PROGRAMS FOR CHILDREN WITH DISABILITIES OR SPECIAL EDUCATIONAL NEEDS REGULATION

I. Identification and Placement of Children with Disabilities and/or Special Educational Needs

A. Screening

1. Definition: *Screening* is designed as a preliminary method of distinguishing from the general population those students who may possibly have a disability. *Screening* identifies those students in need of further evaluation and should not be viewed as an in depth method of assessing development.

2. All students entering kindergarten must be screened by December 1st of that year. In addition, all other new entrants must be screened within three (3) weeks of their entrance into the system. Other students who must be screened are those who score below level 2 (State norms) on the fourth grade reading or mathematics test.

3. Screenings must obtain preliminary information regarding a child’s development in the following areas: physical development, cognitive development, receptive and expressive language, articulation skills and motor development.

B. General Guidelines for Student Classification

1. It is to be recognized that the classification or categorization of a student is an act which has a significant impact on the subsequent educational and social development of that student.

2. The recommendation for a formal classification of a student as defined as Section I. C. of this regulation should be the result of the deliberate action of the Pupil Services Team in its function as an advisory committee of the District Committee on Special Education as provided for in the Regulations of the Commission of Education. Information upon which classification and recommendations are based shall be openly and clearly presented to parents/guardians.

3. The classifications applied to students shall be reviewed at least annually to determine their timeliness and relevancy in conformance with Board of Education Policy 5500, Student Records, and Commissioner’s Regulations.
4. Unless a classification is assigned to a student as a result of the recommendation of a Pupil Services Team and Committee on Special Education authority, comments about that child should be based on descriptions of the child’s observed behavior and not on “shortcut labels” (e.g., “He/she moves quickly and does not sit or attend for longer than five (5) minutes,” rather than “He/she is hyperactive.”)

C. Definitions (See Section 200.1 (mm) of Commissioner’s Regulations)

Student with a disability means a person who has not attained the age of twenty-one (21) prior to September 1st and who is entitled to attend pubic schools pursuant to section 3202 of the Education Law, and, who, because of mental, physical or emotional reasons, has been identified as having a disability and can receive appropriate educational opportunities from special services and programs approved by the department. This term includes the following classifications:

a. **Autistic.** A student who manifests a behaviorally defined syndrome which occurs in children of all levels of intelligence. The essential features are typically manifested prior to thirty (30) months of age and include severe disturbances of developmental rates and/or sequences of responses to sensory stimuli, of speech, of language, of cognitive capacities, and of the ability to relate to people, events, and objects.

b. **Emotionally disturbed.** A student with an inability to learn which cannot be explained by intellectual, sensory or health factors and who exhibits one or more of the following characteristics over a long period of time and to a marked degree.

i. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

ii. inappropriate types of behavior or feelings under normal circumstances.

iii. a generally pervasive mood of unhappiness or depression, or

iv. a tendency to develop physical symptoms or fears associated with personal or school problems.

c. **Learning disabled.** A student with a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which manifests itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, neurological impairments, minimal brain dysfunction, dyslexia and developmental
asphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural or economic disadvantage. A child who exhibits a discrepancy of 50 percent or more between expected achievement and actual achievement determined on an individual basis shall be deemed to have a learning disability.

d. Mentally retarded. A student who, concurrent with deficits in adaptive behavior, consistently demonstrates general intellectual functioning that is determined to be 1.5 standard deviations or more below the mean of the general population on the basis of a comprehensive evaluation which includes an individual psychological evaluation.

e. Deaf. A student with a hearing impairment which is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

f. Hard of Hearing. A student with a hearing impairment, whether permanent or fluctuating, which adversely affects the child’s educational performance but which is not included under the definition of deaf in this section.

g. Speech-impaired. A student with a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child’s educational performance.

h. Visually impaired. A student with a visual disability, which, even with correction, adversely affects a child’s educational performance. The term includes both partially seeing and blind children.

i. Orthopedically impaired. A student who is physically disabled and who has a severe orthopedic impairment, which adversely affects a child’s educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), cerebral palsy, amputation, and fractures or burns which cause contractures.

j. Other health-impaired. A student who is physically disabled and who has limited strength, vitality or alertness due to chronic or acute health problems, including but not limited to a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell, anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes or tourette syndrome, which adversely affect a student’s educational performance.
k. *Multiply disabled.* A student with two (2) or more disabilities that result in multi-sensory or motor deficiencies and developmental lags in the cognitive, affective, or psychomotor areas, the combination of which cause educational problems that cannot be accommodated in a special education program solely for one (1) of the impairments.

l. *Deaf-blindness.* A student with a concomitant hearing and visual impairment, the combination of which causes such severe communication and other developmental and educational problems that the student cannot be accommodated in special education programs solely for students who are deaf or blind.

m. *Traumatic brain injury.* Means an injury caused by an external physical force or by certain medical conditions such as stroke, encephalitis, aneurysm, anoxia or brain tumors with resulting impairments that adversely affect educational performance. The term includes open or closed head injuries or brain injuries from certain medical conditions resulting in mild, moderate or severe impairments in one (1) or more areas, including cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psycho-social behavior, physical functions, information processing and speech. The term does not include injuries that are congenital or caused by birth trauma.

II. **Placement and Program Options**

A. Students will be placed in the least restrictive environment (Section 200.1 (x)) which indicates that the program

1. provides the special education needed by the student;
2. provides for education of the student to the maximum extent appropriate with other students who do not have disabilities, and
3. is as close as possible to the student’s home.

B. Program offerings will include: all options offered in Part 200.6 of the Commissioner’s Regulations.

In cases where parents/guardians and the Committee on Special Education concur, combinations of defined placements may be considered to provide appropriate innovative program design. An example is a student assigned to the resource room (LRA) who receives remedial reading.
1. Transitional support services means those temporary services specified in a student’s individualized education program (IEP), provided to a regular or special education teacher to aid in the provision of inappropriate services to a student with a disability transferring to a regular program or to a program or service in the least restrictive environment.

2. Consultant teacher services. Consultant teacher services shall be for the purpose of providing direct and/or indirect services to students with disabilities enrolled full-time in a regular program, including occupational education. Such services shall be recommended by the Committee on Special Education to meet specific needs of such students and shall be included in the student’s individualized education program (IEP).

3. Related services. These services will be provided in accordance with the student’s IEP and include speech pathology, audiology, psychology services, physical therapy, occupational therapy, counseling services and educationally related diagnostic/evaluative medical services.

4. Resource room programs shall be provided not less than three (3) hours per week and shall not encompass more than 50 percent of the student’s educational time in school.

5. Special classes shall be provided in a group(s) no larger than twelve (12) children except under special circumstances described in Part 200.6(g) or under conditions described in a variance approved by the State Education Department.

6. Home and hospital instruction is provided for a minimum of five (5) hours per week at the elementary level and a minimum of ten (10) hours per week at the secondary level as indicated in the student’s IEP (See II.C.5, below).

7. In-state and out-of-state private schools are considered only after all local and BOCES programs have been considered and with complete agreement by parents or guardians.

C. Support for Children with Disabilities and/or Special Educational Needs

Students who fall at or below the 23rd percentile on any approved group standardized test shall be designated as a student with special educational needs (PSEN) or Title I students in the areas of reading and/or math.
1. Regular Classroom with support from pupil services specialist: Students placed in regular classrooms who require minimal support services may receive such services from the pupil services staff normally assigned to the building. The amount of such services will be determined based on individual and group assessments conducted by pupil services staff members.

2. Compensatory/Remedial: Eligible students receive assistance in reading, math and/or writing above and beyond that typically provided by the district to students with special needs in reading, math, and/or writing. Eligibility for inclusion in this program will be determined according to State and Federal guidelines.

3. Language Improvement (K-2): Upon recommendation of the pupil services team and/or the building speech therapist, language services may be provided to eligible children.

4. Special Transportation: In cases where special transportation for students with short-term or long-term disabilities has been requested, the following procedures will be followed.
   a. Requests for transportation will be made to the Office of Pupil Services for authorization.
   b. Specific contracting arrangements and parent notification will be made by the Office of Transportation upon recommendation from the Office of Pupil Services.

5. Home Instruction (Refer to Section 4401 of the Education Law)
   a. Home instruction shall be provided (with parental consent) to students whose physical or emotional condition, as documented by school personnel and/or medical authority, necessitates absence from school for more than ten (10) school days. The North Colonie form “Application for Approval for Special Education Services,” shall be completed for such students. Completion of the form shall be coordinated through the health office, the school psychologist and the student’s counselor. If there is a lack of agreement regarding the need for home instruction, final determination rests with the district’s school physician.
b. At the elementary level, instruction shall be provided by a certified regular or special education teacher, where appropriate, under the Regulations of the Commissioner for a minimum of five (5) hours per week, preferably one (1) hour per day. At the secondary level, instruction shall be provided by a teacher certified in the subject area being taught or, where appropriate, in special education for a minimum of ten (10) hours per week, preferably two (2) hours per day.

c. Those offering home instruction shall maintain such records as are necessary to provide adequate assessment and appraisal of the progress made during the period of home instruction and readiness to return to a classroom program.

III. District Committee on Special Education

In discharging the responsibilities detailed below, the District Committee on Special Education will monitor the activities of each Pupil Services Team at the building level to ensure that all activities related to the identification and programming of disabled students have been appropriately carried out.

A. Responsibilities

1. To meet at least monthly.
2. To review and evaluate at least annually the status of each student within the district who is designated as disabled.
3. To formally review both short and long-term educational plans for each designated student.
4. To develop an annual report on the status of each disabled student.
5. To serve as a point of access for parents, teachers and other concerned individuals.
6. To provide comprehensive placement recommendations on all disabled children and present them through the Office of Pupil Services to the Board of Education for approval.
7. To provide a highly public and accessible forum for the dissemination of information concerning disabled students.
8. To carry out other related duties.

B. Membership

1. The Superintendent or designee will recommend to the Board persons for membership on the District Committee on Special Education.
2. The committee while having no fixed number of members shall include, but is not limited to, representation from the following:

a. Parent or legal guardian of each child with a disability under consideration;
b. At least one (1) regular education teacher of such student if the student is, or may be, participating in the regular education environment. All regular education teachers employed by the district are hereby deemed eligible to serve in this capacity at the discretion of District administrators.
c. At least one (1) special education teacher of the child, or, if appropriate, one (1) special education therapist of the child. All special education teachers and therapists employed by the district are hereby deemed eligible to serve in this capacity at the discretion of district administrators.
d. A representative of the district who (i) is qualified to provide, or administer or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (ii) is knowledgeable about the general curriculum; and (iii) is knowledgeable about the availability of resources of the district. The following positions are hereby deemed eligible to serve in this capacity: Director of Pupil Services and the Assistant Director of Pupil Services.
e. A school psychologist who can interpret the instructional implications of evaluation results (who may also be able to provide one of the other roles listed above). The following positions are hereby deemed eligible to serve in this capacity: All District School Psychologists.
f. A parent of another child with a disability residing in the district who is not under contract with the district.
g. At the discretion of the parent, or the district, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate.
h. The chairpersons, school physician and representative parents of children with disabilities of the district committee shall be appointed by the Board upon the recommendation of the Superintendent.

IV. Pupil Services Team

A. Responsibilities

1. To function as a building level team by gathering pertinent data and making recommendations for program/placement of children classified as disabled. Each building level team will discharge those responsibilities for students whose homes fall within the boundaries of a given district school serving students of a comparable chronological age;
2. To meet bi-weekly,
3. To review the placement and progress of specific children or groups of
   children as requested by individual classroom teacher(s) or members of the
   Pupil Services Team,
4. To provide comprehensive placement recommendations on all disabled
   children and present them to the District Committee on Special Education.

B. Membership

1. parent or legal guardian of the student under consideration
2. classroom teacher
3. reading specialist
4. school psychologist
5. speech therapist
6. special education teacher
7. school nurse-teacher (elementary schools)
8. counselor (secondary schools)
9. Building or Hall Principal
10. Director of Pupil Services (ex officio)
11. Asst. Director of Pupil Services (ex officio)
12. school physician (ex officio)
13. Director of Library-A/V (ex officio)
14. At least one (1) teacher of the student under review. (An effort will be made
   to include suggestions, participation, and information from special area and
   all classroom teachers.)

C. The chairperson of the Pupil Services Team shall be appointed from among those
   persons applying or in response to the posting of the position by the chairperson
   of the District Committee on Special Education in consultation with the Office of
   Pupil Services (See job description for chairperson of Pupil Services Team.)

V. Challenge to Classification of and Programming for a Student with Disabilities or
   Special Education Needs

In challenging a classification and/or program recommendation for a student, the
formal, “Procedural Due Process” as provided for in the regulations of the
Commissioner of Education shall be followed. (See “Procedural Due Process,”
Section 200.5 of Commissioner’s Regulations.) Prior to invoking procedural due
process, parents or staff members will be encouraged to meet with representatives of
building level teams and/or members of the district’s administrative/supervisory staff
to resolve differences regarding proposed recommendations.
VI. Preschool Education for Children with Disabilities

Part 200 of the Commissioner’s Regulations address the provision of educational programs for 3-5 year old children with disabilities.

A Committee on Preschool Special Education (CPSE) means a multi-disciplinary team established in accordance with the provisions of section 4410 of the Education Law. The following comprise the multi-disciplinary team:

1. Parent or legal guardian of each child with a disability.
2. An appropriate professional employed by the district who is qualified to provide, or supervise the provision of, special education, and who shall serve as chairperson of the committee.
3. A parent of a child with a disability who resides in the school district and whose child is enrolled in a preschool or elementary level education program who is not under contract with the district or municipality.
4. For a child with a disability who has been evaluated for the first time, a professional who participated in the evaluation of the child or a professional employed by the district.
5. In any meeting held to review or reevaluate the status of the child, the child’s teacher.
6. For children in transition from programs or services provided by an outside agency, the appropriately licensed or certified professional designated by the agency.
7. An appropriately certified or licensed professional appointed by the County.

This team will meet and determine (a) if a child is disabled, (b) appropriate program or itinerant services and (c) duration and frequency of these services.

Itinerant service means a related service provided in conjunction with and at the location of a program approved by or licensed by an appropriate government agency.

The Board of Education will conduct a census in accordance with Education Law Section 3240, 3241, 3242 to locate and identify all children with disabilities biennially. The register will be maintained annually and names reported to the Committee on Preschool Special Education.

Programs for 3-5 year old disabled pre-schoolers will be provided from the approved State Education Department list and reviewed at least annually.

Programs for children who requires services of state operated schools will be provided as per sections 4406 and 4410 of the Education Law and section 200.7 of the Commissioner’s Regulations.
VII.  Training

The district devotes three (3) full days each year to in-service training. All staff including providers of instruction through Part 200 participate in these workshops.

The Tuesday after Labor Day, Election Day and the last Friday in March are typically devoted to these activities. In addition, each department and building has responsibility for developing an in-service program designed to assist in completing district and building goals during that year. Pupil Services Department Supervisors carefully instruct each new department staff member in practices and procedures of Part 200 of the Regulations.

Staff in-service programs are developed as a result of cooperative planning sessions attended by representatives of the administrative/supervisory staff and the North Colonie Teachers Association Professional Committee. Department and building in-service activities are developed through committees made up of the department supervisor or Building Principal and representative members of the instructional staff. Following each in-service program administrative and staff questionnaires are administered to determine the effectiveness of the program.

VIII.  Independent Education Evaluations

The North Colonie Central School District provides all necessary and relevant psychological evaluations as required to resident students at no charge to parents. The North Colonie Central School District provides interpretations to these evaluations and will provide further study upon request of the Committee on Special Education. However, there may be an occasion where a parent feels that the North Colonie Central School District’s evaluations are not appropriate as indicated in Part 200 of the Commissioner’s Regulations. This policy addresses these instances.

Parents of children with disabilities have the right under Federal and State regulations to obtain an independent evaluation at public expense under certain conditions. Regulatory standards are outlined in New York State Regulations of the Commissioner of Education Part 200.5 (a) (l)(vi). Additionally, the Federal Regulations 34 CFR 300.603 specify requirements for independent evaluations. In addition to A Parent’s Guide to Special Education: Your Child’s Right to an Education in New York State, detail independent evaluation requirements, and are available from the district for parents who desire more information.
1. **DEFINED**

An independent educational evaluation means an evaluation conducted by a qualified examiner(s), as defined in 34CFR 300.12 who is not employed by the school district responsible for the education of the child with a disability or who is thought to have an educational disability.

If the parent disagrees with the evaluation conducted by the school district, the parent has a right to obtain an independent evaluation at public expense. The district will request the parent to specify the areas of disagreement with the district’s evaluation. The school district may initiate an impartial hearing to show that its evaluation is appropriate; and, if the hearing officer determines that the school’s evaluation is appropriate, the parent would not have the right to a publicly funded independent evaluation or the right to reimbursement for an independent educational evaluation they may have already obtained.

2. **TIMELINE**

Upon completion of an evaluation initiated by the Committee on Special Education, a member of the multi-disciplinary team which conducted the evaluation, will provide an opportunity to parent to review the results. The parent will have ninety (90) calendar days from the date of the CSE review of the evaluation as a time limit to request an independent evaluation. Requests received more than ninety (90) calendar days after the CSE review, will not be considered for payment by the school district.

3. **PUBLIC EXPENSE**

Public expense means that the school district either pays for the full cost of the independent evaluation or ensures that the evaluation is otherwise provided at no cost to the parent. The district has established reasonable reimbursement rates for independent evaluators based upon standard and customary charges for such evaluations that do not exceed the costs which the school district would be required to pay to its own employees. The school district will pay accordingly for various psychological and related evaluations up to $1000 if special needs and conditions exist. Reimbursement for the cost of additional, appropriate evaluations outside the psycho-educational evaluation will be negotiated separately and prior to the commencement of that evaluation.
4. RESPONSIBILITIES

When an individual psycho-educational evaluation is requested and approved by the school, and an independent evaluator is selected by the parent, it then becomes the responsibility of that professional to contact the Director of Pupil Services to arrange for payment, dates of classroom visitations, and discussions with school staff.

The district has the (right) to designate a geographic area within which the parents would be limited in their search for an independent evaluator. The North Colonie Central School District will not consider at public expense independent evaluators outside New York State.

5. LISTING OF QUALIFIED PROFESSIONALS

The North Colonie Central School District has established a comprehensive list of qualified professionals in private practice and public agencies to whom parents may go to secure an independent evaluation. The attached list of independent evaluators includes professionals in all areas of a child’s suspected disability.

6. PAYMENT

The North Colonie Central School District, upon receiving a request for reimbursement for an independent educational evaluation, will forward an acknowledgment letter to the parent and/or independent evaluator within ten (10) calendar days. Any further information needed by the school district to reach a decision regarding payment will be requested in the letter.

7. FURTHER INFORMATION

The North Colonie Central School District has developed a policy on independent evaluations in order to avoid any misunderstandings and ensure that the district is following its responsibility to provide independent evaluations at parent request. Parents can obtain further information on independent evaluations by contacting the Chairperson of the Committee on Special Education at the North Colonie Central School District. Parents can also contact the State Education Department for additional information on independent evaluations by calling the Office for Special Education Services at (518) 474-5356.

While additional information may be sought through outside sources, the CSE reserves the right to consider all information obtained on each case and decide on the program and placement. CSE is not bound by the recommendations of outside agencies and practitioners.
Licensed and/or certified professionals are to be used for these independent evaluations.

IX  Accessibility

At the elementary level, the buildings will remain accessible for individuals with physical disabilities. Appropriate entrance ramps, bathroom, and classroom modifications or adult support will be maintained as required.

X.  Procedural Due Process

In the event the parent(s)/guardian(s) disagree with the CSE’s recommendation, the CSE fails to make a recommendation in accordance with the Commissioner’s Regulations or the Board fails to effectuate the recommendation within thirty (30) days of receipt of the recommendation, the parent(s)/guardian(s) may request, in writing, an impartial formal hearing.

Parents or guardians of students 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 or parents or guardians provided for in law, including the right of any parent or guardian to request an impartial hearing subsequent to mediation. Parents or guardians will not be deemed to have failed to have to exhaust administrative remedies by requesting an impartial hearing in the absence of or prior to mediation.

XI.  Impartial Hearing Officer Selection and Compensation

Pursuant to applicable Federal and State law and regulations, the Board of Education of the North Colonie Central School District hereby adopts the following policies and procedures to govern the selection and compensation of Impartial Hearing Officers (IHOs) for special education related impartial hearings requested, pursuant to Education Law § 4404 (1), Part 200 of the Regulations of the Commissioner of Education and/or the Individuals with Disabilities Education ACT (IDEA) (20 U.S.C. Chapter 33):

1. Maintenance of Impartial Hearing Officer List. The Board of Education of the North Colonie Central School District hereby adopts the following list of Impartial Hearing Officers who are certified, pursuant to § 200.1 (s)(2) of the Regulations of the Commissioner of Education, from which the district may select an impartial hearing officer in the event a demand for such a hearing is made. The list will be submitted in June.
The Board hereby directs the Director of Pupil Services to solicit the resumes of each of the foregoing IHOs and to maintain the resumes on file.

2. **Selection of IHO.** The Committee on Special Education Chairperson shall establish and maintain a list of the names and resumes of all impartial hearing officers who are: (i) certified by the Commissioner of Education pursuant to § 200.1(s)(2) of the Regulations of the Commissioner of Education and (ii) are available to serve in the district in hearings conducted pursuant to Education Law § 4404(1) and the IDEA. Appointment of hearing officers shall be made only from such list and in accordance with the rotation selection process prescribed herein. Such names will be listed in alphabetical order. Selection from such list shall be by the Clerk, or if the Clerk is unavailable, by a person designated by the Superintendent, and shall be made on a rotational basis beginning with the first name appearing after the hearing officer who last served or, in the event no hearing officer on the list has served, beginning with the first name appearing on such list. The Clerk shall inform the prospective IHO of district policy on compensation and reimbursement of expenses for hearing-related activities. Should the prospective IHO decline appointment, or if no affirmative commitment to serve is forthcoming after at least two (2) attempts to contact the IHO have been documented within a twenty-four (24) hour period, the Clerk shall proceed through such list, offering appointment to such successive hearing officer whose name next appears on the list until such appointment, pursuant to the terms of the district’s compensation and expense reimbursement policy, is accepted. The appointment of the specific individual who agrees to serve as IHO shall be ratified by the Board of Education, by public resolution, at the next public meeting prior to the date of the hearing. Upon being notified by any newly certified hearing officer of his or her availability to serve in the district, the Clerk shall insert said name into the list in alphabetical order.

3. **Compensation of IHO.** Impartial Hearing Officers (IHOs) shall be paid by the district for services rendered on the following terms: compensation of $40.00 per hour up to a maximum of $300.00 per 7.5 hour day for pre-hearing, hearing and post-hearing activities. In addition, IHOs will be reimbursed for automotive travel expenses at the State rate, maximum of 200 miles round trip per day of hearing, and reasonable meal expenses on the day of the hearing and mailing costs; [optional: no allowance shall be made for overnight lodging]

4. A written or electronic verbatim record of proceedings before the hearing officer shall be maintained and made available to the parties.

5. At all stages of the proceeding, where required, interpreters of the deaf or interpreters fluent in the dominant language of the child’s home shall be provided at district expense.
6. The impartial hearing officer shall preside at the hearing and shall provide all parties an opportunity to present evidence and testimony.

7. The parties to the proceeding may be represented by legal counsel or individuals with special knowledge or training with respect to the problems of students with disabilities, and may be accompanied by other persons of their choice.

8. Unless a surrogate parent shall previously been assigned, the impartial hearing officer shall, prior to the hearing, determine whether the interests of the child would best be protected by assignment of a guardian ad litem.

9. The hearing should be closed to the public unless the parent/guardian requests an open hearing.

10. The parents/guardians, school authorities and their respective counsel or representatives shall have an opportunity to confront and question all witnesses at the hearing. Each party shall have the right to prohibit the introduction of any evidence the substance of which has not been disclosed to such party at least five (5) days before the hearing.

11. The parents/guardians shall have the right to determine whether the child shall attend the hearing.

12. The impartial hearing officer shall render a decision and mail a copy of the decision to the parents and to the Board of Education, not later than forty-five (45) calendar days after the receipt by the Board of a request for a hearing or after the initiation of such a hearing by the Board. The decision of the impartial hearing officer shall be based solely upon the record of the proceeding before the impartial hearing officer and shall set forth the reasons and the factual basis for the determination. The decision shall also include a statement advising the parents and the Board of Education of the right to obtain a review of such decision by the State review officer in accordance with Section 200.5(d).

13. Within five (5) days from the receipt of a copy of the decision of the hearing officer, the board shall mail a copy of such decision, after deleting any personally identifiable information, to the Office for Special Education Services, State Education Department.

When the Board is notified in writing by a child’s parent or guardian, by a professional staff member of the district, or by a licensed physician that there is a reason to believe that such child may possess a disability which would require the provision of special educational services, the Board shall provide for a determination of eligibility and classification for the student’s placement in an
appropriate special educational service or program in either a public or private facility within thirty (30) days of such notification. If such child is found eligible for special educational placement, the Board shall arrange for such placement within a further period of no longer than thirty (30) days.

During the period of time that any legal proceedings are taking place, unless the Commissioner or Board of Education and the parents or legal guardian agree, the student shall not be evaluated and shall remain in their current educational placement.

Note: Prior regulations, 6152(a)-(i) and Procedural Due Process, Child’s Right to an Education.

Authority:
Education Law §§ 2207, 4404
8 NYCRR 200.2 (1)(c)

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