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To: District Superintendents
Superintendents of Public Schools
Public School Administrators
Executive Directors of Approved Private Schools
Directors of Special Education
Chairpersons of Committees on Special Education
Organizations, Parents and Individuals Concerned with Special Education

From: Christopher Suriano

Subject: Placements of Students with Disabilities in Approved Out-of-State Residential Schools

The purpose of this memorandum is to provide updated policy, procedures, and forms relating to a public school district's responsibility to submit timely and complete applications, as prescribed in section 200.6(j) of the Regulations of the Commissioner of Education (8 NYCRR¹), for approval of New York State reimbursement of tuition costs for placements of students with disabilities in out-of-State approved residential programs. **This memorandum supersedes the March 2021 guidance issued on this topic.**

In accordance with these procedures, the Commissioner or a designee must make a determination of approval of State assistance for instruction of all public school students placed in approved private schools, including out-of-State programs. Approval of the System to Track and Account for Children (STAC) form is necessary to ensure timely State reimbursement of tuition costs to the public school and to provide the necessary authorization to municipalities to pay their portion of maintenance costs for a student's placement in a residential school. Failure to follow the procedures outlined in this memo may result in denial of all or a portion of State reimbursement of tuition costs.

Important policy and procedural information on the following topics is

- Students at Risk of Residential Placement
- Transition Services and Adult Service Planning
- II. Initial Applications for Private School Residential Placements
- III. Reapplication Process for Placement of Students in Out-of-State Residential Schools
 - Out-of-State Residential Placement Reapplication Requirements
 - Application Submission Information
- IV. Notification of Approval or Denial of State Reimbursement of Tuition Costs
- V. Referral and Placement Processes
- VI. Sharing of Student Records
- VII. Placement of Students with Disabilities in Children's Residential Project (CRP) Programs
- VIII. Technical Assistance

Please share this memorandum with staff responsible for the residential placements of students and others responsible for preparing application materials for State reimbursement of tuition costs.

I. Interagency Services for Students at Risk of Placement or Placed in a Residential School

Students at Risk of Residential Placement:

The decision that a student needs an educational placement in a residential school, either in or out of State, must be based on the committee on special education's (CSE) determination that there is no appropriate nonresidential school available to meet the educational needs of the student. Pursuant to Chapter 600 of the Laws of 1994, the New York State Education Department (NYSED) developed considerations for determining that a student is at risk of a residential school placement. State law and regulations require the school district to identify needed support services that may help families maintain children in their own homes and communities, and avoid placement in residential care, for as long as possible. School districts have an important role in working with other child care systems to collaboratively address the needs of children and their families. For additional information, see Attachment 1, Question 1 and Attachment 2.

For each student at risk of a residential school placement, the CSE must:

- provide information to the parent on community support services that may be available to the family; and
- with the consent of the parent (or consent of a student 18 years of age or older), invite the appropriate county or State agency to participate in CSE meetings concerning the appropriateness of a residential placement and other programs and placement alternatives.²

² The CSE must maintain evidence of inviting the participating agencies to the CSE meeting and any outreach efforts. For the Office of Mental Health (OMH) [applicable field office](#). For a contact list of OPWDD Transition Coordinators, see Attachments 4 and 5.

Each application for private school tuition reimbursement for the 2022-23 school year requires the school district to provide, for each student recommended for initial placement in residential care, written assurance³ that it has:

- sought parental consent (or consent of a student 18 years of age or older) to invite county or State agency representatives to the CSE meeting to make recommendations concerning the appropriateness of a residential placement and other programs and placement alternatives (for students in a foster care placement, the local social services district must be notified when a student is determined to be at risk of a residential placement); and
- written assurance that it has, upon receipt of parental consent (or consent of a student 18 years of age or older), invited other agency representative(s) to participate in the CSE meeting.

Transition Services and Adult Service Planning:

Measurable post-secondary goals and recommendations for transition services and activities must be included in each student's individualized education program (IEP) beginning not later than the first IEP to be in effect when the student is age 15 (and at a younger age, if determined appropriate), and updated annually. To ensure appropriate transition planning and timely adult service planning for students who are at risk of or who are placed in residential schools, the are placedrogr(1 (ti55 ()-33e-3 (4)Qqq0 0 61rg)12 (n)-3 (g)-3 (:)]T.

for services from OPWDD, information about adult service planning is available on <https://opwdd.ny.gov/community-involvement/school-transition-students-developmental-disabilities>). Resources on Adult Career and Continuing Education Services-Vocational Rehabilitation are available on the [ACCES-VR](http://www.acces.nysed.gov/vr) webpage (<http://www.acces.nysed.gov/vr>);

- provide parents with prior written notice before the student's graduation with a Regents or local high school diploma which indicates that the student is no longer eligible to receive a free appropriate public education after graduation with the receipt of a Regents or local high school diploma; and
- provide parents with prior written notice before the student's exit with a skills and achievement commencement credential or a career development and occupational studies commenc

schools on a year-by-year basis. Therefore, school districts must reapply annually for State reimbursement of a student in a private residential school. **Reapplications must be submitted prior to June 1 of the year preceding the school year for which funding is sought.** Initial approval of State reimbursement of tuition costs for a private school placement does not automatically mean that the application will be approved for subsequent years.

Reapplications to NYSED for a student who is currently placed in an out-of-State approved private residential school must include annual documentation that there are no appropriate public or approved private facilities for instruction available within New York State.

The CSE must adhere to all reapplication requirements as follows:

1. The school district must seek placement of a student in an in-State residential school early enough in the school year in order to submit its application for State reimbursement of tuition costs to NYSED prior to June 1 of the year preceding the school year for which funding is sought. Therefore, the CSE must make **timely** referrals to appropriate in-State programs to ensure that documentation of acceptances and/or declinations from the in-State programs may be provided to NYSED prior to June 1 preceding the school year for which funding is sought.
2. At each student's annual review, the CSE must consider placement of the student in the least restrictive environment. State law requires that school districts annually seek placement in appropriate in-State programs prior to placement in out-of-State programs, and for each student, there must be a proposed plan and timetable for enabling the student to return to a less restrictive environment. State reimbursement of tuition costs for out-of-State placements is contingent upon documentation that there are no appropriate public or approved private facilities for instruction within New York State available for the student.
3. The school district must submit written documentation to NYSED, in the form of acceptance and declination letters, from all approved in-State schools that are potentially appropriate to implement the student's IEP.
4. In those cases where the CSE does not recommend a 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 school district must provide NYSED with information and documentation which support the CSE's actions based on sound educational reasons consistent with the student's IEP. While the concerns of the parent for the education of their child must be considered, 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.
5. For students who were placed out-of-State and for whom the CSE recommends a change in placement to an in-State school, the school district must notify NYSED's Nondistrict Unit (see page 6 for address) in writing prior to June 1, specifying the entry date, name of the new placement (e.g., XYZ School), and type of placement (e.g., in-State public or approved private school).

6. The following documentation must accompany the school district's application for State reimbursement of tuition costs for out-

Email or standard mail initial and reapplications for residential placements to:

Email: OOSAPP@nysed.gov

OR

New York State Education Department
Office of Special Education
Nondistrict Unit
89 Washington Avenue, Room 309 EB
Albany, NY 12234

Attn: 2022-23 Out-of-State Residential Application

IV. Notification of Approval or Denial of State Reimbursement of Tuition Costs

Upon receipt of the initial application or reapplication, NYSED will notify the CSE of its determination within 15 business days. If State reimbursement of tuition costs for the placement is approved, the school district will receive a copy of the approved STAC-1 form from NYSED. It is the school district's responsibility to forward a copy of the signed STAC-1 form to the approved private school confirming funding approval of tuition costs for the 2022-23 school year. If NYSED denies State reimbursement of tuition costs for the placement, the school district will have 20 business days to correct the deficiencies identified in NYSED's initial denial letter.

Regardless of determination to approve or deny State reimbursement of tuition costs, the school district is responsible to implement the CSE's recommendation for placement in an approved private school. Therefore, the school district cannot use State denial of State reimbursement of tuition costs as a reason not to secure a timely placement of a student in a New York State approved private school. Regardless of approval of reimbursement of tuition costs, NYSED will process the STAC-1 form that authorizes municipalities to fund their portion of the maintenance costs.

A school district may submit a request to NYSED for an administrative review of a denial of an application for State reimbursement of tuition costs no later than 40 days after written notice of the initial denial of the school district's application [8 NYCRR section 200.6(j)(3)(iv)]. If school districts do not follow the administrative review timelines, NYSED will dismiss the review as untimely.

V. Referral and Placement Process

The school district's CSE is responsible for the placement of a student with a disability in his/her least restrictive environment. However, each New York State approved out-of-State residential school serving students from New York State must fully cooperate with the efforts of school districts seeking to place students in approved private schools within New York State. Out-of-State schools must make students available for screening and intake procedures, provide access to educational records, and facilitate observation of the student in his/her current educational setting at the request of the school district.

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district should assist the parent in the application process to OPWDD to determine eligibility for services (see [Instructions for the Completion of the Intermediate Care Facilities for Individuals with Intellectual Disabilities \(ICF/IID\) Level of Care Eligibility Determination \(LCED\) Form for Home and Community Based Services \(HCBS\) Waiver, Comprehensive Care Coordination and other State Plan Services](https://opwdd.ny.gov/system/files/documents/2020/01/final-lced_instructions_1-22-20.pdf) (https://opwdd.ny.gov/system/files/documents/2020/01/final-lced_instructions_1-22-20.pdf)).

The school district can email OOSAPP@nysed.gov to request the form for placement in a CRP. To ensure timely review of this request, electronic submissions are preferred but only permitted if your email server can transmit secure messages (see page 6 for further explanation). Select **one** method for submission (email or standard mail).

Email: OOSAPP@nysed.gov

OR

New York State Education Department
Office of Special Education
Nondistrict Unit
89 Washington Avenue, Room 309 EB
Albany, NY 12234
Attn: 2022-23 CRP Request

VIII. Technical Assistance

NYSED does not provide a service by which it matches students to approved private schools for a school district. It is the school district's responsibility to access the [OLVW RI LQ 6WDR XWRI VWDWH DSS](https://www.nysed.gov/olvwri-lq-6wdr-xwri-vwdwh-dss) (<https://www.nysed.gov/olvwri-lq-6wdr-xwri-vwdwh-dss>) through www.nysed.gov/olvwri-lq-6wdr-xwri-vwdwh-dss and to contact each school directly to obtain information to assist in the referral and placement process. However, staff from the Nondistrict Unit are available to provide technical assistance to school districts regarding the residential placement process and may be able to assist school districts to identify potential residential programs for students who may be difficult to place.

Questions concerning these procedures should be directed to the Nondistrict Unit at OOSAPP@nysed.gov. Thank you for your cooperation and attention to this matter.

Attachments

- Attachment 1 Questions and Answers
- Attachment 2 School, Home, and Community Factors
- Attachment 3 Interstate Compact Requirements
- Attachment 4 OPWDD Residential School Transition Coordinator Contact List
- Attachment 5 OPWDD Local School Transition Coordinator Contact List

Questions and Answers

1. **What factors should a committee on special education (CSE) consider prior to recommending a student for a residential placement?**

The determination that a residential school placement is the least restrictive environment for a student, thus removing the child from his/her home and community, must come only after a CSE has made the

- how the student can be awarded a diploma, either from NYS or, when determined appropriate, from the host state;
- how a student can work toward a NYS Career Development and Occupational Studies Commencement Credential, which is recognized by the Board of Regents and certifies a student has the standards-based knowledge and skills necessary for entry-level employment;
- how a student with a severe disability who is eligible to take the New York State Alternate Assessment can earn a Skills and Achievement Commencement Credential;
- how and when the residential school will provide regular student progress reports to the school district and to the student's parent;
- how the student's teacher(s) will participate in the required CSE meetings; and
- how the school district ensures teachers have access to a copy of the student's IEP and are informed of their IEP implementation responsibilities.

If a student earns a diploma from an out-of-State school, does this end his/her eligibility for schooling with NYS?

Yes, if the diploma is considered a regular high school diploma by the host state's Department of Education. However, earning a high school equivalency diploma does not terminate a student's entitlement to a free appropriate public education.

If a student is eligible for a diploma from an out-of-State school, who makes the arrangements?

These arrangements would be the responsibility of the approved out-of-State school where the student is enrolled.

What are the school district's responsibilities to ensure a student placed in an out-of-State residential school takes NYS assessments and/or examinations?

The school district of residence is responsible to arrange for a student to take NYS assessments and/or examinations. They may do so through arrangements in a public school district closer to the out-of-State school, returning the student to the school district of residence to take the NYS assessment and/or examination, or sending a NYS-certified teacher to the out-of-State school to administer the NYS assessment and/or examination. The school district may contact NYSED's 211 L F H R I 6 W D W H \$ V V H V (

CSE must consider the concerns of the parent in making the placement recommendation. However, a parent's refusal to accept a placement recommended by the CSE cannot be the sole reason to continue a student in an out-of-State placement. Continuing placement of a student in an out-of-State program when there is an appropriate in-State program available is likely to result in the denial of State reimbursement of tuition costs for the placement.

- 7. If a student's placement recommendation changes from an out-of-State program to an in-State program, must the school district provide the parent with prior written notice?**

Yes.

- 8. Must the parent provide written consent for a particular placement?**

Except for placement in a Children's Residential Project (CRP), the school district does not need parental consent for a change in placement. However, as stated above, the school district must provide the parent with prior written notice of its recommendation, and the parent has due process rights to disagree with the CSE's recommended placement.

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

The school district is responsible to ensure that the prospective private school has the appropriate information from the student's record. In the event the application to the private school is incomplete, the approved private school should respond in writing to the school district that it is unable to make a decision based on insufficient student records.

- 10. Which school district is responsible for the CSE functions when a student is placed in an out-of-State child care institution by a local Department of Social Services (DSS)?**

The school district where the student is living at the time, he/she is placed in the out-of-State facility is responsible for the provision of education services, including CSE functions, if the student is a student with a disability. Education services for these students may be provided by a tutor, by contract with a school connected with the residential program or by contract with the local public school district in which the facility is located. Fiscal responsibility for the education of the student is a cost to the social services district, except that the school district where the student resided at the time of placement in the care and custody of social services is responsible for a basic contribution deduction for students with disabilities placed in an NYSED-approved out-of-State school. (See page 26 of [Education Responsibilities for School-Age Children in Residential Care](https://www.p12.nysed.gov/specialed/publications/EducResponsSchoolAgeResidence.pdf) <https://www.p12.nysed.gov/specialed/publications/EducResponsSchoolAgeResidence.pdf>).

School, Home, and Community Factors that May Indicate that a Student is at Risk of a Future Residential School Placement

In determining whether a student's parent/guardian should be provided information on where to obtain a family assessment by a human service agency, the committee on special education (CSE) must determine if the child is at risk of the need for residential placement at some point in the future. Home and community factors alone would not warrant a residential school placement. However, such factors in combination with school factors may indicate that the student is at risk of a residential school placement. In those instances, it is the CSE's responsibility to provide the family or guardian with a list of community support services that may be available, including the name and address where the parent/guardian can obtain an assessment of their support needs.

Many of the factors listed below are indicative that a child may require treatment or support services beyond the supplementary supports and services an education agency can provide. It is the district's responsibility to contact other agencies, when parent permission has been received, in order to engage them in assisting the school and family to provide supports and services in an effort to prevent more restrictive educational placements, including the need for a future residential school placement.

The need for a child to be placed in a residential school program is often precipitated by a combination of the following factors demonstrated in the school, home, and community setting:

School Factors

- chronic lack of or inconsistent progress in meeting IEP goals and an increasing need for supplementary supports and services; or underachievement in many school settings;
- frequent and escalating problems with behaviors (e.g., self-abusive, violent or aggressive behaviors, frequent unexplained absences, pervasive lack of motivation or effort, substance or alcohol abuse, depression, withdrawal, phobias, suicidal ideation, or suicide attempts) that are dangerous to the child or others and, even with the use of supplementary supports and services, behaviors that are becoming increasingly difficult to address in less restrictive settings;
- multiple referrals to the CSE to increase the levels of special education services; and/or
- unique needs which require specialized supports and services and/or medical interventions.

Home Factors

- primary caregiver spends an inordinate amount of time caring for the child, thus negatively impacting upon the care of the other members of the family;
- multiple crises that impact upon the stability of the family structure;
- alleged or documented abuse or neglect in the home;
- child unable to take care of himself/herself (i.e., hygiene, eating, avoiding injuries);
- family lacking the skills or resources to meet the child's specialized or chronic medical or behavioral needs relating to his or her disability;

Residential School Transition Coordinator (RSTC) Contact List
10/24/2022

Region	Service Office	Coordinator Name	Counties Served	Phone Number, E -mail, and Mailing Address
1	Western NY	Victoria DeRue	Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans	(585) 241-5721 Victoria.A.Derue@opwdd.ny.gov DDRO-Finger Lakes-Region 1 620 Westfall Rd Rochester, NY 14620

Region	NYC Supervisors	Sophia Smith NYC Unit Manager & ACS RSTC supervisor	Maryneily Rodriguez RSTC supervisor	
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