



# KNOW YOUR RIGHTS: Navigating Special Education In New York

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TRACEY DISCEPOLO, STAFF ATTORNEY  
NASSAU SUFFOLK LAW SERVICES  
COMMITTEE, INC.

## About Nassau Suffolk Law Services



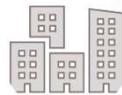
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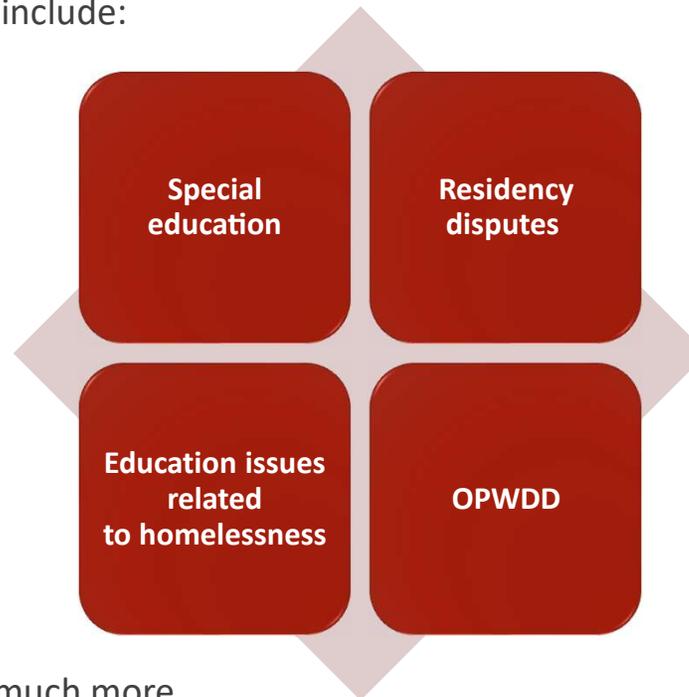
Partnerships with Community Agencies

# Education Disability Rights Project (EDRP)

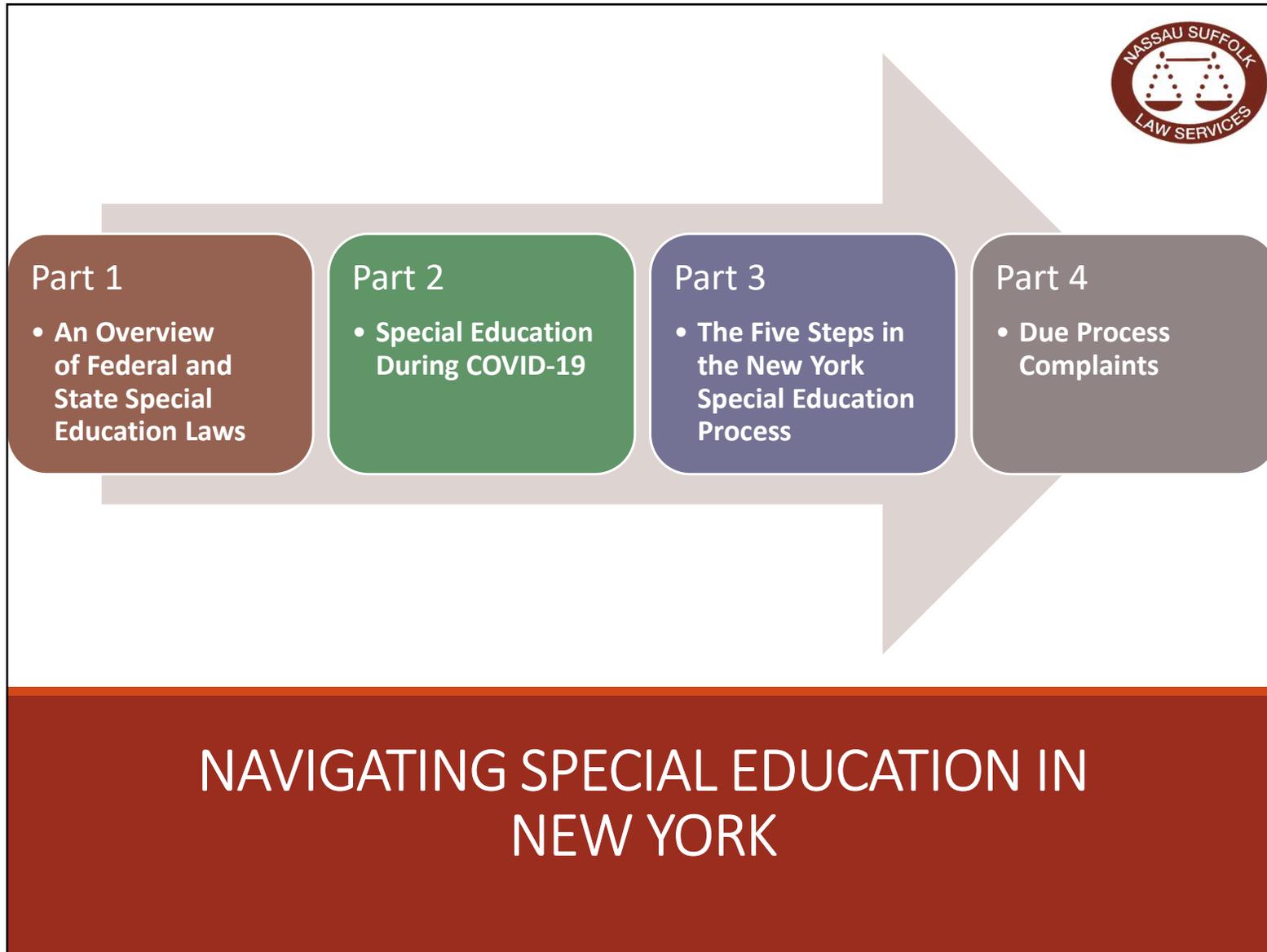


The EDRP represents students with disabilities between ages of 5-21 and adults with developmental disabilities.

Issues include:



...and much more.





**Federal and New York State laws protect the rights of students with disabilities and their parents:**

- Individuals with Disabilities Education Improvement Act (“**IDEA**” or “**IDEIA**”)
- Section 504 of the Rehabilitation Act of 1983 (“**Section 504**”)
- Americans with Disabilities Act (“**ADA**”)
- New York State Education Law
- New York State Commissioner of Education Regulations

## OVERVIEW OF FEDERAL AND STATE SPECIAL EDUCATION LAWS



Under these laws, Districts are required to:

1. Provide students with disabilities a **free appropriate public education** (“FAPE”) 20 U.S.C. §1412(a)(1)(A); and
2. Educate all students with disabilities in the **least restrictive environment** (“LRE”).
3. A **FAPE** is delivered through an Individualized Education Program (“IEP”) to meet each student's unique needs. 20 U.S.C. §1412(a)(4).



## OVERVIEW OF FEDERAL AND STATE SPECIAL EDUCATION LAWS



### What is Special Education?

- **Special Education** is “specially designed individualized or group instruction or special services or programs, and special transportation, provided at **no cost** to the parent, to meet the unique needs of students with disabilities”. 8 NYCRR §200.1(w).

### What is a 504 Plan?

- **Section 504** Plans ensure that children with disabilities receive accommodations to ensure access to the learning environment. See U.S. Rehabilitation Act of 1973.



# OVERVIEW OF FEDERAL AND STATE SPECIAL EDUCATION LAWS



### How long is a student with a disability eligible for a FAPE in NY?

- Whichever comes first:
  - The end of the school year in which the student turns 21, or
  - Receipt of a Regents or Local diploma. *8 NYCRR §200.5(a)(5)(iii).*



### Identifying students who need extra help (Child Find)

- All children living in New York who need Special Education and related services must be identified and evaluated, regardless of the severity of their disabilities.
- Children with disabilities must be located even if they are homeless or attend private school. *20 U.S.C. §1412(a)(3)(A).*



## OVERVIEW OF FEDERAL AND STATE SPECIAL EDUCATION LAWS



### What is an IEP?

- An IEP is a written plan to meet the unique education needs of a student with a disability. *8 NYCRR §200.1(y)*.
- The District's **Committee on Special Education (“CSE”)** develops the IEP. *8 NYCRR §200.1(y)*



### What is the least restrictive environment (“LRE”)?

- Children with disabilities must be educated with students who are not disabled to the maximum extent appropriate.
- **LRE** applies in public or private institutions or other care facilities.
- Children with disabilities should only be removed from the regular school environment if aids and services are not sufficient to allow the child be to educated in a regular class. *20 U.S.C. § 1412(a)(5)(A)*.

## OVERVIEW OF FEDERAL AND STATE SPECIAL EDUCATION LAWS



### What kind of program should an IEP provide?

- The U.S. Supreme Court said that an “appropriate” IEP must be “reasonably calculated to enable the child to receive educational benefits”.\*
- An IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances”.

*\*\*Board of Education v. Rowley, 458 U.S., 176 (1982)*

*\*\* Endrew F. v. Douglas County School District, 137 S. Ct. 988 (2017)*

## OVERVIEW OF FEDERAL AND STATE SPECIAL EDUCATION LAWS

## SPECIAL EDUCATION DURING COVID-19



### FAPE is Still Required During COVID-19

- “To the greatest extent possible” Districts must provide students “with the special education and related services identified in that student’s IEP”.

*DOE March 12, 2020 Guidance.*

- Students with a **504 Plan** must also be provided with a **FAPE** through services set forth in the 504 Plan.
- Districts have “flexibility” in providing **IEP** education and services through teletherapy and tele-interventions.

### NYS Education Department Reopening Plan

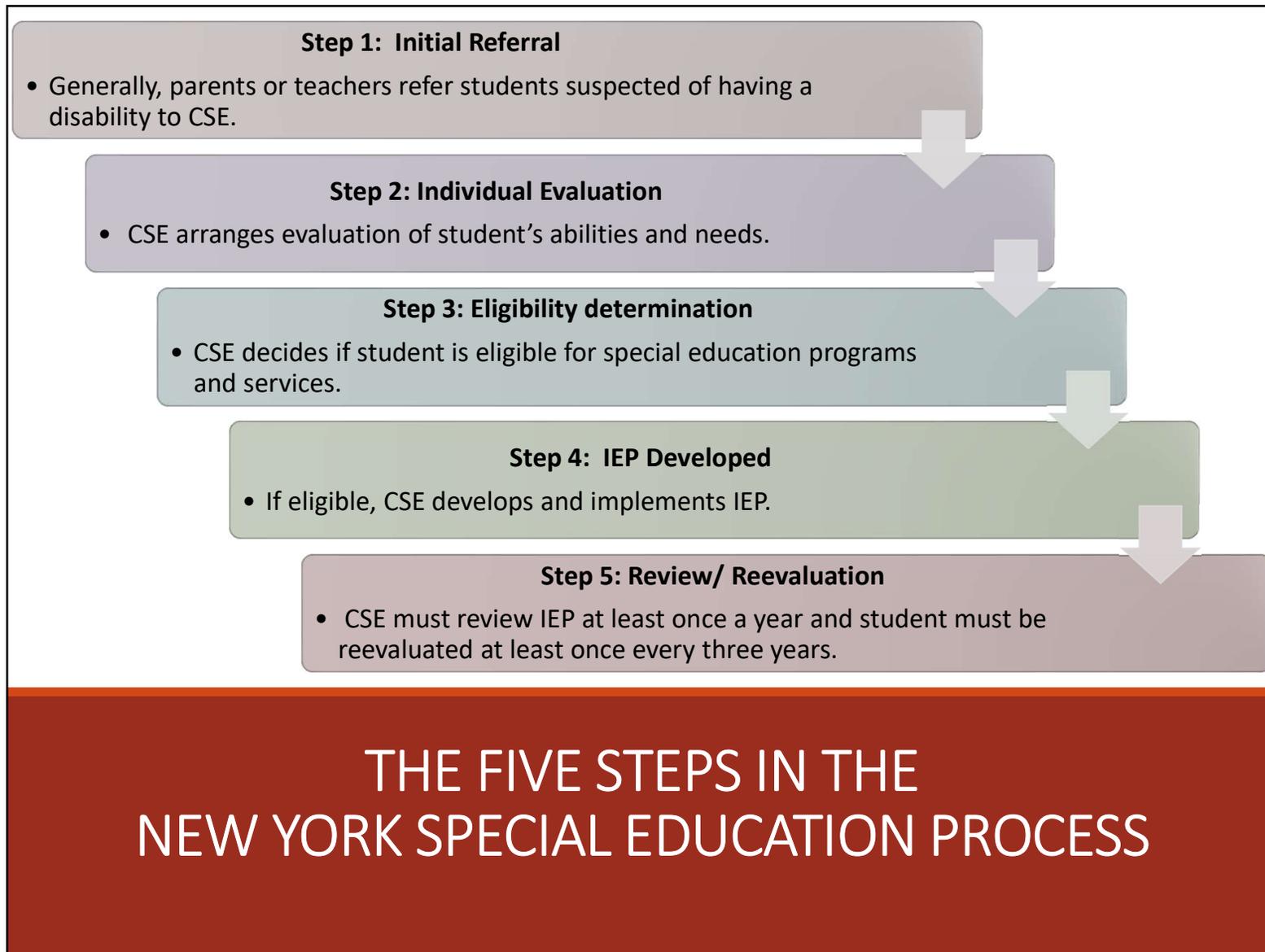
- Districts must ensure access to accommodations, modifications, supplementary aids and services and technology;
- Districts must prioritize in-person services for high needs students with disabilities.

**What is  
Compensatory  
Education?**

## SPECIAL EDUCATION DURING COVID-19



- a. **CSE** must make individual determinations about compensatory services
  - Remedy to make up for the loss of a **FAPE**.
  - If performance lower than when schools closed or achievement gap larger, **CSE** must provide more intensive services.
  
- b. To demonstrate need document:
  - Services child was receiving prior to the closure.
  - Services offered during the District's closure.
  - Access to materials and education.
  - Regression or loss of skill.





### What should the initial referral include?

- Student's **name** and **date of birth**;
- Your **address** and **telephone number**;
- A request that the District **evaluate** the student for Special Education services;
- Your **reasons** or **concerns** for requesting evaluation.
  - List **all** your concerns: academic, behavioral, physical and social problems or delays that the student is experiencing. *8 NYCRR §200.4(a)(2)(iii)(a)*.
- Request must be in writing.



## Step 1: Initial Referral for Special Education Services



### How long does a District have to complete initial evaluation?

- If the student is being evaluated for the first time, the District must complete the initial evaluation within **60 calendar days** of receiving parent's written consent for evaluation. *8 NYCRR §200.4(b)(7)*.



### Assessments must be appropriate

- Assessments and materials used to assess a student must be:
  - In student's native language or other mode of communication;
  - Valid and reliable;
  - Administered by trained and knowledgeable personnel following developers' instructions;
  - Not discriminatory on a racial or cultural basis. *8 NYCRR §200.4(b)(6)(i)(a-d)*.



## Step 2: Individual Evaluation Process



### What should an initial evaluation include?

- District must evaluate in **all areas of suspected disability**, at **no cost** to parent.  
*8 NYCRR §200.4(b)(6)(vii).*

### What are some evaluations District will conduct?

- The individual evaluation must be at no cost to the parent and must include:
  - Physical examination;
  - Psychological evaluation (unless a school psychologist determines evaluation not needed);
  - Social history;
  - Observation in student's learning environment;
  - Functional behavior assessment (if behavior impedes learning);
  - Other evaluations needed to determine the factors that contribute to suspected disabilities. *8 NYCRR §200.4(b)(1)(i-v).*

## Step 2: Individual Evaluation Process



### What if parent disagrees with evaluation?



- Parent has right to one independent educational evaluation (“IEE”) at public expense each time the District conducts an evaluation that the parent disagrees with. 8 NYCRR §200.5(g)(1).
- District may ask why parent objects to public evaluation but may not require explanation.
- If parent requests IEE, District must, without unnecessary delay, either:
  - Ensure IEE is provided at public expense, or
  - File due process complaint (“DPC”) notice to request hearing to show its evaluation is appropriate or that parent's evaluation does not meet District criteria. 8 NYCRR §200.5(g)(iv).

## Step 2: Individual Evaluation Process



### What happens after evaluation completed?

- CSE meets to review evaluation results to determine:
  - If student has a disability;
  - Student's educational needs.

### How is CSE meeting scheduled?

- The District sends parent a written notice at least 5 days before CSE meeting. 8 NYCRR §200.5(c)(1).
- Notice must include date, time, location and participants.
- Notice must say that parent has right to participate and invite those with knowledge or special expertise about student. 8 NYCRR §200.5(c)(2)(i-iii).
- Meeting should be scheduled for mutually agreed upon time and place and be physically accessible to parent. 8 NYCRR §200.5(d)(1)(ii).
- CSE and parent may agree to conduct meeting by phone. 8 NYCRR §200.5(d)(1)(iii).
- Parents have the right to attend and should attend CSE meeting.



## Step 3: Determining Eligibility for Special Education Services



### Who is on CSE team?

- Parent or guardian;
- Regular education teacher (if the student is or may participate in regular education);
- Special Education teacher or provider;
- School psychologist;
- Representative of the District to serve as Chairperson;
- Person to interpret the evaluation results (usually school psychologist);
- If requested in advance:
  - School physician;
  - Parent of another student with a disability;
- People with knowledge or special expertise regarding the student invited by the parent or District;
- Student, at the parent's discretion, unless the student is over 18 years old.

*8 NYCRR §200.3(a)(1)(i-x).*

## Step 3: Determining Eligibility for Special Education Services



## What does the CSE do when it meets?

- The **CSE** reviews the evaluation results and information from parent. *8 NYCRR §200.4(c)*.
- **CSE** decides whether to “identify” student as a student with disability. *8 NYCRR §200.4(c)*.
- To be eligible for Special Education, student must have disability that, for mental, physical, or emotional reasons, affects ability to learn and requires special services and programs. *8 NYCRR §200.1(zz)*.



## Step 3: Determining Eligibility for Special Education Services

**What happens if the student is identified as a student with a disability?**

CSE determines which of 13 classifications most accurately describes disability that most directly interferes with student's learning.

8 NYCRR §200.4(d)(2)(ii).



- Autism
- Deafness
- Deaf-blindness
- Emotional disturbance
- Hearing impairment
- Learning disability
- Intellectual disability
- Multiple disabilities
- Orthopedic impairment
- Other health-impairment
- Speech or language impairment
- Traumatic brain injury
- Visual impairment including blindness



8 NYCRR §200.1(zz)(1-13).

# Step 3: Determining Eligibility for Special Education Services

**CSE discusses student's Present Levels of Performance ("PLEPS") and expected learning outcomes in four categories.** 8 NYCRR §200.4(d)(2)(i)



1. Academic achievement, functional performance, and learning characteristics:

- Knowledge in subject and skill areas including activities of daily living, intellectual functioning, adaptive behavior, expected rate of progress;

2. Social development:

- Student's relationship with peers and adults, social adjustment in school and community;

3. Physical development:

- The quality of the student's motor and sensory development, health, vitality and physical skills or limitations; and

4. Management needs:

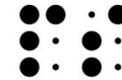
- Environmental modifications and resources needed for student to benefit from instruction.

## Step 4: Developing the Individualized Education Program (IEP)



Among other factors, **CSE** must consider:

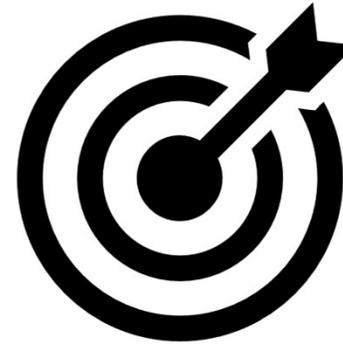
- Positive behavior interventions and strategies to address any disruptive behavior;
- Language needs of a student with limited English proficiency *NYCRR §200.4(d)(3)(ii)*;
- Braille for a visually impaired student *NYCRR §200.4(d)(3)(iii)*;
- Students' communication needs *NYCRR §200.4(d)(3)(iv)*;
- Assistive Technology (e.g., pencil grip, Braille reader, IPAD, or software) and whether it is needed at home and other places. *NYCRR §200.4(d)(3)(v)*.



## Step 4: Developing the Individualized Education Program (IEP)



- The **CSE** develops measurable annual goals.
  - Goals must include academic and functional goals.
  - Goals must be specific and measurable so that progress can be easily quantified. 8 NYCRR §200.4(d)(2)(iii).
- The **CSE** identifies special education programs and services that must be provided in the **LRE (least restrictive environment)**. 8 NYCRR §200.4(d)(4)(ii).



## Step 4: Developing the Individualized Education Program (IEP)



CSE considers "Continuum of Services" to meet student's needs. 8 NYCRR §200.6.

In increasing order of restrictiveness, this continuum includes:

1. **Consultant Teacher Services** - Direct or indirect services to student in regular education classes.
  - Students receiving Consultant Teacher Services must receive at least 2 hours per week of these services. 8 NYCRR §200.6 (d).
2. **Related Services** – (e.g., Speech/Language Therapy, Occupational Therapy, Physical Therapy, Parent Counseling and Training and Rehabilitation Counseling Services);
  - Related services may be individual or in a group;
  - Groups may not exceed 5 students. 8 NYCRR §200.6 (e).

## Step 4: Developing the Individualized Education Program (IEP)



### Continuum of Services (continued)

3. **Resource Room Program** – For student who needs specialized supplementary instruction at most half of school day.
  - Students who need a Resource Room program must receive at least 3 hours of instruction per week.
  - Max 5 students in a Resource Room group. 8 NYCRR §200.6(f).
  
4. **Integrated Co-Teaching (“ICT”) Services** – Special education and general education teacher teach students with disabilities and non-disabled students together.
  - Maximum number of students with a disability in an **ICT** is 12. 8 NYCRR §200.6(g).

## Step 4: Developing the Individualized Education Program (IEP)



### Continuum of Services (continued)

5. **Special Classes** – Special Education teachers and supplementary personnel
- Class must be composed based on similar needs and strengths, achievement, learning characteristics, social and physical development, and management needs.
  - Max class size ranges from 6-15 students depending on intensity of needs.
  - Student age range is 36 months. But no age range if 16 and older. 8 NYCRR §200.6(h).

## Step 4: Developing the Individualized Education Program (IEP)



## Continuum of placement options

### Home and hospital instruction

- Elementary students receiving home or hospital instruction shall receive at least 5 hours per week (preferably 1 hour daily);
- Secondary students receiving home or hospital instruction shall receive at least 10 hours per week (preferably 2 hours daily). *8 NYCRR §200.6(i).*

### Approved private schools

To place a student at a state approved private school, the District must document efforts to place student in public school and demonstrate that available public options are not suitable. *8 NYCRR §200.6(j).*

## Step 4: Developing the Individualized Education Program (IEP)



**The CSE must also consider:**

1. Need for supplementary aids and services (for example, study guide, Behavior Intervention Plan (“**BIP**”), note taker, 1-1 aide, behavioral consultation);
2. Program modifications: change in curriculum or measurement of learning;
3. Program accommodations: adjustments to environment, instruction or materials (for example, Braille, fewer items on a page, extra time to complete assignments, preferential seating);
4. Parent Counseling and Training: required for students with Autism;
5. Projected date to start Special Education program and services;
6. Date of initiation, frequency and duration of services. *8 NYCRR §200.4(d)(2)(v)(b).*

## Step 4: Developing the Individualized Education Program (IEP)



### Assessments and Alternate Assessments

- CSE determines whether student needs testing accommodations e.g.:
  - Extended time
  - Directions read
  - Tests taken in separate location. 8 NYCRR §200.4(d)(2)(vi).
- Only “severely disabled” students are eligible to take “alternate assessments”, rather than Districtwide or Statewide regular assessments, such as Regents. 8 NYCRR §100.1(t)(2)(iv).
- If student is assessed alternatively, **IEP** must explain why regular assessments are not appropriate. 8 NYCRR §200.4(d)(2)(vii).

## Step 4: Developing the Individualized Education Program (IEP)



### Summer school

- A student is eligible for **Extended School Year (“ESY”)** (12- month service/program) if needed to prevent substantial regression over the summer months. 8 NYCRR §200.4(d)(2)(x).

### Special transportation needs

- **CSE** should document special transportation needs in student’s **IEP**. 34 C.F.R. §300.34(c)(16), 8 NYCRR §200.4(d)(2)(v).
- No maximum school bus ride, but travel time must be reasonable. Many Districts consider this to be one hour per trip.



## Step 4: Developing the Individualized Education Program (IEP)



### Physical education for students with physical limitations

- Adapted physical education (APE) may be required in an **IEP**.

*8 NYCRR §200.1(ww)(2), 8 NYCRR §200.4(d)(viii)(d).*

- Adapted physical education includes development activities, games, sports and rhythms, suited to the interests, capacities and limitations of students with disabilities.

*8 NYCRR §200.1(b).*



## Step 4: Developing the Individualized Education Program (IEP)



### How long does a District have to provide Special Education programs and services specified in the student's IEP?

- If the CSE decides a student has a disability, the District must provide the special education services and programs in the student's IEP within 60 school days of receipt of the parent's consent to evaluate the student.

*8 NYCRR §200.4(e)(1), §200.6(k).*

### Who gets a copy of the IEP?

- Parent
- Each regular education teacher, Special Education teacher and service provider responsible for implementing the IEP.

*8 NYCRR §200.4(e)(3)(i), (iii), (iv).*



## Step 4: Developing the Individualized Education Program (IEP)



### What is an annual review?

- Each student's **IEP** must be reviewed at least once a year to determine if student achieved annual goals.

8 NYCRR §200.4(f).

### What is a triennial review?

- The student must be reevaluated at least once every **three years** unless District and parent agree in writing that it is not needed.

8 NYCRR §200.4(b)(4).

### What is declassification?

- District must evaluate a student and provide the evaluation report to parents before determining that the student no longer needs special education services.

8 NYCRR §200.4(c)(3).

## Step 5: Annual Review/Reevaluation

## DUE PROCESS COMPLAINTS



### What can a parent do if he/she disagrees with the determination of the CSE?

- Due Process Complaint (“**DPC**”) challenges the identification, evaluation or placement of a student with a disability, or the provision of **FAPE** for the student. *8 NYCRR §200.5(i).*
- No money damages, but parent may be reimbursed for education services paid out-of-pocket.
- Mail **DPC** Notice and **DPC** to the District's Board of Education, with a copy to NY State Education Department.
- **DPC** Notice requests an “Impartial Hearing”:  
administrative proceeding before an **Impartial Hearing Officer (“IHO”)**. *New York Education Law Article 89 §4404(1).*
- **DPC** must be submitted within 2 years of the action or within 2 years of when parent discovered the action. *New York Education Law Article 89 §4404(1), 8 NYCRR §200.5(j)(1)(i).*

# DUE PROCESS COMPLAINTS



## Student, Parent and School Information

### Subject of the complaint:

\*Describe **problem** including all **specific facts** relating to problem. Attach additional pages or documents if needed.

### Proposed solution:

\*Explain how you want the problem solved. Attach additional pages or documents if needed.



Thank you for your attention.



If you have any questions,  
please email me at  
[tdiscepolo@nsls.legal](mailto:tdiscepolo@nsls.legal) or call at  
516 292-8100 .

Thank you  
for  
attending!