

**EAST QUOGUE UNION FREE SCHOOL DISTRICT**

**PROGRAMS FOR STUDENTS WITH DISABILITIES  
UNDER THE IDEA AND NEW YORK  
EDUCATION LAW ARTICLE 89**

**POLICY 4321**

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## PROGRAMS FOR STUDENTS WITH DISABILITIES UNDER THE IDEA AND NEW YORK EDUCATION LAW ARTICLE 89

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### I. General

The Board of Education shall make available a free appropriate public education to all students with disabilities who reside within the School District and are eligible for special education and related services under the Individuals with Disabilities Education Act ("IDEA") and Article 89 of New York's Education Law ("Article 89"), and their implementing regulations. Special education and related services will be provided to resident eligible students with disabilities in conformity with their individualized education program (IEP) and in the least restrictive environment appropriate to meet their individual educational needs. Special education services or programs will be designed to enable a student with disabilities to be involved in and progress in the general education curriculum, to the extent appropriate to his/her needs.

The Board of Education also shall make available special education and related services to eligible students with disabilities parentally placed in a nonpublic school located within the School District, regardless of whether they are residents of the School District. However, this obligation does not extend to resident students with disabilities who are placed by their parent(s)/person(s) in parental relation in a non-public school within School District boundaries because of a disagreement between the parent(s)/person(s) in parental relation and the School District over the provision of a free appropriate public education. Nonpublic school students with disabilities who are School District residents will be provided programs and services in accordance with their individualized education services program (IESP).

### II. Committees on Special Education and Preschool Special Education

Committee on Special Education ("CSE") shall mean a multidisciplinary team of individuals identified in applicable law and regulations that oversee the education of "students with a disability" who are entitled to attend public schools pursuant to law, and who, because of mental, physical or emotional reasons, have been identified as having a disability and require special services and programs approved by the School District. [OR "student with a disability" as defined in 8 N.Y.C.R.R. § 200.1(zz)]

Committee on Preschool Special Education ("CPSE") shall mean a multidisciplinary team of individuals identified in applicable law and regulations that oversee the education of "preschool students" who are eligible to receive preschool programs and services.

#### A. Committee on Special Education

The members of the CSE, CPSE and CSE/CPSE subcommittees will include those individuals identified in applicable law and regulations, and their attendance at CSE and CSE subcommittee meetings will be required except as otherwise provided in law and regulations.

The parent(s)/person(s) in parental relation of a student with disabilities is one of the mandated CSE, CPSE, and CSE/CPSE subcommittee members and, as such, has a right to participate in

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CSE, CPSE, and CSE/CPSE subcommittee meetings concerning the identification, evaluation, educational placement, and the provision of a free appropriate public education to their child.

School District staff will take steps to promote the parent(s)/person(s) in parental relation participation, in accordance with the following:

1. CSE, CPSE, and CSE/CPSE subcommittee meetings will be scheduled at a time and place that is mutually agreeable to the parent(s)/person(s) in parental relation and the School District.
2. The parent(s)/person(s) in parental relation will be given at least five (5) days' notice of the time and place of a CSE, CPSE, or CSE/CPSE subcommittee meeting, except as otherwise provided in law and regulation, along with notice of the purpose of the meeting, those who will attend (including name and title), and the parent(s)'/person(s) in parental relation's right to be accompanied to the meeting by person(s) the parent(s)/person(s) in parental relation considers to have knowledge and special expertise about their child.
3. The parent(s)/person(s) in parental relation and the School District may agree to use alternative means of participation at CSE or CPSE meetings, such as videoconferences or telephone conference calls.
4. School District staff will take steps to provide the parent(s)/person(s) in parental relation with an understanding concerning the proceedings at CSE or CPSE meetings, including arranging for an interpreter for deaf parent(s)/person(s) in parental relation or parent(s)/person(s) in parental relation whose native language is other than English.

The CSE, CPSE, or CSE/CPSE subcommittee may meet without a student's parent(s)/person(s) in parental relation only if School District staff has been unable to obtain either parent(s)/person(s) in parental relation's participation, and has a record of its attempts to arrange a mutually agreed upon time and place. Similarly, the CSE, CPSE, or CSE/CPSE subcommittee may make a decision without the involvement of the student's parent(s)/person(s) in parental relation only if School District staff has been unable to obtain parental participation, even through the use of alternative means of participation, and has a record of its attempts to provide parental involvement.

### **B. Pre-School Special Education**

The Board of Education recognizes the value of special education and its responsibility in ensuring that all resident preschool children with disabilities have the opportunity to participate in special programs and services from which they may benefit. The Board of Education authorizes the Superintendent of Schools to establish administrative practices and procedures which shall include:

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1. locating and identifying all preschool children with disabilities pursuant to the relevant provisions of the Education Law. The register of children eligible to attend a preschool program is to be maintained and revised annually by the CPSE;
2. ensuring that the parent(s)/person(s) in parental relation of preschool age children with disabilities have received and understand the request for consent for evaluation of their child;
3. developing an IEP for each preschool age child with a disability;
4. appointing and training appropriately qualified personnel including the members of a CPSE;
5. maintaining lists of impartial hearing officers and of State Education Department-approved special education programs within the county and adjoining counties in which the School District is located; and
6. reporting to the State Education Department the number of children with disabilities that are being served, as well as those not served.

The Board of Education hereby establishes the CPSE as required under the Education Law. Its responsibilities will include the evaluation and recommendation for placement in appropriate approved programs and the provision of appropriate special education programs and services for each preschool child with a disability. The CPSE shall review, at least annually, the status of each preschool child with a disability.

It is ultimately the responsibility of the Board of Education to arrange for the appropriate approved preschool program and services for preschool children identified as having a disability. Should the Board of Education disagree with the CPSE's recommendations, it shall send the recommendation back to the CPSE so that they may schedule a timely meeting to review the Board of Education's concerns and to revise the IEP as deemed appropriate.

Placement may be appealed by a parent(s)/person(s) in parental relation to an impartial hearing officer, appointed by the Board of Education. Mediation shall be offered to such parent(s)/person(s) in parental relation to resolve complaints regarding the education of preschool children with disabilities at the same time notice of the availability of an impartial hearing is provided.

The CPSE shall make quarterly reports on the status of each preschool child with a disability and report on the adequacy of preschool special education programs and services to the Board of Education.

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The Superintendent of Schools or his/her designee will determine that the School District has made available adequate and appropriate space for programs and services for pre-school students with disabilities, when applicable.

The Board of Education directs the Superintendent of Schools to develop and maintain a plan which incorporates information concerning the provision of services for preschool children with disabilities, pursuant to the Regulations of the Commissioner of Education ("Commissioner's Regulations").

### **C. Special Education: District Plan**

A District plan shall be developed and updated every two (2) years describing the Special Education program in the School District. The District plan shall include the following:

1. A description of the nature and scope of special education programs and services currently available to students residing in the School District, including but not limited to descriptions of the School District's resource room programs and each special class program provided by the School District in terms of group size and composition.
2. Identification of the number and age span of students to be served by type of disability and recommended setting.
3. The method to be used to evaluate the extent to which the objectives of the program have been achieved.
4. A description of the policies and practices of the Board of Education to ensure the allocation of appropriate space within the School District for special education programs that meet the needs of students with disabilities.
5. The estimated budget to support such plan.
6. The date on which such plan was adopted by the Board of Education.

The District plan, with personally identifiable student information deleted, shall be filed and available for public inspection and review by the Commissioner.

### **III. Least Restrictive Environment**

The Board of Education recognizes its responsibility to provide students with disabilities with special education programs and services under the IDEA and Article 89 of New York's Education Law and for students to receive those services in the least restrictive environment appropriate to meet their individual educational needs.

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Therefore, the School District will not place students with disabilities in special classes or separate schools, or otherwise remove them from the regular educational environment unless the nature or severity of their disability is such that their education cannot be achieved satisfactorily in regular classes, even with the use of supplementary aids and services. In addition, the School District will provide special services or programs to enable students with disabilities to be involved in and progress in the general curriculum, to the extent appropriate to their needs.

To fulfill its responsibility to educate students with disabilities in the least restrictive environment, the School District will implement the provisions of section 200.6 of Commissioner's Regulations.

Furthermore, and pursuant to those provisions, students with disabilities placed together for purposes of receiving special education will be grouped by similarity of individual needs including their range of academic achievement, functional performance and learning characteristics; social and physical development, and management needs. When grouping students by similarity of needs, the social needs or physical development of a student shall not be the sole determinant for placement of a student in a special education program. A student's range of needs should be limited to the extent that one student's needs do not infringe on another student's ability to learn.

The Superintendent of Schools or his/her designee will establish a process that the CSE or CPSE or CSE/CPSE subcommittee Chairperson, as appropriate, obtains an up-to-date copy of the Commissioner's Regulations at the beginning of each school year, and copies of any amendments that become effective during the school year.

The Board of Education also recognizes that the least restrictive environment requirements established by applicable law and regulations also extend to nonacademic settings. Therefore, to the extent appropriate to their individual needs, eligible students with disabilities residing within the School District and attending the School District's public schools will be entitled to participate in School District academic, co-curricular and extracurricular activities available to all other students enrolled in the School District's public schools. Such co-curricular and extracurricular activities may include, but are not limited to, athletics, transportation, recreational activities, school-sponsored special interest groups or clubs, and referrals to agencies that provide assistance to individuals with disabilities and the employment of students (including both employment by the School District and assistance in making outside employment available). Students with disabilities, and their parent(s)/person(s) in parental relation, will be informed of the availability of such programs and activities and their eligibility to participate.

The School District will provide School District programs and activities, including extracurricular activities that are accessible to students with disabilities to the extent appropriate to their individual needs. The School District will make individual modifications to include physical facilities, scheduling and transportation arrangements, so that students are not excluded because of the presence of a disability.

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In providing a free appropriate public education to students with disabilities eligible under the IDEA and Article 89, the Board of Education will afford students and their parent(s)/person(s) in parental relation the procedural safeguard rights to which they are entitled under applicable law and regulations. The Board of Education also will provide them with notice of such rights as required by law and regulation, using the form prescribed by the Commissioner of Education.

For purposes of this policy and others related to the provision of services to eligible students with disabilities, and consistent with applicable law and regulation, the word "parent" means a birth or adoptive parent, a legally appointed guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child; a person in parental relationship to the child as defined in section 3212 of the Education Law; an individual designated as a person in parental relation pursuant to title 15-A of the General Obligations Law, including an individual so designated who is acting in the place of a birth or adoptive parent (including a grandparent, stepparent, or other relative with whom the child resides; or a surrogate parent who has been appointed in accordance with Commissioner's Regulations.

Eligible students with disabilities will be entitled to special education and related services until the end of the school year in which they turn twenty-one (21) (or as required by law) or until they receive a local high school or Regents diploma, whichever comes first.

Students with disabilities may not be required to take medication as a condition for receiving a free appropriate public education.

The School District will provide services to students with disabilities in accordance with the following:

1. School District staff will take steps to locate, identify, evaluate and maintain information about all children with disabilities within the School District, including homeless children and children who are wards of the state, and children attending nonpublic school within the School District (including religious schools), who are in need of special education.
2. The School District will establish a plan and practice for implementing school-wide approaches and interventions in order to remediate a student's performance prior to referral for special education services. The School District will provide general education support services, instructional accommodations, and/or alternative program options to address a student's performance before referring the student to the Committee on Special Education (CSE) or CPSE. The Instruction Support Team will develop, implement and evaluate pre-referral intervention strategies.
3. School District staff will refer for evaluation a student who has not made adequate progress after an appropriate period of time when provided instruction under a

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response to intervention program.

4. The Board of Education will appoint a committee on special education (CSE), CPSE, and, as appropriate, CSE/CPSE subcommittees, to assure the timely identification, evaluation and placement of eligible students with disabilities.
5. The Board of Education will arrange for special education programs and services based upon the recommendation of the CSE, CPSE, or CSE/CPSE subcommittee.
6. The Board of Education directs that the Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE) shall have prepared a written statement (program) for each child with a disability. Such an individualized Educational Program will be developed by the CSE or CPSE upon referral, and reviewed or revised, whichever is appropriate, for every child with a disability at least annually or in the event that the program no longer appears to be appropriate to meet the student's needs and ability level.
7. The Board of Education shall allow recording equipment to be used at meetings regarding individualized education programs (IEPs) for students with disabilities. A formal request must be made in writing to the Superintendent of Schools by a parent/person in parental relation or school official. All members to be present at the meeting shall receive advance notification that recording equipment will be used. A written transcript shall be furnished to provide a complete record of the meeting.
8. The Superintendent of Schools will establish a plan for the recruitment, hiring and retention of staff appropriately and adequately prepared to meet the needs of students with disabilities including, but not limited to, highly qualified special education teachers.
9. The Superintendent of Schools will establish a comprehensive professional development plan which provides personnel with the skills and knowledge required to meet the needs of students with disabilities.
10. The Superintendent of Schools will establish a process for ensuring that School District staff understand the right of students with disabilities to access and participate in the same academic, co-curricular and extracurricular programs and activities as all other students enrolled in the School District's schools, to the extent appropriate to their individual needs.

### **IV. Locate and Identify Students with Disabilities**

The School District will conduct an annual census to locate and identify all students with disabilities who reside in the School District, and establish a register of such students who are

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entitled to attend the public schools of the School District during the next school year, including students with disabilities who are homeless or wards of the State. The census shall be conducted, and the registry maintained, in accordance with the requirements established in Commissioner's regulations.

The School District's activities for locating and identifying parentally-placed nonpublic school students with disabilities will be comparable to those undertaken for students attending the School District's public schools, and will be completed in a comparable time period, as well. The School District shall consult with representatives of private schools and representatives of parents of parentally-placed private school students with disabilities on the child find process.

The Superintendent of Schools will determine what other activities might be appropriate to help locate and identify students with disabilities. These may include, but are not limited to, the mailing of letters to all School District residents regarding the availability of special education programs and services and their right to access such services, and/or the publication of a similar notice in school newsletters and other publications.

### **V. Evaluation of Students with Disabilities**

To initially determine a student's eligibility for a free appropriate public education under the IDEA and Article 89, the School District will conduct a full evaluation of the student within legally prescribed time lines. As set forth in Commissioner's Regulations, the initial evaluation will include, at least, a physical examination, an individual psychological evaluation unless the school psychologist determines it unnecessary, a social history, an observation of the student in the student's learning environment to document the student's academic performance and behavior in the areas of difficulty, and other appropriate assessments or evaluations (including a functional behavioral assessment for a student whose behavior impedes his or her learning or that of others) to ascertain the physical, mental, behavioral and emotional factors that contribute to the suspected disabilities.

Once a student has been determined eligible to receive a free appropriate public education, the School District will reevaluate the student with a disability whenever the student's parent(s)/ person(s) in parental relation requests a reevaluation, and when the School District determines the educational and related services needs (including improved academic achievement and functional performance) of the child warrant a reevaluation. However, a reevaluation must take place at least once every three years, unless the student's parent(s)/ person(s) in parental relation and the School District agree it is unnecessary.

### **VI. Parental Consent for Student Evaluations**

Before conducting any type of evaluation, School District staff will take steps to obtain written informed consent from a student's parent/person in parental relation, as required by applicable law and regulations. They also will keep a detailed record of those attempts and their results,

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including phone calls and correspondence, visits to the parent/ person in parental relation's home and any responses received.

1. If a parent/ person in parental relation refuses to give consent for an initial evaluation, or fails to respond to such a request, the parent/ person in parental relation will be given an opportunity to attend an informal conference and ask questions about the proposed evaluation. Unless the referral for evaluation is withdrawn, if the parent/ person in parental relation continues to withhold consent, the Board of Education may commence due process proceedings to conduct an initial evaluation without parental consent within the time lines established in Commissioner's Regulations.
2. If a parent/ person in parental relation refuses to give consent for a reevaluation, or fails to respond to such a request, School District staff will proceed with the reevaluation without parental consent if it has engaged in documented reasonable efforts to obtain such consent and the parent/ person in parental relation has failed to respond. If the School District cannot document its efforts to obtain consent, the Board of Education may commence due process proceedings to conduct a reevaluation without parental consent.
3. If School District staff is unable to obtain consent for the initial evaluation or reevaluation of a home schooled or a parentally-placed nonpublic school student, the Board of Education will not commence due process proceedings to conduct the evaluation without parental consent, and will consider the student as not eligible for special education.

### **VII. Referral Process**

In conducting evaluations of students with disabilities, the School District will use a variety of assessment tools and strategies, including parent-provided information, to gather relevant functional, developmental, and academic information for determining a student's eligibility for special education and related services, and the content of the student's individualized education program or individualized education services program or services plan in the case of nonpublic school students with disabilities (including information related to enabling the student to be involved in and progress in the general education curriculum).

The School District also will assess a student in all areas of suspected disability, and the assessment and other evaluation used will not be discriminatory on a racial or cultural basis. In addition, students will be assessed in the language and form most likely to yield accurate information on what the student actually knows and can do academically, developmentally, and functionally, unless it is not feasible to do so.

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In the case of students suspected of having a specific learning disability, the School District will follow the procedures established in the Commissioner's Regulations.

The School District will notify a student's parent/person in parental relation of any determination that no additional data is needed and the reasons for such a determination. It will also inform the parent/person in parental relation of his or her right to request an assessment, notwithstanding that determination.

### **VIII. Independent Educational Evaluations**

The Board of Education recognizes the right of parent(s)/person(s) in parental relation of a student who has or is thought to have a disability to receive an independent evaluation at public expense if they disagree with the evaluation obtained by the Committee on Special Education (CSE) or the Committee on Preschool Special Education (CPSE). If a parent(s)/person(s) in parental relation requests an IEE at public expense, the School District may ask for the parent(s)/person(s) in parental relation reason why he or she objects to the public evaluation. Notwithstanding the foregoing, the explanation by the parent(s)/person(s) in parental relation of said reasons may not be required by the School District and the School District may not unreasonably delay either providing the IEE at public expense or filing a due process complaint notice to request a hearing to defend the public evaluation.

The independent examination shall be conducted by a qualified examiner who is not employed by the School District responsible for the child's education. Upon request, parent(s)/person(s) in parental relation will be provided with a list of public and private agencies and professional resources where independent evaluations may be obtained. These publicly-funded independent evaluations shall be limited to the same geographic limitation (*i.e.*, within a fifty (50) mile radius of the School District) as used by the School District when it initiates an evaluation. Whenever an evaluation is at public expense, the School District will pay the reasonable costs associated with the evaluation. "Reasonable costs" are defined as not exceeding the evaluation costs of any university hospital within a fifty (50) mile radius of the School District.

Notwithstanding the foregoing, the parent(s)/person(s) in parental relation will be provided with an opportunity to demonstrate that unique circumstances justify an IEE that does not fall within the above-stated criteria. Parent(s)/person(s) in parental relation should file a written request prior to the next reevaluation.

If the School District determines that the request is appropriate, then the School District shall advise the Parent(s)/person(s) in parental relation in writing, that the School District will reimburse him/her at the Reasonable Cost for the proposed evaluation.

Parents or persons in parental relation should file a written request prior to the next reevaluation. If the School District determines that the request is not appropriate, then the School District has the right to initiate an impartial hearing to demonstrate that its evaluation is appropriate. If the

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hearing officer determines that the School District's evaluation was appropriate, a parent/person in parental relation is not entitled to reimbursement at public expense.

### **IX. Declassification and Declassification Support Services**

#### **Declassification**

The Board of Education recognizes that it may be appropriate to declassify some students with disabilities. A student may mature and develop skills such that they no longer require the special program, support services or accommodations offered by an Individualized Education Program (IEP), Individualized Education Services Program or (IESP). The Committee on Special Education (CSE), the CSE/CPSE Subcommittee or, the Committee on Preschool Special Education (CPSE), as applicable, is responsible for making this judgment, while adhering to the requirements of federal and state law and regulation.

#### **Declassification Support Services**

It is the goal of the Board of Education to provide an opportunity for the student to succeed in the transition to the regular education program. In order to facilitate that success, the CSE/CPSE may offer educational and support services for a period of time, not to exceed one year. Declassification support services may include:

1. For the student, psychological services, social work services, speech and language improvement services, non-career counseling, and other appropriate support services.
2. For the student's teachers, the assistance of a teacher aide or a teaching assistant, and consultation with appropriate personnel.

The CSE/CPSE will provide teachers and service providers providing services to students with disabilities concerning the need for the transition services, and the nature and duration of those services.

### **X. Re-evaluation**

Prior to determining that a student is no longer eligible for special education services and should be placed in a full-time regular education program, the CSE, CSE subcommittee, or CPSE, as applicable, will conduct a declassification evaluation of the student in accordance with the process and procedures prescribed for the evaluation and reevaluation of students with disabilities, by applicable law and regulations. However, the CSE, CSE subcommittee, or CPSE members may determine after reviewing existing evaluation data that no additional information is needed to determine the student's continued eligibility for services.

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When a determination is made that no additional data is needed for reviewing a student's continued eligibility for special education services, the CSE, CSE subcommittee, or CPSE Chairperson, as applicable, will notify the student's parent(s)/person(s) in parental relation of that determination and the reasons for it, and of their right to nonetheless request an assessment. Unless the student's parent(s)/person(s) in parental relation make such a request, the School District will not conduct any further assessments.

The School District will provide the student's parent(s)/person(s) in parental relation with a copy of the reevaluation report and documentation regarding the eligibility determination.

Consistent with applicable law and regulation, the School District will not conduct a declassification evaluation if the reason why a student is determined to be ineligible for special education services is that he or she has either:

1. Graduated with a regular high school or Regents diploma; or
2. Exceeded the age of eligibility for services.

However, in such an instance the School District will provide the student with a summary of his or her academic achievement and functional performance that also includes recommendations on how to assist the student in meeting his or her post-secondary goals.

### **XI. Eligibility Determination**

The CSE, CPSE or CSE/CPSE subcommittee will determine whether a student is eligible for special education and related services under the IDEA and Article 89, as well as the student's educational needs.

The CSE, CPSE or CSE/CPSE subcommittee may not determine that a student is eligible for special education and related services if the determining factor is lack of appropriate instruction in the essential components of reading, including phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies; or lack of appropriate instruction in math; or limited English proficiency.

### **XII. Provision of Services**

The Board of Education will arrange for appropriate special education and related services recommended by the CSE, CPSE or CSE/CPSE subcommittee within sixty (60) school days of the School District's receipt of parental consent to evaluate a student not previously identified as a student with a disability, or within sixty (60) school days of referral for review of a student with a disability, except as otherwise provided in law and regulations.

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If the Board of Education disagrees with the recommendations of the CSE or CPSE, the Board of Education will either return the recommendation to the original CSE or CPSE for further consideration, or establish a second CSE/CPSE to develop a new recommendation for the student within the time frames contained in law and regulation.

All staff and/or related service providers responsible for the implementation of a student's individual education program (IEP), or Individual Education Services Program (IESP), will be provided with information regarding those responsibilities in addition to a paper or electronic copy of the IEP or IESP prior to the implementation of such IEP or IESP or shall be able to access such student's IEP or IESP electronically.

### **XIII. Parental Consent for the Provision of Services**

The Board of Education acknowledges that parental consent for initial evaluation does not constitute consent for placement for the provision of special education and related services. Therefore, School District staff will take steps to obtain written informed consent for the initial provision of special education and related services to an eligible student. The Board of Education will be precluded by applicable law and regulations from commencing due process proceedings to override the parent(s)/person(s) in parental relation's refusal to provide such consent or override the parent(s)/person(s) in parental relation's failure to respond to such a request.

### **XIV. Annual Review**

The CSE shall annually review the (IEP) of each student with a disability to determine:

1. The extent to which the student can benefit from participation in regular educational programs and services in the least restrictive environment;
2. The extent to which credit toward a high school diploma can be granted through participation in special education programs; and
3. The student's progress toward a high school diploma.

At each annual review of a student's IEP, the CSE shall consider the following factors (listed in order/priority):

1. the strengths of the student;
2. the concerns of the parent(s)/person(s) in parental relation for enhancing the education of their child;
3. the results of the initial or most recent evaluation of the student;

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4. as appropriate, the results of the student's performance on any general state or district-wide assessment programs;
  5. the academic, developmental, and social needs of the students;
  6. the educational progress and achievement of the student with a disability and the student's ability to participate in instructional programs in regular education and in the least restrictive environment;
  7. in the case of a student whose behavior impedes his or her learning or that of others, consider strategies including positive behavioral interventions and supports and other strategies to address the behavior;
  8. in the case of student with limited English proficiency, consider the language needs of the student as such needs relate to the student's IEP;
  9. in the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the CSE determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media, that instruction in Braille or the use of Braille is not appropriate for the student;
  10. consider the communication needs of the student, and in the case of student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and
  11. consider whether the student requires assistive technology devices and services, including whether the use of school purchased assistive technology devices is required to be used in the student's home or in other settings in order for the student to receive a free appropriate public education.

### **XV. Due Process**

The School District or the parent(s)/person(s) in parental relation of a student may file a due process complaint with respect to any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of free appropriate public education to such student in accordance with the law.

### **XVI. Use of Time Out Rooms**

# **EAST QUOGUE UNION FREE SCHOOL DISTRICT**

## **PROGRAMS FOR STUDENTS WITH DISABILITIES UNDER THE IDEA AND NEW YORK EDUCATION LAW ARTICLE 89**

**POLICY 4321**

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Behavior management practices for students may include the use of time out rooms consistent with Commissioner's Regulations. The following guidelines shall be followed in the event time out rooms are utilized:

A time out room is an area for a student to safely de-escalate, regain control, and prepare to meet expectations to return to program. Time out rooms are to be used in conjunction with a therapeutic behavior management intervention in which a student is removed to a supervised area in order to facilitate self-control or to remove a child from a potentially dangerous environment. For the purpose of this policy, a potentially dangerous situation is an unanticipated situation that poses an immediate concern for the physical safety of a student or others. Except for emergency interventions, a time out room shall only be used in conjunction with a behavioral intervention plan that is designed to teach and reinforce alternative appropriate behaviors.

### Factors Precipitating the Use of a Time Out Room

The School District may place a student in a time out room when: (1) the student's behavior affects the teacher's ability to teach and/or the ability of the other students in the classroom to learn and the student's removal is necessary to maintain or restore control over the classroom; (2) the student's behavior poses a threat to themselves or another individual; (3) the student requests a break in the time out room to regain composure or self-control; or (4) a potentially dangerous situation arises. Except in the event of a potentially dangerous situation, the placement of a student in a time out room shall be in conjunction with that student's behavioral intervention plan.

The amount of time a student will need to be in a time out room will vary with the student's age, individual needs, and Behavior Management Plan. Careful monitoring of the amount of time a student is in a time out room is required so that a time out room is not being used to the detriment of a student or student's educational program.

To ensure a student's safety, staff must be assigned to continuously monitor the student in the time out room. The staff assigned must be able to see and hear the student at all times. Individual determinations will be necessary to assess a student's need for direct adult supervision in the time out room.

When the Behavior Management Plan for a student with a disability includes the use of a time out room, the time out room must be specified in the student's IEP. The IEP must also include the maximum amount of time a student will need to be in a time out room as a behavioral consequence as determined on an individual basis in consideration of the student's age and individual needs. Data on the use of the time out room by a student must be included in the materials reviewed by the CSE or CPSE.

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Parent(s)/ person(s) in parental relation must be notified prior to the initiation in the Behavior Management Plan of a behavioral intervention for a child which would incorporate the use of a time out room.

### Description of Time Out Room

A time out room must include a means for continuous monitoring of the student, both visually and aurally. The room must be of an adequate size (width, length, and height) to allow the student to move about and recline comfortably. The ceiling height must be consistent with the ceiling height throughout the building. Wall and floor coverings should be designed to prevent injury. There shall be adequate lighting and ventilation and the temperature of the room shall be within the normal comfort range and consistent with the rest of the building. The room must be clean and free of objects and fixtures that could be potentially dangerous to a student and must meet all local fire and safety codes.

The time out room must be unlocked, and the door must be able to be opened from the inside at all times. The use of locked rooms or spaces for the purposes of time out or emergency interventions is prohibited. Under no circumstances may a locked room or space be used for the purposes of a time out or emergency intervention.

To ensure a student's safety, staff must be assigned to continuously monitor the student in the time out room. The staff assigned must be able to see and hear the student at all times. Individual determinations will be necessary to assess a student's need for direct adult supervision in the time out room.

### Recordkeeping

A time out log shall be maintained for each use of the time out room. Information to be logged in includes the student's name, factors precipitating the time out intervention, the times the student entered and exited the time out room, the student's behavior during and upon exit of the time out room, and the names of the staff member(s) who initiated the time out room placement, supervised the student during the time out procedure, and removed the student from the time out room. In addition, the effectiveness of the time out procedure to decrease specified behaviors shall be monitored.

The School District shall establish and implement procedures to document the use of the time out room, including information to monitor the effectiveness of its use to decrease specified behaviors. The School District shall review the data collected through such monitoring and make any needed changes to its time out procedures, as is appropriate.

### Staff Training

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## **PROGRAMS FOR STUDENTS WITH DISABILITIES UNDER THE IDEA AND NEW YORK EDUCATION LAW ARTICLE 89**

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The School District shall provide staff training to those staff members who may be called upon to implement time out interventions.

If a provision of this policy relating to use of time out rooms conflicts with the rules of a State agency operating an educational program, the rules of such State agency shall prevail so that the conflicting portions of this policy shall not apply.

### **XVII. Emergency Interventions**

For purposes of this section of the policy, "emergency" means a situation in which immediate intervention involving the use of reasonable physical force is necessary.

Emergency interventions shall be used only in situations in which alternative procedures and methods not involving the use of physical force cannot reasonably be employed. Emergency interventions shall not be used as a punishment or as a substitute for systematic behavioral interventions that are designed to change, replace, modify, or eliminate a targeted behavior.

Staff who may be called upon to implement emergency interventions shall be provided with appropriate training in safe and effective restraint procedures.

The School District must maintain documentation on the use of emergency interventions for each student, which shall include:

1. the name and date of birth of the student;
2. the setting and the location of the incident;
3. the name of the staff or other persons involved;
4. a description of the incident and the emergency intervention used, including duration;
5. a statement as to whether the student has a current behavioral intervention plan;
6. details of any injuries sustained by the student or others, including staff, as a result of the incident; and
7. the date the parent/person in parental relation was notified.

The parent/person in parental relation shall be notified on the same day a physical or mechanical restraint is applied on such student or such student is placed in a time out room and documentation of emergency interventions shall be reviewed by school supervisory personnel and, as necessary, the school nurse or other medical personnel. When the student's parent/person

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in parental relation cannot be contacted after reasonable attempts are made, the principal shall record and report such attempts to the committee on special education.

Cross ref: Policy 4321, Programs For Students with Disabilities *et. seq.*

Ref: The Individuals with Disabilities Education Act (IDEA), 20 USC §§1400 *et seq.*; Education Law Article 89, §§4401 *et seq.*  
34 CFR Part 300 *et seq.*; 34 CFR §300.305; 34 CFR 300.503;  
8 NYCRR Part 200; 8 NYCRR §§200.2(b)(4); 200.6 8 NYCRR §§200.1(u);  
8 NYCRR 200.2(b) (8), 200.4(b) (4-6), (c) (3-4); 200.5(a) (l) (vi) (a); 200.5(b); 200.5(c)  
(6)  
8 NYCRR §§100.1(q), (ooo)

Adoption Date: March 31, 2025