

ENROLLED ORIGINAL

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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Columbia
Official Code*

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To establish the circumstances under which a student with a disability can be placed and publicly funded in a nonpublic special education school or program, to grant the District of Columbia Public Schools, as the state education agency, the authority to issue certificates of approval to nonpublic schools or programs serving students with disabilities with funding from the District of Columbia government, and to authorize the Mayor, or his or her designee, to set rates for the payment of tuition and related services to nonpublic schools that serve students with disabilities who reside in the District of Columbia; and to repeal the Special Education Assessment and Placement Act of 1998.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Placement of Students with Disabilities in Nonpublic Schools Amendment Act of 2006".

TITLE I

Sec. 101. Definitions.

For the purposes of this title, the term:

(1) "Certificate of Approval" means the document issued by the SEA to the legal authority responsible for governing and operating a nonpublic special education school or program upon determination that the nonpublic special education school or program is in compliance with the requirements of section 107.

(2) "DCPS" means the public local education system under the control of the Board of Education. The term "DCPS" does not include public charter schools.

(3) "Free appropriate public education" means special education and related services that:

(A) Have been provided at public expense, under public supervision and direction, and without charge;

(B) Meet the standards of the State Education Agency;

(C) Include an appropriate preschool, elementary school, or secondary school education; and

(D) Are provided in conformity with the individualized education plan.

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(4) “IDEA” means the Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. § 1400 *et seq.*), and its implementing regulations.

(5) “Individualized education plan” or “IEP” means a written plan that specifies the special education programs and services to be provided to meet the unique educational needs of a student with a disability, as required under section 614(d) of the IDEA.

(6) “Least restrictive environment” means a placement of a student with a disability that:

(A) Provides the special education needed by the student;

(B) Provides for the education of the student, to the maximum extent appropriate, with other students who do not have disabilities;

(C) Is based upon consideration of the proximity of the placement to the student’s place of residence; and

(D) Is in accordance with section 612(a)(5)(A) of the IDEA.

(7)(A) “Nonpublic special education school or program” means 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.

(B) 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.

(8) “Panel” means the Rate Reconsideration Panel established by section 114.

(9) “Rates” are the annual or per-diem costs paid to each nonpublic special education school or program, for tuition and for each unit of related service delivered.

(10) “Related services” shall have the same meaning as provided in section 602(26) of the IDEA.

(11) “Residential child care facility” means a program that provides care for children 24 hours a day with a structured set of services and activities designed to achieve objectives related to the needs of the children served.

(12) “Special education” shall have the same meaning as provided in section 602(29) of the IDEA.

(13) “State education agency” or “SEA” means the District of Columbia Public Schools, or any successor agency that has primary responsibility for the state-level supervisory functions for special education that are typically handled by a state department of education or public instruction, a state board of education, a state education commission, or a state education authority.

(14) “Student with a disability” means a student determined to have:

(A) Autism;

(B) Deaf-blindness;

(C) A developmental delay;

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- (D) A hearing impairment, including deafness;
- (E) Mental retardation;
- (F) Multiple disabilities;
- (G) An orthopedic impairment or other health impairment;
- (H) An emotional disturbance;
- (I) A severe disability;
- (J) A specific learning disability;
- (K) A speech or language impairment;
- (L) A traumatic brain injury;
- (M) A visual impairment, including blindness; or
- (N) Any other condition, disability, or impairment described in section

602(3) of the IDEA, or in section 7(8) of the Rehabilitation Act of 1973, approved September 26, 1973 (87 Stat. 359; 29 U.S.C. § 706(8)).

Sec. 102. Assessment and placement of a students with a disability - General.

(a) DCPS shall assess or evaluate a student who may have a disability and who may require special education services within 120 days from the date that the student was referred for an evaluation or assessment.

(b) DCPS shall place a student with a disability in an appropriate special education school or program in accordance with this act, and the IDEA.

(c) Special education placements shall be made in the following order or priority; provided, that the placement is appropriate for the student and made in accordance with the IDEA and this act:

- (1) DCPS schools, or District of Columbia public charter schools pursuant to an agreement between DCPS and the public charter school;
- (2) Private or residential District of Columbia facilities; and
- (3) Facilities outside of the District of Columbia.

Sec. 103. Placement and funding of a student with a disability in a nonpublic special education school or program.

(a) DCPS shall be responsible for the placement and funding of a student with a disability in a nonpublic special education school or program when:

(1) DCPS cannot implement the student's IEP or provide an appropriate placement in conformity with DCPS rules, the IDEA, and any other applicable laws or regulations; and

(2) The nonpublic special education school or program to which the student has been referred:

- (A) Has been approved by the SEA in accordance with section 107;
- (B) Can implement the student's IEP; and
- (C) Represents the least restrictive environment for the student.

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(b)(1) No student with a disability whose education, including special education and related services, is funded by the District government shall be placed in a nonpublic special education school or program that has not received and maintained a valid Certificate of Approval from the SEA in accordance with section 107, unless the placement has been ordered by a District of Columbia court, a federal court, or a hearing officer pursuant to the IDEA.

(2) A hearing officer may make a placement in a nonpublic special education school or program that lacks a valid Certificate of Approval from the SEA only if the hearing officer has determined that:

(A) There is no public school or program able to provide the student with a free appropriate public education; and

(B) There is no nonpublic special education school or program with a valid Certificate of Approval that meets the requirements of subsection (a)(2) of this section.

(c) In conformity with the IDEA, DCPS is not responsible for paying the cost of education, including special education and related services, of a student with a disability who attends a nonpublic special education school or program if:

(1) DCPS made a free appropriate public education available to the student; and

(2) The student's parent or guardian elected to place the student in a nonpublic special education school or program.

Sec. 104. Funding of a placement of a student with disabilities in a nonpublic special education school or program made by other District of Columbia government agencies.

(a) If another District of Columbia government agency places a student with a disability in a nonpublic special education school or program, DCPS shall fund the placement unless and until the other agency agrees to fund the placement.

(b) The District of Columbia shall comply with section 612(a)(12) of the IDEA and 34 C.F.R. § 300.154 by developing appropriate mechanisms for interagency coordination between DCPS and other District government agencies to ensure that all necessary services are provided and funded by the appropriate agency.

(c) Nothing in this section shall be construed as removing DCPS's liability for providing and paying for special education and related services if another public agency fails to provide or pay for them.

Sec. 105. Resolution of assessment, evaluation, placement, and funding disputes.

(a) The due process procedures set forth in Chapter 30 of Title 5 of the District of Columbia Municipal Regulations and the IDEA shall govern any disputes between a student's parent or guardian and DCPS regarding the assessment, evaluation, placement, and funding of a student with a disability in a nonpublic special education school or program.

(b) In conformity with the IDEA, DCPS may not terminate funding for the last approved nonpublic placement of a student while an administrative or judicial review of a recommended

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placement is pending.

Sec. 106. Participation of DCPS in development or review of the IEP.

When a student is receiving education and related services from a nonpublic special education school or program that is approved by the SEA under section 107 and receives funding from the District of Columbia government, DCPS shall participate in the initial meeting to develop an IEP. For any subsequent meeting to review or revise the IEP, the failure or inability of a DCPS representative to attend the IEP meeting after the meeting has been set shall not prevent the meeting from taking place as planned.

Sec. 107. Certificate of Approval for nonpublic special education schools or programs—General.

(a) The SEA shall develop and administer a Certificate of Approval process for nonpublic schools or programs that serve District of Columbia students with disabilities with funding from the District of Columbia government. The SEA shall issue a Certificate of Approval to a nonpublic special education school or program after determining that the school or program complies with the regulations set forth in Chapters 22, 25, 30, and 38 of Title 5 of the District of Columbia Municipal Regulations, this act, and any applicable fire safety, building code, health, and sanitation requirements.

(b) Any nonpublic special education school or program that will be affected by the Certificate of Approval process shall be allowed to participate in the development and revision of applicable standards pursuant to the IDEA.

(c) A Certificate of Approval shall be for a period not to exceed 3 years.

(d) The SEA shall develop and maintain a list of approved nonpublic special education schools and programs, and shall display this list along with appropriate information about each nonpublic special education school or program on the Internet site of the District of Columbia Public Schools.

(e) The initial application and the Certificate of Approval shall include the following information:

- (1) Name of the school or program;
- (2) Location of the school or program;
- (3) The name and address of the individual or entity responsible for governing and operating the school or program;
- (4) The classification of the educational school or program to include, but not be limited to, one or more of the following:
 - (A) Nursery school;
 - (B) Kindergarten;
 - (C) Elementary school with sequential grades specified;
 - (D) Secondary school with sequential grades specified; and
 - (E) Special education and related services; and

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(5) Any additional information the SEA requires.

(f) A school or program shall operate in a manner that is consistent with the specifications recorded on the Certificate of Approval issued to the individual or entity with legal responsibility for governing and operating the school or program.

(g) The SEA may issue a provisional Certificate of Approval to schools or programs that meet minimum requirements to be established by SEA regulations.

(h) When placing District of Columbia students with disabilities in a nonpublic special education school or program outside the District, the SEA may adopt a certificate of approval or license established by that jurisdiction's state education agency, if the standards of that state are substantially similar to the District of Columbia's Certificate of Approval standards.

(i) In issuing Certificates of Approval to residential child care facilities, or when otherwise required, the SEA shall coordinate with the Department of Mental Health, the Department of Human Services, the Child and Family Services Agency, the Department of Youth Rehabilitation Services, and the Medical Assistance Administration of the Department of Health, or any other appropriate public agency.

Sec. 108. Certificate of Approval – Compliance.

(a) All nonpublic special education schools or programs serving students with disabilities with funding provided by the District of Columbia government shall come into full compliance with this act by August 15, 2007, for the 2007-2008 academic school year.

(b) To continue receiving funding from the District of Columbia government in the 2007-2008 academic school year, all nonpublic special education schools or programs shall submit an initial application for a Certificate of Approval to the SEA no later than 90 days after the effective date of this act.

(c) For the 2008-2009 academic school year and each subsequent school year, a nonpublic special education school or program seeking a Certificate of Approval shall submit an initial application to the SEA no later than 45 days prior to the start of the school year.

(d) Not later than 45 days prior to the start of each school year, a school or program granted a Certificate of Approval by the SEA shall certify its annual compliance with this act, and regulations issued pursuant to this act, by filing a certificate of compliance with the SEA.

Sec. 109. Certificate of Approval – Inspection.

(a) The SEA shall schedule periodic monitoring visits to each nonpublic special education school or program at least once every 3 years. The employees of the SEA may make unannounced visits to a school or program during the 3-year period.

(b) A nonpublic special education school or program approved by the SEA shall be subject to inspection by the SEA or its designee for the following reasons:

(1) To verify compliance with this act and its implementing regulations for the purpose of reviewing an application for a Certificate of Approval;

(2) To verify compliance with this act and its implementing regulations when a

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nonpublic special education school or program receives District of Columbia government funds for its educational program;

(3) To investigate complaints relating to this act or violations of the IDEA; and

(4) To determine compliance with DCPS regulations or to monitor program quality.

Sec. 110. Certificate of Approval - Renewal.

(a) Nonpublic schools and programs for special education students may have their Certificates of Approval renewed for a period not to exceed 3 years.

(b) If a Certificate of Approval has not been renewed by the SEA on or before the renewal anniversary date, the Certificate of Approval shall expire and the DCPS Superintendent of Schools shall take immediate steps to determine an appropriate placement, in accordance with the IDEA, to any DCPS-funded students who attended the nonpublic special education school or program with the expired Certificate of Approval.

Sec. 111. Certificate of Approval – Denial, revocation, refusal to renew, or suspension.

(a) The SEA may deny, revoke, refuse to renew, or suspend a Certificate of Approval for any one or combination of the following causes:

(1) Violating any provision of this act, applicable rules of the SEA or DCPS, or applicable federal laws or regulations, except that noncompliance with section 112 shall not be grounds for denial, revocation, refusal to renew, or suspension;

(2) Providing false, misleading, or incomplete information, or failing to provide information requested by the SEA or DCPS;

(3) Violating any commitment made in an application for a Certificate of Approval;

(4) Failing to provide or maintain the premises or equipment of the special education school or program in a safe and sanitary condition as required by applicable law or regulation;

(5) Failing to maintain adequate programs or to retain adequate, qualified instructional staff; and

(6) Failing within a reasonable time to provide information requested by DCPS or the SEA as a result of a formal or informal complaint, or as a supplement to an initial application for a Certificate of Approval.

(b)(1) If the SEA determines a nonpublic special education school or program is in violation of subsection (a) of this section, the SEA shall provide the nonpublic special education school or program written notice of the violations before denying, revoking, refusing to renew, or suspending the Certificate of Approval.

(2) A nonpublic special education school or program determined to be in violation of subsection (a) of this section may request a hearing before an independent panel of the SEA. The request shall be in writing and submitted to the SEA within 30 days of receipt of

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the written notice required under paragraph (1) of this subsection. The panel that reviews the SEA decision shall not contain any individual who participated in the decision to issue the original notice.

(3) The SEA shall hold a hearing within 30 days of receiving a written request, and shall issue its decision no later than 10 days after the hearing. The decision of the SEA panel shall be final and not appealable.

(4) Pursuant to the IDEA, while review is pending, the nonpublic special education school or program shall continue to provide special education and related services to enrolled students.

(c) The Mayor shall conduct a study of how to improve the process of appealing the SEA's decision to deny, revoke, refuse to renew, or suspend a Certificate of Approval. The study shall include the options of review of SEA decisions by the Office of Administrative Hearings or the courts. The Mayor shall provide a report to the Council, including recommendations for legislative and operations changes, by January 1, 2009.

Sec.112. Rate-setting for nonpublic schools.

(a) The Mayor, or his or her designee, shall administer and implement a rate-setting process for the payment of tuition and related services to nonpublic special education schools and programs that provide special education and related services to students with disabilities funded by the District of Columbia.

(b) In establishing fair and reasonable rates, the Mayor, or his or her designee, shall consider a variety of factors, including historical data, the rates established by surrounding jurisdictions, and administrative costs.

(c) The Mayor, or his or her designee, may adopt the rates established by surrounding jurisdictions and apply those rates to nonpublic special education schools or programs that have already been approved to provide services with public funds by a surrounding jurisdiction.

(d) A nonpublic special education school or program serving students who are funded by the District government shall enter into a contract with the District government accepting rates set by the Mayor, or his or her designee, except that a contract is not required for a student whose placement has been ordered by a District of Columbia court, a federal court, or a hearing officer pursuant to the IDEA.

Sec. 113. Rate-setting for nonpublic schools—Reconsideration.

(a) A nonpublic special education school or program may request reconsideration of a rate approved by the Mayor, or his or her designee, by the Rate Reconsideration Panel established by section 114. A rate is eligible for reconsideration only for matters that relate to the ability of the nonpublic special education school or program to meet the requirements of an IEP for a student placed by a District government agency.

(b) The opportunity to request rate reconsideration shall apply only to an aggregate rate for students funded by the District government and the rate may not be reconsidered for

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individual students, except that the Panel may make case-by-case exceptions for a student the Panel determines has unique or highly specialized needs that cannot be properly addressed and funded through an aggregate rate.

(c) A request for reconsideration shall be filed within 30 days of the nonpublic special education school or program's notification of rates from the Mayor, or his or her designee. The reconsideration request shall include the relief requested, the basis for the relief, and sufficient and appropriate information to allow an analysis of the claim.

(d) The decision of the Panel is final and binding.

Sec. 114. Rate Reconsideration Panel.

(a) A Rate Reconsideration Panel shall be established to review requests for rate reconsideration. The Panel shall be comprised of the following individuals:

- (1) One individual designated by the Superintendent of Schools;
- (2) One individual designated by the State Education Officer;
- (3) One individual designated by the Chief Financial Officer;
- (4) One individual designated by the Director of the Department of Health;
- (5) Two parents of students with disabilities, designated by the Mayor; and
- (6) One representative of a nonpublic special education school or program

serving students from the District of Columbia, designated by the Mayor.

(b) The members of the Panel shall elect the Chairman of the Panel.

(c) The presence of at least 4 members of the Panel shall constitute a quorum necessary for the Panel to conduct official business.

(d) The representative of the nonpublic special education school or program shall recuse himself or herself from any cases involving his or her school or program.

Sec. 115. Rules.

(a) Not later than 90 days after the effective date of this act, the Mayor shall issue regulations to implement the powers and duties assigned to the Mayor by this act.

(b) Not later than 90 days after the effective date of this act, DCPS shall issue regulations to implement its powers and duties pursuant to this act.

TITLE II

Sec. 201. The Special Education Assessment and Placement Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code § 38-2501), is repealed.

**Repeal
§ 38-2501**

TITLE III

Sec. 301. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

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Sec. 302. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia