

**New York State’s Commissioner’s Advisory Panel for Special Education Services  
November 2 -3, 2023, Meeting Minutes**

New York State’s (NYS) Commissioner’s Advisory Panel for Special Education Services (CAP or Panel) held its scheduled winter meeting on November 2-3, 2023, in-person at the New York State Education Department (NYSED) building in Albany, NY.

**MEETING OF CAP, November 2<sup>nd</sup> at 11:00 A.M.**

**Members Who Participated:**

Natasha Bermudez, Alicia Bockmier, Timothy Bromirski, Kimberly Clarke, Harold Dean, Andrea DeMeo, Kristin Dudek, Janety Encarnación, Jacie Feuer, Amy Frank, MaryJo Ginese, Michele Gode, Lindsey Holcomb, Tia Jackson, Stacy Denise Lyles, Jamie Maistros, Jennifer Pankowski, Suzanne Pearson, Raymond Pierce, Raquel Schmidt, Sharda Veerubhotla, Danielle Williams, Joshua Woodworth.

**MEETING OF CAP, November 3<sup>rd</sup> at 9:00 A.M.**

**Members Who Participated:**

Natasha Bermudez, Alicia Bockmier, Timothy Bromirski, Kimberly Clarke, Harold Dean, Andrea DeMeo, Kristin Dudek, Janety Encarnación, Jacie Feuer, Amy Frank, MaryJo Ginese, Michele Gode, Alexis Harrington, Tia Jackson, Stacy Denise Lyles, Jamie Maistros, Jennifer Pankowski, Suzanne Pearson, Raymond Pierce, Raquel Schmidt, Sharda Veerubhotla, Danielle Williams, Joshua Woodworth.

The following 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; Director of Career Readiness and Workforce Partnerships, Amy Cox; OSE Supervisor, Due Process Unit, Tracy Davidson; Associates, Policy Unit/NYSED CAP Designees: Dawn Kalleberg and Alana Wickware.

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**General Business**

Chairperson Danielle Williams called the meeting to order at 11:05 A.M. This was followed by the participation protocols and tips.

On day one and two of the meeting, CAP roll call was taken verbally. Members of the public were asked to identify themselves by including their name and affiliation.

Chairperson Williams reviewed the two-day agenda and the responsibilities of CAP members.

**Old Business**

See Action Item “May 18-19, 2023, Meeting Minutes”

**Executive Committee Report**

Chairperson Williams reviewed CAP member duties and reminded members of the importance of the responsibility of being a CAP member. Chairperson Williams reviewed the membership list and reminded members on the importance of verifying that their information is still correct.

Chairperson Williams 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. Chairperson Williams thanked the OSE staff for their participation and assistance in the Executive Committee meetings.

Secretary Dudek introduced the following new members appointed for three-year terms and representing the following constituencies:

- Individual with a Disability - William Dávila;
- Parents of Children with Disabilities – Amy Frank, Lindsey Holcomb, Tia Jackson, and Jamie Maistros;
- Representative of Private Schools – Andrea DeMeo;
- Representative of a Vocational, Community or Business Organization Concerned with the Provisions of Transition Services – Jacie Feuer; and
- State Corrections Agencies (Adult) – Joshua Woodworth

### **ACTION ITEMS**

#### **Election of Officers – Vice-Chairperson and Secretary**

Chairperson Williams informed members that a vote would be taken to elect the new Vice-Chairperson and Secretary for the 2023-2024 CAP year. CAP members were provided the opportunity to nominate candidates for these positions prior to the meeting using an online nomination form. Chairperson Williams informed members that the online nominations submitted through the form shared over the listserv were Kristin Dudek for Vice-Chairperson and Alicia Bockmier for Secretary. Chairperson Williams asked for any additional nominations from the floor. With no additional nominations made, a vote was taken in person using anonymous ballots, and Kristin Dudek was elected for Vice-Chairperson and Alicia Bockmier was elected for Secretary, for a one-year term, by unanimous vote.

**MOVED**, that the following nominations were approved.

Vice-Chairperson: Kristin Dudek

Secretary: Alicia Bockmier

Motion by: Jennifer Pankowski

Seconded by: Raquel Schmidt

Action: Motion carried

#### **May 18-19, 2023, Minutes**

Secretary Kristin Dudek provided a high-level summary of the [May 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 in person.

**MOVED**, that the May 18-19, 2023, meeting minutes be approved.

Motion by: Harold Dean

Seconded by: Jennifer Pankowski

Action: Motion carried with 1 abstention

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

CAP members were provided a draft copy of the [CAP Annual Report for 2022-2023](#) for review prior to the meeting. A high-level summary of the CAP Annual Report for 2022-2023 was provided. Members were

given the opportunity to provide comments/corrections. Secretary Dudek asked members for a motion to accept the minutes. A vote was taken in person.

**MOVED**, that the CAP Annual Report for 2022-2023 be approved.

Motion by: Michele Gode

Seconded by: Tim Bromirski

Action: Motion carried

## **DISCUSSION ITEMS**

### **Remarks from OSE Leadership**

Eileen Borden, Chief of Special Education Services, introduced NYSED staff.

Assistant Commissioner Christopher Suriano welcomed participants and relayed the importance of the recommendations and discussions that take place at CAP meetings, and the impact the feedback CAP provides in an advisory capacity. Policy updates were shared on the following:

### **NYS Graduation Measures Initiative: Understanding the Process**

At their October 2023 meeting, the BOR presented the [NYS Graduation Measures Initiative: Understanding the Process](#) outlining the steps taken to receive stakeholder feedback regarding NY's graduation measures, and sharing the results in a finalized report. [Recommendations from the Blue-Ribbon Commission on Graduation Measures](#) will be presented at the November 2023 BOR meeting.

### **Formal Opinion of Counsel 242**

The Office of Counsel issued [Formal Opinion of Counsel 242](#) regarding the effect of a Second Circuit Court of Appeals' decision that requires that public schools in New York provide special education and related services to resident students with disabilities until age 22, or the day before the student's 22nd birthday. CAP members were encouraged to review the request for [State Aid](#) support for Free and Appropriate Public Education (FAPE) until age 22 presentation that will be presented at the November 2023 BOR meeting.

### **Formal Opinion of Counsel 243**

The Office of Counsel issued [Formal Opinion of Counsel 243](#) regarding regulations concerning the minimum number of instructional hours per week in home, hospital, or institutional settings. This addresses the amount of instruction owed to a student of compulsory school age who has been suspended.

### **Differentiated Monitoring and Support Report**

Joanne LaCrosse provided a review of the results of the [Differentiated Monitoring and Support \(DMS\)](#) activities conducted by the U. S. Department of Education's Office of Special Education Programs (OSEP). The DMS targeted monitoring report summarizes OSEP's review of Individuals with Disabilities Education Act (IDEA) Part B requirements regarding these monitoring priorities and components. Monitoring activities included discussions and a review of documents regarding the State's process to monitor its local educational agencies (LEAs), identify and correct noncompliance, and make annual local determinations on the performance of each LEA. Discussions also included NYSED's State complaint process and due process hearing oversight.

### **Participation of Students with Disabilities in Career and Technical Education (CTE) Programs:**

Amy Cox was accompanied by Michael Woods, Director [CTE Technical Assistance Center \(TAC\) of New York](#). Together they provided a presentation informing CAP members what CTE is; the seven content areas in which credit courses are offered; the CTE requirement for student in grades 6 – 8; and the difference between locally approved sequences and NYSED approved CTE programs. Data was presented on the number of students, including the percentage of those students identified as having a

disability, who participate in the approved CTE programs. Information about [Perkins V](#) for CTE programs was discussed. The NYS CTE TAC, which assists NYSED in providing students access to high quality CTE opportunities is currently gathering information regarding the participation of students with disabilities in CTE programs. CAP members were invited to access the brainstorming phase of the survey to provide insights about the challenges faced and supports needed at the classroom, building, and district levels, so that clear guidelines and best practices can be established for a successful student experience.

### **Due Process Updates**

Tracy Davidson, Supervisor, Due Process Unit, provided information and updates on the due process hearing system. CAP members provided input on target setting for State Performance Plan (SPP) Indicator 15, Resolution Sessions.

### **Impartial Hearing Decisions**

The Due Process Unit oversees and monitors New York State's special education due process hearing system as required by the IDEA. A due process hearing (also known as an impartial hearing) is a formal process to resolve disagreements between a parent of a student with a disability and a school district. At the conclusion of a special education due process hearing, the impartial hearing officer issues a final written decision. The final decisions are posted after all personally identifiable information has been removed. CAP members were provided with information on locating the final written decisions which are made available to the public on the [OSE Impartial Hearing Decisions website](#).

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

As a follow up to the May 2023 CAP meeting, Tracy Davidson presented information on [SPP Indicator 15: Resolution Sessions](#) and sought member feedback on resetting the targets for this indicator based on a change in the calculation of the data.

Members received information and engaged in discussion 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;
- SPP Indicator 15 data from federal fiscal year 2006 to the present;
- current improvement strategies; and
- results of the fall 2023 stakeholder survey.

CAP members were asked to provide input the following question:

- What do you believe our modified SPP 15 targets should be?

### **New York's Determination for 2023 under the Individuals with Disabilities Education Act**

Previously, at the March 2023 meeting, CAP members were provided with background information on New York's FFY 2021 Part B State Performance Plan (SPP)/Annual Performance Report (APR) submission, including a review of the State's results on the 17 SPP indicators. The FFY 2021 SPP/APR was finalized and publicly posted in June 2023. As a follow up, Eileen Borden, Chief of Special Education Services, presented on New York's 2023 IDEA determination under Part B. United States Department of Education (USDE) makes determinations on whether each state "meets requirements," "needs assistance," "needs intervention," or "needs substantial intervention" in meeting the requirements of Part B of the IDEA. A states determination is based on both compliance and results data other State-reported data, and other publicly available information. In June 2023, NYSED was notified of USDE's determination that New York State (NYS) "needs assistance" in implementing the requirements of Part B of the IDEA. This determination was based on data reflected in NYS's "2023 Part B Results-Driven Accountability Matrix" (RDA Matrix). The RDA Matrix is a scoring rubric that includes specific Results and Compliance factors by which states are

measured. As a result of NYS's determination of "needs assistance," USDE advised NYS of available technical assistance resources, including USDE-funded technical assistance centers and resources, and has required NYS to work with these entities. NYS has also been directed to determine the Results elements and/or Compliance indicators, and improvement strategies, on which it will focus its use of available technical assistance, in order to improve its performance. NYS must report with its 2022 SPP/APR submission, due February 1, 2024, on the technical assistance sources from which the state received assistance and the actions the state took as a result of that technical assistance. NYS must also notify the public of its IDEA determination, [New York State's IDEA Determination under Section 616\(d\) of the Individuals with Disabilities Education Act: Part B website](#) has the required public posting of Letter to Commissioner Rosa regarding Determination by the USDOE, Office of Special Education Programs. The final FFY 2021 SPP/APR including the 2023 Part B Results-Driven Accountability Matrix is posted on NYSED's [Special Education State Performance Plan \(SPP\)/Annual Performance Report \(APR\) website](#).

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

Chairperson Williams led a discussion about the new structure of the CAP subcommittees, including when and how often they meet and how to promote additional participation. Subcommittees will be given time during CAP but can also choose to meet outside of CAP.

The two subcommittees are School-age and Preschool. CAP members were provided with a framework for approaching their subcommittee conversations as representatives of their constituency. CAP members were encouraged to bring questions and ideas to their meetings and to consider framing issues around the following categories during those discussions: least restrictive environment; student performance; legislative updates; teacher/provider certification, and family engagement. During the May 2023 meeting, CAP members had identified the topic of transition across all ages and levels of education as an unmet need in the state. During the meeting, subcommittees designated their Co-chairs and familiarized themselves with procedures. Subcommittees discussed transition needs and provided input on additional unmet needs within the State in the education of students with disabilities. [\[CAP By-laws, Responsibilities I.A\]](#) The subcommittees identified the following needs for future discussion:

#### **Pre-School Subcommittee**

- Tuition Reimbursement Rate- pre-school
- FFS reimbursement rate-Early Intervention (EI)
- Transportation
- Availability of pre-school providers (pre-school and EI)
- Loss of providers to school districts
- Red tape/requirements to open programs/approvals needed
- No access to teacher retirement system
- Lack of physical space for programs
- Growing list of children without services (pre-school and EI)
- Increase in English Language Learners and support services
- Growing need for services
- District 4410 vs. private/non-profit (private requires oversight)

#### **School Age Subcommittee**

- Families seeking services/due process rights (proper reporting)
- Unbiased 3rd party support for parents (non-school district staff)
- IEP being more functional across grade-spans
- Increase in related service providers need
- Placement for students upon graduation- for NYSAA students links to OPWDD/OMH/etc.

- Sharing of multiple languages/formats/modern ways, etc.
- Use “plain language” when communicating with and supporting parents
- Staffing needs

### **New York State Agency Representation Updates:**

The following CAP members representing State agencies provided descriptions of their roles in serving students with disabilities and their families:

- **ACCESS-VR** - Suzanne Pearson - assists individuals with disabilities to achieve and maintain employment and to support independent living through training, education, rehabilitation, and career development;
- **Department of Health (DOH), Bureau of Early Intervention (EI)** - Ray Pierce - provides therapeutic and support services to eligible infants and toddlers with disabilities birth - 3;
- **Department of Corrections and Community Supervision (DOCCS)** - Josh Woodworth - provides special education services to incarcerated individuals age 18-22 at 14 designated facilities, individuals in foster care;
- **Office of Children and Family Services (OCFS)** - Tim Bromirski - provides special education services to incarcerated individuals under the age of 18;
- **Office of Mental Health (OMH)** - Natasha Bermudez - provides traditional outpatient mental health services to children and adolescents in a variety of sites including schools and community offices;
- **Office of People with Developmental Disabilities (OPWDD)** - Alexis Harrington - provides supports and services for people with developmental disabilities.

### **Public Comment**

No public comment was provided.

### **Closing**

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

Vice Chairperson Dudek thanked Alexis Harrington from OPWDD for her five years of service on CAP.

Chairperson Williams thanked everyone for their support and requested feedback on the meeting which was noted and will be reviewed by the Executive Committee.

**MOVED**, that the November 2-3, 2023, CAP meeting be adjourned.

Motion by: Harold Dean

Second by: Jacie Feuer

Action: Motion carried

Chairperson Williams adjourned the November 2023 CAP meeting.