

## **New York State’s Commissioner’s Advisory Panel for Special Education Services May 18-19, 2023, Meeting Minutes**

New York State’s (NYS) Commissioner’s Advisory Panel (CAP or Panel) for Special Education Services held its scheduled spring meeting on May 18-19, 2023, through a hybrid in-person/remote model at the New York State Education Department (NYSED) building in Albany, NY.

### **MEETING OF CAP, May 18<sup>th</sup> at 12:00 P.M.**

#### **Members Who Participated:**

Lynette Aqueron, Angela Austin, Natasha Bermudez, Kimberly Black, Alicia Bockmier, Naomi Brickel, Tim Bromirski, Olga Nelly Collazo, Harold Dean, Kristin Dudek, Janety Encarnacion, Edward Escobar, Mary Jo Ginese, Michelle Gode, Alexis Harrington, Stacy Lyles, Barbara Martorana, Eileen Murtha, Jennifer Pankowski, Suzanne Pearson, Raymond Pierce, Lori Podvesker, Raquel Schmidt, Mara Vanderzell, Sharada Veerubhotla, Mindi Wapner, Danielle Williams.

### **MEETING OF CAP, May 19<sup>th</sup> at 9:00 A.M.**

#### **Members Who Participated:**

Lynette Aqueron, Angela Austin, Natasha Bermudez, Kimberly Black, Alicia Bockmier, Naomi Brickel, Tim Bromirski, Olga Nelly Collazo, Kristin Dudek, Janety Encarnacion, Edward Escobar, Mary Jo Ginese, Michelle Gode, Alexis Harrington, Stacy Lyles, Barbara Martorana, Eileen Murtha, Jennifer Pankowski, Suzanne Pearson, Raymond Pierce, Raquel Schmidt, Mara Vanderzell, Sharada Veerubhotla, Mindi Wapner, Danielle Williams.

The following NYSED staff also participated in the meetings: Assistant Commissioner, Office of Special Education (OSE), Christopher Suriano; NYSED Office of Higher Education, Senior Policy Advisor, Laura Glass; OSE Director of Special Education Services, Joanne LaCrosse; Chief of Special Education Services, Eileen Borden; Chief of Special Education Services, Belinda Johnson, OSE Supervisor, Special Education Policy, Alison Conners; OSE Supervisor, Preschool Unit, Barbara Kozlowski; OSE Supervisor, Due Process Unit, Tracy Davidson; Associates, Due Process Unit, Jay Kallner and Michael Treffiletti; Associates, Policy Unit/NYSED CAP Designees: Dawn Kalleberg, and Alana Wickware.

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### **General Business**

Chairperson Barbara Martorana, called the meeting to order at 12:03 P.M. This was followed by the review of the Zoom protocol and participation tips by Dawn Kalleberg.

On day one and two of the meeting, CAP roll call was taken verbally. CAP members were also 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 reviewed the two-day agenda and Chairperson Martorana reviewed the responsibilities of CAP members.

On Day two of the meeting, Vice Chairperson Danielle Williams, shared a message on [Mental Health Awareness Month](#) and the National Alliance on Mental Health “More Than Enough” campaign. The Executive Committee wore green in support of Mental Health Awareness month and encouraged CAP members to include their voices in conversations to support positive aspects and changes in New York State.

## **Old Business**

See Action Item “March 2-3, 2023, Meeting Minutes”

## **Executive Committee Report**

Chairperson Martorana reviewed CAP member duties and reminded members of the importance of the responsibility of being a CAP member.

Chairperson Martorana also informed members that the Executive Committee has been meeting with OSE staff, which has resulted in discussions regarding the reimagining of the subcommittees and review of information on the unmet needs of students with disabilities.

Secretary Kristin Dudek introduced the following newly appointed CAP members and the constituency categories they represent:

- Individual with a Disability - Angela Austin (secondary constituency category – Parent of a Child with a Disability)
- Individual with a Disability - Sharada Veerubhotla (secondary constituency category – Teacher of Children with Disabilities)

## **ACTION ITEMS**

### **March 2-3, 2023, Minutes**

Secretary Dudek provided a summary of the March 2023 CAP meeting minutes. Members were given the opportunity to provide comments/corrections. Secretary Dudek asked members for a motion to accept the minutes. A vote was taken by Zoom poll and in person.

**MOVED**, that the March 2-3, 2023 meeting minutes be approved.

Motion by: Edward Escobar

Seconded by: Naomi Brickel

Action: Motion carried

## **DISCUSSION ITEMS**

### **Remarks from OSE Leadership**

Laura Glass provided information and responded to questions on the [Students with Disabilities \(All Grades\) Certificate](#), which was adopted by the New York State Board of Regents at its [September 2022 meeting](#). The new certificate permits individuals to teach students with disabilities in pre-Kindergarten through grade 12 in New York State public schools. The Board of Regents also approved revisions to the extension to teach certain subjects to students with disabilities in grades 5-9 or grades 7-12 for eligible special education teachers. Additional information about the SWD (All Grades) certificate can be found in the [SWD \(All Grades\) Certificate Summary and Frequently Asked Questions \(FAQs\)](#).

Ms. Glass also provided information on the following proposed amendments discussed at the May 2023 Board of Regents meeting:

### **[Proposed Amendment to Section 80-5.3 of the Regulations of the Commissioner of Education Relating to Extending the Flexibility for Incidental Teaching](#)**

The Board of Regents has adopted an emergency rule to extend the flexibility for incidental teaching where certified teachers can teach up to 10 classroom hours a week in a subject area not covered by their

certificate through the 2023-2024 school year after extensive and documented recruitment. Public comments on the proposal can be submitted to [oheregcomments@nysed.gov](mailto:oheregcomments@nysed.gov) through July 31, 2023.

### **[Proposed Amendment of Section 80-5.4 of the Regulations of the Commissioner of Education Relating to the Employment of Substitute Teachers](#)**

NYSED proposed a regulatory amendment to the Commissioner’s regulations to remove the end date for the provision that has been in effect since July 27, 2016 to permit substitute teachers to be employed by a school district or boards of cooperative educational services (BOCES) beyond the 40-day limit during a school year under certain conditions. Public comments on the proposals can be submitted to [oheregcomments@nysed.gov](mailto:oheregcomments@nysed.gov) through July 31, 2023.

Assistant Commissioner Christopher Suriano welcomed participants and relayed the importance of the discussions, comments, and feedback CAP provides in its advisory capacity. Assistant Commissioner Suriano urged CAP as a whole, and the members as individuals, to provide comment on the proposed regulatory changes related to substitute teachers and incidental teaching.

Joanne LaCrosse thanked the CAP members for their ongoing recommendations and input; and reiterated the impact that the CAP discussions have had on the work within OSE and NYSED. Ms. LaCrosse also provided updates on the work of the [Blue-Ribbon Commission’s \(BRC\) review of Graduation Measures in New York](#). The questions generated by CAP members at the March meeting were shared with the BRC for inclusion in the [Thought Exchange](#). Ms. LaCrosse reported that student groups have been meeting and shared ideas around programs to link pathways, energize and create their future with project-based learning, internships, networking, and outcomes to assist with lifelong jobs/careers. Discussions from students included conversation on Regents examination exemptions and the impact of the various COVID related options for students who struggle to meet the requirements for graduation.

### **Office of Special Education Policy Updates**

### **[Proposed Amendment of Section 19.5 of the Rules of the Board of Regents and Sections 100.2, 200.1, 200.7, 200.15, and 200.22 of the Regulations of the Commissioner of Education](#)**

Alison Conners provided information regarding the proposed amendments, which were discussed at the April Board of Regents meeting, to clarify, streamline and update requirements of the Commissioner’s regulations to support school districts in proactively managing and responding to student behavior. The majority of the proposed changes are to section 19.5 relating to the prohibition of corporal punishment, aversive interventions, prone restraint and seclusion and permitted use of timeout and restraint. Additional changes have been proposed to the other sections of the Commissioner’s regulations to clarify and align those sections to the proposed amendments to section 19.5, which includes amendments to section 100.2 relating to data collection and the existing requirements in Commissioner’s regulations Part 200 applicable to students with disabilities relating to the use of time out rooms and emergency interventions, including the use of physical restraints.

The proposed regulations do not require schools to use timeout or physical restraint but establish guidelines for when and how timeout and physical restraint may be utilized and add documentation and reporting requirements relating to the use of timeout and physical restraint, including:

- Parental Notification
- Documentation
- Debriefing
- Review of Documentation
- Training
- Written Policy
- Reporting

The comment period will run from May 3 to July 10, 2023. In accordance with the Individuals with Disabilities Education Act, NYSED will also be conducting [two public hearings on July 5, 2023](#), one in person and one virtually. Following the public comment period, it is anticipated that the proposed amendment will be presented to the Board for permanent adoption at the July 2023 meeting. If adopted at the July 2023 meeting, the proposed amendment will become effective as a permanent rule on August 2, 2023.

### **CAP Public Comment on Proposed Amendments**

CAP members discussed the proposed amendments relating to incidental teaching, substitute teachers and the prohibition of corporal punishment, aversive interventions, prone restraint and seclusion and permitted use of timeout and restraint and unanimously supported CAP submitting public comment on the proposals.

### **Target Setting for State Performance Plan (SPP) Indicator 15, Resolution Sessions**

Tracy Davidson, Jay Kallner and Michael Treffiletti from OSE's Due Process Unit presented information on SPP Indicator 15: Resolution Sessions and sought member feedback on resetting the baseline and targets for this indicator based on a change in the calculation of the data. Members received background information on:

- resolution sessions, which are an opportunity for the parent(s) and school district representatives to discuss a due process complaint (disagreement on a special education matter) and to reach a possible agreement before an impartial hearing takes place;
- NYSED's previous, current and proposed data collection practices and calculation for SPP Indicator 15; and
- SPP Indicator 15 data from federal fiscal year 2006 to the present.

The presentation also included the following NYSED proposed improvement strategies to ensure timely and accurate data:

- Review data collection and reporting requirements and processes regarding resolution meetings to ensure collection of pertinent data points from all districts, including all Community School Districts in the New York City Department of Education (NYCDOE).
- Provide guidance to districts to improve data collection and reporting regarding all aspects of the resolution process; and
- Engage in increased monitoring of district submission of the data.

After reviewing the SPP Indicator 15 historic and current data, CAP members were asked to provide input the following questions:

- Should NYSED reset the baseline for SPP Indicator 15 based on FFY 2022 data?
- When NYSED resets its targets for SPP Indicator 15, should they continue to set them as a range?

Following additional stakeholder engagement planned for the fall of 2023, members of the Due Process Unit will return to CAP to present the proposed baseline and targets.

### **Updates on Due Process Regulations**

Eileen Borden provided information regarding two recent regulatory packages regarding due process system procedures. These regulations, some still proposed, are to address the high volume of due process complaints filed annually in New York City (NYC), which continues to significantly increase each year.

### **[Proposed Amendment of Sections 200.1\(x\) and 200.5 of the Regulations of the Commissioner of Education Relating to Special Education Due Process System Procedures](#)**

On December 1, 2021, NYSED and the NYCDOE entered into a Memorandum of Agreement (MOA) with NYC’s Office of Administrative Trials and Hearings (OATH) to establish an administrative team of full-time impartial hearing officers (IHOs) to effectively manage NYCDOE’s current due process caseload. The parties agreed that handling of the special education impartial hearing system would be transferred to OATH in order to facilitate the effective management of current and future due process compliant filings. The parties recognized the need to establish an appropriate transition period during which both current IHOs (per-diem independent contractors) and OATH IHOs will conduct impartial hearings. The transition period is ongoing. To date, OATH has hired 43 attorneys who are certified and trained by NYSED to be IHOs, in addition to settlement officers and administrative staff. NYSED has since trained 16 additional OATH IHOs to be certified IHOs. In addition, the MOA indicates that NYSED will take steps to propose amendments to the Commissioner’s regulations to support the use of IHOs hired by OATH and the ability of OATH to assign cases to its IHOs as OATH deems appropriate.

At its January 2023 meeting, the Board of Regents adopted as an emergency rule proposed amendments to 200.5(p) and 200.1(x), effective January 25, 2023. to immediately permit OATH to promulgate regulations related to special education due process hearings to promote the efficient resolution of due process complaints. The proposed amendment required that OATH must ensure that all proposed regulations are consistent with state and federal laws and regulations. Additionally, the Department proposed to amend the definition of “impartial hearing officer” to contemplate IHOs employed by OATH. Following public comment, at the May Board of Regents 2023 meeting, the proposed rule was adopted as a permanent rule, effective May 31, 2023.

### **[Proposed Amendment of Section 200.5 of the Regulations of the Commissioner of Education Relating to Special Education Due Process Hearings](#)**

At their February 2023 meeting, the Board of Regents proposed amendments to section 200.5 to the Regulations of the Commissioner of Education relating to special education due process system procedures in 5 areas:

- granting impartial hearing extensions;
- enforcement of mediation and resolution agreements;
- increasing use of mediation;
- establishing rules of conduct; and
- providing flexibility for conducting hearings in different modes.

The 60-day public comment period ended May 8, 2023. It is anticipated that the proposed amendments will be presented for permanent adoption at the June 2023 Regents meeting, effective June 28, 2023.

### **Public Comment**

No public comment was provided.

### **Subcommittee Redesign: Updates/Share Out from Subcommittees**

Chairperson Martorana led a discussion about future changes to the structure of the CAP subcommittees. CAP members shared suggestions for the process moving forward. Based on the recommendations, the Executive Committee will meet to create a plan for the structure and work of the subcommittees in 2023-2024. Additional information about the subcommittee changes will be shared with the members prior to the fall 2023 CAP meeting.

There were no updates from the current subcommittees.

## **Updates from New York State Agency Representation on CAP**

The following CAP members representing State agencies provided updates on initiatives relating to children with disabilities and their families:

Natasha Bermudez, from the New York State (NYS) [Office of Mental Health \(OMH\)](#), shared the following new initiatives related to supporting mental health services for youth:

- New York State's fiscal year 2024 Executive Budget includes 30 million dollars to expand mental health services for school-aged children throughout the State and implement wraparound services training.
- Expansion of Peer Services to help build the credentials for Peer Specialists/Advocates, or individuals who utilize their lived experience and expertise of resilience and recovery with others in their work.
- Establishment of a Trauma-Informed Network and Resource Center to provide support for schools.

CAP members were encouraged to reach out to Ms. Bermudez for assistance in accessing regional OMH services for their constituencies or to sign up for the [OMH Newsletter](#).

Alexis Harrington, from the NYS [Office for People with Developmental Disabilities](#) provided information about the [National Expansion of Employment Opportunities Network \(NEON\) Initiative Grant](#), a new cross agency collaboration with OMH, the Department of Labor, NYSED and NYSED's Adult Career and Continuing Education Services-Vocational Rehabilitation to increase competitive integrated employment opportunities for people with disabilities, including those with developmental disabilities.

Raymond Pierce, from the NYS [Department of Health, Bureau of Early Intervention \(EI\)](#), informed CAP members that there are ongoing events and campaigns to recruit providers and increase the EI workforce. A rate increase for providers was originally proposed in the State budget and has been reintroduced as a separate legislative bill.

## **Member Sharing of Information and Unmet Needs:**

Members reviewed and discussed the following unmet needs identified at the November 2022 and March 2023 CAP meetings:

- Transition planning for youth and support for vocational goals;
- Transition for PreK-age 21: critical steps;
- Parent education;
- Supports for students with disabilities who are English language learners;
- Individualized planning for all students including daily living skills;
- Staff shortages - including recruiting and retaining certified educators and shortages of preschool providers (i.e., related services); and
- Mental health supports.

The members were asked to consider the topic of transition planning as a focus in 2023-2024.

Discussion highlights included:

- Transition planning should begin earlier and occur Prekindergarten to age 21 to set students up for success.
- Guidance is needed to assist programs in understanding student needs at key transition stages (e.g., committee on preschool special education to committee on special education; elementary to middle school, middle school to high school, and high school to post-secondary transitions)
- Transition to post-secondary life for students with significant disabilities needs to be seamless to ensure that youth with disabilities have the supports and therapies they need after leaving school. Information is needed on students who are enrolled in Career and Technical Education (CTE) and

participating in work-based learning (WBL) (e.g., What is the data on the participation of students with disabilities in CTE programs and how are schools using WBL? and What supports do students need to be successful?).

- The importance of meeting students' current needs and planning for supports to build future independence (e.g., consideration of one-to-one aides, therapies and supports versus programs).

### **CAP Annual Report for 2022-2023**

The CAP Executive Committee will work with NYSED staff to draft the 2022-2023 CAP Annual Report, with the goal of for approval at the November 2023 CAP meeting. Each subcommittee will be asked for a summary of their work for inclusion in the report.

### **CAP 2023-2024 Meetings**

Members were provided with the dates and times for the 2023-2024 CAP meetings. Additional details about the meeting format and times will be sent to members via the CAP Listserv.

- Thursday, November 2, 2023 - Friday, November 3, 2023
- Thursday, February 29, 2024 - March 1, 2024
- Thursday, May 30, 2024 - Friday, May 31, 2024

### **Closing**

#### **Acknowledgement of Outgoing Members**

Vice Chairperson Williams, thanked the following outgoing members for their service and dedication for students and adults with disabilities during their time on CAP:

- Edward Escobar
- Naomi Brickel
- Mara Vanderzell
- Brett Eisenberg
- Yvonne Sinisgalli
- Kimberly Black
- Lynette Aqueron
- Kathy Doody
- Brian Pulvino
- Lori Podvesker

The CAP Executive Committee presented Edward Escobar with a plaque recognizing the 15 years he served as the CAP Chairperson. Mr. Escobar thanked the CAP members and NYSED staff for their help and support over the past 15 years.

Chairperson Martorana thanked the members for their participation and requested feedback on the meeting. The feedback will be reviewed by the Executive Committee in planning for the 2023-2024 CAP meetings.

**MOVED**, that the May 18-19, 2023, CAP meeting be adjourned.

Motion by: Edward Escobar

Second by: Naomi Brickel

Action: Motion carried

Chairperson Martorana adjourned the May 2023 CAP meeting.