

**SCHOOL ADMINISTRATORS ASSOCIATION OF
NEW YORK STATE (SAANYS)
POSITION PAPER REGARDING
SPECIAL EDUCATION MANDATE REDUCTION**

January 27, 2009

At the January meeting of the State Board of Regents it was determined that the State Education Department should seek stakeholder input in regard to special education mandates that may be eliminated without adversely affecting students with disabilities or the quality of education services they are provided. On January 23, Deputy Commissioner Rebecca Cort convened a meeting of association, school district and parent representatives to engage in a structured, open discussion of the pros and cons of eliminating various New York State special education mandates which exceed federal requirements. This paper depicts the position of the Schools Administrators Association of New York State (SAANYS) in regard to special education mandate relief.

I. Special Education Space Planning Requirements

Requirement: Education Law requires that each Board of Cooperative Educational Services (BOCES) submit a special education space requirements plan every five years.

SAANYS Position: Elimination of this unfunded planning requirement.

Rationale:

- Plan requirements established by the State Education Department necessitate extensive documentation collection far exceeding the purpose of the plan which is "...to determine the need for additional facilities space for all special education programs in the geographic area served by the BOCES." Current procedures necessitate that each BOCES collect documentation from every school district in the BOCES supervisory district and merge such information with school district

PD 1 and PD 4A data. Therefore, the plan development process requires the review of approximately 100 pages of documentation per school district.

- The State Education Department annually collects special education child count and least restrictive environment data from all school districts, BOCES, state supported schools, etc. These data should be synthesized and analyzed by SED on a statewide basis and for each BOCES region. This information may then be provided to BOCES district superintendents during currently scheduled monthly meetings to analyze and plan for the availability of needed space across several dimensions geographically: individual BOCES, contiguous BOCES, Joint Management Team regions, and statewide; and demographically: small rural school districts, suburban school districts, and urban school districts. Moreover, such analysis and planning may be conducted annually rather than every five years.
- The State Performance Plan (SPP) is completed based on the Least Restrictive Environment (LRE) data annually collected from school districts. Each school district's data is reviewed and specific parameters are defined. SED Quality Assurance personnel follow-up with school districts with LRE data outside defined parameters to ensure appropriate student placement. Such appropriate SED oversight and intervention affects the types and locations of space needed for the provision of special education.

II. Special Education District Plans

Requirement: Every two years school districts are required to submit plans to describe the nature and scope of available special education programs, number of students including age spans, type of disability, recommended setting, methods of program evaluation, policies and practices of the board of education to ensure appropriate space in district and in BOCES, availability of instructional materials in alternative formats, estimated budget, date the plan was adopted, and how the district plan is consistent with the BOCES regional space plan.

SAANYS Position: Elimination of this unfunded planning requirement, which is largely duplicative of information otherwise submitted to and available to SED.

Rationale:

- The information called for in school district special education plans is largely duplicative of other state and federal reporting requirements.
 - School districts must annually submit IDEA grant applications to State Education Department Quality Assurance personnel in order to access their preschool (Section 619), school age (section 611) and CPSE allocations. These applications call for detailed information regarding the scope of services and programs to be provided.
 - School districts must annually submit to SED student count and least restrictive environment data that far exceeds the level of specificity included in the plan requirements (e.g., disaggregated by student race/ethnicity), and is used to determine classification and LRE disproportionality.

- Title 1 applications annually submitted to SED describe educational programs and services available to all students, and describe the manner in which students with disabilities have equitable opportunities to participate in such services.
- School district policies are annually reviewed by each school district's board of education and are included in a policy log available to SED and the general public.
- SED monitors (for special education and EMSC) periodically conduct on-site visits and formal reviews regarding the implementation of IDEA and title programs consistent with approved applications.
- Consistent with provisions of Chapter 57 of the Laws of 2007 all schools designated to be In improvement, corrective action, restructuring or SURR accountability status are reviewed by a school quality review team or joint intervention team for the purpose of providing recommendations to the school/district to improve performance in all areas (and student sub-populations) of accountability status, including special education.

III. Minimum Level of Service for Consultant Teacher Services, Resource Room, Speech and Language Related Services

Requirements: New York State law and regulations establish the following minimum levels of service: consultant teacher two hours per week (if combined with resource room, the combination of services must be provided for three hours per week); resource room services three hours per week (unless combined with consultant teacher services); speech and language services two 30-minute sessions per week.

SAANYS Position: Elimination of minimum service requirements that at best, may exceed the level of services needed by some students with disabilities in order to benefit from their education program; and at worst, may disadvantage students by pulling them from the general education program more than needed.

Rationale:

- Each student with a disability should receive special education services at a frequency and duration which the CSE or CPSE determines to be appropriate. Service, frequency, duration, and group size information are required to be documented in every student's individualized education program (IEP). There is no efficacy research basis for establishing minimum levels of service in general; and indeed, no research basis exists for the minimum levels of service currently specified in regulation. The currently required minimum levels for these three types of service were set in a well intentioned, albeit visceral manner.
- Students who are over served in special education, by receiving more services than they need to benefit from their education program, may actually be disserved by special education. The time during which students with disabilities receive consultant teacher services, resource room or speech language services does not generate units of credit needed for graduation. In order to provide these services, students may be "pulled" from other courses that would generate units of

credit. Therefore, providing special education services in excess of what is actually needed by the student may protract the time needed to complete their high school program, and may increase their likelihood of dropping out. More is not always better, and more almost always costs more.

IV. Students Disabled Due to Autism

Requirement: Section 200.13 of regulations was established specifically to address the provision of special education programs and services to students disabled due to autism. These regulations mandate the following services be provided for each and every student with autism: daily language services for 30 minutes (groups not to exceed 2) or 60 minutes (groups not to exceed 6), parent counseling and training, a staff to student ratio of 12:1+3:1 for special classes composed entirely of students with autism, and transitional support services for students placed with students having other disabilities or no disabilities.

SAANYS Position: Elimination of mandated services that may exceed the types and levels of support necessary to provide a free appropriate public education.

Rationale:

- For some students disabled due to autism, the levels of service and programs currently specified in section 200.13 are necessary and appropriate, and therefore, should be provided. For other students disabled due to autism, additional services will be necessary in order to provide an equitable opportunity to benefit from their education program, and those services must be provided as well. However, there is no clear rationale for specifying such minimum service requirements for all students with autism, whether mildly or severely disabled, whether they actually need such services or not. Such a requirement flies in the face of an “individualized” education program.
- Some of the highest functioning students with Asperger’s Syndrome, a milder form of autism, take advanced placement and honors courses in high school. The CSE classification recommended for these students is autism, but they often do not require all the minimum levels of service specified in regulation (Section 200.13). In fact, school officials feel that the required provision of all the services required by the regulation disrupt their education program, and should be left to the discretion of the CSE.
- There is no clear rationale for establishing a separate section of regulations for students disabled due to autism. The need to specify minimum service and program requirements is unnecessary for the other disability categories specified in section 200.1, just as it is unnecessary for students disabled due to autism.
- All the concerns presented above for issue III are equally relevant to this issue, for students with autism.

V. Maximum Caseload for Consultant Teacher Services and Speech and Language Related Services

Requirement: State law and regulation establishes the following special education case load maximums: consultant teacher, 20 students; resource room, 20 students in grades K-6 and 25 students in grades 7-12 (Note: New York City has been granted a variance to increase these case load limits.); Speech and Language Services, 65 students. (Note: Current regulations allow school districts to apply for a waiver to such requirements.)

SAANYS Position: Elimination of this requirement, which is unnecessary and is inconsistent with local control.

Rationale:

- Each school district board of education is required to act upon the IEP developed by the CSE/CPSE for each student with a disability. The IEP must include detailed information regarding placement, programs, and services, including size of instructional setting. School districts should have appropriate discretion in making staffing and caseload determinations that are both educationally and fiscally responsible.
- Education, including special education, is outcomes driven. School districts should have discretion and be accountable for meeting the goals specified in each student's IEP. The matter of caseload is a process/logistical issue that properly belongs with school districts.
- School districts receive fiscal support for the provision of special education services from the federal, state and local levels. However, the preponderance of support is provided at the local level. Therefore, the current caseload requirements constitute a state mandate that is largely unfunded.

VI. Notification of Math and Reading Levels Spanning More Than Three Years

Requirement: State regulations require that for special classes other than 12:1+3:1, where student achievement levels in reading and mathematics exceeds three years, the school district must provide the CSE and the parents and teacher of the students in such class a description of the range of achievement in reading and mathematics, and the general levels of social development, physical development, and management needs in the class by November 1 of each year. Parents who receive such descriptions must also be informed that upon request an appropriate representative of the district will meet with them to discuss the description.

SAANYS Position: Elimination of this burdensome notification requirement that may give parents the misimpression that students are not well served.

Rationale:

- In many general education classes, student achievement in reading and mathematics will exceed three years. In fact, with the increased emphasis on LRE and integrated co-teaching, many general education class settings will exceed three-year student achievement levels in reading and mathematics. There appears to be no clear rationale for distinguishing between general education and special class programs in this manner.
- Special education services are provided on an individual student basis, consistent with their IEP. School district personnel and parents monitor student progress and a referral may be made back to the CSE if the program and or placement are not felt to be appropriate for the student.
- The current regulation is flawed in that students with disabilities do not necessarily participate in special class programs on a full-time basis. It is possible that a student with a disability would attend a special class program in a departmentalized manner (e.g., for mathematics only), due to a disability in a particular area. The current regulation requires that the reading performance of such students would also have to be considered in the calculation of achievement spans.

VII. Level 1 Vocational Assessments

Requirement: State regulations require that for students with disabilities who are 12 years of age, a review of records be conducted which must include teacher assessments; and that parent and student interviews be conducted to determine the student's vocational skills, aptitudes, and interests.

SAANYS Position: Elimination of this mandate that creates an additional and unnecessary burden for school districts and most students with disabilities.

Rationale:

- Section 100.2 of regulations requires for all students in grades 7-12, "... an annual [guidance] review of each student's educational progress and career plans." The regulation also requires that

such reviews are to be conducted by personnel certified or licensed as school counselors. In that the great majority of students with disabilities take the same classes and same assessments as do non-disabled peers, and have the same college and career aspirations as do non-disabled peers, there is no clear rationale for requiring a Level 1 Vocational Assessment for all students with disabilities.

- Section 200.4 of regulations requires that the CSE ensure that that each student is “assessed in all areas related to the suspected disability, including, where appropriate ...vocational skills.” Therefore, the CSE should determine the students for whom a Level 1 vocational assessment is appropriate and arrange for those students to receive such an assessment. Students and school districts are not well served by completing unnecessary assessments and evaluations.

VIII. Dissemination of Individualized Education Programs (IEPs)

Requirement: Education Law and regulation require that copies of IEPs be provided to teachers and providers before the implementation of the IEP. Each special education teacher and related service provider must be given his/her individual copy of each student’s IEP.

SAANYS Position: Revision of this burdensome, costly, and unnecessary requirement in light of readily available technological innovations.

Rationale:

- Electronic pupil personnel systems available in most school districts allow school personnel to access student IEPs when they have a legitimate educational interest. Providing electronic access to student IEPs is quicker and easier, and saves money. There is no need to continue to require hard copy distribution of IEPs, a procedure that presents a greater possibility of compromising student confidentiality. It is important to ensure that all educators working with a student understand the contents of the IEP, and local procedures can be established to monitor and ensure such access.

IX. Membership of Preschool and School Age IEP Teams

Requirement: New York State exceeds federal requirements by requiring the following additional members to the Committee on Preschool Education and Committee on Special Education: school psychologist, additional parent member, and school physician (upon timely receipt of parent request).

SAANYS Position: Revision of such mandated attendance at all IEP Team meetings. Instead, procedures should be established so that such participation would be required only when requested by the parent or member of the committee.

Rationale:

- For each student under CSE/CPSE consideration, staff with necessary expertise should be part of the decision-making process. However, requiring school professionals to attend such meetings when their expertise is not necessary, is a waste of resources and deprives students of their

services. For example, it is not expected that a school psychologist would be needed for students referred due to an orthopedic disability. Rather than require attendance at all committee meetings, a procedure should be established to receive prior notification from parents or committee members when such attendance is necessary.

X. Due Process Statute of Limitations

Requirement: Education Law was amended in 2005 to establish a two-year statute of limitations for filing an impartial hearing request.

SAANYS Position: Education Law should be amended to restore the one-year statute of limitations that applied until Chapter 352 of the Laws of 2005 extended the period to two years.

Rationale:

- A one-year statute of limitations aligns with the annual review of each student's IEP. This provides sufficient time for parents to determine if classification and services are appropriate. Moreover, to the extent a parent feels that IEP provisions are not appropriate for their child, appropriate actions and remedies should be implemented in a timely manner to ensure that the student receives appropriate educational services.

SAANYS represents statewide more than 7,000 school administrators at the preschool, elementary, middle, and high school levels. In addition to principals and deans who are responsible to provide educational leadership for all students, our membership includes a broad array of school and district leadership, including supervisors and directors of special education. It is our position that the above mandates can and should be eliminated without detriment to students and services. On the contrary, the discontinuation of unproductive planning requirements will permit more time to analyze revise programs and services to enhance effectiveness; and any cost savings can be re-directed to better meet student needs.