)/guardian(s) shall also receive a copy of the evaluator's statement and recommendation to the CPSE.

If the parent(s)/guardian(s) disagrees with the evaluation, he/she shall notify the district so the district may initiate an impartial hearing to determine the adequacy of the evaluation. If the hearing officer determines the evaluation was inadequate then the parent(s)/guardian(s) may obtain an independent evaluation at no cost to themselves. Even if the evaluation is determined adequate by the hearing officer, the parent(s)/guardian(s) may obtain an independent evaluation, but not at public expense.

IV. Determining the Appropriate Preschool Program in the Least Restrictive Environment and Developing the Individualized Education Program (IEP)

Following the individual evaluation, if the CPSE determines the child has a disability, the members shall recommend approved appropriate services and/or special programs and the frequency, duration and intensity of such services including, but not limited to, the appropriateness of single services or half-day programs based on the individual needs of the child.

Before the CPSE recommends any program, the members must first consider the appropriateness of providing (1) related services only, (2) special education itinerant services only, (3) related services in combination with special education itinerant services, (4) a half-day preschool program, or (5) a full-day preschool program. If it is determined that a child needs a single related service, the service must be provided as a related service only or, where appropriate, as a special itinerant service.

Before recommending a program which provides special education services in a setting which includes only children with disabilities, the CPSE must consider programs in which the child will be placed with non-disabled children of a similar age. Settings which do not provide contact with non-disabled children may only be considered when the nature or severity of the child's disability is such that education in a less restrictive environment with the use of supplementary aids and services cannot be satisfactorily achieved. In cases where the recommendation is for services to be provided in a setting without regular contact with non-disabled peers, the recommendation must contain a statement as to why less restrictive placements were not recommended.

Prior to making any recommendation that would place a child in an approved program owned or operated by the same agency which conducted the initial evaluation of the child, the CPSE may obtain an evaluation of the child from another approved evaluator. If the CPSE decides to obtain another evaluation and the parent(s)/guardian(s) withdraws consent or otherwise chooses not to have their child further evaluated, the CPSE shall inform the parent(s)/guardian(s) that their child's review cannot proceed until such time as the additional evaluation has been completed.

Twelve-month special services and/or programs shall be provided to eligible preschool children consistent with their individual needs, as specified in the IEP. The CPSE or the Board may recommend services and programs that are different in type or intensity than the services and programs provided during the school year.

Any recommended programs and services shall be selected from the list of approved preschool programs within the county and adjoining counties or the municipality's list of itinerant service providers. The CPSE must provide the recommendation to the Board within 30 days of the date of receipt of consent and shall notify the parent(s)/guardian(s) of the child of its recommendation. The recommendation must state the reasons for the recommendation even if the CPSE determines the child has no disability. In addition, if the CPSE's recommendation differs from the parent's(s')/guardian's(s') preference with respect to the frequency, duration or intensity of services, the recommendation must specify reasons why a program different than the parent's(s')/guardian's(s') preference was recommended.

In developing an individualized education program (IEP), the CPSE must review all relevant information, including but not limited to:

1. information presented by the parent(s)/guardian(s) and the child's teacher(s);
2. the results of all evaluations; and
3. information provided by the appropriate licensed or certified professional designated by the agency that is charged with the responsibility for the child pursuant to applicable federal laws, if any.

Upon the parent's(s')/guardian's(s') request, the CPSE shall provide copies of all written documentation to be considered by the committee in the development of the preschool child's IEP.

The Board shall arrange the appropriate services and/or program after receipt of the recommendation of the CPSE. Should the Board disagree with the recommendation of the CPSE, the recommendation shall be returned to the CPSE with notice to schedule a timely meeting to review the Board's concerns. The parent(s)/guardian(s) and the county shall be notified of the Board's disapproval of the recommendation and the need to schedule a meeting to discuss the Board's reasons for disapproval and to revise the IEP as deemed appropriate.

Services of a program shall commence with the July, September or January starting date of the approved program. Should the recommendation of the CPSE be given 30 days prior to, or after, such starting date for the program selected for the child, services shall be provided no later than 30 days after the recommendation of the CPSE. The CPSE shall review at least annually the status of each preschool child with a disability.

V. Due Process Provisions

Should the parent(s)/guardian(s) of a preschool child disagree with the determination of the Board or if the CPSE or the Board fails to make or effectuate such a recommendation within the time periods set by the Commissioner, an impartial hearing may be requested.

Parents or guardians of preschool children with, or suspected to have, disabilities shall have mediation available to resolve complaints regarding the education of a student. The availability or use of mediation shall not diminish or limit any rights of parents or guardians provided for in law, including the right of a parent or guardian to request an impartial hearing subsequent to mediation. Parents or guardians will not be deemed to have failed to exhaust administrative remedies by requesting an impartial hearing in the absence of or prior to mediation.

During the pendency of an appeal, unless the parent(s) or guardian(s) and Board otherwise agree, the child will remain in the current educational placement at the time the Board made the decision which is the subject of the appeal. If the child has not been previously served, he/she may enter the Board recommended placement if the parent(s)/guardian(s) consents. Until his/her third birthday, a preschool child who received services from an agency after having been placed by a Family Court, may continue to receive services at the agency. The child may remain in such placement until August 31 of that calendar year, and thereafter must be referred to the CPSE.

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