

**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

**NOTICE OF FINAL RULEMAKING**

The State Superintendent of Education, pursuant to the authority set forth in sections 3(b)(8) and (11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §§ 38-2602(b)(8) and (11)) (2010 Supp.); sections 101 *et seq.* of the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code § 38-2561.01 *et seq.*) (2010 Supp.); and Mayor’s Order 2007-149 (June 28, 2007), and Article II of An Act to provide for compulsory school attendance, and for other purposes, approved February 4, 1925 (43 Stat. 805; D.C. Official Code §§ 38-202 *et seq.*) (2001 and 2010 Supp.), hereby gives notice of the repeal of section 3813, chapter 38 of subtitle E of Title 5 of the District of Columbia Municipal Regulations (DCMR). These final rules create a new chapter 28 entitled “Certificates of Approval for Nonpublic Special Education Schools and Programs Serving Students with Disabilities Funded by the District of Columbia,” of subtitle A, “Office of the State Superintendent of Education” of Title 5 of the DCMR. These rules were proposed on June 18, 2010, and published in the *D.C. Register* (DCR) at 57 DCR 5263. A public hearing was held on June 24, 2010. This action takes into consideration all public comments received in connection with this proposal and hearing, as well as those received through the proposed rulemaking for special education nonpublic schools and programs certificates of approval published in the *D.C. Register* at 56 DCR 5112 (June 26, 2009); and comments received in connection with the rate proposal for nonpublic special education schools or programs published in the *D.C. Register* at 54 DCR 7265 (July 29, 2007).

The final rules are being adopted in substantially the same form as proposed with clarifications and deletions taking into account suggestions received in public comments. The final rules do not include proposed subsection 2821.5. This provision addressed nonpublic school invoice submissions and payments in connection with student attendance. Proposed subsection 2823.6 addressing attorney representation has been deleted. Proposed sections 2844 and 2845 addressing rate setting and rate schedules for tuition and related services have also been removed from the final rulemaking at this time. OSSE plans to re propose the invoicing and rate setting provisions and will schedule another public hearing to review rate related proposals.

Subtitle A, Title 5 of the DCMR is amended by adding a new Chapter 28 to read as follows:

**CHAPTER 28                    CERTIFICATES OF APPROVAL FOR NONPUBLIC SPECIAL  
EDUCATION SCHOOLS AND PROGRAMS SERVING  
STUDENTS WITH DISABILITIES FUNDED BY THE DISTRICT  
OF COLUMBIA AND SPECIAL EDUCATION RATES**

**2800                    AUTHORITY AND PURPOSE**

2800.1                    This chapter is promulgated pursuant to section 101 *et seq.* of the Placement of Students with Disabilities in Nonpublic Special Schools Act, effective March 14,

2007 (D.C. Law 16-269; D.C. Official Code §§ 38-2561.01 through 38-2561.11) (2009 Supp.) (Placement Act); Mayor’s Order 2007-149 (June 28, 2007); sections 3(b)(8) and (11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §38-2602(b)(8) and 38-2602(11)) (2010 Supp.); and Article II of An Act to provide for compulsory school attendance, and for other purposes, approved February 4, 1925 (43 Stat. 805; D.C. Official Code §§ 38-201 *et seq.*).

- 2800.2 The Office of the State Superintendent of Education (OSSE) may issue a certificate of approval to a nonpublic special education school or program, including a residential treatment or psychiatric residential treatment facility (PRTF) operating an educational program, serving students with disabilities funded by the District of Columbia. The purpose of the certificate of approval process is to maintain oversight of nonpublic special education schools or programs, including residential treatment or psychiatric residential treatment facilities, to ensure that every District of Columbia student with a disability is afforded a high quality education in the least restrictive environment.
- 2800.3 Any school or program defined within this chapter as a nonpublic special education school or program shall not accept a placement of a District of Columbia student with a disability whose education is funded by the District of Columbia government unless it receives and maintains a certificate of approval issued by OSSE; except if a student is ordered placed and located at a specific uncertified school by order of a court or a due process hearing officer decision pursuant to 34 C.F.R. 300.513; and then only in exceptional circumstances where the student, because of the student’s unique and highly specialized needs, cannot be served by a nonpublic special education school or program with a certificate of approval.
- 2800.4 A nonpublic special education school or program with a current certificate of approval issued by OSSE shall comply with the provisions of this chapter unless otherwise exempted by District of Columbia laws or regulations.
- 2800.5 A nonpublic special education school or program without a certificate of approval that accepts a District of Columbia student ordered placed and located specifically in that school or program by a court of law or due process hearing officer decision must apply for a certificate of approval within ninety (90) calendar days after the date of accepting that student and must immediately comply, at a minimum, with the following sections of this chapter as to the student placed before accepting the student: sections A-2805 through A-2822; sections A-2830 through A-2834; A-2836; A-2837; and A-2844, unless otherwise exempted by OSSE. The nonpublic special education school or program shall give OSSE an assurance as to its compliance under this section before accepting the student.

- 2800.6 If OSSE denies an application for, refuses to renew, suspends or revokes a certificate of approval for a nonpublic special education school or program subject to this chapter, the following shall occur:
- (a) OSSE shall provide written notification of its decision to any sending local education agency (sending LEA) with children in the nonpublic school or program;
  - (b) Each responsible LEA shall schedule an Individualized Education Program (IEP) team meeting for each of its District of Columbia students and notify the parent that the nonpublic school or program has failed to qualify for a certificate of approval; and
  - (c) The IEP team shall determine an appropriate placement for the student.

2800.7 The denial of an application, refusal to renew, suspension or revocation of a certificate does not invalidate a student placement by court order or hearing officer decision (HOD). The responsible LEA shall convene an IEP team to determine if the placement is appropriate and, if necessary, seek a modification of the court order or HOD.

## **2801 AWARD OF A CERTIFICATE OF APPROVAL**

2801.1 In determining whether to grant or renew a certificate of approval, OSSE shall review the applicant's program for compliance with the standards of this chapter and other applicable laws and regulations, including, without limitation, the requirements of the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act.

2801.2 A nonpublic special education school or program shall not be granted or allowed to maintain a certificate of approval unless it obtains and maintains documentation verifying compliance with all applicable fire, safety, building code, health, and sanitation requirements.

2801.3 A certificate of approval does not relieve a nonpublic special education school or program of its obligation to comply with all applicable local or federal statutory or regulatory requirements. OSSE may withhold, revoke, or deny approval consistent with the provisions of this chapter if, in its discretion, circumstances warrant such action.

## **2802 VALIDITY OF CERTIFICATE OF APPROVAL**

2802.1 A certificate of approval is valid for up to three (3) years after the date of issuance. The expiration date shall be clearly indicated on the certificate.

2802.2 In its discretion, OSSE may grant a certificate of approval for a period

shorter than three (3) years. In such a circumstance, the nonpublic special education school or program shall be informed in writing of the reasons for the decision.

2802.3 OSSE may issue a provisional certificate of approval that shall continue in effect pending OSSE's review of an application for renewal that is timely submitted to OSSE in conformance with this chapter, unless OSSE provides written notification of other action affecting the status of the certificate of approval.

2802.4 A certificate of approval shall be considered void if:

- (a) The nonpublic special education school or program ceases operating educational programs or files for bankruptcy or dissolution;
- (b) The certificate of approval expires and an application for renewal has not been completed and submitted within the applicable timelines for a renewed certificate of approval; or
- (c) The certificate of approval is revoked by OSSE due to noncompliance with the standards set forth in this chapter.

### **2803 LEVELS OF APPROVAL**

2803.1 OSSE may, at its discretion, grant a certificate of approval that confers full approval status, probationary approval status, or provisional approval status. OSSE shall grant full approval status to a nonpublic special education school or program based upon a finding that the application meets all of the standards and requirements of this chapter.

2803.2 In no case shall approval at any level be awarded unless the nonpublic special education school or program demonstrates to the satisfaction of OSSE that the health and safety of students is protected and that the school or program is able to implement the provisions in each student's IEP.

2803.3 A nonpublic special education school or program shall operate in a manner consistent with the specifications of the certificate of approval and may not extend, assign, or transfer a certificate of approval status to additional operating sites.

2803.4 A nonpublic special education school or program shall notify OSSE in writing and submit an application to amend its certificate of approval before a change in circumstances occurs. A change in circumstances includes without limitation, a change of ownership, accreditation status, location, or other form of change in operation that is inconsistent with information or specifications submitted to OSSE. If a nonpublic special education school or program expects to experience

a change in circumstances, it shall:

- (a) Notify OSSE in writing at least sixty (60) calendar days before a change in circumstance(s); and
- (b) Submit to OSSE specific documentation to describe the change, including any additional information requested by OSSE.

2803.5 OSSE may place a nonpublic special education school or program on probationary approval status at any time, based upon circumstances which, in OSSE's discretion, compromise the school or program's ability to provide a safe, healthy, and appropriate educational environment, or to comply with the standards of this chapter. A school or program in probationary approval status shall complete and document in writing specific corrective actions within timelines specified by OSSE. Based on evidence of compliance with the corrective action(s), OSSE may revoke or reinstate the nonpublic school or program certificate of approval with full approval status, or probationary approval status with specific timelines for additional correction.

2803.6 A nonpublic special education school or program with a probationary certificate of approval may not accept or enroll any additional students from the District of Columbia until OSSE issues a certificate of approval with full approval status, or a student placement at the school or program is ordered by a court of law or a hearing officer decision pursuant to 34 C.F.R. 300.513.

2803.7 OSSE may grant provisional approval status for a time period not to exceed six (6) months after the date of approval of an initial application. OSSE may revoke provisional approval status at any time for any reason.

2803.8 If provisional approval status is granted, OSSE shall indicate the specific conditions and timeline that the nonpublic special education school or program shall meet to establish full approval status.

2803.9 If OSSE finds that the nonpublic special education school or program has failed to meet the specified conditions within the provisional approval status period or does not grant full approval status, the provisional approval status shall expire automatically.

2803.10 A nonpublic special education school or program with a provisional certificate of approval may not accept or enroll any additional students from the District of Columbia until OSSE issues a certificate of approval with full approval status, or a student placement at the school or program is ordered by a court of law or a hearing officer decision pursuant to 34 C.F.R. 300.513.

## **2804 CERTIFICATION LIST AND MONITORING REPORTS**

- 2804.1 OSSE shall publish and make available the list of nonpublic special education schools or programs, including the current level of approval of each school or program.
- 2804.2 OSSE shall produce at least one (1) written monitoring report for each nonpublic special education school or program during the period of the school or program's certificate of approval. Such reports shall not contain personally identifiable student information.

## **2805 CURRICULUM REQUIREMENTS**

- 2805.1 Nonpublic special education schools or programs that serve District of Columbia students with disabilities shall provide special education and related services in accordance with the student's IEP and afford the student all of the rights he or she would have if served by a public agency.
- 2805.2 Nonpublic special education schools or programs that serve District of Columbia students with disabilities shall ensure instructional alignment with the District of Columbia's learning standards, grades, promotion, and graduation requirements, consistent with Title 5 of the DCMR, including compliance with any amendments to these respective policies, procedures and rules.
- 2805.3 Nonpublic special education schools or programs shall ensure all students are appropriately included in the statewide assessment, either by taking the statewide general assessment or an alternate assessment approved by OSSE, in accordance with guidelines established by OSSE.

## **2806 LEARNING TIME**

- 2806.1 The school year of a nonpublic special education school or program shall include a minimum of one hundred eighty (180) regular instructional school days, exclusive of any Extended School Year (ESY) period mandated by an IEP.
- 2806.2 Each regular instructional school day shall be at least six (6) hours in length for students, inclusive of time allotted for lunch periods, recesses, and class breaks, except that the six (6) hour minimum instructional school day requirement shall not be applicable to any evening school program, prekindergarten program, or other alternative program approved by OSSE.

## **2807 RESOURCES AND MATERIALS**

- 2807.1 A nonpublic special education school or program shall provide the facilities, textbooks, equipment, technology, materials, and supplies needed to provide the

special education and related services specified by the IEPs of its enrolled students.

2807.2 A nonpublic special education school or program shall provide all resources and materials required to accommodate students with disabilities in obtaining, as specified in their IEPs, a diploma, GED, or alternative certificate of completion.

2807.3 A nonpublic special education school or program that does not meet the necessary resources and materials requirements shall not be eligible to apply for a certificate of approval.

## **2808 INDIVIDUALIZED EDUCATION PROGRAMS**

2808.1 The sending LEA responsible for the District of Columbia student with a disability placed in a nonpublic special education school or program and the nonpublic special education school or program are both responsible for ensuring that the student has a complete and current IEP. A nonpublic special education school or program shall work with the sending LEA to maintain compliance with the IDEA as follows:

- (a) If the nonpublic special education school or program becomes unable to implement any portion of the student's IEP, including compensatory education, the school or program shall immediately notify the sending LEA in writing and consult with the sending LEA about whether an IEP team meeting is required;
- (b) If the nonpublic special education school or program becomes aware that the student's IEP is not being fully implemented due to factors beyond its control (for example, transportation), the school or program shall immediately notify the sending LEA in writing and consult with the sending LEA about whether an IEP team meeting is required;
- (c) If it appears to the nonpublic special education school or program that a required timeline for an evaluation, reevaluation or any other timeline specified in the IDEA has lapsed or will imminently lapse, the school or program shall immediately notify the sending LEA in writing; and
- (d) In the event that the sending LEA must call an IEP team meeting, whether as a result of a situation outlined in paragraphs (a) and (b) above or otherwise, the nonpublic special education school or program shall assist the sending LEA in convening the meeting and respect the due process rights afforded to a student and his or her parents under the IDEA.

2808.2 The sending LEA shall ensure that all data required by OSSE regarding a student with a disability enrolled in a nonpublic special education school or program is entered into the District of Columbia's Special Education Data System (SEDS)

and that such data is accurate, up-to-date and complete. OSSE shall provide SEDS access to a nonpublic special education school or program limited to the students enrolled in the school or program and in a manner consistent with the Family Educational Rights and Privacy Act of 1974 (FERPA). Each nonpublic special education school and program shall cooperate with the LEA to maintain each enrolled student's IEP in SEDS. The failure to maintain current data shall be considered a failure to cooperate, as will other actions or omissions that lead to incomplete records. Under no circumstances shall a nonpublic special education school or program issue a change in location using SEDS.

2808.3 A nonpublic special education school or program shall implement all components of each student's IEP, including any items of compensatory education, unless it has been specifically agreed by the IEP team and documented in writing that an entity other than the school or program will implement an item or items on the IEP.

2808.4 Pursuant to 34 C.F.R. 300.325I, the sending LEA shall remain responsible for compliance with the requirements of the IDEA for students served by nonpublic special education schools or programs, and OSSE shall monitor the sending LEA's compliance with these requirements.

2808.5 In the event that the sending LEA has an agreement with the nonpublic special education school or program for the nonpublic special education school or program to administer or arrange assessments (including reevaluations) to determine continued eligibility for special education and related services or for any other purpose under the IDEA:

- (a) The nonpublic special education school or program shall administer or arrange for the provision of assessments consistent with the IDEA and any hearing officer decision governing the assessment pursuant to 34 C.F.R. 300.513; and
- (b) The nonpublic special education school or program shall submit an invoice to OSSE for the assessment in the next invoicing period at OSSE established rate in the manner prescribed by OSSE's guidance or agreements. In the event that OSSE has not established a rate for the assessment in question, the nonpublic special education school or program must first notify OSSE and receive written approval prior to administering or arranging for the assessment. OSSE shall respond to such requests within 10 business days. OSSE shall only pay for assessments at an established rate consistent with the Placement Act.

2808.6 Pursuant to 34 C.F.R. 300.325(b), IEP team meetings may be initiated and conducted by the nonpublic special education school or program at the request or discretion of the sending LEA.

- (a) The nonpublic special education school shall provide written notification to and invite the sending LEA to the student's IEP team meeting.
- (b) The notice shall include the time, date, and location of the meeting.
- (c) The nonpublic special education school shall document its attempts to invite the sending LEA to the IEP team meeting, as well as the LEA's involvement with any IEP team decision and the LEA's agreement with any proposed changes to the IEP which result from any meeting.

2808.7 As part of the IEP team process, staff members of the nonpublic special education school or program who are members of the student's IEP team shall ensure that each IEP:

- (a) Meets all the requirements of the IDEA, 20 U.S.C. §1414(d); and 34 C.F.R. 300; 320; 300.321; 300.322 and 300.324;
- (b) Contains a Behavior Intervention Plan (BIP), whenever appropriate, that is based on a Functional Behavior Assessment (FBA) and includes a plan for crisis management; and
- (c) Provides for extended school year services (ESY) only if the IEP team decides, on an individual basis, that ESY services are necessary for the provision of a free appropriate public education (FAPE) to the student.

2808.8 A nonpublic special education school or program shall ensure that the appropriate members of its staff attend all IEP team meetings related to District of Columbia students. If an interpreter is necessary to ensure parent participation, the nonpublic special education school or program shall access the necessary services to ensure that it meets the requirements of the District of Columbia Language Access Act, D.C. Law 15-167, effective April 1, 2004. In the event an interpreter is not available, the nonpublic special education school or program shall reschedule the meeting.

2808.9 A nonpublic special education school or program shall monitor how each student is making progress toward meeting the annual goals of the IEP and produce written reports for the parent(s) and the sending LEA on at least a quarterly basis.

2808.10 A nonpublic special education school or program shall ensure that the confidentiality of student records is kept strictly in accordance with the FERPA, and any other applicable privacy laws and regulations.

**2809 IMPLEMENTATION OF HEARING OFFICER DECISIONS AND SETTLEMENT AGREEMENTS**

- 2809.1 A nonpublic special education school or program shall implement all services ordered by any Hearing Officer Decision (HOD) pursuant to 34 C.F.R. 300.513 and/or a Settlement and Mediation Agreements (SA) entered into pursuant to 34 C.F.R. 300.510(d) and 300.506(b)(6) with respect to each attending student, including all assessments and any items of compensatory education, unless it is specifically agreed and documented by the IEP team that a service or services shall be provided by an entity other than the nonpublic special education school or program. Failure of an LEA to timely notify a nonpublic school or program of an HOD or SA will not result in any adverse findings against the nonpublic school or program. Compensatory education shall be invoiced to and paid for by the LEA that is a party to the HOD or SA.
- 2809.2 In the event that the nonpublic special education school or program becomes unable to implement any aspect of a student's HOD or SA, including by reason that the language of a HOD or SA is unclear, not sufficiently specific or not in accordance with subsequent decisions made by the IEP team, the nonpublic special education school or program shall immediately notify in writing the LEA that is a party to the HOD or SA, consult with the LEA regarding whether an IEP team meeting is required and assist the LEA with any IEP team meeting it may schedule.
- 2809.3 A nonpublic special education school or program shall immediately notify in writing the LEA that is a party to the HOD or SA if it appears to the nonpublic special education school or program that a required timeline for an evaluation, reevaluation or other compliance requirement of a HOD or SA has lapsed or will imminently lapse. The nonpublic special education school or program shall also consult with the LEA that is a party to the HOD or SA, regarding whether an IEP team meeting is required and assist the LEA with any IEP team meeting it may schedule.

## **2810 TRANSITIONS TO THE LEAST RESTRICTIVE SETTING**

- 2810.1 In accordance with the IDEA requirement of placing students in the least restrictive environment as well as the Placement Act, IEP planning and service delivery by sending LEAs and nonpublic special education schools or programs shall be designed to support a transition of the student to a less restrictive setting when determined appropriate by the IEP team. The nonpublic special education school or program shall ensure that the IEP teams for students enrolled at the school or program consider a student's transition status at least annually as a component of annual IEP review.
- 2810.2 When an IEP team member believes that a District of Columbia student is ready for a less restrictive setting, an IEP team meeting shall be convened to discuss a change in placement, consistent with the IDEA.

**2811 REPORTING SUSPECTED ABUSE OR NEGLECT**

2811.1 A nonpublic special education school or program shall make reports of suspected neglect or abuse as defined in D.C. Official Code §§16-2301(9) and (23), respectively (including compliance with the law on compulsory school attendance) as required by all relevant federal, state and local law.

**2812 STATE-WIDE ASSESSMENTS**

2812.1 In accordance with chapter A-23 and section 3019 of chapter E-30 of Title 5 of the DCMR, every nonpublic special education school or program shall ensure that every District of Columbia student with an IEP enrolled in a nonpublic special education school or program is appropriately included in either the District of Columbia statewide assessment system or alternate assessment approved by OSSE.

2812.2 A nonpublic special education school or program shall ensure that statewide assessments are administered according to the test security guidelines published by OSSE.

2812.3 The nonpublic special education school or program shall ensure a student's IEP shall include a specific finding that the student is eligible for participation in the alternate assessment based upon the alternate academic achievement standards, OSSE state level guidelines for participation in alternate assessments, and other applicable guidance issued by OSSE.

2812.4 Unless specifically required by a student's IEP, the nonpublic special education school or program and the sending LEA shall not substitute an alternate assessment based on alternate academic achievement standards for the general statewide assessment for any student.

**2813 GRADES AND PROMOTIONS**

2813.1 A nonpublic special education school or program shall adhere to the grades and promotion policies and procedures of the sending LEA in which each student is enrolled as well as state graduation requirements.

**2814 INDIVIDUALIZED BEHAVIOR SUPPORT AND DISCIPLINE**

2814.1 Behavior support programs and plans used by a nonpublic special education school or program shall be based on an individual behavior intervention plan and the utilization of school-wide positive behavior intervention supports. If the behavior of a student impedes the student's learning or the learning of other students, the IEP team shall consider the use of positive behavioral supports and other strategies to address that behavior in conformance with the IDEA and its implementing regulations (20 U.S.C. §1414(d)(3)(B)(i); 34 C.F.R.

300.324(a)(2)(i)). Further, if the student's behavior that impedes learning is not addressed in the IEP, the IEP team must review and revise the IEP to ensure that the student receives appropriate positive behavioral interventions and supports and other strategies (34 C.F.R. 300.324(a)(2)(i) and 300.324(a)(3)(i)).

2814.2 All nonpublic special education schools and programs must ensure compliance with the IDEA's discipline procedures and related procedural safeguards. Any behavioral intervention strategies shall be designed to enhance the delivery of the IEP to support minimal interruption of the academic program. When determining whether a change in placement is appropriate for a student with a disability who violates a code of student conduct, the nonpublic special education school or program shall implement procedures consistent with the IDEA and its implementing regulations (20 U.S.C. §§1415(k)(1) and (7), 34 C.F.R. 300.530).

2814.3 All nonpublic special education schools and programs shall be prohibited from using demeaning, violent or coercive treatment with District of Columbia students. Nonpublic special education schools and programs shall not use restraints or seclusion in any form on District of Columbia students, other than in an emergency circumstance as defined below in section A-2816 below. Seclusion and restraint shall not be used, under any circumstances, as a means of coercion, discipline, convenience or retaliation by staff with District of Columbia students. When an emergency intervention is needed to address problem behavior, the type of intervention chosen shall be the least intrusive necessary.

## **2815 STUDENT-INITIATED TIME AWAY FROM STRUCTURED ACTIVITY**

2815.1 A nonpublic special education school or program shall allow students to initiate time away from structured activity as a means of regaining self-control. Student-initiated time away from structured activity:

- (a) Shall occur in designated areas within the classroom or as appropriate, and as outlined and measured in a student's Behavior Intervention Plan, in other areas within the school, as long as there is direct supervision;
- (b) Be documented in a student's Behavior Intervention Plan;
- (c) Be monitored for effectiveness; and
- (d) May not be imposed upon a student as a form of seclusion or punishment.

## **2816 PHYSICAL AND CHEMICAL RESTRAINTS**

- 2816.1 The use of physical restraints is prohibited in all nonpublic special education schools and programs except in emergency circumstances, which are defined as circumstances that meet the following criteria:
- (a) The use of the restraint is included in the student’s IEP to address specific behaviors under defined circumstances, and the use by appropriate staff is therefore consistent with the student’s IEP; or
  - (b) The intervention is necessary to protect the student or other person from imminent, serious physical harm; and other less intrusive, nonphysical interventions have failed or been determined inappropriate.
- 2816.2 Any physical restraint shall be applied only by nonpublic special education school or program personnel who are trained and certified in the appropriate use of specific, authorized techniques. Copies of those certifications shall be maintained on file at the nonpublic special education school or program.
- 2816.3 The use of physical restraints shall be limited to the use of reasonable force and to the shortest time period necessary to protect the student or other person from imminent, serious physical harm. The restraint must end as soon as the student or other person is no longer in imminent danger. Nonpublic special education school or program personnel shall provide the student with an explanation of the behavior that resulted in the restraint and instructions on the behavior required to be released from the restraint. A member of the staff shall personally observe the student during the entire duration of the use of the restraint in order to assess the need for continued restraint.
- 2816.4 Physical restraint is prohibited as a means of punishment or as a response to property destruction, disruption of school order, a student’s refusal to comply with a nonpublic special education school or program rule or staff directive, or language that does not constitute a threat of imminent, serious physical harm.
- 2816.5 No physical restraint shall be administered if the student has a medical or psychological condition contraindicative to restraint. No physical restraint shall be administered in such a way that the student’s breathing or speaking is restricted. During the restraint, a staff member shall continuously monitor the physical status of the student, including skin color and respiration. The restraint shall be released immediately upon a determination by a staff member that the student or other person is no longer at risk of causing imminent, serious physical harm. A staff member shall continuously assess the student to determine if medical attention is required.
- 2816.6 If the student uses sign language or an augmentative mode of primary communication, the student shall be permitted to have the student’s hands free of restraint for brief periods, unless the staff member determines that such freedom

appears likely to result in harm to self or others. The restraint must end as soon as the student is no longer at risk of causing imminent, serious physical harm.

2816.7 The use of restraint practices with a student whom the nonpublic special education school or program knows has been sexually or physically abused is prohibited.

2816.8 A nonpublic special education school or program shall only use a chemical restraint on a District of Columbia student to the extent the chemical restraint is determined to be medically necessary. Any usage of a chemical restraint must be ordered by a physician, determined to be medically necessary, and administered in conformance with the student's medical treatment plan.

## **2817 MECHANICAL RESTRAINT**

2817.1 A nonpublic special education school or program shall not use any form of mechanical restraint on a District of Columbia student. Use of such restraints as a policy or practice shall be grounds for denying or revoking a certificate of approval.

## **2818 PRONE RESTRAINT**

2818.1 A nonpublic special education school or program shall not use any form of prone restraint on a District of Columbia student. Use of such restraints as a policy or practice shall be grounds for denying or revoking a certificate of approval.

## **2819 SECLUSION**

2819.1 A nonpublic special education school or program shall not use any form of seclusion on a District of Columbia student unless it is an emergency, as defined in section A-2816.1. Use of seclusion as a policy or practice shall be grounds for denying or revoking a certificate of approval.

2819.2 A space used for seclusion shall, at a minimum:

- (a) Be free of objects and fixtures with which a student could self-inflict bodily harm;
- (b) Provide school personnel an adequate view of the student from an adjacent area in accordance with this section; and
- (c) Provide adequate lighting, ventilation, and appropriate temperature controls.

- 2819.3 In the event of seclusion, nonpublic special education school or program personnel shall view a student placed in seclusion at all times, by remaining within sight of the student, consistent with section A-2819.5 herein, and shall provide the student with an explanation of the behavior that resulted in the seclusion and instructions on the behavior required to be released from the seclusion.
- 2819.4 Seclusion shall only be applied by nonpublic special education school or program personnel who are trained in the appropriate use of the specific, authorized technique and knowledgeable of these regulatory provisions and any other guidance issued by OSSE. Copies of those certifications shall be maintained on file at the nonpublic special education school or program.
- 2819.5 Nonpublic special education school or program personnel shall continuously monitor a student placed in seclusion and speak with the student every ten (10) minutes at minimum. After thirty (30) minutes, the Director, Head of Special Education or other senior personnel shall personally observe the student to assess the need for continued seclusion. No seclusion shall continue longer than one (1) hour.
- 2819.6 If the space used for seclusion has a locking mechanism, it must only be engaged when it is held in position by a person, or if electronically engaged, must automatically release if the building's fire alarm system is activated.

## **2820 RESTRAINT AND SECLUSION REPORTING AND FOLLOWUP**

- 2820.1 If any form of restraint or seclusion is used, the nonpublic special education school or program shall prepare and file a written report consistent with the requirements of this section.
- 2820.2 A written incident report shall include the following information:
- (a) The student's name;
  - (b) The date of the incident;
  - (c) The beginning and ending times of the incident, and beginning and ending times of actual restraint or seclusion;
  - (d) A description of relevant events leading up to the incident;
  - (e) A description of any interventions used prior to the implementation of restraint or seclusion;

- (f) A log of events during the restraint, including the restraint technique(s) used;
- (g) A log of events during the seclusion;
- (h) A description of any injuries (whether to students, personnel or others) and/or property damage;
- (i) A list and signatures of the school personnel who participated in the implementation, monitoring, and supervision of the restraint or seclusion event; and
- (j) A description of the short-term planned approach to addressing the student's behavior in the future.

2820.3 The written incident report shall be prepared for each individual incident involving a restraint or seclusion, and shall be placed in the student's permanent file within twenty four (24) hours of the incident.

2820.4 A copy of the written incident report shall be sent within one (1) business day of the incident to the student's parent(s), the sending LEA and any other District of Columbia agency involved in the student's placement.

2820.5 Except in the case where a child's IEP authorizes the use of restraint and/or seclusion and a BIP had been created, the IEP team shall meet within ten (10) school days of the incident to consider the need for a FBA and BIP and to discuss non-physical and non-restrictive de-escalation strategies. If the student has a BIP in place, the IEP team shall review and revise as appropriate. If the student is unable or unwilling to attend the IEP team meeting, the nonpublic special education school or program shall meet with the student individually to discuss the incident as appropriate after consulting with the sending LEA.

## **2821 ATTENDANCE AND TRUANCY**

2821.1 Consistent with D.C. Official Code § 38-201 (2001), *et seq.*, a nonpublic special education school or program shall require that District of Columbia students enrolled in its program attend every regular instructional school day and remain in school until the official closure of the school day.

2821.2 A nonpublic special education school or program shall adhere to and maintain policies and procedures in conformance with the attendance and truancy policies and procedures of the sending LEA and the District of Columbia as set forth in chapter 21 subtitle A of Title 5 of the DCMR. The nonpublic special education school or program shall maintain a policy to allow a student to enter and attend school when the student arrives late for school.

- 2821.3 The nonpublic special education school or program shall submit to the sending LEA and OSSE the same attendance record at the time an invoice is submitted to OSSE for payment, and the roster shall accurately reflect each student's attendance for every regular instructional school day for the respective billing cycle, identifying excused and unexcused absences.
- 2821.4 A nonpublic special education school or program shall notify the sending LEA in writing no later than two (2) instructional school days after the accrual of five (5) unexcused absences by a District of Columbia student in a marking period or similar time frame. A nonpublic special education school or program shall notify the sending LEA, in writing, no later than two (2) instructional school days after each accrual of ten (10) unexcused absences at any given time within the school year. In such cases,
- (a) the nonpublic special education school or program shall consult with the sending LEA regarding whether the current placement or location assignment is appropriate; and
  - (b) the sending LEA shall convene an IEP team meeting as soon as possible to review the student's absences, and make recommendations as appropriate with regard to intervention strategies, and appropriateness of the current placement.
- 2821.5 Upon notification from any source that an enrolled District of Columbia student with a disability has been hospitalized, incarcerated, detained, or placed at a residential facility, a nonpublic special education school or program shall:
- (a) Immediately notify the sending LEA in writing and request written information regarding the student's status and whether the student is to be withdrawn from the nonpublic special education school or program;
  - (b) Comply with any request by the receiving facility or the sending LEA for records or other input for the purpose of providing appropriate academic instruction and related services at the student's new placement within two (2) business days after such request; and
  - (c) Inform OSSE, in the attendance report accompanying its next invoice, of the student's status and the date on which the nonpublic special education school or program learned of the new placement. The final date for which OSSE will provide payment is the date on which the nonpublic special education school or program received notice or the instructional school day prior to the date the subsequent placement begins billing for educational expenses, whichever date is earlier. OSSE, in its discretion, may seek a credit or refund for any overlapping payments made.

2821.6 At its discretion, and upon the request from a sending LEA, OSSE may provide payment to a nonpublic special education school or program in order to ensure that a student will be allowed to return to the school or program after a short-term (less than 30 calendar days) hospitalization, incarceration, detention or placement in a residential facility.

## **2822 TERMINATION OF ENROLLMENT**

2822.1 A nonpublic special education school or program shall not terminate the enrollment of any student, unless and until the sending LEA has been informed, in writing, not less than fifteen (15) instructional school days prior to the proposed date of termination.

2822.2 In the event of emergency circumstances, a nonpublic special education school or program shall not terminate the enrollment of any student, unless and until the sending LEA has been informed by the most expedient and appropriate means of communication with subsequent notice in writing.

## **2823 PERSONNEL QUALIFICATIONS**

2823.1 A nonpublic special education school or program shall ensure that its organizational structure provides for the effective and efficient operation of the school or program, supervision of the school personnel and supervision of the students.

2823.2 Effective no later than school year 2011-12, each member of the teaching staff shall hold a teaching certification from the state or district in which the school is located, to the same level as required for teaching staff in public schools of that state or district.

2823.3 Related service providers, whether employed or contracted by the nonpublic special education school or program, shall be appropriately certified, licensed or registered in their professional areas in alignment with requirements from the state or district in which the school is located, to the same level as required for teaching staff in public schools of that state or district.

2823.4 A nonpublic special education school or program shall maintain personnel files including, at minimum, resumes, attendance records, contracts, driver's licenses (or equivalent), and evidence of child protective service and criminal background checks. Access to personnel policies and files shall be available to OSSE upon request, for the purposes of monitoring compliance with the requirements of this chapter.

2823.5 All nonpublic special education schools and programs must conduct child protective service and criminal background checks on school personnel. A

nonpublic special education school or program shall complete criminal background checks consistent with the District of Columbia requirements.

## **2824**

### **POLICIES AND PROCEDURES**

#### **2824.1**

A nonpublic special education school or program shall maintain on file, at minimum, written policies and procedures that address the following areas:

- (a) Mission statement;
- (b) Positive behavior support policy statement and school-wide positive behavior plan, including a school-wide crisis plan;
- (c) Emergency behavioral interventions, including use of seclusion and restraint as proscribed in this chapter;
- (d) Participation of all District of Columbia students in state-wide assessments;
- (e) Opportunities for enrolled students to interact maximally with their non-disabled peers during such time as they are enrolled in the nonpublic special education school or program;
- (f) Reintegration plan for return to a less restrictive environment;
- (g) Postsecondary transition services and transition planning;
- (h) Truancy;
- (i) Records management and confidentiality of student records;
- (j) Process for a student or parent to make a complaint to the nonpublic special education school or program about the services the student is receiving, including how to access OSSE's state complaint process;
- (k) Employee policies including position descriptions, staff evaluation policies, staff discipline policies (including suspensions and dismissals), procedures for handling complaints by staff, and a statement of equal employment/educational opportunities in regard to race, color, creed, religion, national origin, sex, sexual orientation and disability;
- (l) A plan for meaningful participation by the parent and other family members authorized by the parent;
- (m) Supervision of students;

- (n) A plan for serving students with limited English proficiency;
- (o) Admissions and termination criteria;
- (p) Reporting of suspected child abuse or neglect;
- (q) Timely IEP implementation, including conducting and participating in IEP team meetings;
- (r) Conducting evaluations and reevaluations; and
- (s) Professional development plan which ensures adequate staff education on policies and procedures.

**2825 PROFESSIONAL DEVELOPMENT AND TRAINING**

2825.1 A nonpublic special education school or program shall conduct personnel training at least once annually, regarding:

- (a) Research-based interventions;
- (b) Alignment of curriculum to state standards, including District Learning Standards;
- (c) Confidentiality of student information;
- (d) Procedural safeguards for students and parents;
- (e) Positive behavior support;
- (f) Restraints/seclusion policies in accordance with this chapter;
- (g) Reporting of suspected abuse or neglect;
- (h) Emergency procedures including evacuation and fire drills;
- (i) Truancy; and
- (j) Equal employment opportunities.

**2826 INFORMATION FOR STUDENTS**

2826.1 A nonpublic special education school or program shall provide each student with full and up to date information about its program, including at minimum its academic policies, IEP process, policies on behavior management, student rights

and privileges and the process for making a confidential complaint about the services or treatment he or she is receiving at the school or program.

**2827 INFORMATION FOR PARENTS**

2827.1 A nonpublic special education school or program shall provide every parent with complete and up to date information about its program, including at minimum its academic policies, IEP process, policies on behavior management, student rights and privileges and the process for a parent to make a complaint about the services or treatment a student is receiving at the school or program.

2827.2 In addition to the information set forth in the above subsection, the nonpublic special education school or program shall provide information to all parents regarding monitoring by OSSE, including the fact that students may be asked to participate in interviews or other fact-gathering activities with OSSE representatives.

**2828 FACILITIES**

2828.1 A nonpublic special education school or program shall have current licenses, approvals, and certificates of inspection by state and local agencies, covering safety, fire, lead paint, health, building code, Americans with Disabilities Act and any other inspections that may be required by local or state authorities.

**2829 PUBLIC ACCOUNTABILITY**

2829.1 A nonpublic special education school or program shall maintain and keep up to date on an internet website, and make available for public review upon request, the following information:

- (a) Statement of purpose, including the number of students served and disability categories served;
- (b) Description of the education program;
- (c) Organizational chart and student/teacher ratios;
- (d) Discipline and behavior management policies;
- (e) Rates and tuition information;
- (f) Professional staff listing, including qualifications;
- (g) Licensure, certifications and accreditation status; and
- (h) Management and ownership.

- 2829.2 The following documents shall be maintained onsite at the school and made available for review upon request:
- (a) Documentation of current certificate of approval by the District of Columbia and all other relevant certifications and licensing bodies;
  - (b) Documents granting authority to operate the school, including documents that fully identify ownership, and, as applicable, the names of officers, boards, charters, partnership agreements, articles of organization, and by-laws; and
  - (c) Required professional certifications and licenses of all school personnel.

**2830 INCIDENT REPORTING**

- 2830.1 A separate written incident report shall be prepared for each student subject to the use of restraints or seclusion within twenty four (24) hours of the incident in accordance with this chapter.
- 2830.2 Any other incident involving physical injury to a student shall be reported in writing within one (1) business day to the sending LEA, any other involved District of Columbia agency, and the student's parent(s).

**2831 EMERGENCY REPORTING**

- 2831.1 In the event of fire or any other form of emergency situation, the nonpublic special education school or program must provide the sending LEA and OSSE with written notification as soon as is feasible, and status reports thereafter as requested by OSSE.

**2832 MATERIAL EVENT REPORTING**

- 2832.1 The nonpublic special education school or program shall notify the LEA and OSSE of a material event with a written report about such change of circumstances no later than fifteen (15) calendar days after the date of such event.

**2833 INVOICING**

- 2833.1 A nonpublic special education school or program shall invoice OSSE according to the District of Columbia's rates established under this chapter, policies and procedures for payment of nonpublic special education schools, programs and providers. Such rates, policies and procedures shall be published and made available by OSSE.

- 2833.2 An invoice shall include the following information for each student:
- (a) Student name, date of birth, and a unique student identification number if one has been assigned;
  - (b) Tuition rate per diem;
  - (c) the number of days billed for on the invoice;
  - (d) An itemization of related services provided, frequency of service including the unit of service per hour or per diem as appropriate;
  - (e) the student's Medicaid number, if provided by the parent or sending LEA; and
  - (f) An attendance report including specific days of attendance and absence (identified as excused and unexcused) for each student included in an invoice.
- 2833.3 A nonpublic special education school, program or related service provider shall not use any bundled or packaged rate methodology when invoicing the District of Columbia government.

## **2834 MEDICAID**

- 2834.1 A nonpublic special education school or program shall adhere to all federal and District of Columbia laws and regulations governing Medicaid reimbursable services, including, but not limited to, documentation of all instances of IEP health-related services delivered to District of Columbia students.
- 2834.2 A nonpublic special education school, program or related service provider shall keep organized and confidential records that detail client specific information regarding all specific Medicaid reimbursable services provided for each individual recipient of services and retain those records for review. All such documentation shall include with the invoice:
- (a) Recipient's name, date of birth, and Medicaid or unique identification number;
  - (b) Date, start time, and location of the services;
  - (c) Service Provider name and contact information;
  - (d) A description of the services provided, including diagnosis code and level of service;

- (e) Duration (or unit) of service, with start time;
- (f) Therapy modality (individual or group, including the size of the group);
- (g) Dated progress notes with an original signature by the service provider, including credentials (and signature of qualified supervisors for service providers requiring supervision);
- (h) A copy of provider health evaluation(s) and assessments(s);
- (i) A copy of the current IEP authorizing related service(s);
- (j) Individual service provider daily documentation of the nature of the service encounters and progress notes, signed and dated by the provider, and listing the provider's credentials; and
- (k) An attendance report including specific days of attendance and absence (identified as excused and unexcused) for each student included in an invoice.

2834.3 The frequency, duration and scope of services shall be specified in the student's IEP consistent with the IDEA and its implementing regulations.

2834.4 All services shall be documented within fifteen (15) calendar days of delivery and submitted with invoices using the format required by the District of Columbia. .

2834.5 As requested by OSSE, a nonpublic special education school or program shall enter into a contract confirming its rates for Medicaid purposes and consistent with the Placement Act requirements.

2834.6 When considering residential placements, sending LEAs shall give student placement preference to facilities that are Medicaid eligible and qualify with regard to providing services specified by an IEP.

**2835 ANNUAL CERTIFICATE OF COMPLIANCE**

2835.1 Pursuant to D.C. Official Code § 38-2561.08, a nonpublic special education school or program shall certify compliance with this chapter not less than forty-five (45) calendar days prior to the start of the school year, using such forms as shall be provided by OSSE.

**2836 DISCLOSURE OF INFORMATION**

2836.1 A nonpublic special education school or program shall make available to OSSE, on request, information on all aspects of the school's program(s), staff credentials,

certification by agencies other than OSSE, information regarding any complaints made, health and safety information, the individual records of District of Columbia students, and any other information that OSSE may reasonably require in exercising its duties as the SEA.

**2837 MONITORING**

2837.1 Pursuant to D.C. Official Code § 38-2561.09, OSSE shall schedule periodic monitoring visits to each nonpublic special education school or program at least once during the validity of each certificate of approval, to verify compliance with this chapter, federal and local law. Prior to a scheduled monitoring visit, a nonpublic special education school or program shall inform all parents of enrolled District of Columbia students that a scheduled monitoring visit shall occur.

2837.2 Representatives of OSSE may make unannounced visits to a nonpublic special education school or program, review student records, and conduct interviews with students and staff. OSSE, as the District of Columbia’s SEA, is entitled to immediate access to all student records for monitoring and investigative purposes and shall maintain their confidentiality as required by law. The nonpublic special education school or program shall cooperate in full with any requests for documentation, file review, interviews and access to the facility during an unannounced visit. OSSE may interview students on site at a school or program without school representatives being present. OSSE shall make its requests in a manner least intrusive to the delivery of services to students.

2837.3 OSSE shall issue to the nonpublic special education school or program a monitoring report at least once in every period of validity for a certificate of approval, to include any findings of noncompliance with D.C. Official Code §38-2561 and this chapter.

**2838 INITIAL APPLICATION FOR CERTIFICATE OF APPROVAL**

2838.1 A nonpublic special education school or program seeking a certificate of approval from OSSE shall complete an initial application. Any application shall be made on OSSE’s standard form, which shall comply with the requirements of D.C. Official Code § 38-2561.07(e).

2838.2 An initial application by a nonpublic special education school or program shall be made by the nonpublic special education school or program itself. OSSE will not accept an application for a certificate of approval completed and submitted by a parent, advocate, or LEA.

2838.3 OSSE shall not accept or consider incomplete applications.

2838.4 OSSE shall review each application submitted for an initial Certificate of

Approval according to the criteria specified in this chapter and shall consult with other District agencies and agencies of other state and local governments as applicable.

2838.5 OSSE shall not grant approval to the educational component of a nonpublic special education residential school or program until all licenses required by local or state law have been awarded. OSSE shall not grant approval to any nonpublic special education school or program lacking a physical location at the time of its application.

2838.6 A certificate of approval shall become effective as prescribed by OSSE. OSSE may, at its discretion, schedule site visits, interviews, or other inspections, and/or consult with counterparts in the host state, District agencies or other relevant stakeholders prior to granting a certificate of approval. OSSE shall provide the applicant with written notice of its actions and the reasons for such actions.

### **2839 EXPIRATION OF A CERTIFICATE OF APPROVAL**

2839.1 It is the responsibility of the nonpublic special education school or program to submit a timely application for renewal of its certificate of approval. The failure to submit a timely renewal application shall result in an automatic expiration of the certificate of approval as of the date of expiration on the certificate of approval. Upon expiration, the school or program shall be out of compliance with the Placement Act and may not serve District students.

### **2840 RENEWAL OF AN EXISTING CERTIFICATE OF APPROVAL**

2840.1 A nonpublic special education school or program may have its Certificate of Approval renewed for up to three years at a time. An application for renewal must be submitted not later than one hundred and eighty (180) calendar days prior to the expiration date of the current certificate of approval, using a standard renewal form which shall be published on OSSE's website. It is the responsibility of the nonpublic special education school or program to apply for renewal of certification.

2840.2 Any corrective actions required by OSSE and in place at the time of application for renewal of a certificate of approval must be completed as a condition of renewal.

2840.3 OSSE may revoke or decline to renew a certificate of approval for any of the reasons pursuant to D.C. Official Code §38-2561.11 and this chapter.

### **2841 EXTENSION OF A CERTIFICATE OF APPROVAL**

2841.1 OSSE may in its discretion extend a certificate of approval or grant a provisional certificate of approval pending final action on an application.

- 2841.2 A nonpublic special education school or program must submit an application form for any new branch or campus not covered by the existing certificate of approval.
- 2841.3 OSSE may modify a certificate of approval to allow a nonpublic special education school or program to reflect a material change at the school, to incorporate campus or program additions or changes, or as OSSE otherwise deems appropriate.

**2842 FINDINGS, CORRECTIVE ACTION AND PROCEEDING TO CHANGE CERTIFICATE OF APPROVAL STATUS**

- 2842.1 At least once within the period of validity for each certificate of approval, OSSE shall, based on its monitoring activities, make written findings, documenting noncompliance with the Placement Act and other applicable laws and rules.
- 2842.2 Any finding of noncompliance that constitutes a violation of D.C. Official Code §38-2561.11(a) shall be clearly documented.
- 2842.3 In the event OSSE determines a special education school or program has violated D.C. Official Code §38-2561.11(a), OSSE may in its discretion take action with regard to the status of the school's certificate of approval.
- 2842.4 If OSSE makes one or more findings of noncompliance, whether or not such findings constitute violations of D.C. Official Code §38-2561.11(a), OSSE may order the nonpublic special education school or program to correct the violation(s) within a specific timeframe, and may require the school or program to produce and implement a corrective action plan. Failure to comply with a corrective action, may, at OSSE's discretion, result in a notification of a proceeding to deny, revoke, refuse to renew or suspend the nonpublic special education school or program's certificate of approval.
- 2842.5 Pursuant to D.C. Official Code §38-2561.11(b), OSSE may, in its discretion, issue a notification of a proceeding to deny, revoke, refuse to renew or suspend a certificate of approval at any time OSSE makes a finding of a violation of D.C. Official Code §38-2561.11(a), with or without providing the school or program an opportunity to correct findings that constitute violations of the law or rules thereunder.
- 2842.6 Pursuant to D.C. Official Code §38-2561.11(b), a written notification of a proceeding to the nonpublic special education school or program shall specify the violations of D.C. Official Code §38-2561.11(a) and the action to be taken, including an intention to deny, revoke, refuse to renew or suspend a certificate of approval; as well as notice of an opportunity for a hearing. In the event a school or program does not timely request a hearing under section A-2843 of this chapter

and the Placement Act, OSSE's intended action shall be final and take effect. OSSE shall deliver notice to the school or program of the final action.

## **2843 CERTIFICATE OF APPROVAL REVIEW PROCESS**

- 2843.1 A nonpublic special education school or program may request a hearing and opportunity for an oral presentation to review a notification of a violation and intent to take action regarding the school or program's certificate of approval under D.C. Official Code §38-2561.11(a).
- 2843.2 A nonpublic special education school or program shall request such hearing in writing, no later than thirty (30) days after the receipt date of a written notification of violation and intent to take action regarding the school or program's noncompliance. A hearing request involving a nonpublic special education school or program's aversive intervention policy or practice shall be submitted to OSSE in writing not later than ten (10) days after the receipt date of the written notification of noncompliance.
- 2843.3 The hearing request and all submissions shall be addressed to the attention of the Office of the State Superintendent of Education, Office of the General Counsel, Attn: Certificate of Approval Review.
- 2843.4 The hearing shall be conducted by an independent panel (panel) composed of three (3) but not more than five (5) members selected by the State Superintendent of Education.
- 2843.5 The panel shall not contain any person who has participated in the determination being reviewed or who is a member of the OSSE Department of Special Education (DSE).
- 2843.6 The nonpublic special education school or program's written request for a hearing shall be submitted to the OSSE Office of General Counsel and shall include the following:
- (a) A concise statement of facts regarding each specific violation, finding, or action of which the school or program seeks review;
  - (b) The specific basis for opposing each violation, finding or action subject to review, including the identification of any specific document submitted as part of the record to support the nonpublic special education school or program's position;
  - (c) The specific relief requested;
  - (d) The statutory and factual justification for the relief requested;

- (e) Two copies of all documentary evidence and an index of the documents for consideration by the panel; and
  - (f) A request for an oral presentation consistent with section A-2843.10 if the school or program seeks an opportunity for an oral presentation at the hearing.
- 2843.7 OSSE shall respond in writing to the school or program's submissions with regard to the hearing, not later than five (5) days prior to the hearing date. OSSE's submission shall conform to the process set forth in this chapter.
- 2843.8 The hearing panel's decision shall be based upon the written record including the nonpublic special education school or program's written submission and documentary evidence in support of its request; OSSE's monitoring report or written determination of violations including any attachments; OSSE's notification of noncompliance; a response by DSE; and any other documentation considered relevant by the panel, including additional documentation that may be requested by the independent panel.
- 2843.9 The hearing shall be held not later than thirty (30) days after the receipt date of the written request for a hearing, except that a hearing shall be held within fifteen (15) days after the receipt date of a request for a hearing in a case involving aversive intervention policies or practice.
- 2843.10 A written request for oral presentation before the panel shall be submitted at the same time as and included with a request for a hearing. The special education school or program and DSE shall make a representative available to appear before the panel at the time scheduled by the panel. The length of an oral presentation shall be limited to twenty (20) minutes unless otherwise specified by the panel.
- 2843.11 The nonpublic special education school or program shall continue to provide special education and related services to a District of Columbia student consistent with a student's IEP; and may submit invoices for such services consistent with this chapter and a final decision by the panel.
- 2843.12 The written decision of the panel shall be issued within ten (10) days after a hearing is concluded.
- 2843.13 Pursuant to D.C. Official Code §38-2561.11(b), the decision of the panel is final and not appealable.
- 2843.14 OSSE shall publish the final decision issued by the panel, and take appropriate action in conformance with the final decision, including specific notification to the nonpublic special education school or program, and other relevant parties as OSSE deems appropriate including LEAs, and other government officials within or outside the District of Columbia.

Any term used in this chapter that is not otherwise defined herein, has the same meaning as the D.C. Official Code §§ 38-2561 *et seq.* and the IDEA 20 U.S.C. §§ 1400 *et seq.*

**Americans with Disabilities Act** - Americans with Disabilities Act of 1990, (P.L. 101-336, 104 Stat 327, approved July 26, 1990) as amended, 42 U.S.C. §§ 12101 *et seq.*

**Abuse** - as defined in D.C. Official Code § 16-2301.

**Behavior Intervention Plan** or **BIP** – is a written plan that describes: how an educational setting will be changed to improve the behavioral success of a student; the teaching that will occur to give the student alternative ways of behaving; the consequences that will be provided to (a) encourage positive behavior, (b) limit inadvertent reward of problem behavior, and (c) where appropriate, discourage problem behavior; and procedures for ongoing assessment to determine if the BIP is being implemented correctly and if implementation is resulting in benefits for the student.

**Bundled or Package Rate Methodology** - use of a single invoice for groups of services to students with disabilities without documentation of the actual delivery of services or their costs on an individual per student basis, and which therefore does not qualify for Medicaid reimbursement under federal guidance.

**Days** – calendar days unless otherwise noted.

**Evaluation** - an assessment conducted by a professional certified to conduct such an assessment for students suspected of or diagnosed with a disability defined herein.

**Extended school year services** or **ESY services** – are special education and related services that are provided to a student with a disability beyond the normal school year in accordance with a student’s IEP, provided at no cost to the parents of the student, and meet the standards of the SEA.

**Family Educational Rights and Privacy Act or FERPA** - Family Educational Rights and Privacy Act of 1974, Elementary and Secondary Education Amendments Act, approved August 21, 1974 (P.L. 93-380; 88 Stat 571 as amended , 20 U.S.C. § 1232g); and implementing rules at 34 C.F.R. Part 99.

**Full approval status** - the recognition by OSSE that a nonpublic special education school or program has demonstrated an ability to comply with the standards of this Chapter, and has successfully completed an application for a certificate of approval.

**Functional behavior assessment** or **FBA** – is a process for identifying (a) observable problem behaviors, (b) the contexts or routines where the problem behaviors are most likely, (c) the specific antecedent events within a context or routine that reliably predict occurrence of problem behaviors, and (d) the consequences that appear to maintain the problem behavior.

**Individuals with Disabilities Education Act or IDEA** - Individuals with Disabilities Education Act, approved November 29, 1975 (P.L. 94-142; 89 Stat. 773, as amended, 20 U.S.C. §§ 1400 *et seq.*).

**Individualized education program or IEP** - a written plan that specifies the special education and related services to be provided to meet the unique educational needs of a student with a disability, in conformance with the IDEA (See 20 USC § 1414(d)).

**Material event** – a change of circumstances or requirements related to a nonpublic special education school or program’s permit or license; a change in accreditation status; change of financial status or court protection; a major change in program offerings; a change in ownership, management or leadership of the school or program including administrative director, principal or chief executive officer.

**Mechanical restraint** - the use of a physical device to restrict the movement of a student or the movement or normal function of a portion of his or her body. A protective or stabilizing device ordered by a physician shall not be considered mechanical restraint.

**Neglect** - as defined in D.C. Official Code § 16-2301.

**Nonpublic special education school or program** - a privately owned or operated preschool, school, educational organization, or program, no matter how titled, that maintains or conducts classes for the purpose of offering instruction, for a consideration, profit, or tuition, to students with disabilities; provided that the term “nonpublic special education school or program” shall not include a privately owned or operated preschool, elementary, middle, or secondary school whose primary purpose is to provide educational services to students without disabilities, even though the school may serve students with disabilities in a regular academic setting.

**OSSE** - the Office of the State Superintendent of Education for the District of Columbia.

**Parent** - as defined in the IDEA, 20 U.S.C. § 1401(23) and 34 C.F.R. 300.30.

**Personnel** – any individual on site at a special education school or program or a person who works with a student on a full-time, part-time, temporary or contractual basis who is paid for services or volunteers service without monetary or other compensatory benefit.

**Physical restraint** - the use of bodily force to limit a student’s freedom of movement.

**Placement Act** - the Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-269; D.C. Official Code §§ 38-2561.01 *et seq.*).

**Probationary approval status** - a demotion from full approval status, granted by OSSE, that requires the nonpublic special education school or program to develop and implement a corrective action plan and timelines dictated by OSSE.

**Prone restraint** - the use of force and/or use of a physical device to hold a student face down on the floor.

**Provider** - a facility or person providing a special education or related service to a student with a disability.

**Provisional approval status** - the less than full approval status granted by OSSE to a nonpublic special education school or program pending the submission of all documentation required for the satisfactory completion of a certificate of approval application.

**Psychiatric residential treatment facility or PRTF** - a psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards recognized by the state in which the facility is located and provides inpatient psychiatric services for individuals under the age of twenty-two (22) in conformance with the federal requirements set forth in sections 441.151 through 441.182 of Title 42 of the Code of Federal Regulations (C.F.R.).

**Rate** - a fee for a special education service, including the per-diem or hourly cost paid to each nonpublic special education day or residential school (including PRTFs) or program, for tuition, and related services delivered in conformance with an IEP, unless otherwise specified in this chapter.

**Receipt Date**—the date of actual receipt for hand delivered documents and documents sent electronically to a designated contact; or three days after the postmark date of transmittal.

**Rehabilitation Act**- The Rehabilitation Act of 1973, approved September 26, 1973 (P.L. 93-112, 87 Stat 394, as amended, U.S.C. § 12101 *et seq.*).

**Related Service** - as defined in the IDEA, 20 U.S.C. § 1401(26); and 34 C.F.R 300.34(a)

**Seclusion** - the involuntary confinement of a student alone in a room or area from which he or she is physically prevented from leaving, or from which as student believes he or she may not leave, whether or not in a locked area.

**Sending LEA** – refers to the local education agency (LEA) at which the student remains enrolled while attending a nonpublic special education school or program, that remains responsible for ensuring the provision of FAPE to the student and compliance with the IDEA.

**Special education** - specialized services for students identified as having disabilities, as provided in section 101 of the IDEA, or students who are individuals with a disability as provided in section 7(8)of the Rehabilitation Act of 1973, 29 U.S.C. § 706(8)).

**Student with a disability** - a student determined to have one of the conditions, disabilities or impairments listed in D.C. Official Code § 38-2561.01(14) or any other condition, disability, or impairment described in Section 602(3) of the IDEA, 20 U.S.C. § 1401; or in Section 7(8) of the Rehabilitation Act, 29 U.S.C. § 796(8)).

**Truancy** - the absence of a school-age student from any portion of the school day without a valid excuse consistent with the requirements of the attendance and truancy requirements set forth in chapter A-21 of Title 5 of the DCMR.

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**Section 3813** of Chapter 38, subtitle E of Title 5 of the DCMR is repealed.