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# Elimination of “Emotional Disturbance” Classification

## Background

- 13 Categories of disability under IDEA including Emotional Disturbance
  - “Emotional Disturbance” has been replaced by “Emotional Disability” as a classification in NYS as of 7/27/22
  - Overwhelming consensus that term “disturbance” has a negative connotation
  - Change is not intended to change coverage, eligibility, or rights of students with disabilities currently identified with the disability classification “Emotional Disturbance” or the responsibilities of school district to serve these students
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# Elimination of “Emotional Disturbance” Classification

## Advice to Members

- Special Educators should begin using new terminology immediately in written and verbal communications
  - IEPs developed for the 22-23 school year that use the term “Emotional Disturbance” do not need to be amended
  - CSEs must begin using the term “Emotional Disability” in place of “Emotional Disturbance” for student disability classifications for IEPs developed or amended on or after the July 27, 2022 effective date
  - This term must also be used on related documents (e.g. prior written notice, progress notes, meeting minutes, etc.)
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# NYS Alternate Assessment in Science Background

- Historically, NYS Alternate Assessment in science has been administered in grade 4, grade 8, and once in high school
  - Beginning in the 2023-2024 school year, students will be assessed in grade 5, rather than grade 4
  - Administration for grade 8 and high school will not change
  - This change has been made to be consistent with the general education Elementary level Science Assessments
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# NYS Alternate Assessment in Science

## Advice to Members

- NYS Alternate Assessment eligible students in grade 4 during the 2022-2023 school year will **NOT** be administered the NYS Alternate Assessment in science
  - Instead, these students will be assessed in grade 5 of the following school year (Spring, 2024)
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# Aging Out of Special Education

## Background

- IDEA mandates that SWDs be eligible for special education services in public school until the age of 21
  - IDEA does not define 21
  - NY Education Law specifies the following timeline to end eligibility for students who turn 21:
    - Birthdays between 9/1 and 6/30, age out at the end of the school year in which they turn 21
    - July and August birthdays retain eligibility through 8/31, just beyond their 21st birthday
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# Aging Out of Special Education

## Advice to Members

- New temporary regulation allows a student enrolled in special education who turned 21 during the 2021-22 school year (up to the start of the 2022-2023 school year) to receive educational services until the student completes the services pursuant to the IEP or turns 23 years old, whichever is sooner
  - Legislation does not provide month-based milestones as outlined in NY Education Law
  - Age 23 is a hard stop for NYS mandated services, but districts have flexibility
  - Takes effect immediately and expires 6/30/24
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# New Federal Guidance to Avoid Discriminatory Use of Discipline for Students With Disabilities

## Background

- New Federal guidance released 7/19/22
  - Intended to provide schools with greater clarity on how they can avoid the discriminatory use of discipline
  - Provides guidance on the civil rights of SWDs concerning student discipline
  - Makes clear that Section 504 and IDEA can be simultaneously in compliance while maintaining a safe school environment for all
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# New Federal Guidance to Avoid Discriminatory Use of Discipline for Students With Disabilities

## Advice to Members

- IDEA does not preclude disciplining a child with a disability for violating a school's code of student conduct *except where it would result in a change in placement and the behavior is determined to be a manifestation of the child's disability*
  - Informal exclusions are subject to the same requirements as formal disciplinary exclusions
  - Informal exclusions include shortening a student's day, requesting that a guardian pick up a student early, or not allowing a student to take an elective
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# **New Federal Guidance to Avoid Discriminatory Use of Discipline for Students With Disabilities**

## **Advice to Members**

- A student must have a manifestation determination prior to an expulsion, a suspension over 10 consecutive school days, or a pattern of disciplinary removals that totals more than 10 school days in the school year
  - This excludes special circumstances (possessing a weapon at school, possessing illegal drugs at school, or inflicting serious bodily injury upon another person while at school)
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## New Federal Guidance to Avoid Discriminatory Use of Discipline for Students With Disabilities

### Advice to Members

- Make every effort to include positive behavioral interventions on the IEP if student behavior is impeding their learning or that of others, regardless of the student's classification
  - Exclusionary discipline should not be used for non-violent offenses
  - School suspensions as well as bus suspensions are considered a change in a student's placement
  - Guidance also applies to students suspected of having a disability under IDEA "child find" obligation
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# Changes to Certification

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# Changes to Certification

## Background

- Special Education Certificate Permanent (Pre-2004)
  - Students With Disabilities (2004)
    - Birth-Grade 2
    - Grades 1-6
    - Grades 5-9 (Generalist or Content Area)
    - Grades 7-12: (Content Area)
  - Students With Disabilities Generalist Grades 7-12 (2011)
  - Amendments to state regs. to allow for grade level extensions (2018-2019)
  - New requirements for Special Class Instruction (2021)
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As of September  
28th...

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# Changes to Certification

## Changes

- New Certificates
    - SWD Pre-K - Grade 12
    - SWD Birth - Grade 2
  - Certificates Being Phased Out
    - SWD Grades 1-6
    - SWD Grades 5-9
    - SWD Grades 7-12
  - New programs leading to current SWD certificates will no longer be registered after 10/1/22 but may continue to operate through 2030
  - Programs for new certificates can be registered beginning 9/28/22
  - Several options for special class instruction
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# Attention areas

## Special Class Instruction

- Effective 7/1/21, special education teachers who teach one or more subject areas in special class grades 7-12, with some or no students alternately assessed, must either:

1. Be appropriately certified in each subject area that they teach, (content 7-12 certificate, Subject Area Extension, or Limited Subject Area Extension), or
  2. Have an active Statement of Continued Eligibility (SOCE) in TEACH in each subject area that they teach
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# Remember...

- Content area certification requirements only apply to Grades 7-12 where at least one student is not being alternately assessed
  - Subject areas affected are biology, chemistry, earth science, physics, English language arts, mathematics, social studies, and languages other than English
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# Changes to Certification

## Advice to Members

- There are several Special Education certificates that members may currently be working under
  - Be sure that classes are being taught by a Special Education teacher with the appropriate certification
  - Be particularly mindful of content certification requirements for special class instruction
  - If you have questions, speak with your local leader or LRS
  - Visit the NYSUT website for an updated fact sheet
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TEACHERS  
WANTED

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# Teacher Shortages in Special Education

## Advice to Members

- Special Education has mandates that may not apply to other certification areas
  - Be mindful that services being provided pursuant to an IEP are in compliance with IEP mandates
  - Be sure that special education services are being provided by an appropriately certified special education teacher
  - Be aware of class size limits for special education services in different settings
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# "Creative" Solutions to Teacher Shortages

## Background

- Many districts are experiencing difficulty in filling open Special Education positions, particularly at the secondary level
- District PPS directors are trying to creatively cover these appointments, but are not always working within NYSED/IDEA regulations

## Solutions

- Incidental teaching
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## **“Creative” Solutions to Teacher Shortages**

### **Advice to Members**

- Be mindful of the professional limitations of a literacy or reading certificate holder providing specialized reading instruction to SWDs per an IEP
  - If a variance is in place, make sure it has SED approval if required
  - Ensure that your members working with SWDs are not teaching outside of their certification
  - **Remember! Incidental teaching may not be applied to special education**
  - Ensure that Teacher Aide and Teaching Assistant services are being used appropriately
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# Variations

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# Special Education Variances

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## Two types of variances

- Request for SED Approval; or
- Variance by Notification
  - Requires that a program be in compliance on day 1
  - Requires parental notification to all students in the class
  - Approval on "honor system"
  - Does not have a written approval or denial from NYSED

# Special Education Variances

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- **Consultant Teacher Services (SED Approval)**
  - Caseload
    - Not to exceed 20 students
- **Resource Room Programs (SED Approval)**
  - Caseload
    - Not to exceed 20 students in elementary
    - Not to exceed 25 students in middle and secondary
  - Instructional Group Size
    - Not to exceed five students



# Special Education Variances continued...

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- **Integrated Co-Teaching Services**

- Class Size/Make-Up

- Not to exceed 12 students with IEPs (any classification)
- Number of non-disabled students must be  $\geq$  number of SWDs
- 13<sup>th</sup> student (Variance by Notification)
- 14<sup>th</sup> student (SED Approval)

- **Special Classes**

- Class Size/Make-Up

- 15:1 / 12:1 / 12:1+1 / 8:1+1 / 6:1+1 / 12:1+(3:1)
- Elementary (SED Approval)

## Special Education Variances continued...

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- **Special Classes** *(continued...)*

- Class Size/Make-Up

- Middle/Secondary (Variance by Notification)
  - 20% rounded up to the nearest whole student
- Not to exceed 36 months (except for classes of students 16 and older and 12:1+3)
- Chronological Age Range (SED Approval)

# Use of Teacher Aides and Teaching Assistants

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- Teacher Aides

- No certification required
- Cannot provide instruction
- Perform non-instructional duties

- Teaching Assistants

- Certification required
- Can work with individual students or groups of students on special instructional projects
- Assist in related instructional work as required
- Work under general supervision of certified teacher
- Cannot serve in place of special education teacher

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# Important Points

- Special Education services are dictated by the IEP, not the student's schedule, teacher's schedule, or class make-up
  - Just because you have students with IEPs in your class (even if it is 100% of the students) does not mean you are teaching a Special Education class
  - Incidental teaching may not be applied to Special Education
  - If you are teaching a Special Education class, you must have the appropriate certification
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# 504 Plan vs. IEP

## 504 Plan

- Section 504 of the Rehabilitation Act of 1973
- Any disability that affects a major life activity
- Civil Rights law intended to prevent discrimination against people with disabilities
- Ensures that students with disabilities can participate in school programs and activities
- Intended to make school equally accessible to the student with a disability
- No requirements for what must be included in plan/no written plan required
- No requirement for measurable growth
- Responsibility falls under **general education**

## IEP

- Individuals with Disabilities Education Act (IDEA)
- Must qualify as one of 13 disability categories
- Federal law specifically for students ages 3-21 with disabilities
- Provides for specialized instruction
- IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances”
- Responsibility falls under **special education**