

New York State's Commissioner's Advisory Panel for Special Education Services March 3-4, 2022, Meeting Minutes

New York State's (NYS) Commissioner's Advisory Panel (CAP) for Special Education Services held its scheduled winter meeting March 3-4, 2022, via Zoom.

MEETING OF THE COMMISSIONER'S ADVISORY PANEL March 3rd at 9:00 a.m.

Members Who Participated:

Lynette Aqueron, Suryati Barnes, Natasha Bermudez, Kimberly Black, Naomi Brickel, Tim Bromirski, Harold Dean, Kathy Ralabate Doody, Kristen Dudek, Brett Eisenberg, Edward Escobar, Mary Jo Ginese, Michelle Gode, Alexis Harrington, Stacy Lyles, Barbara Martorana, Eileen Murtha, Jennifer Pankowski, Brian Pulvino, Raquel Schmidt, Alesia Simco, Kristie Stromecki, Mara Vanderzell, Mindi Wapner, Elizabeth O'Dell Wehling, Danielle Williams.

MEETING OF THE COMMISSIONER'S ADVISORY PANEL, March 4th at 9:00 a.m.

Members Who Participated:

Lynette Aqueron, Suryati Barnes, Natasha Bermudez, Kimberly Black, Naomi Brickel, Tim Bromirski, Harold Dean, Kathy Ralabate Doody, Kristen Dudek, Edward Escobar, MaryJo Ginese, Michelle Gode, Alexis Harrington, Stacy Lyles, Barbara Martorana, Eileen Murtha, Jennifer Pankowski, Brian Pulvino, Raquel Schmidt, Alesia Simco, Yvonne Sinisgalli, Kristie Stromecki, Mara Vanderzell, Mindi Wapner, Elizabeth O'Dell Wehling, Danielle Williams.

The following New York State Education Department (NYSED) staff also participated in the meetings: Assistant Commissioner, Office of Special Education (OSE), Christopher Suriano; OSE Director of Special Education Services, Joanne LaCrosse; Chief of Special Education Services, Eileen Borden; OSE Manager of Preschool Policy, Incident Management and Nondistrict Units, Suzanne Bolling; OSE Supervisor, Special Education Policy, Alison Conners; Associates/NYSED CAP Designees: Sandra Cote and Dawn Kalleberg; Assistant Data Director, Information and Reporting Services (IRS)/NYSED Coordinator of Federal Reporting, Kristin DeSalvatore.

General Business

Chairperson Edward Escobar called the meeting to order at 9:00 A.M and introduced the Executive Committee. This was followed by a review of Zoom participation tips by Dawn Kalleberg.

Members were asked to place their name and constituency in the chat box for attendance purposes. Members of the public were asked to identify themselves by including their name and affiliation in the chat box.

Alison Conners introduced NYSED staff participating in the meeting and reviewed the two-day meeting agenda.

Old Business

See Action Item "December 2-3, 2021, Meeting Minutes."

Executive Committee Report

Chairperson Escobar informed members that the Executive Committee and NYSED staff continue to meet every two weeks to plan for future CAP meetings and develop processes and procedures to ensure CAP is meeting its responsibilities and providing members a voice. Members were informed that the

Business Subcommittee is working on revisions to the CAP By-laws to better align with the restructuring of CAP that has occurred over the last few years. Chairperson Escobar also discussed the Executive Committee's virtual "Meet and Greet" session with members that took place on February 2, 2022 and felt that the session was very successful. The Executive Committee will discuss holding similar sessions in the future.

Secretary Williams informed CAP members that the Executive Committee is working to communicate more effectively with members via the virtual platform and is open to suggestions to improve processes. Chairperson Escobar introduced Stacy Lyles, CAP's new charter school representative. Ms. Lyles has worked in charter schools for the past 10 years in the capacity of Special Education Coordinator and teacher.

Alison Conners informed members that NYSED will be sending out notification to those members whose terms that are ending on June 30, 2022, informing them that they may submit an application form if they are interested in being appointed to CAP for a new three-year term.

ACTION ITEMS

December 2-3, 2021, Meeting Minutes

Secretary Williams provided a high-level summary of the December 2021 CAP minutes. Topics included Election of CAP Executive Committee Officers, Executive Committee work, feedback obtained through the stakeholder engagement process and member recommendations on the 2020-2025 State Performance Plan/Annual Performance Report (SPP/APR) Targets, member input on the identification of unmet needs and CAP priority areas for 2020-21, and CAP subcommittee reports. Members were given the opportunity to provide comments/corrections to the minutes. Chairperson Escobar asked members for a motion to accept the minutes. A vote was taken by Zoom poll.

MOVED, that the December 2-3, 2021, meeting minutes be approved.

Motion by: Harold Dean

Seconded by: Brian Pulvino

Action: Motion carried. One member abstained.

DISCUSSION ITEMS

Federal Fiscal Year (FFY) 2020 SPP/APR (Submitted February 2, 2022)

Kristin Desalvatore, Suzanne Bolling, Alison Conners, and Dawn Kalleberg presented on NYS's FFY 2020 SPP/APR required under Section 616 of the Individuals with Disabilities Education Act (IDEA). Members were informed that this is the first submission for the new FFY 2020-2025 six-year cycle. Members were also provided an overview of data and information for the 17 SPP compliance and performance indicators NYS was required to report on in its FFY 2020 Part B SPP/APR, submitted to the U.S. Department of Education (ED) on February 1, 2022. This data and information, considered preliminary during OSEP's clarification period, will be finalized by June 2022 and then publicly posted. Discussion focused on the explanation of progress and whether NYS met its targets for indicators 1-17, with the opportunity for questions and clarification. Additional components of the SPP/APR submission were also explained, including which indicators were based on a sampling of one-sixth of school districts in the State (New York City (NYC) reports on all indicators every year) and those that showed "slippage" (i.e., worsening from the previous year's data and failure to meet the target).

Annual State Application Under Part B of IDEA

Alison Conners presented on the submission of New York's Annual State Application Under Part B of IDEA for FFY 2022, due to the ED no later than May 27, 2022. Members were provided with an overview

of required components of the application, including reporting on the description of the use of federal funds used for administrative and other State-level purposes, the required assurances that the state has policies and procedures in effect to comply with IDEA requirements and the identification of areas where the state exceeds federal requirements. Ms. Conners also explained the public participation requirements – posting for 60 days, public comment accepted for 30 days. Members will be notified when the Part B application is posted.

In order to receive their Part B grant States must describe:

- How the amounts retained for State administration and State-level activities will be used to meet the requirements of IDEA (which covers services for students ages 3-21); and
- How those amounts will be allocated among other activities to meet State priorities based on input from local educational agencies.

Members were separated into breakout rooms to discuss two guiding questions: 1.) What thoughts do you have on the way New York State spends its IDEA funds? 2.) Will the way the funds are distributed get us to where we want to be?

Summary of Member Responses:

- Funding is very confusing.
- A large part of State funding is not paid for with IDEA funds. It is time for New York to place the money back in State hands.
- Would like to see more grant funds allocated to bring in more diverse teacher candidates of color and others to the field. Need more funding to recruit and retain teacher candidates of color in teacher preparation programs.
- Non-public schools get some monies, but they do not always know what that amount is. It depends on the number of students.
- How much money is utilized for preventive services?
- There is a trend that the use of monies is mostly compliance driven.
- How do we measure the impact of technical assistance? How many districts are accessing the technical assistance centers? Are we getting the impact we are looking for?
- What are the evaluative measures used to determine the use of IDEA funds (excluding local educational agency allocations) to be the best use of the money?
- Look at programs that really impact students. How is the money really used? There is a big difference in the allocation of money between New York City and other districts around the State.

Public Comment

Public comment was provided by Emily Mondschein, the Executive Director of Gigi's Playhouse which is a Down Syndrome Achievement Center in Buffalo, New York regarding inclusive education for students with Down Syndrome. The Playhouse provides free educational, therapeutic, and social supports for individuals with Down syndrome as well as their communities. The National Down Syndrome Society has developed guidelines for inclusive education for students with Downs Syndrome. In a recent report to Congress, NYS was found to be one of the least inclusive states. Ms. Mondschein requested NYSED disseminate this guidance as a resource for educators and administrators to support the inclusion of students with disabilities. Following the meeting, Ms. Mondschein will provide her written comment (see attached) as well as the [link](#) to the document she referred to for her public comment.

Remarks from OSE Leadership

Assistant Commissioner Chris Suriano welcomed participants and with Joanne LaCrosse, Director of Special Education Services, provided a policy overview on the following topics:

NYSED will be proposing regulations at the March 2022 Board of Regents (BOR) meeting to replace the term for the disability classification “emotional disturbance.”

NYSED has been exploring special education teacher certification and ways to address teacher shortages. NYSED will be proposing changes to special education teacher certification bands and seeking stakeholder feedback.

Integrated Multi-Tiered Systems of Support (MTSS-I) is being highlighted as a priority area in relation to diversity, equity and inclusion. MTSS-I is a department-wide initiative that touches on and involves many different offices within NYSED.

The [Educational Partnership website](#) provides information about the Educational Partnership, which is a coordinated and cohesive network of support focused on enhancing services and supports for students with disabilities from early childhood and school-age education to engagement in post-school opportunities. The available [Educational Partnership training packages](#) are posted on the [NYSED OSE Educational Partnership website](#).

Members inquired how the information about the OSE Educational Partnership trainings is getting to parents. Assistant Commissioner Suriano indicated that the expectation is that Family and Community Engagement (FACE) Centers and Regional Partnership Centers do extensive outreach to connect with families and members of their communities to ensure information is getting disseminated at the local level. A primary function of the OSE Educational Partnership’s FACE Centers is to build and strengthen connections with families and communities and to also build the capacity of school districts to make these same connections.

Currently, there are 15,812 open due process cases in the State – 15,638 in NYC and 174 in the rest of State. The NYC Department of Education (NYCDOE) has been under corrective action since 2019 due to the large number of impartial hearing requests and the number of hearings waiting to be assigned an impartial hearing officer (IHO). NYSED has taken steps to increase the number of IHOs certified to serve; however, the capacity of the IHOs in NYC is not sufficient to address the backlog of cases. NYSED published a Request for Information in October 2021 to gather information on how NYSED can address the due process system in NYC ([RFI 21-003: Impartial Hearing Officer System for Special Education Due Process in New York City : Funding Opportunities : P-12 : NYSED](#)). An extensive analysis of the recommendations in the RFI was completed. One of the conclusions was that the IHOs in NYS are part time and per diem and, given the number of due process complaints, a full-time cohort of IHOs is necessary to address the needs of the NYCDOE impartial hearing system.

On December 1, 2021, NYSED entered into a [Memorandum of Agreement](#) (MOU) with the Office of Administrative Trials and Hearings of the City of New York ("OATH") and the NYCDOE to transfer the handling of the impartial hearing system to OATH. As of the date of the MOU, there were 16,524 open impartial hearing cases and over 8,900 students awaiting the appointment of an IHO. In October 2021, NYS reached an all-time high of 9,400 cases awaiting appointment of an IHO. NYSED continues to address systemic changes with the DOE and changes to their procedures and processes. The MOU was developed to alleviate this problem and protect the rights of students with disabilities. OATH has established a special education unit and will be hiring 40-50 full-time IHOs to address the increase in cases. The transition will happen over time, approximately a year. All OATH IHOs are attorneys and are trained by NYSED.

[Accelerated Order of Relief](#) legislation was signed by Governor Kathy Hochul on December 29, 2021, to address students awaiting appointment of an IHO. The legislation provides for the immediate appointment of an IHO to issue an order of relief when a parent files a due process complaint notice seeking an impartial hearing relating to the identification, evaluation, education placement or the provision of a free appropriate education and an appointment has not been made after 196 days. NYSED has 90 days from the effective date to implement the legislation. Parents are not required to use this relief and

can remain on the waitlist. The legislation does not specifically apply to NYCDOE; however, based on the number of cases in other parts of the State, it is not anticipated that this will be used elsewhere. School districts must report annually on how accelerated relief was used on a form prescribed by the Commissioner of Education. NYSED is in process of developing a form and will also be proposing regulations relating to the accelerated route for IHO appointment that will go before the BOR in March 2022. NYSED will also be issuing guidance.

Members recommended an analysis be conducted to identify common issues at the core of the due process complaints in NYCDOE. NYSED conducted an analysis to identify the specific districts/regions which make up the majority of the requests for hearings in NYCDOE. NYSED required the NYCDOE to conduct a root cause analysis of the top two regions, which identified the following two top issues: 1.) students parentally placed by their parents and 2.) difficulties providing bilingual special education services. NYCDOE was required to develop a plan to address these issues.

Proposed regulations will also be presented at the March 2022 BOR meeting relating to the rotational process of IHOs, defining due process terms where there has been confusion in the field, and providing clarification regarding conflicts of interest.

At the November 2021 BOR meeting, NYSED [proposed regulations to amend sections 200.1 and 200.5 of the Regulations of the Commissioner of Education relating to special education impartial hearing officers and the special education due process system procedures](#) to establish a minimum and maximum number of cases, allow 60-day extensions in special education due process hearings and require NYC to establish an electronic filing system. Public comment was accepted for 60 days, and three public hearings were conducted. The regulations will be brought back to the BOR in the next few months. These regulations were proposed prior to the MOU and may require revisions.

NYSED was notified in February 2022 that the federal Office of Special Education programs (OSEP) will be conducting a monitoring review in New York. OSEP refers to their monitoring reviews as Differentiated Monitoring and Supports (DMS). DMS provides different levels of supports to states based on their unique needs and challenges. While NYS's monitoring is tied to due process, the focus will be on general supervision and monitoring. OSEP will be using two protocols including: [OSEP Integrated Monitoring Protocol](#) and the [OSEP Sustaining Compliance and Improvement Protocol](#).

Members recommended that NYSED explore the increased use of mediation, which has been found to be effective in other states. Joanne LaCrosse informed CAP that mediation is priority of NYSED and that there is an SPP/APR specific to mediation (Indicator 16). NYSED is working with the NYCDOE to increase the areas in which they will mediate. NYSED has a contractor that provides training for special education mediators and information on mediation is available through the OSE Partnership's Family and Community Engagement Centers. As part of the SPP/APR stakeholder feedback on Indicator 16, NYSED is exploring making a change to policy to allow the inclusion of attorney's fees as part of mediation. NYSED will also be conducting a survey on mediation and developing guidance for the field.

Assistant Commissioner Suriano reviewed changes to NYSED organizational structure. Kimberly Young Wilkens, Deputy Commissioner for P-12 retired as of March 2022. As part of the reorganization, P-12 will now be supported by two Deputy Commissioners - Jason Harmon and Angelique Johnson Dingle.

Subcommittee Reports

Business Committee: The subcommittee met at the end of January 2022. The members have been working to develop and update CAP documents. A letter to acknowledge public comment was created to send as a follow up to any public comment provided at a CAP meeting. The CAP application was reviewed and updated to clarify the constituency category section. The CAP By-laws are currently being reviewed and recommendations will be made for updates related to attendance, participation, meetings and subcommittees, including the role of the Business Committee. The edits will be reviewed by the

Executive Committee and then brought to CAP for discussion and a vote. Alison Conners informed members that the CAP website is in the process of being updated. NYSED will work with the Business Subcommittee to continue to make improvements to the website.

Standing Subcommittees

- 1. Legislative/Regulatory/Policy:** This subcommittee met in February 2022 and discussed legislation recently signed into law by Governor Hochul (S1662B and A3523A), which expands the scope of practice of Licensed Behavior Analysts to serve students beyond those with an autism diagnosis. CAP had voted to recommend that NYSED support this legislation at the December 2021 CAP meeting. The subcommittee identified graduation measures as an area of focus for their future work. Alison Conners recommended that the subcommittee coordinate with the Student Performance Outcomes subcommittee regarding this topic area.
- 2. Teacher/Provider Certification/Recruitment and Retention:** This subcommittee met frequently during 2020-21 and made recommendations to CAP, which were reiterated at the December CAP 2021 meeting. The subcommittee plans to reconvene in a couple of weeks to regroup and decide on next steps.
- 3. Least Restrictive Environment:** Due to changes in CAP membership, there is currently only one member on this subcommittee. Previously the committee worked to identify the actual tools to support schools on least restrictive environment (LRE), including strengthening parent understanding and engagement around LRE. The committee would like to work with other subcommittees on LRE as well.
- 4. Student Performance Outcomes:** Due to changes in CAP membership, there is currently only one member on this subcommittee. The subcommittee will reconvene once it has full membership. Previous discussions were focused on transition and post-school outcomes.

Based on member input on the needs of families at the December 2021 CAP meeting, issues raised regarding outreach to families, and conversations of the existing subcommittees, a vote was taken as to whether a separate Family Engagement Subcommittee should be established. The majority of the members who voted supported adding a Family Engagement Subcommittee as a fifth subcommittee. Family engagement should also continue to be incorporated into the other four standing subcommittees.

The Executive Committee has been discussing and documenting the processes being established to assist CAP in meeting its responsibilities as CAP continues to transform as an active stakeholder group. The Executive Committee reminded members of the importance of responding to emails and requests for input between meetings. Following the March meeting, Secretary Williams will work with Kristen Dudek to send out a Microsoft form to members to identify the subcommittee of which they would like to be a member. The goal is to have subcommittee assignments made within a week.

Annual Report

2020-2021 Annual Report

The 2020-21 CAP Annual Report was shared with the CAP members prior to the March 2022 meeting for review. Following approval, the annual report will be submitted to NYSED for consideration and will also be posted to the CAP website. Chairperson Escobar asked members for a motion to accept the annual report.

MOVED, that the *New York State Commissioner's Advisory Panel (CAP) for Special Education Services Annual Report – July 2020-June 2021* be approved.

Motion by: Yvonne Sinisgalli

Seconded by: Barbara Martorana
Action: Motion carried unanimously.

Closing

Chairperson Escobar adjourned the March 2022 CAP meeting.