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To: Superintendents of Public Schools
Superintendents of Special Act School Districts
Chairpersons, Committees on Special Education
Approved Private Schools for Students with Disabilities
Approved Out-of-State Schools for Students with Disabilities

From: James P. DeLorenzo 

Re: Important Information Concerning Placements of Students with Disabilities in Approved Out-of-State Residential Schools and Emergency Interim Placements for the 2011-12 School Year

The purpose of this memorandum is to remind school districts of their responsibilities to submit timely and appropriate documentation for approval of State reimbursement for placements of students with disabilities in out-of-State residential programs in accordance with State regulations and the procedures of the Commissioner. I remind schools that the approval of the System to Track and Account for Children (STAC) form is necessary to ensure timely reimbursement not only to the public school, but also to ensure timely notification to municipalities for their portion of maintenance costs to be paid to the approved private residential school.

Important policy and procedural information on the following topics is included in this memorandum:

- I. Initial Applications for Private School Placements
- II. Reapplication Process
 - Out-of-State Residential Placements
 - Emergency Interim Placement
 - Application Submission Information
- III. Notification of Approval of State Reimbursement
- IV. Referral and Placement Process
- V. Sharing of Student Records
- VI. Children's Residential Project (CRP) Programs
- VII. Emergency Interim Placements
- VIII. Technical Assistance

I encourage you to share this memorandum with your staff involved in the residential placement process, as well as with other district personnel responsible for preparing application materials for State reimbursement. For districts with students placed in emergency interim placements, I particularly draw your attention to new policy directives on pages 5 and 6.

I. Initial Applications for Approved Private School Placements

In order to obtain a timely determination of approval for State reimbursement of an approved private school placement, an application for State reimbursement must be received by the New York State Education Department (NYSED) within six business days of the recommendation of the Committee on Special Education (CSE) that the student will be placed in a particular approved private school. State regulations require NYSED to conduct a review of the student's application to ensure that it meets criteria for approval of State reimbursement, including documentation that the proposed placement offers the instruction and services recommended in the student's individualized education program (IEP) and that such placement is in the least restrictive environment (LRE).

Regardless of the State's determination regarding approval of State reimbursement, the district is responsible to implement the CSE recommendation for timely placement in an approved private school.

For the initial placement of students with disabilities in out-of-State residential schools, a school district must submit an *Interstate Compact on the Placement of Children (ICPC) Referral Packet* to the New York State (NYS) Office of Children and Family Services (OCFS). Information on the Interstate Compact is attached.

II. Reapplication Process for Placement of Students in Out-of-State Residential Schools

Because NYSED is required to approve State assistance for instruction of public school students with disabilities placed in approved private schools on a year-by-year basis, an annual reapplication for State reimbursement of a student in a private school must be submitted. **The due date for submitting reapplications is June 1** (i.e., prior to June 1st preceding the school year for which funding is sought). Initial approval of State reimbursement of a private school placement does not automatically mean that the application will be approved for subsequent years.

Reapplications to NYSED for students, who are currently placed in out-of-State approved private residential schools, including schools approved on a child-specific basis for emergency interim placements, must include annual documentation that there are no appropriate public or approved private facilities for instruction available within this State. Pursuant to section 200.7(c)(1) of the Regulations of the Commissioner of Education, failure to follow the procedures outlined in this memo will result in denial of State reimbursement.

The CSE must adhere to all reapplication requirements as follows:

1. Prior to, or as part of, the student's annual review, discuss with the student's parent(s)/guardian(s) NYSED's requirement that districts must first refer students to appropriate in-State programs, even if the student is already placed in an out-of-State approved private school or emergency interim placement. Section 200.6(i) requires that the district document that there are no appropriate public or approved private facilities for instruction available within NYS with each application.
2. In those cases where the CSE rejects a proposed placement for the student in a particular school that has accepted the student because the in-State school is unable to meet the student's IEP needs, the district must provide NYSED with information and

documentation which support the CSE's actions based on sound educational reasons linked to the student's IEP. A parent's disagreement with a placement or preference for another school is not, in and of itself, justification for the CSE not recommending an approved in-State program that has accepted the student based on its approval status and its determination that it is able to implement a student's IEP.

3. If no appropriate in-State program accepts the student, submit a Statement of Assurance for Out-of-State Residential or Emergency Interim Placement to NYSED documenting that no appropriate public or approved private facilities are available within NYS (section 200.6(j)(1)(iii)(e)).
4. All applications for approval of State reimbursement must be accompanied by documentation of efforts to obtain placement for the student in approved in-State schools that are likely able to serve the student based on such factors as age and disability category. In addition, applications for continuing emergency interim placements in residential programs must also include documentation of efforts to place that student in an approved out-of-State residential school.
5. If the student is to be placed in-State for the following school year, notify the Nondistrict Unit in writing by June 1 of the change in placement.
6. The following documentation must accompany the district's application for State reimbursement, due prior to June 1 of the year preceding the year for which funding is sought. Forms necessary to provide this documentation are available on the Special Education website at: www.p12.nysed.gov/specialed/applications. These are also the same documents required for initial applications. For students turning 21 during July or August 2011, the only required documentation is a cover letter, application checklist and summer STAC-1.

Out-of-State Residential Placements

1. CSE cover letter
2. Application checklist
3. Statement of Assurance for Out-of-State Residential or Emergency Interim Placement including the listing of the in-State schools that are unable to meet the student's educational needs (copies of the rejection letters from the in-State private schools must be submitted; letters within six months are acceptable)
4. Student Profile
5. Hard copy of the Office of Special Education Pre-approval Data form (known as OSES/DOSES) available at: <http://www.oms.nysed.gov/stac>
6. Signed STAC-1 (summer, if applicable, and school year)

Emergency Interim Placements

Documentation required for out-of-State residential emergency interim placements must also include copies of rejection letters from out-of-State approved private schools and a plan that describes efforts the district will employ to return the student from the placement to a NYS-approved private school.

Application Submission Information

The required documentation must be submitted as a **complete** reapplication and can be submitted anytime following an annual review, but must be received by the Nondistrict Unit no later than June 1. Partial reapplications will not be considered. Mail, fax or e-mail complete reapplications to:

**New York State Education Department
Office of Special Education
Nondistrict Unit
Room 1619, One Commerce Plaza
Albany, NY 12234
Attn: 2011-12 Residential Reapplication**

Fax completed applications to the Nondistrict Unit at 518-473-5769. E-mail completed applications to sstyno@mail.nysed.gov.

III. Notification of Approval of State Reimbursement

Upon receipt of the required documentation for reapplications by June 1, NYSED will notify the CSE of its determination within 15 business days. If State reimbursement for the placement is approved, the district will receive a copy of the approved STAC-1 from NYSED. It is the district's responsibility to forward a copy of the signed STAC-1 to the approved private school confirming funding approval for the 2011-12 school year.

Regardless of the State's determination regarding approval of State reimbursement, the district is responsible to implement the CSE recommendation for placement in an approved private school. Therefore, the district cannot represent the State's disapproval of State reimbursement as a reason not to secure a timely placement for the student.

School districts that recommend that a student continue in an out-of-State approved private school or an out-of-State residential emergency interim placement without completing those procedures by **June 1, 2011** are at risk of receiving either partial State reimbursement based on the date of receipt of a complete application or no State reimbursement for the placement of that student for the 2011-12 school year. This would result in the Board of Education of the sending school district accepting full responsibility for the education and maintenance costs for the student's placement.

IV. Referral and Placement Process

While it is the sole responsibility of school districts to take the actions necessary to ensure the completion of placement activities, approved out-of-State schools serving students from NYS must cooperate fully with the efforts of school districts seeking to place students in approved private schools within NYS. This includes the out-of-State schools making students available for screening and intake procedures, providing access to educational records and facilitating observation of the student in his/her current educational setting. Parents are integral partners in the referral process and are expected to cooperate fully in the intake process. The CSE should emphasize to the parents the importance of the intake interview for the residential school to obtain needed comprehensive information about the student and his/her needs and for the parents to learn about the school.

In the event a prospective school conducting the intake process does not have all student records from the student's current school of attendance, the prospective school must make its decision regarding acceptance based on the information available as submitted by the public school district.

V. Sharing of Student Records

Pursuant to section 99.34 of the Family Educational Rights and Privacy Act (FERPA), an agency or institution subject to these requirements, such as a local educational agency (LEA), may disclose educational records of a student receiving services under Part B of the Individuals with Disabilities Education Act to a school in which the student seeks or intends to enroll, provided that (1) the agency makes a reasonable attempt to notify the parent (unless the disclosure is initiated by the parent) or (2) it is the policy of the agency or institution to forward education records to other agencies or institutions that have requested records and in which the student seeks or intends to enroll. Under these circumstances, prior consent of the parent is not required for the sharing of student education records pursuant to section 99.31 of FERPA.

VI. Placement of Students with Disabilities in Children's Residential Project (CRP) Programs

Placement of students in CRP programs requires special procedures. CRP programs are the result of a joint endeavor between NYSED and the Office for People With Developmental Disabilities (OPWDD) to provide in-State educational and residential programs for severely developmentally disabled children currently in out-of-State schools or at risk of placement in out-of-State schools. The CRP is a voluntary program, and parents must agree to participate before a district can pursue placement.

CRP programs consist of an NYSED-approved private school and an OPWDD-certified residential facility, known as an Intermediate Care Facility for the Developmentally Disabled (ICFDD). As a result of this joint State agency involvement, admission to CRP programs is limited to those children identified through the education system as needing educational/residential services who also meet the residential eligibility criteria for the ICFDD established by OPWDD.

If a CSE is considering a residential placement for a student in a CRP program, the district must discuss this option with the parent and obtain parental consent to participate in the CRP. The district then contacts the OPWDD district office (referred to as the DDSO) concerning the referral to the CRP program and assists the parent in the application process for the child's admission to the ICFDD.

VII. Emergency Interim Placements

Out-of-State Residential Emergency Interim Placements

NYS law authorizes school districts to place students in day or residential private schools only when such schools have been approved by the Commissioner of Education. Over recent years, NYSED has expanded the number and capacity of approved in-State schools to more adequately meet the needs of NYS students needing this level of education. It is essential that

NYSED focus its oversight and monitoring activities on these approved schools to ensure the health and safety of NYS students placed in these settings.

Therefore, beginning with the 2013-14 school year, NYSED will cease its practice of approving out-of-State residential schools to serve individual students on an emergency interim basis. School districts with students currently in residential emergency interim placements will have not more than two years to secure alternative placements for these students in public or approved private schools in the least restrictive environment for such students. Please refer to NYSED's web-site for approved in-State and out-of-State residential schools. Information on these schools is available at: <http://www.p12.nysed.gov/specialed/privateschools/home.html>.

Emergency Interim Placement – Day Basis

Consistent with NYSED policy, emergency interim placements are reserved for students who require a residential school and for whom there are no public or NYS-approved day or residential private school programs available. Earlier this year, school districts were informed that NYSED will not be approving out-of-State schools on a student-specific basis for purposes of emergency interim day placements beginning July 1, 2011 and thereafter. CSEs were instructed to take immediate steps to begin the process of finding alternative placements in public or NYSED-approved private schools for these students for the 2011-12 school year. Districts were further requested to contact students' parents immediately and work to determine appropriate alternative placements in the least restrictive environment for these students.

VIII. Technical Assistance

NYSED does not provide a student-to-approved private school program "matching service" for a district. It is the district's responsibility to access the list of in-State and out-of-State approved private schools through our website at: <http://www.p12.nysed.gov/specialed/privateschools/home.html>. The Nondistrict Unit of the Office of Special Education is available to provide technical assistance to school districts regarding the residential placement process and can assist school districts to identify potential residential programs for students who are "difficult to place."

Questions concerning these procedures should be directed to the Nondistrict Unit at (518) 486-6260. Thank you for your cooperation and attention to this matter.

Attachment

Interstate Compact on the Placement of Children

For any initial or change of placement of students with disabilities under the age of 18 in out-of-State residential schools, a school district must submit an *Interstate Compact on the Placement of Children (ICPC) Referral Packet* to the New York State (NYS) Office of Children and Family Services (OCFS). The referral packet must include:

- Cover Letter (3 copies) explaining the reasons for the request;
- Completed ICPC-100A (5 copies) with signatures from an authorized school official AND one of the custodial parents (Section III);
- Social Summary (3 copies) – may be one or more of the following that describes the student's current functioning and need for residential placement: Individualized Education Program, Psychological Evaluation or Psychiatric Report; and
- Birth Certificate and Facility Acceptance Letter (3 copies) (for referrals to Connecticut and Massachusetts only)

Submit the ICPC Referral Packet to:

Interstate Compact on the Placement of Children
NYS Office of Children and Family Services – Adoption Services
52 Washington Street
Room 323 North Building
Rensselaer, NY 12144

If you have questions or need a copy of the ICPC Referral Packet, contact Michael O'Connor at OCFS at Michael.O'Connor@ocfs.state.ny.us or (518) 402-3882.