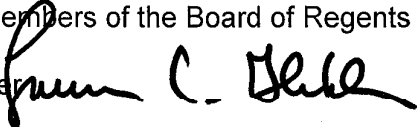




**TO:** The Honorable the Members of the Board of Regents

**FROM:** Lawrence C. Gloeckler 

**COMMITTEE:** Vocational and Educational Services for Individuals with Disabilities

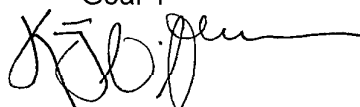

**TITLE OF ITEM:** Emergency adoption of revised proposed amendment of sections 200.2, 200.4 and 200.16 of the Regulations of the Commissioner of Education (Individualized Education Programs)

**DATE OF SUBMISSION:** January 22, 2003

**PROPOSED HANDLING:** Approval

**RATIONALE FOR ITEM:** Compliance with Chapter 408 of the Laws of 2002

**STRATEGIC GOAL:** Goal 4

**AUTHORIZATION(S)**  

**SUMMARY:**

Attached is a proposed amendment of sections 200.2, 200.4 and 200.16 of the Regulations of the Commissioner of Education relating to individualized education programs (IEPs). The text of the proposed amendment is attached. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

The purpose of the proposed amendment is to ensure that school districts provide teachers, related service providers and other service providers with a copy of the IEP of a student with a disability prior to the implementation of the student's IEP, in accordance with Chapter 408 of the Laws of 2002. The proposed amendment to section 200.2 of the Regulations of the Commissioner of Education establishes a requirement for a board of education policy relating to IEP implementation. The proposed amendments to sections 200.4 and 200.16 conform State regulations with the statute relating to a school's responsibility to implement a student's IEP.

A Notice of Proposed Rule Making was first published in the State Register on October 9, 2002 and the proposed amendment was discussed at the October Regents meeting. Based upon public comment, it was necessary to adopt a revised proposed amendment on an emergency basis at the December Regents meeting. Based upon public comment received in response to those emergency regulations, it is proposed that the regulations be further revised as follows: (1) clarify that "other service provider" refers to a representative of another public school district, charter school, BOCES, or certain other enumerated schools where a student receives or will receive special education, rather than to the institution itself; (2) clarify which persons must be informed of their responsibilities to implement the recommendations on a student's IEP; and (3) require schools to provide each paraprofessional and each other provider who has IEP implementation responsibilities with the opportunity to review a copy of the IEP prior to its implementation and to have ongoing access to a copy of the IEP; such paraprofessionals and other providers may access the copy of the IEP that is provided to the student's teacher or related service provider.

A Statement of the Facts and Circumstances Which Necessitate Emergency Action is attached. A Notice of Revised Rule Making will be published in the State Register no later than February 5, 2003. Public comment on the Revised Rule Making will be accepted until March 7, 2003.

**RECOMMENDATION:**

It is recommended that the Board of Regents take the following action:

**VOTED:**

That a new paragraph (11) be added to subdivision (b) of section 200.2 of the Regulations of the Commissioner; that paragraph (3) of subdivision (e) of section 200.4 of the Regulations of the Commissioner be repealed and that a new paragraph (3) of subdivision (e) of section 200.4 of the Regulations of the Commissioner be added; and that a new paragraph (6) be added to subdivision (e) of section 200.16 as submitted, effective February 18, 2003, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to ensure compliance of the State and local educational agencies with Chapter 408 of the Laws of 2002 by its effective date.

**Attachments**

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 4402, 4403 and 4410 of the Education Law and Chapter 408 of the Laws of 2002.

1. Subdivision (b) of section 200.2 of the Regulations of the Commissioner of Education is amended, effective February 18, 2003, by the addition of a new paragraph (11), to read as follows:

(11) establishes administrative practices and procedures to ensure that:

(i) each regular education teacher, special education teacher, related service provider and/or other service provider, as defined in clause (a) of this subparagraph, who is responsible for the implementation of a student's individualized education program (IEP), is provided a paper or electronic copy of such student's IEP prior to the implementation of such program.

1

(a) For purposes of this paragraph, "other service provider" means a representative of another public school district, charter school, board of cooperative educational services (BOCES) or school enumerated in articles 81, 85 or 89 of the Education Law where the student receives or will receive IEP services.

(ii) any copy of a student's IEP provided pursuant to this paragraph shall remain confidential and shall not be disclosed to any other person, in accordance with paragraph (6) of this subdivision; and

(iii) the chairperson of the committee on special education designates for each student one, or as appropriate, more than one professional employee of the school district with knowledge of the student's disability and education program to, prior to the implementation of the IEP, inform each regular education teacher, special education teacher, related service

provider, other service provider, paraprofessional, as defined  
in section 200.1(hh) of this Part, and other provider and  
support staff person of his or her responsibility to implement  
the recommendations on a student's IEP, including the  
responsibility to provide specific accommodations, program  
modifications, supports and/or services for the student in  
accordance with the IEP.

2. Paragraph (3) of subdivision (e) of section  
200.4 of the Regulations of the Commissioner of Education is  
repealed and a new paragraph (3) added, effective February 18,  
2003, as follows:

[(3) . . . .]

(3) The school district shall ensure that the  
recommendations on a student's IEP are implemented, including  
but not limited to:

(a) ensuring that each regular education teacher, special education teacher, related service provider, and/or other service provider, as defined in section 200.2(11)(i)(a) of this Part, who is responsible for the implementation of a student's IEP, is provided a paper or electronic copy of the IEP prior to the implementation of such IEP;

(b) ensuring that a paraprofessional, as defined in section 200.1(hh) of this Part, and each other provider responsible for assisting in the implementation of a student's IEP, has the opportunity to review a copy of the student's IEP, prior to the implementation of such program, and has ongoing access to a copy of the IEP, which may be the copy provided to the student's special education teacher or the teacher or related service provider under whose direction such paraprofessional or other provider works;

(c) ensuring that each regular education teacher, special education teacher, related service provider, other service provider, paraprofessional as defined in section 200.1(hh) of this Part, and other provider and support staff person has been informed, prior to the implementation of the IEP, of his or her responsibility to implement the recommendations on the student's IEP, including the responsibility to provide specific accommodations, program modifications, supports and/or services for the student in accordance with the IEP; and

(d) ensuring that a copy of the IEP is provided to the student's parents at no cost to the student's parents.

3. Paragraph (6) of subdivision (e) of section 200.16 of the Regulations of the Commissioner of Education is added, effective February 18, 2003, as follows:

(6) The IEP of a preschool student with a disability shall be implemented in accordance with section 200.4(e)(1)(i), (3), (4) and (7) of this Part, except that during the pendency of proceedings conducted pursuant to paragraphs (9) and (10) of subdivision (g) of this section, the placement of a preschool student shall be as provided in paragraph (3) of subdivision (g) of this section.



PROPOSED AMENDMENT OF SECTIONS 200.2, 200.4 and 200.16 OF THE  
REGULATIONS OF THE COMMISSIONER OF EDUCATION PURSUANT TO  
SECTIONS 101, 207, 4402, 4403 AND 4410 OF THE EDUCATION LAW AND  
CHAPTER 408 OF THE LAWS OF 2002, RELATING TO PROVIDING COPIES OF  
INDIVIDUALIZED EDUCATION PROGRAMS.

STATEMENT OF FACTS AND CIRCUMSTANCES

WHICH NECESSITATE EMERGENCY ACTION

The proposed rule is necessary to amend sections 200.2,  
200.4 and 200.16 of the Regulations of the Commissioner of  
Education in order to ensure the continued compliance of the  
State and local educational agencies with Chapter 408 of the  
Laws of 2002, and reflects significant changes to the rule which  
was initially adopted by emergency action in December 2002.

The amendment to section 200.2 is necessary to require  
school districts to establish a policy to provide copies of a  
student's individualized education program (IEP) to teachers and

related service providers and other service providers and to ensure that any individual with responsibility to implement the IEP of a student with a disability is informed of his or her specific responsibilities. The proposed regulations clarify who must receive a copy of the student's IEP and who, in addition, must be informed about his or her IEP implementation responsibilities. The amendment to section 200.4 is necessary to conform the State's current regulations relating to IEP implementation to the statute. The amendment to section 200.16 is necessary to clarify the IEP implementation responsibilities for a preschool student with a disability.

Emergency action to adopt the proposed rule is necessary for the preservation of the general welfare in order to continue, and revise as necessary, the provisions in the Commissioner's Regulations concerning the development of a board of education policy relating to IEP implementation so that

school districts and other local educational agencies are able to implement the requirements of Chapter 408 of the Laws of 2002.

Emergency regulations to implement Chapter 408 were adopted at the December 2002 meeting of the Board of Regents and it was anticipated that those regulations would be permanently adopted at the Regents February meeting. However, based upon significant public comment received, it is necessary to again adopt revised regulations on an emergency basis. The regulations adopted at the December 2002 Regents meeting will expire on March 15, 2003. A Notice of Revised Rule Making will be published in the State Register on February 5, 2003. The Board of Regents meets only at fixed intervals, and it is anticipated that the proposed rule, as revised, will be presented to them for adoption at their March 24-25 meeting, which is the first meeting scheduled after expiration of the 30-day period for

public comment relating to publication of a Notice of Revised Rule Making, as established in State Administrative Procedure Act section 202(4-a). Accordingly, emergency action is necessary to ensure that the regulation, as revised, does not expire before it can be permanently adopted by the Regents at their March meeting.

PROPOSED AMENDMENT OF SECTIONS 200.2, 200.4 AND 200.16 OF THE  
REGULATIONS OF THE COMMISSIONER OF EDUCATION PURSUANT TO  
SECTIONS 101, 207, 4402, 4403 AND 4410 OF THE EDUCATION LAW AND  
CHAPTER 408 OF THE LAWS OF 2002, RELATING TO INDIVIDUALIZED  
EDUCATION PROGRAMS.

#### ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Revised Rule Making in the  
State Register on December 11, 2002, the State Education  
Department received the following comments.

#### COMMENTS:

It was recommended that the term "other service provider"  
be defined as an individual rather than an educational agency or  
institution and that the term include providers of supplementary  
services and teaching assistants who are involved in the  
provision of direct instructional or support services to  
students with disabilities. It was further recommended that the

proposed regulations be revised to ensure that paraprofessionals such as teaching assistants or teacher aides be afforded a copy of a student's individualized education program (IEP) to reference on an as needed, ongoing basis.

DEPARTMENT RESPONSE:

The proposed regulations have been revised to clarify that an other service provider is a representative of another school where the student's individualized education program (IEP) will be implemented.

In accordance with 34 CFR section 300.136 and 8 NYCRR §200.1(hh), a paraprofessional may be used to assist in the provision of special education services. Therefore, the proposed regulations have been revised to add that the school must ensure that paraprofessionals and other providers have ongoing access to a copy of the student's IEP.

COMMENT:

It was recommended that the proposed regulations be revised to clarify what the phrase "IEP implementation responsibilities" means, who must be informed of such responsibilities, and that all teachers or service providers who have students with disabilities enrolled in their classes or assigned to their caseloads should be provided a copy of the IEP.

DEPARTMENT RESPONSE:

The proposed regulations have been revised to clarify that the phrase "IEP implementation responsibilities" means responsibility to implement the recommendations on a student's IEP, including the responsibility to provide specific accommodations, program modifications, supports and/or services for the student in accordance with the IEP.

COMMENT:

It was recommended that the regulations be revised to define the term "support staff" to mean specific school

personnel, such as teacher aides, bus drivers and cafeteria workers, who require an explanation of modifications and supports, described in the IEP that are directly related to their assigned responsibilities.

DEPARTMENT RESPONSE:

The proposed regulations have been revised to clarify that support staff persons with IEP implementation responsibilities must be informed of their responsibility to implement the recommendations on the student's IEP, including the responsibility to provide specific accommodations, program modifications, supports and/or services for the student in accordance with the IEP.

COMMENT:

It was recommended that the regulations be revised to clarify that the professional assigned to inform others of their IEP implementation responsibilities must be an administrator and



may not be an individual involved in providing direct instructional services if the addition of this responsibility to inform others will impact the provision of required services to students with disabilities.

DEPARTMENT RESPONSE:

The statute established the conditions for the individual to be selected by the Committee on Special Education Chairperson. To establish additional criteria would exceed the Department's statutory authority. The proposed regulations have been revised to allow the Chairperson to select one, or as appropriate, more than one professional employee, thereby providing local flexibility to address administrative, supervisory or other issues relating to this responsibility.

COMMENT:

To reduce the paperwork burden, it was recommended that the proposed regulations be revised to allow school districts to

provide copies of shortened IEP forms that include modifications, reading levels, alerts and needs as opposed to providing a full copy of the student's IEP and to clarify whether every subsequent change or addendum to an IEP must also be distributed.

DEPARTMENT RESPONSE:

The statute requires a copy of the student's IEP and does not provide flexibility for a shortened version of the IEP to be substituted. This would include IEPs that have been modified during the school year.

COMMENT:

It was recommended that the proposed regulations be revised to require a formal procedure for the individual receiving the copy to sign and date when the IEP copy was received. It was also recommended that the teacher who receives a copy of the IEP provide a written acknowledgement that he or she understands the

IEP and his/her responsibility to implement the IEP and has had an opportunity to discuss and resolve any problems with his/her supervisor or the special education office of the school district.

DEPARTMENT RESPONSE:

No changes to proposed regulations are recommended to address this concern. However, nothing would prohibit a board of education from establishing these practices in policy.

COMMENT:

It was recommended that the proposed regulations be revised to allow the parent of the student with a disability to limit or expand the distribution of his or her child's IEP.

DEPARTMENT RESPONSE:

No changes to proposed regulations have been made to address this recommendation since federal law and regulations permit an educational agency or institution to disclose

personally identifiable information from an education record of a student without the consent of the parent under certain conditions, including when the disclosure is to other school officials, including teachers, within the school who have a legitimate educational interest in the student.

COMMENT:

It was recommended that the proposed regulations be revised to clarify the filing and record keeping procedures required for the IEP copies.

DEPARTMENT RESPONSE:

The proposed regulations require that any copy of a student's IEP must remain confidential and shall not be disclosed to any other person, in accordance with sections 300.500 and 300.560 through 300.577 and Part 99 of title 34 of the Code of Federal Regulations.

COMMENT:

It was recommended that the regulations provide a clear definition of what it means to be informed of one's IEP implementation responsibilities (e.g., in writing or verbally) and to require documentation to demonstrate that such individuals were so informed.

DEPARTMENT RESPONSE:

No revisions to the proposed regulations have been made to address this concern. A board of education could specify in its policy how it ensures compliance with this requirement.

COMMENT:

It was recommended that the regulations be revised to require a school to monitor that teachers follow the IEP (e.g., through teacher notes reviewed by supervisors).

DEPARTMENT RESPONSE:

The proposed regulations have been revised in section 200.4 to state that the school district shall ensure that the recommendations on a student's IEP are implemented.

COMMENT:

Many individuals supported the proposed regulation that would allow the copy of the IEP to be provided in electronic format. Others recommended that only a paper copy be allowed, believing that an electronic copy may not ensure the confidentiality of the document and that the probability of IEPs being read and complied with would be greater if paper copies are available for reference.

DEPARTMENT RESPONSE:

The proposed regulations include that a copy of the IEP could be provided in paper or electronic format. A school is responsible to ensure the confidentiality of any copy of the IEP

in accordance with Parts 300 and 99 of the Code of Federal Regulations.

COMMENT:

It was recommended that the phrase "or guardian" when referencing the student's parent be added.

DEPARTMENT RESPONSE:

Section 200.1(ii) of the Commissioner's Regulations defines the term "parent" to mean a natural or adoptive parent, a guardian, a person in parental relationship to the child or a surrogate parent who has been appointed for the student.

COMMENT:

It was recommended that the proposed regulations clarify whether a substitute teacher must receive a copy of the student's IEP.

DEPARTMENT RESPONSE:

The Department will clarify in guidance that a teacher's copy of the IEP needs to be available to a substitute teacher for a student.