

REGULATIONS OF THE COMMISSIONER OF EDUCATION

200.1 Definitions

Updated March 2011

The University of the State of New York
THE STATE EDUCATION DEPARTMENT
Office of P-12 Education

Office of Special Education
Albany, New York 12234

REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Sections 207, 3214, 4403, 4404 and 4410 of the Education Law

PART 200 Students with Disabilities
and

PART 201
Procedural Safeguards for Students with
Disabilities Subject to Discipline

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REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Sections 207, 3214, 4403, 4404 and 4410 of the Education Law

PART 200 – STUDENTS WITH DISABILITIES
(Includes all Amendments through March 2011)

Section Topic

200.1 Definitions.....1

200.1 Definitions.

As used in this Part:

(a) **Adaptive behavior** means the effectiveness with which the individual copes with the natural and social demands of his environment.

(b) **Adapted physical education** means a specially designed program of developmental activities, games, sports and rhythms suited to the interests, capacities and limitations of students with disabilities who may not safely or successfully engage in unrestricted participation in the activities of the regular physical education program.

(c) **Annual review** means an evaluation, conducted at least annually by the committee on special education, of the status of each student with a disability and each student thought to have a disability who resides within the school district for the purpose of recommending the continuation, modification or termination of the provision of special education programs and services for the student to the board of education.

(d) **Approved private school** means a private school which conforms with the requirements of Federal and State laws and regulations governing the education of students with disabilities, and which has been approved by the commissioner for the purpose of contracting with public schools for the instruction of students with disabilities.

(e) **Assistive technology device** means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability. Such term does not include a medical device that is surgically implanted, or the replacement of such a device.

(f) **Assistive technology service** means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

- (1) the evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment;
- (2) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students with disabilities;
- (3) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (4) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (5) training or technical assistance for a student with a disability or, if appropriate, that student's family;
- (6) training or other technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that student.

(g) **Change in program** means a change in any one of the components of the individualized education program of a student as described in section 200.4(d)(2) of this Part.

(h) **Change in placement** means a transfer of a student to or from a public school, BOCES or schools enumerated in articles 81, 85, 87, 88 or 89 of the Education Law or graduation from high school with a local high school or Regents diploma. For purposes of removal of a student with a disability from the student's current educational placement under Education Law section 3214, change of placement is defined in Part 201 of this Title.

(i) **Class size** means the maximum number of students who can receive instruction together in a special class or resource room program and the number of teachers and supplementary school personnel assigned to the class.

(j) **Committee on preschool special education (CPSE)** means a multidisciplinary team established in accordance with the provisions of section 4410 of the Education Law.

(k) **Committee on special education (CSE)** means a multidisciplinary team established in accordance with the provisions of section 4402 of the Education Law.

(l) **Consent** means:

(1) the parent has been fully informed, in his or her native language or other mode of communication, of all information relevant to the activity for which consent is sought, and has been notified of the records of the student which will be released and to whom they will be released;

(2) the parent understands and agrees in writing to the activity for which consent is sought; and

(3) the parent is made aware that the consent is voluntary on the part of the parent and may be revoked at any time except that, if a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(m) **Consultant teacher services** means direct and/or indirect services, as defined in this subdivision, provided to a student with a disability in the student's regular education classes and/or to such student's regular education teachers.

(1) Direct consultant teacher services means specially designed individualized or group instruction provided by a certified special education teacher pursuant to subdivision (yy) of this section, to a student with a disability to aid such student to benefit from the student's regular education classes.

(2) Indirect consultant teacher services means consultation provided by a certified special education teacher pursuant to subdivision (yy) of this section to regular education teachers to assist them in adjusting the learning environment and/or modifying their instructional methods to meet the individual needs of a student with a disability who attends their classes.

(n) **Days** means calendar days unless otherwise indicated as school day or business day.

(1) School day means any day, including a partial day, that students are in attendance at school for instructional purposes. The term school day has the same meaning for all students in school including students with disabilities and students without disabilities, except that, during the months of July and August, school day means every day except Saturday, Sunday and legal holidays.

(2) Business day means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day).

(o) **Fiscal year** means the period commencing on the 1st day of July in each year and ending on the 30th day of June next following.

(p) **Full-day preschool program** means an approved special education program for preschool students with disabilities that provides instruction for a full-day session as defined in subdivision (q) of this section, provided however that in the event a program is approved by the commissioner to provide instruction for less than a full-day session but more than a half-day session, such program shall be deemed a full-day program solely for purposes of development of a recommendation by the preschool committee on special education pursuant to subparagraph (i) of paragraph b of subdivision 5 of section 4410 of the Education Law and section 200.16(e)(3) of this Part.

(q) **Full-day session** means a school day with not less than five hours of instruction for preschool students with disabilities and for students whose chronological ages are equivalent to those of students in grades K through 6, and not less than 5 1/2 hours of instruction for students whose chronological ages are equivalent to those of students in grades 7 through 12.

(r) **Functional behavioral assessment** means the process of determining why a student engages in behaviors that impede learning and how the student's behavior relates to the environment. The functional behavioral assessment shall be developed consistent with the requirements in section 200.22(a) of this Part and shall include, but is not limited to, the identification of the problem behavior, the definition of the behavior in concrete terms, the identification of the contextual factors that contribute to the behavior (including cognitive and affective factors) and the formulation of a hypothesis regarding the general conditions under which a behavior usually occurs and probable consequences that serve to maintain it.

(s) **Guardian ad litem** means a person familiar with the provisions of this Part who is appointed from the list of surrogate parents or who is a pro bono attorney appointed to represent the interests of a student in an impartial hearing pursuant to section 200.5(j)(3)(ix) of this Part and, where appropriate, to join in an appeal to the State Review Officer initiated by the parent or board of education pursuant to section 200.5(k) of this Part. A guardian ad litem shall have the right to fully participate in the impartial hearing to the extent indicated in section 200.5(j)(3)(xii) of this Part.

(t) **General curriculum** means the same general education curriculum as for students without disabilities.

(u) **Half-day preschool program** means an approved preschool special education program for preschool students with disabilities that provides instruction for a half-day session as defined in subdivision (v) of this section.

(v) **Half-day session** means a morning or afternoon session with not less than 2 1/2 hours of instruction for students whose chronological ages are equivalent to those of students in grades K through 6, and not less than three hours of instruction for students whose chronological ages are equivalent to those of students in grades 7 through 12, provided that for preschool students with disabilities such term shall mean a morning or afternoon session with not more than 2 1/2 hours of instruction per day.

(w) **Home and hospital instruction** means special education provided on an individual basis for a student with a disability confined to the home, hospital or other institution because of a disability.

(x) **Impartial hearing officer** means an individual assigned by a board of education pursuant to Education Law, section 4404(1), or by the commissioner in accordance with section 200.7(d)(1)(i) of this Part, to conduct a hearing and render a decision. No individual employed by a school district, school or program serving students with disabilities placed there by a school district committee on special education may serve as an impartial hearing officer and no individual employed by such schools or programs may serve as an impartial hearing officer for two years following the termination of such employment, provided that a person who otherwise qualifies to conduct a hearing under this section shall not be deemed an employee of the school district, school or program serving students with disabilities solely because he or she is paid by such schools or programs to serve as an impartial hearing officer. An impartial hearing officer shall:

- (1) be an individual admitted to the practice of law in the State of New York who is currently in good standing and who has a minimum of two years practice and/or experience in the areas of education, special education, disability rights or civil rights; or be an individual certified by the State of New York as an impartial hearing officer on September 1, 2001;
- (2) have access to the support and equipment necessary to perform the duties of an impartial hearing officer;
- (3) be independent, shall not be an officer, employee or agent of the school district or of the board of cooperative educational services of which such school district is a component, or an employee of the Education Department, shall not have a personal or professional interest which would conflict with his or her objectivity in the hearing, and shall not have participated in any manner in the formulation of the recommendation sought to be reviewed; and
- (4) be certified by the commissioner as an impartial hearing officer eligible to conduct hearings pursuant to Education Law, section 4404(1) and subject to suspension or revocation of such certification by the commissioner for good cause in accordance with the provisions of section 200.21 of this Part. In order to obtain and retain such a certificate, an individual shall:
 - (i) successfully complete a training program, conducted by the department, which program provides information regarding State and Federal laws and regulations relating to the education of students with disabilities, the needs of such students, and the procedures involved in conducting a hearing, and in reaching and writing a decision;
 - (ii) attend such periodic update programs as may be scheduled by the commissioner;
 - (iii) annually submit, in a format and by a date prescribed by the commissioner, a certification that the impartial hearing officer meets the requirements of paragraphs (1), (2) and (3) of this subdivision;
 - (iv) possess knowledge of, and the ability to understand, the provisions of Federal and State law and regulations pertaining to the Individuals with Disabilities Education Act and legal interpretations of such law and regulations by Federal and State courts; and
 - (v) possess knowledge of, and the ability to conduct hearings in accordance with appropriate, standard legal practice and to render and write decisions in accordance with appropriate standard legal practice.

(y) **Individualized education program** means a written statement, developed, reviewed and revised in accordance with section 200.4 of this Part, which includes the components specified in section 200.4(d)(2) of this Part to be provided to meet the unique educational needs of a student with a disability.

(z) **Independent educational evaluation** means an individual evaluation of a student with a disability or a student thought to have a disability, conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student. Whenever an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria which the school district uses when it initiates an evaluation.

(aa) **Individual evaluation** means any procedures, tests or assessments used selectively with an individual student, including a physical examination in accordance with the provisions of sections 903, 904 and 905 of the Education Law, an individual psychological evaluation, except where a school psychologist has determined pursuant to section 200.4(b) of this Part that a psychological evaluation is unnecessary to evaluate a student of school age, a social history and other appropriate assessments or evaluations as may be necessary to determine whether a student has a disability and the extent of his/her special education needs, but does not include basic tests administered to, or procedures used with, all students in a school grade or class.

(bb) **Individual psychological evaluation** means a process by which a New York State-certified school psychologist or licensed psychologist uses, to the extent deemed necessary for purposes of educational planning, a variety of psychological and educational techniques and examinations in the student's native language, to study and describe a student's developmental, learning, behavioral and other personality characteristics.

(cc) **Least restrictive environment** means that placement of students with disabilities in special classes, separate schools or other removal from the regular educational environment occurs only when the nature or severity of the disability is such that even with the use of supplementary aids and services, education cannot be satisfactorily achieved. The placement of an individual student with a disability in the least restrictive environment shall:

- (1) provide the special education needed by the student;
- (2) provide for education of the student to the maximum extent appropriate to the needs of the student with other students who do not have disabilities; and
- (3) be as close as possible to the student's home.

(dd) **Mediator** means a qualified and impartial individual who is trained in effective mediation techniques to resolve disputes in accordance with Education Law, section 4404-a and section 200.5(h) of this Part and who is knowledgeable in laws and regulations relating to the provision of special education services. An individual who serves as a mediator may not have a personal or professional interest which would conflict with his or her objectivity in the mediation process and may not be an employee of a State educational agency that is providing direct services to a student who is the subject of the mediation process or a school district or program serving students with disabilities, provided that a person who otherwise qualifies to conduct mediation under section 200.5(h) of this Part shall not be deemed an employee of the State, a school district, school, or a program serving students with disabilities solely because he or she is paid by a community dispute resolution center through grant funds provided by the State Education Department to serve as a mediator.

(ee) **Medical services** means only evaluative and diagnostic services provided by a licensed physician, or by another appropriately licensed or registered health professional in consultation with, or under the supervision of,

a licensed physician, to determine whether a student has a medically related disability which may result in the student's need for special education and related services.

(ff) **Native language** means:

- (1) if used with reference to an individual of limited English proficiency, the language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student, except that, in all direct contact with a student (including evaluation of the student), native language means the language normally used by the student in the home or learning environment; and
- (2) for an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

(gg) **Occupational therapy** means the functional evaluation of the student and the planning and use of a program of purposeful activities to develop or maintain adaptive skills, designed to achieve maximal physical and mental functioning of the student in his or her daily life tasks.

(hh) **Supplementary school personnel** means a teacher aide or a teaching assistant as described in section 80-5.6(a) through (d) of this Title.

(ii) (1) **Parent** means a birth or adoptive parent, a legally appointed guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child; a person in parental relationship to the child as defined in Education Law, section 3212; an individual designated as a person in parental relation pursuant to title 15-A of the General Obligations Law including an individual so designated who is acting in the place of a birth or adoptive parent (including a grandparent, stepparent, or other relative with whom the child resides); or a surrogate parent who has been appointed in accordance with section 200.5(n) of this Part. The term does not include the State if the student is a ward of the State. (2) A foster parent may act as a parent unless State law, regulations or contractual obligations with a State or local entity prohibit the foster parent from acting as a parent. (3) Except as provided in paragraph (4) of this subdivision, when one or more than one party is qualified under paragraph (1) of this subdivision to act as a parent, the birth or adoptive parent must be presumed to be the parent unless the birth or adoptive parent does not have legal authority to make educational decisions for the student. (4) If a judicial decree or order identifies a specific person or persons to act as the parent or make educational decisions on behalf of the student, then such person or persons shall be determined to be the parent for purposes of this Part, except that a public agency that provides education or care for the student, or a private agency that contracts with a public agency for such purposes, shall not act as the parent.

(jj) **Participating agency** means a State or local agency, other than the public agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student.

(kk) **Parent counseling and training** means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's individualized education program.

(ll) **Physical therapy** means a related service provided in accordance with section 6731(a) of the Education Law.

(mm) **Preschool student with a disability** is a preschool child as defined in section 4410(1)(i) of Education Law who is eligible to receive preschool programs and services, is not entitled to attend the public schools of the school district of residence 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 programs and services approved by the department. Eligibility as a preschool student with a disability shall be based on the results of an individual evaluation which is provided in the student's native language, not dependent on a single procedure, and administered by a multidisciplinary team in accordance with all other requirements as described in section 200.4 (b) (1) through (5) of this Part.

(1) Commencing July 1, 1993, to be identified as having a disability a preschool student shall either:

(i) exhibit a significant delay or disorder in one or more functional areas related to cognitive, language and communicative, adaptive, socio-emotional or motor development which adversely affects the student's ability to learn. Such delay or disorder shall be documented by the results of the individual evaluation which includes but is not limited to information in all functional areas obtained from a structured observation of a student's performance and behavior, a parental interview and other individually administered assessment procedures, and, when reviewed in combination and compared to accepted milestones for child development, indicate:

(a) a 12-month delay in one or more functional area(s); or

(b) a 33 percent delay in one functional area, or a 25 percent delay in each of two functional areas; or

(c) if appropriate standardized instruments are individually administered in the evaluation process, a score of 2.0 standard deviations below the mean in one functional area, or a score of 1.5 standard deviations below the mean in each of two functional areas; or

(ii) meet the criteria set forth in paragraphs (1), (2), (3), (5), (9), (10), (12) or (13) of subdivision (zz) of this section.

(2) Commencing July 1, 1991, in the calendar year in which such preschool student becomes three year of age, a student shall be first eligible for preschool programs and services on January 2nd of such calendar year, if the student's birthday falls before July 1st, otherwise a student shall be first eligible on July 1st of the calendar year; except that a student who, as of his or her third birthday, is already receiving services pursuant to section 236 of the Family Court Act or its successor, or section 4204-a of the Education Law, may, if the parent so chooses, continue to receive such services through August 31st of the calendar year in which the student first becomes eligible to receive services pursuant to section 4410 of the Education Law. A student shall be deemed to be a preschool student with a disability through the month of August of the school year in which the student first becomes eligible to attend school pursuant to section 3202 of the Education Law.

(nn) **Preschool program** means a special education program approved pursuant to section 4410 of the Education Law to provide special education programs and services, from the continuum of services set forth in section 200.16(i) of this Part, and to conduct evaluations of preschool students with disabilities if such program has a multidisciplinary evaluation component.

(oo) **Prior written notice** means written statements developed in accordance with section 200.5(a) of this Part, and provided to the parents of a student with a disability a reasonable time before the school district proposes to or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.

(pp) **Regular education teacher** means:

(1) for a school-age student, a teacher qualified to serve nondisabled students who is providing regular education instruction to the student. If the student is not receiving instruction from one or more regular education teachers, a teacher qualified to provide regular education in the type of program in which the student may be placed may serve as the student's regular education teacher;

(2) for a preschool child, a regular education teacher qualified to provide regular education services to nondisabled preschool or elementary-level students who is providing regular education instruction to the student. If the student is not receiving instruction from one or more regular education teachers, a teacher qualified to provide regular education in the type of program in which the student may be placed may serve as the preschool student's regular education teacher.

(qq) **Related services** means developmental, corrective, and other supportive services as are required to assist a student with a disability and includes speech-language pathology, audiology services, interpreting services, psychological services, physical therapy, occupational therapy, counseling services, including rehabilitation counseling services, orientation and mobility services, medical services as defined in this section, parent counseling and training, school health services, school nurse services, school social work, assistive technology services, appropriate access to recreation, including therapeutic recreation, other appropriate developmental or corrective support services, and other appropriate support services and includes the early identification and assessment of disabling conditions in students.

(1) Services that apply to children with surgically implanted devices, including cochlear implants.

Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (such as mapping), maintenance of that device, or the replacement of that device, provided that nothing in this paragraph:

(i) limits the right of a student with a surgically implanted device to receive related services that are determined by the CSE or CPSE to be necessary for the student to receive a free appropriate public education; or

(ii) limits the responsibility of a school district to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school; or

(iii) prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

(rr) **Resource room program** means a special education program for a student with a disability registered in either a special class or regular class who is in need of specialized supplementary instruction in an individual or small group setting for a portion of the school day.

(ss) **School health services and school nurse services.**

(1) School health services means health services provided by either a qualified school nurse or other qualified person that are designed to enable a student with a disability to receive a free appropriate public education as described in the individualized education program of the student.

(2) School nurse services means services provided by a qualified school nurse pursuant to section 902(2)(b) of the Education Law that are designed to enable a student with a disability to receive a free appropriate public education as described in the individualized education program of the student.

(tt) **Social history** means a report of information gathered and prepared by qualified school district personnel pertaining to the interpersonal, familial and environmental variables which influence a student's general adaptation to school, including but not limited to data on family composition, family history, developmental history of the student, health of the student, family interaction and school adjustment of the student.

(uu) **Special class** means a class consisting of students with disabilities who have been grouped together because of similar individual needs for the purpose of being provided specially designed instruction as defined in subdivision (vv) of this section.

(vv) **Specially-designed instruction** means adapting, as appropriate to the needs of an eligible student under this Part, the content, methodology, or delivery of instruction to address the unique needs that result from the student's disability; and to ensure access of the student to the general curriculum, so that he or she can meet the educational standards that apply to all students.

(ww) **Special education** means specially designed individualized or group instruction or special services or programs, as defined in subdivision 2 of section 4401 of the Education Law, and special transportation, provided at no cost to the parent, to meet the unique needs of students with disabilities.

(1) Such instruction includes but is not limited to that conducted in classrooms, homes, hospitals, institutions and in other settings.

(2) Such instruction includes specially designed instruction in physical education, including adapted physical education.

(3) For the purposes of this definition:

(i) The individual needs of a student shall be determined by a committee on special education in accordance with the provisions of section 200.4 of this Part upon consideration of the present levels of performance and expected learning outcomes of the student. Such individual-need determinations shall provide the basis for written annual goals, direction for the provision of appropriate educational programs and services and development of an individualized education program for the student. The areas to be considered shall include:

(a) academic achievement, functional performance and learning characteristics which shall mean the levels of knowledge and development in subject and skill areas, including activities of daily living, level of intellectual functioning, adaptive behavior, expected rate of progress in acquiring skills and information, and learning style;

(b) social development which shall mean the degree and quality of the student's relationships with peers and adults, feelings about self, and social adjustment to school and community environments;

(c) physical development which shall mean the degree or quality of the student's motor and sensory development, health, vitality, and physical skills or limitations which pertain to the learning process; and

(d) management needs which shall mean the nature of and degree to which environmental modifications and human or material resources are required to enable the student to benefit from instruction. Management needs shall be determined in accordance with the factors identified in each of the three areas described in clauses (a)-(c) of this subparagraph.

(ii) **Group instruction** means instruction of students grouped together according to similarity of individual needs for the purpose of special education. The curriculum and instruction provided to such groups shall be consistent with the individual needs of each student in the group, and the instruction required to meet the individual needs of any one student in the group shall not consistently detract from the instruction provided other students in the group.

(xx) **Special education provider** means an individual qualified pursuant to section 200.6(b)(3) of this Part who is providing related services, as defined in paragraph (qq) of this section, to the student. If the student is not receiving related services, an individual qualified to provide related services needed by the student may serve as the related service provider of the student.

(yy) **Special education teacher** means a person, including an itinerant teacher, certified or licensed to teach students with disabilities pursuant to Part 80 of this Title who is providing special education to the student. For a student who is being considered for initial placement in special education, a teacher qualified to provide special education in the type of program in which the student may be placed may serve as the student's special education teacher.

(zz) **Student with a disability** means a student with a disability as defined in section 4401(1) of the Education Law, who has not attained the age of 21 prior to September 1st and who is entitled to attend public 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 who requires special services and programs approved by the department. The terms used in this definition are defined as follows:

(1) **Autism** means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disturbance as defined in paragraph (4) of this subdivision. A student who manifests the characteristics of autism after age 3 could be diagnosed as having autism if the criteria in this paragraph are otherwise satisfied.

(2) **Deafness** means a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a student's educational performance.

(3) **Deaf-blindness** means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

(4) **Emotional disturbance** means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

- (i) an inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (ii) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- (iii) inappropriate types of behavior or feelings under normal circumstances;

- (iv) a generally pervasive mood of unhappiness or depression; or
- (v) a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(5) **Hearing impairment** means an impairment in hearing, whether permanent or fluctuating, that adversely affects the child's educational performance but that is not included under the definition of deafness in this section.

(6) **Learning disability** means 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, as determined in accordance with section 200.4(j) of this Part. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing or motor disabilities, of an intellectual disability, of emotional disturbance, or of environmental, cultural or economic disadvantage.

(7) **Intellectual disability** means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

(8) **Multiple disabilities** means concomitant impairments (such as intellectual disability-blindness, intellectual disability-orthopedic impairment, etc.), the combination of which cause such severe educational needs that they cannot be accommodated in a special education program solely for one of the impairments. The term does not include deaf-blindness.

(9) **Orthopedic impairment** means a severe orthopedic impairment that adversely affects a student'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.), and impairments from other causes (e.g., cerebral palsy, amputation, and fractures or burns which cause contractures).

(10) **Other health-impairment** means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is 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, attention deficit disorder or attention deficit hyperactivity disorder or tourette syndrome, which adversely affects a student's educational performance.

(11) **Speech or language impairment** means a communication disorder, such as stuttering, impaired articulation, a language impairment or a voice impairment, that adversely affects a student's educational performance.

(12) **Traumatic brain injury** means an acquired injury to the brain 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 or more areas, including cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not include injuries that are congenital or caused by birth trauma.

(13) **Visual impairment** including blindness means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

(aaa) **Substantial regression** means a student's inability to maintain developmental levels due to a loss of skill or knowledge during the months of July and August of such severity as to require an inordinate period of review at the beginning of the school year to reestablish and maintain IEP goals and objectives mastered at the end of the previous school year.

(bbb) **Supplementary aids and services** means aids, services, and other supports that are provided in regular education classes, other education-related settings and in extracurricular and nonacademic settings to enable students with disabilities to be educated with nondisabled students to the maximum extent appropriate in accordance with the least restrictive environment.

(ccc) **Surrogate parent** means a person appointed to act in place of parents or guardians when a student's parents or guardians are not known, or when after reasonable efforts, the board of education cannot discover the whereabouts of a parent, the student is an unaccompanied homeless youth or the student is a ward of the State and does not have a parent who meets the definition in subdivision (ii) of this section, or the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law.

(ddd) **Transitional support services** means those temporary services, specified in a student's individualized education program, provided to a regular or special education teacher to aid in the provision of appropriate services to a student with a disability transferring to a regular program or to a program or service in a less restrictive environment.

(eee) **Twelve-month special service and/or program** means a special education service and/or program provided on a year-round basis, for students determined to be eligible in accordance with sections 200.6(k)(1) and 200.16(i)(3)(v) of this Part whose disabilities require a structured learning environment of up to 12 months duration to prevent substantial regression. A special service and/or program shall operate for at least 30 school days during the months of July and August, inclusive of legal holidays, except that a program consisting solely of related service(s) shall be provided with the frequency and duration specified in the student's individualized education program.

(fff) **Transition Services** means a coordinated set of activities for a student with a disability, designed within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities, including, but not limited to, post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based on the student's strengths, preferences and interests, and shall include needed activities in the following areas:

- (1) instruction;
- (2) related services;
- (3) community experiences;
- (4) the development of employment and other post-school adult living objectives; and

(5) when appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(ggg) **Travel training** is a special education service that means providing instruction, as appropriate, to students with significant cognitive disabilities, and any other students with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live; and learn the skills to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(hhh) **Homeless youth** means the same as the term homeless child as defined in section 100.2(x) of this Title.

(iii) **Limited English proficient student** means the same as the term pupils with limited English proficiency as defined in section 154.2(a) of this Title.

(jjj) **Universal design** means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies.

(kkk) Ward of the State means a child or youth under the age of 21:

- (1) who has been placed or remanded pursuant to section 358-a, 384 or 384-a of the Social Services Law, or article 3, 7, or 10 of the Family Court Act, or freed for adoption pursuant to section 383-c, 384 or 384-b of the Social Services Law; or
- (2) who is in the custody of the Commissioner of Social Services or the Office of Children and Family Services; or
- (3) who is a destitute child under section 398(1) of the Social Services Law.

(lll) **Aversive intervention** means the same as such term is defined in section 19.5(b)(2) of this Title.

(mmm) **Behavioral intervention plan** means a plan that is based on the results of a functional behavioral assessment and, at a minimum, includes a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs and intervention strategies that include positive behavioral supports and services to address the behavior.

(nnn) **Interpreting services** means oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services and transcription services, such as communication access real-time translation (CART), C-Print and TypeWell for students who are deaf or hard of hearing; and special interpreting services for students who are deaf-blind.

(ooo) **Declassification support services** means those services provided by persons appropriately certified or licensed pursuant to Part 80 of this Title in the appropriate area of service, to a student or such student's teacher(s) to aid in such student's transition from special education to full-time regular education, including:

- (1) for the student, psychological services, social work services, speech and language services, counseling (other than career counseling), and other appropriate support services; and

(2) for the student's teacher(s), the assistance of supplementary school personnel, and consultation with appropriate personnel.