



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK /  
ALBANY, NY 12234

**TO:** P-12 Education Committee

**FROM:** John B. King, Jr.

**SUBJECT:** Proposed Amendment to sections 200.2, 200.4, 200.5, 200.6, 200.9, 200.10, 200.11, 200.13, 200.20, 201.2 and 201.11 of the Commissioner's Regulations, Relating to Special Education Mandate Relief

**DATE:** November 1, 2010

**STRATEGIC GOAL:** Goals 1 and 2

**AUTHORIZATION(S):**

### Summary

#### Issue for Decision

Should the Regents adopt the proposed amendment of sections 200.2, 200.4, 200.5, 200.6, 200.9, 200.10, 200.11, 200.13, 200.20, 201.2 and 201.11 of the Commissioner's Regulations?

#### Reason for Consideration

Review of Policy

#### Proposed Handling

The proposed amendment will be submitted to the P-12 Education Committee for discussion and approval and to the full Board for adoption at the November 2010 meeting.

#### Procedural History

The issue of mandate relief in special education was discussed extensively by the Board of Regents at their January and March 2009 meetings and again at their April and June 2010 meetings.

## Background Information

The proposed amendment will provide mandate relief to schools in certain areas of special education that exceed federal requirements; conform the Commissioner's Regulations to the federal regulations (34 CFR Part 300) that implement the Individuals with Disabilities Education Act (IDEA) and State law; and make certain technical amendments, including correction of cross citations.

The proposed amendment will provide mandate relief and appropriate flexibility for committees on special education (CSE) to make special education recommendations based on students' individual needs by repealing minimum level of service requirements for speech and language related services and for instruction to address the individual language needs of students with autism, and by authorizing the addition of up to two additional students in an integrated co-teaching class when it is necessary to do so to address the unique needs of students in that class. To conform to federal and state requirements, the proposed rule will also ensure that the State regulations use language consistent with federal regulations for CSE meeting notices and State statute for district plans of service for special education; and will make other technical amendments.

A Notice of Proposed Rule Making was published in the State Register on August 18, 2010. Public hearings were held in Albany and LeRoy (near Rochester) on September 15, 2010 and in New York City on September 16, 2010. An Assessment of Public Comment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

## Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That sections 200.2, 200.4, 200.5, 200.6, 200.9, 200.10, 200.11, 200.13, 200.20, 201.2 and 201.11 of the Commissioner's Regulations be amended, as submitted, effective December 8, 2010.

## Timetable for Implementation

If adopted at the November Regents meeting, the proposed amendment will become effective on December 8, 2010.

Attachment

**PROPOSED AMENDMENT OF SECTIONS 200.2, 200.4, 200.5, 200.6, 200.9, 200.10, 200.11, 200.13, 200.20, 201.2 and 201.11 OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION PURSUANT TO EDUCATION LAW SECTIONS 207, 305, 3214, 4402, 4403 AND 4410 AND CHAPTER 410 OF THE LAWS 1978, RELATING TO THE PROVISION OF SPECIAL EDUCATION PROGRAMS AND SERVICES TO STUDENTS WITH DISABILITIES**

**ASSESSMENT OF PUBLIC COMMENT**

Since publication of a Notice of Proposed Rule Making in the State Register on August 18, 2010 the State Education Department received the following comments on the proposed amendments.

General Comments

1. COMMENT:

Proposed amendment would provide relief to local school districts; ensure adequate and appropriate services for students while helping districts reduce costs; and streamline excessive paperwork.

DEPARTMENT RESPONSE:

Comments are supportive in nature and no response is necessary.

2. COMMENT:

Oppose amendments that require reduction in services to students with disabilities. Proposals appear to be motivated by budgetary reasons rather than pedagogy. Given decline in number of students with disabilities meeting proficiency in English language arts (ELA) and Math, and Regents' statement that "we need to do more and provide real accountability to bring about focused attention needed to implement the necessary reforms to help all our children catch up and succeed," now is not the time to eliminate minimum

speech requirements or expect teachers in co-teaching classrooms to be responsible for more of the lowest performing, neediest students. No data has been provided as to how much money would be saved or how proposals will contain costs without compromising services and a free appropriate public education (FAPE) to students. New York Standards should not be lowered for students with disabilities. This is supported by the stipulations of the Jose P. v. Mills case, which requires the Department of Education to obey federal laws that require appropriate evaluation, placement and services be provided to all students with disabilities.

**DEPARTMENT RESPONSE:**

There are no proposed amendments that would require a reduction in services to students with disabilities and lower NYS' standards for students with disabilities. The proposals to repeal the minimum service delivery requirements for speech and language as a related service and the minimum daily frequency and duration for instructional services to address the individual language needs of students with autism and to add a waiver for the number of students with disabilities in an integrated co-teaching class are to ensure that Committees on Special Education (CSEs) have the appropriate flexibility to make recommendations for each student with a disability based on individual needs. These proposals do not relieve the local school districts of their obligation to ensure that all students with disabilities are identified, located, and evaluated and are provided a FAPE to address his or her needs.

**3. COMMENT:**

The proposed change from Office of Mental Retardation and Developmental Disabilities to Office for People with Developmental Disabilities is appropriate and does not have a negative stigma.

DEPARTMENT RESPONSE:

Comment is supportive in nature and no response is necessary.

Section 200.2(c)(1) District Plan of Service for Special Education

4. COMMENT:

Support conforming State regulations to statutory language relating to district plans of service. Keeping the plan on file and available for public inspection and review by the Commissioner is appropriate. Support change but hope information in the 155 reports already submitted to the Department is being used.

DEPARTMENT RESPONSE:

The “155 Report” is a facilities planning report and serves a different function from the District Plan of Service for Special Education. Other comments are supportive in nature and no response is necessary.

Meeting Notice §200.5(c)(2)(i)

5. COMMENT:

The proposed requirement “disallows legitimate situations” for members to miss meetings (e.g., illness, emergencies, etc.); provides a technical reason for a parent to request an impartial hearing; may increase costs for schools; and may result in numerous meeting cancellations. The proposed change limits flexibility as it is hard to guarantee specific attendance at meetings. If adopted, districts will need additional guidance on how to lawfully proceed under these circumstances. Current language is sufficient. While

unanticipated circumstances could impact attendance, procedural safeguards are already in place to address this situation.

DEPARTMENT RESPONSE:

The proposed amendment is a technical change necessary to conform State Regulations to federal requirements relating to meeting notice. Current State regulations require meeting notice to identify individuals who are “expected to attend” the Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE) meeting, while federal regulations require that parents be notified as to “who will be in attendance” at a CSE/CPSE meeting. Substantively, these two phrases mean the same. In accordance with the procedures in section 200.3(f) of the Commissioner's Regulations, when an individual identified in the meeting notice is not able to attend, the parent and district could agree, either prior to or subsequent to the issuance of the meeting notice, that the attendance of one or more individuals at all or a portion of a meeting is not necessary or that a member may be excused from attending all or a portion of the meeting. Therefore, this proposed change should have no impact on current policy, procedures or practices, nor should it lead to increased requests for impartial hearings.

6. COMMENT:

Support conforming State regulations to federal regulations relating to meeting notice and parent participation in CSE meetings. Informing parents of the name and title of persons who will be in attendance will avoid parents feeling that they were not adequately prepared for the meeting, alleviate mistrust, and defuse adversarial situations that could lead to impartial hearings.

DEPARTMENT RESPONSE:

While this is a technical amendment and should not substantially change current practice, the comments are supportive in nature and no response is necessary.

Section 200.5(d)(2) – Parent Participation

7. COMMENT:

Agree with proposed language that would allow districts to have informal and unscheduled conversations to develop ideas/proposals to be discussed at CSE meetings.

DEPARTMENT RESPONSE:

Comment is supportive in nature and no response is necessary.

Section 200.6(e)(2) – Speech and Language Related Services

8. COMMENT:

The majority of comments received were in opposition to the repeal of the minimum level of service requirements for speech and language as a related service. Reasons given for opposition included: proposal will adversely impact students; evidenced-based practice indicates that twice a week for 30 minutes is the minimum needed for effective treatment; position of speech therapists that the current requirement is a low minimum and should be valued and supported; a minimum level of service delivery preserves the professional integrity of the instructional program and provides an opportunity for students to benefit from service, provides therapeutic interventions to assist students in accessing classroom curriculum and allows for learning, reinforcement and generalization of skills; services one time a week do not allow the therapist to learn students' strengths and weaknesses to treat them appropriately; speech therapy is ineffectual if it does not allow for intensive practice and carryover; students benefit from routine, repetition, and frequent drill; less than the current minimum does not provide enough support and is inadequate for students with greater needs; students need more than one session a week to make the

desired change in brain function and structure; legal minimums are often interpreted as what should be provided and uninvolved parents or those less knowledgeable about the special education process could be taken advantage of; it is difficult for families to ask for more services, especially those who do not understand their rights, speak a language other than English, do not have resources or fear repercussions; proposal based on belief that fewer, briefer sessions can accomplish same goals with practice at home, however, some students are unable to practice on their own or there may be little family involvement; communication skills and language comprehension affect all aspects of students' development and are the foundation of reading and employment skills; other personnel who are not trained to address the needs of students with speech and language delays will be asked to fill in the gaps; typically-developing students are allowed to learn second language five times a week yet, under the proposal, students with speech and language delays in their first language could receive services less than one hour each week; studies show teen dropouts have speech/language impairments that were not addressed and led to academic failure; and not treating or under treating communication disorders will have future financial ramifications.

#### DEPARTMENT RESPONSE:

The CPSE and CSE must consider the communication needs of the student and recommend the frequency and duration of related services needed to meet the specific needs of a student with a disability. The proposed amendment allows the CPSEs and CSEs appropriate flexibility to make recommendations for speech and language services based on a student's individual needs and does not relieve districts of their obligation to make FAPE available to each student with a disability; nor does it provide a school district with the authority to unilaterally reduce the frequency of a related service



that is recommended of a student's IEP. Each decision as to the level of service for a related service must be made based on individual evaluation information. The United States Department of Education (USED) opined that it would be inconsistent with the Individuals with Disabilities Education Act (IDEA) to dictate the amount of services for all students receiving speech services and that a student's "IEP team" is responsible for determining the services needed for the student to receive FAPE, including the type and amount of related services. (Analysis of Comments, Federal Register/Vol. 71, No. 156/Monday, August 14, 2006, p. 46575). There are no minimum levels of service requirements in State regulations for any other related service, nor is the Department aware of any other states having such requirements.

9. COMMENT:

Under the proposal, districts could state that a student does not warrant speech services because there is not enough of a deficit. Concerned the proposal will be interpreted to mean speech services will be terminated after one year.

DEPARTMENT RESPONSE:

Whether a related service is recommended for a student with a disability is a determination that must be made on a case-by-case basis by the student's CPSE or CSE in light of a student's individual needs. We do not agree that the proposed amendment would negatively affect eligibility determinations. In fact, some students now determined not to be eligible for services because they do not require at least two periods per week, could now be determined to be eligible for services.

10. COMMENT:

Instead of decreasing frequency and durational requirements, revise manner in which services are provided so that speech therapists push into classrooms to help

students.

**DEPARTMENT RESPONSE:**

It would be inconsistent with federal and State law and regulations to dictate the location of services for all students receiving speech services. On a case-by-case basis, Committees may recommend that a student receive speech services in a general education classroom rather than a separate location. The decision as to the location where a service will be provided should be made in consideration of the least restrictive environment provisions and in consideration of the student's overall schedule and participation in general education classes.

**11. COMMENT:**

Minimum service requirements protect students, especially in urban and rural districts, from decisions based on fiscal concerns. Financial and staffing ratios may drive services, not best practices. Districts may pressure IEP teams and speech therapists to reduce services to save money. Savings will occur at expense of students. There will be pressure from administrators to recommend certain programs and services because of budget, space, lack of staff and ease of implementation.

**DEPARTMENT RESPONSE:**

Committees must determine the special education programs and services needed for a child to receive FAPE on an individual basis. It would be inappropriate for schools districts to make decisions based solely on factors such as budget, staffing and administrative convenience.

**12. COMMENT:**

Reducing services would be a disservice to students and amounts to educational neglect. Students with significant speech and language needs will have reduced sessions and not get the support they need. Reducing speech-language services to meet federal

minimum requirements of one time per week is not "Best Practices" and does not conform to recommended practices by the American Speech-Language-Hearing Association (ASHA). Cutback "ties the hands" of school districts committed to effective teaching and services for students. No research and analysis has been provided to validate whether students with disabilities are making progress with current ratios and speech and language requirements. The Department has provided no evidence that the proposed reduction in service is warranted or that less service would be successful.

**DEPARTMENT RESPONSE:**

The Department is not proposing a reduction in speech and language services, nor would it be appropriate for districts to reduce speech services to all students based on the repeal of the current minimum level of service requirement. The proposal allows CSEs/CPSEs the appropriate flexibility to recommend services based on individual student needs.

**13. COMMENT:**

Therapists are often already expected to under serve or not serve mandated students and reducing mandates will amplify this and compromise the quality of intervention. Scheduling issues, absences, and therapists being used for coverage in other areas interfere with mandated services.

**DEPARTMENT RESPONSE:**

School districts must ensure that all students with disabilities have available to them FAPE, consistent with a student's IEP, and consider the impact of factors such as scheduling, absences and staff coverage on a student's progress and performance and determine how to ensure the continued provision of FAPE. The proposed regulation would have no effect on this requirement. However, some providers may be able to serve

currently unserved students if the therapists' caseloads now include students recommended for two 30-minute sessions per week rather than student's actual need for speech and language at a frequency/duration less than the currently required minimum level of service requirement.

14. COMMENT:

Students need at least 30 minute sessions to demonstrate adequate learning.

DEPARTMENT RESPONSE:

Nothing in the proposed regulations would preclude the CSE/CPSE from recommending sessions of 30 minutes or longer in duration based on an individual student's needs.

15. COMMENT:

Speech teachers are not required to be members of CSEs, nor are they required to be consulted when administrators propose to cut services through the IEP process. Administrators, in the role of district representative, can refuse programs and services recommended by other CSE members. Expertise of speech therapists must be part of decision making and should be required to attend meetings if decisions are being made about speech therapy. Speech pathologists maintain a professional license and are held to high ethical standards and would not give more services or services for longer than needed. It should be up to the speech professional to determine frequency and group size. Speech and language therapists are not given enough time to make thoughtful progress reports and recommendations.

DEPARTMENT RESPONSE:

The Committee, not one individual, is responsible for determining the services needed for a student to receive FAPE. The Committee reaches a decision through

consensus. It is only when the Committee cannot reach consensus that the chairperson of the Committee makes a decision. School districts must ensure that all individuals who are necessary to develop an IEP participate in a student's CSE/CPSE meeting, including not less than one special education teacher, or, if appropriate, not less than one special education provider (e.g., speech and language therapist) of the student. In addition, under section 200.3 of the Commissioner's Regulations, parents and school districts have the discretion to invite to CSE/CPSE meetings "other persons having knowledge or special expertise regarding the student, including related services personnel." Although federal and State law and regulations do not expressly require that CSEs/CPSEs include related services personnel as part of the Committee, it is appropriate for those persons to be included if a particular related service is to be discussed at a meeting. If a student has an identified need for a related service, such as speech and language as a related service, the school district should ensure that a qualified provider of that service either attends the meeting, or provides a written recommendation concerning the services to be provided to the student.

16. COMMENT:

Mandate relief does not address IDEA and support the individual needs of the child. Cannot provide a "one size fits all" model. Alexa Posny of the USED stated that the recommendation for speech and language therapy should be based on an individual's needs and not policy. IDEA requires a team of professionals and parents to determine the services necessary for students to benefit from education and the minimum level of service ensures that students receive needed treatment.

DEPARTMENT RESPONSE:

We agree that decisions regarding the type and amount of services a student needs to receive FAPE must be made on an individual basis. Consistent with federal requirements, the proposed amendment would allow CSEs appropriate flexibility to make recommendations for a student to receive the services that he/she needs, and not more because the regulations require it.

17. COMMENT:

Districts can provide speech therapy less than twice a week as a general education support service. If speech is the only service a student receives, it could be provided once a week as a declassification support service for up to one year. Local flexibility currently exists for the minimum level of service requirement through the innovative program waiver provision in section 200.6(l) of the Regulations, which would require the Department's approval and local accountability to demonstrate program effectiveness.

DEPARTMENT RESPONSE:

If a student is eligible for special education services and the Committee determines that speech therapy is necessary to address that student's special education needs, such services must be provided through an IEP. Speech therapy one time a week as a declassification support services would only be available to students for whom the CSE has determined that they no longer need any special education programs and services, not to students who have IEPs. Because the determination of a student's need for speech and language services must be made on an individual basis, it would be inappropriate for the Department to approve an innovative waiver for this purpose.

18. COMMENT:

Support repeal of the minimum level of service for speech. Current requirements do not allow for individualization of services and may limit the CSE's ability to develop an appropriate IEP. Repeal would give appropriate services to students who require minimal

support. Assessments, observations, parent and member input should dictate what level of speech is appropriate for each child. Repeal of minimum will provide districts with flexibility to meet individual needs more efficiently and in a cost-effective manner. By having a pre-determined amount of hours speech therapists may begin to face ethical concerns. Repeal of minimum would alleviate issue of students being pulled to receive services they do not need. Decision is best left to speech therapist and CSE but, if a minimum is required, it should be based on minutes per month. Current regulations have prevented speech therapists from recommending a reduction in speech services to once a week for 30 minutes. Repeal minimum to be in line with other related services (e.g., occupational therapy, physical therapy, music therapy) so students get services they need, not an arbitrary minimum.

**DEPARTMENT RESPONSE:**

Comments are supportive in nature and no response is necessary.

**19. COMMENT:**

Some students are profoundly and intellectually impaired and have reached their capacities in terms of speech development and no amount of treatment will alter this. Classroom teachers could use speech consultations for such students on a monthly/weekly basis to maintain/carry over skills. A repeal of the minimum frequency/duration of such services would help students get what they need without over treating students to no effect.

**DEPARTMENT:**

We agree that repealing the minimum level of service for speech and language will provide the CSE the flexibility they need to recommend the frequency and duration based on individual needs, and not more because the regulations require it. However, CSEs

must continue to ensure the provision of FAPE to a student. While "consultations" may be recommended in a student's IEP as a support to school personnel on behalf of the student, such services would not be a related service. A related service is a direct service to a student. The proposed regulation should not be construed to authorize indirect services to students with disabilities as a related service.

20. COMMENT:

Increasing group size would marginalize therapists' relationships with students and would not be beneficial to regular and special education students. With increased group size and caseload therapists will not be able to effectively target speech and language deficits. A decrease in frequency and possible shortened session time and unlimited group size, will impact learning and generalization of skills and adversely impact students.

DEPARTMENT RESPONSE:

The proposed amendment does not include any proposed amendments to maximum group size or the caseload requirements.

§200.6(g) Integrated Co-teaching

21. COMMENT:

Oppose proposal that would authorize districts to add two additional students with disabilities to an integrated co-teaching class. Cap of 12 students was reached after much discussion and public comment. Increasing the number of special education students past 12 will ruin integrated co-teaching approach and compromise the quality of instruction to all students and students with disabilities. Increasing the special needs students in this program will diminish the level of attention, individualized support and learning opportunities for students. General education students will progress more slowly and gifted students will suffer most from lack of attention. The benefits of educating students with



disabilities with their nondisabled peers do not outweigh the negative effect of students' needs not being met. Proposal is setting up teachers to fail. Proposal will lead to more referrals for special education and lower test scores. Classes are already large and the increase will result in overcrowding. Additional students could possibly affect the mental and physical health and safety of students and teachers. Limiting the size of the learning environment maximizes a teacher's ability to provide each child with individualized instruction, support and attention. There will be less academic learning and more behavior management issues when students who need a 12:1 ratio are put in larger classes. There are no criteria for recommending students for a co-teaching class so the range of behavioral and academic needs can be significant. Not reasonable to provide administrative flexibility before conditions of appropriate and effective service delivery of this relatively new program option have been identified. Combination of more students, common core standards raising the difficulty, and a hiring freeze on qualified teachers will result in inefficient and less effective situations. Costs of proposal will be greater in the long run because parents will obtain Nickerson letters to send their children to specialized private schools or sue schools that fail to provide fair and equitable education. Proposal could allow the district to circumvent the CSE's ability to ensure that integrated co-teaching classes are appropriately implemented by a school. Department has provided no criteria for determining the appropriateness of the additional students in the class.

**DEPARTMENT RESPONSE:**

The proposed regulation would provide districts with the flexibility to add one additional student with a disability through notification to the Department and a second student with prior Department approval only when exceptional circumstances arise, such as when a student currently in a class that is also an integrated co-teaching class is

identified as a student with a disability during the school year or when there is no other appropriate class for a student with a disability and a waiver is needed to ensure FAPE to the student. School districts must begin the school year in compliance with the 12 student rule and it would be inappropriate for a district to use the waiver provision on a routine basis. Current regulations require that, whenever students are placed together for purposes of special education, they must be grouped by similarity of individual needs, including consideration of the range of academic or educational achievement of such students to assure that instruction provides each student appropriate opportunities to achieve his or her annual goals; the social development of each student to assure that the social interaction within the group is beneficial to each student, contributes to each student's social growth and maturity, and does not consistently interfere with the instruction being provided; the levels of physical development to assure that appropriate opportunities to benefit from instruction; and the management needs of the student.

## 22. COMMENT:

The proposal does not identify how and when a variance would be enacted; what educational justification would be required; who in the district would initiate the variance and provide documentation; how the CSE will be involved; who will ensure that the classroom does not have too many students with disabilities with varying needs; how the district will ensure that students with disabilities are in classrooms with similar needs; what the impact will be on students without disabilities and the education of all students in the classroom; how the classroom profile will be established. No criteria are specified for getting Department approval to add a second student.

DEPARTMENT RESPONSE:

The Department will establish procedures for variances to the maximum number of students with disabilities in integrated co-teaching classes consistent with the existing procedures for special class size and chronological age variances. Notifications and requests for variances will be monitored by the Office of Special Education to evaluate whether these procedures are being applied appropriately.

23. COMMENT:

Do not support increase without there being a percentage of students with disabilities to nondisabled students. Clarify if there will be a ratio of students with disabilities to students without disabilities. Allowing more than current 60/40 student ratio would harm premise of this model. Model will not work if the ratio is 50/50 or if there are more students with disabilities than general education students, because special education students will "bring down the performance of general education students." Model for successful integrated co-teaching class is 10 percent, or at most 20 percent, special needs students per class. When possible, efforts should be made to maintain percentage of students with disabilities below 50 percent. No studies have been put forth to show whether the current ratios and class size limits for integrated co-teaching classes are effective and that co-teaching improves student outcomes. 1997 study by Alter and Gotlieb found that reading and math scores decreased when group size increased. Before authorizing schools to add more students, find out if this model works, for whom, and under what conditions.

DEPARTMENT RESPONSE:

There is no current regulatory ratio of students with disabilities to nondisabled students in an integrated co-teaching class in regulations, and the Department declines to

establish one in regulation. Committees should consider the overall size of the class enrollment (which includes students with disabilities and nondisabled students) and the ratio of students with disabilities to nondisabled students in relation to the individual student's learning needs when making a recommendation for integrated co-teaching services. The size of general education classes is a matter of local discretion. Therefore, an important consideration in determining the number of students with disabilities and nondisabled students on an integrated class roster is that the ratio must not result in a *de facto* segregated class which would undermine the philosophy of inclusive practices. It is expected that the number of nondisabled students should be more than or equal to the number of students with disabilities in the class in order to ensure the level of integration intended by this program option. Each CSE is responsible to monitor the progress of students with disabilities to ensure that the special education programs and services are appropriate to assist the student to meet his/her annual goals. We disagree that including students with disabilities in general education classes compromises the educational achievement of nondisabled students.

24. COMMENT:

Local flexibility currently exists for the minimum level of service requirement through the innovative program waiver provision in section 200.6(l) of the Regulations, which would require Department approval and establishes local accountability to demonstrate effectiveness.

DEPARTMENT RESPONSE:

The proposed regulation to add up to two additional students in an integrated co-teaching class would allow the district to provide FAPE to individual students with a disability in a timely manner. Section 200.6(l) also provides an opportunity for a school

district to apply to the Commissioner to implement an innovative special education program that will enhance student achievement and/or opportunities for placement in regular classes and programs. The purposes of these two waiver provisions are different.

25. COMMENT:

Support proposal that would allow school districts to add up to two additional students to integrated co-teaching classes. Variance will help districts better meet the needs of students who enter after the start of the school year without forcing districts to hire additional teachers or change IEPs to accommodate programs. Change allows districts flexibility when developing classes and to still meet the needs of students. Proposal is similar to district's ability to request a variance to increase special class size. Will offer relief in emergency situations; however, increase should be done judiciously and not as a long term plan for districts. Proposal is appropriate and reasonable in some situations and district administrators will use this discreetly.

DEPARTMENT RESPONSE:

Comments are supportive in nature and no response is necessary.

§200.13(a)(4) Instructional Services to Address the Language Needs of Students with Autism

26. COMMENT:

Regulations regarding autism should not be changed. Speech and language needs are a core deficit area for a student with autism and providing less in this area is not providing an appropriate education to students with autism. The proposal would be detrimental to children and students will show in lack of progress in other areas. Given the array of communication disorders within the autism spectrum, the importance of addressing speech, language, communication and literacy is critical. Students with autism

need minimum speech and language therapy provided under current law. The current requirement ensures that students receive minimum amount of services to address their individual language needs. Proposal provides opportunity for districts to reduce services to students that could benefit from more. Change will result in many children never acquiring verbal speech or other functional means of communication. Only effective strategies with empirical evidence in improving the abilities of students with autism are educational, behavioral intervention and continuous speech therapy. Mandate is needed to protect students and ensure districts provide intense and focused supports. Oppose removing service minimum without written assurances that adequate services will be in place for students with autism. Autism is neurologically-based disorder that dramatically affects a student's ability to communicate. Concerned that regression will occur if services are reduced. Children with autism need specific language based learning that they cannot get in a classroom. Assumption that Asperger Syndrome is mild disability along spectrum is wrong since some children with Asperger Syndrome have significant communication disorders.

#### DEPARTMENT RESPONSE:

While difficulty in the area of communication is a manifestation of the disability for most students with autism, not all students classified with autism will need the intensity of instructional services mandated in current regulations. The proposed amendment retains the requirement that instructional services shall be provided to meet the individual language needs of a student with autism. The proposed repeal of the minimum daily frequency and duration of such services ensures that the CPSE and CSE have flexibility to recommend the appropriate frequency and duration of such services to meet the individual needs of the student. The current requirement mandates a level of service based upon a student's disability classification, which is inconsistent with federal

requirements. USED has opined that “Decisions regarding the provision of services that are appropriate for an individual child must be based on the child’s special education and related services needs, and not on the disability category in which the child is classified. Whether speech pathology or any other related service is required for a particular child with a disability is a determination that must be made on an individual basis by the child's IEP team.” (Office of Special Education Programs, Letter to Williams, March 24, 2000, 33 IDELR 249)

27. COMMENT:

Many districts do not follow current regulation which requires that students with autism be provided speech and language therapy daily.

DEPARTMENT RESPONSE:

Current section 200.13(a)(4) of the Commissioner’s Regulations does not require that instructional services address a student’s language needs be limited to speech and language therapy. The CSE/CPSE must address the language needs identified in the student’s IEP; however, they could do so by recommending that such services be provided through instruction in the student’s class and/or through speech and language as a related service. Therefore, it may be appropriate for such services to be provided by the student’s special education teacher and/or by a related service provider.

28. COMMENT:

Support the repeal of the minimum speech and language services for students with autism. Current language is too restrictive and amendment will allow CSEs to provide flexibility of services as appropriate based on students’ needs, not based on a mandated requirement that has existed for decades. Current provision is overly restrictive given the wide range of needs of students on the spectrum. Minimum level does not allow for

individualization of an IEP. Current requirement violates intent of federal and State law which mandates CSE develop programs based on students' unique strengths and needs and not solely on basis of classification. Decisions regarding frequency and duration should be left to discretion of the CSE. Assessments, observations, parent and team member input should dictate what level of speech and language therapy is appropriate for each child. Proposal would provide flexibility in regard to how resources are being utilized. Learning is disrupted and socialization opportunities are missed when students are pulled to receive services they may not need. Requirement for instructional services one period every day is problematic for high school student and impacts student's ability to earn credit toward a diploma. Repeal requirement or clarify that speech therapists are not solely responsible for providing instructional services to meet the language needs of students with autism. There have been many occasions when parents, therapists or teachers feel it is unnecessary to provide the mandated level of service and that an arbitrary minimum is not in the best interest of students. Group of two is contrary and limiting for students with autism who need to expand socialization skills. Regulations appear to have been developed for moderately and severely disabled students on spectrum with expressive and receptive language disorders and restrictiveness of the regulations has resulted in misclassification of students.

#### DEPARTMENT RESPONSE:

Section 200.13 of the Regulations was developed in the late 1970's at a time when many children with autism were not receiving educational services equivalent to other students and when autism was best understood to include students with significant cognitive and language disabilities. Within the past decade, there has been a better understanding and diagnoses of the spectrum of autism related disabilities, and the



varying needs of these students. We agree that that the proposed amendment will, consistent with federal regulations, allow Committees the appropriate flexibility to make recommendations based on the student's individual language needs, not on his or her classification. The proposed regulations retain the requirement that instructional services be provided to meet the individual language needs of a student with autism; however, there is no requirement that such services be limited to speech and language therapy, so no further change is necessary.

29. COMMENT:

Change section 200.13(6), which requires a special education teacher with a background in teaching students with autism to provide transitional support services to students with autism, to allow services to be provided based on a student's needs.

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed regulations.

Miscellaneous

30. COMMENT:

The timing of the proposals is intended to minimize meaningful consideration by the Regents and legislators and shorten the opportunity for comment.

DEPARTMENT RESPONSE:

The Department had an extended period of consideration and public input on the proposed changes. The issue of mandate relief in special education was discussed extensively by the Board of Regents at their January and March 2009 meetings and again at their April and June 2010 meetings. To ensure broad public input, the Department posted the proposed regulations on its website and published them in the State Register on August 18, 2010. In accordance with the State Administrative Procedures Act (SAPA)

and the public participation requirements under IDEA, public comment on the proposed amendment was accepted for 45 days following its publication. In addition, three public hearings were conducted to seek public comment throughout the State.

31. COMMENT:

Class size regulations for every level of disability are arbitrary in nature. Given that these have been in place a number of years, would like to know what evidence is available to support class size regulations and their impact on student performance.

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed regulations.

32. COMMENT:

IEPs need to be available to all educators so that they can adequately serve children who need classroom and testing accommodations.

DEPARTMENT RESPONSE:

The proposed comment is beyond the scope of this rulemaking and no amendment is proposed relating to the current requirement that each school district must ensure that each regular education teacher, related service provider, and/or other service provider who is responsible for the implementation of a student's IEP, is provided a paper or electronic copy of the IEP prior to implementation and is informed of his/her responsibility for implementing the IEP.

33. COMMENT:

Regulations for children with learning disabilities and/or emotional disabilities need overhaul.

DEPARTMENT RESPONSE:

The comment is beyond the scope of the proposed regulations.

34. COMMENT:

Repeal the Federal Medical Assistance Percentage (FMAP) Contingency Law which will cut services to the speech and hearing impaired.

DEPARTMENT RESPONSE:

The FMAP Contingency fund is established in State statute and is beyond the scope of the proposed regulations.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 305, 3214, 4402, 4403, 4410 and Chapter 410 of the Laws of 1978.

1. Paragraphs (6), (10) and (12) of subdivision (b) of section 200.2 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(6) for the purpose of ensuring the confidentiality of personally identifiable data, information or records pertaining to a student with a disability. Such personally identifiable information shall not be disclosed by any officer or employee of the State Education Department or any school district, or member of a committee on special education or committee on preschool special education to any person other than the parent of such student, except in accordance with [section 300.500] sections 300.500 through 300.536 and sections 300.610 through 300.625 and Part 99 of title 34 of the Code of Federal Regulations (Code of Federal Regulations, [2006] 2009 edition, title 34, [section 300.500,] sections 300.500 - 300.536, sections 300.610 through 300.625, and [Federal Register/ Vol. 71 No. 156/ August 14, 2006/ p. 46791; title 34, sections 300.610-300.625, Federal Register/ Vol. 71, No. 156/ August 14, 2006/ pp. 46802-46804 - Office of the Federal

Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington DC 20001; Code of Federal Regulations, 2006 edition, title 34,] Part 99, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 - available at the [Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624, One Commerce Plaza,] Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234);

(10) and establishes a plan, pursuant to sections 1604(29-a), 1709(4-a), 2503(7-a) and 2554(7-a) of the Education Law, to ensure that all instructional materials to be used in the schools of the district are available in a usable alternative format, which shall meet the National Instructional Materials Accessibility Standard; in accordance with appendix C to part 300 of title 34 of the Code of Federal Regulations (Code of Federal Regulations, [2006] 2009 edition, title 34, part 300, appendix C, [Federal Register/ Vol. 71, No. 156/ August 14, 2006/ pp. 46814-46817 – Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington, DC 20001;] Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 - available at the [Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624, One Commerce Plaza,] Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234), for each student with a disability in accordance with the student's educational needs and course selections at the same time that such materials are available to nondisabled students. For purposes of this paragraph, alternative format is defined as any medium or format for the presentation of instructional materials, other than a traditional print textbook, that is needed as an accommodation for a student with a disability enrolled in the school district, including but not limited to Braille, large print, open and closed captioned, audio, or an electronic

file. An electronic file must be compatible with at least one alternative format conversion software program that is appropriate to meet the needs of the individual student. The plan shall:

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(12) that identify the measurable steps it shall take to recruit, hire, train and retain highly qualified personnel, as defined in section 120.6 of this Title and 34 CFR 300.18 (Code of Federal Regulations, [2006] 2009 edition, title 34, section 300.18, [Federal Register/ Vol. 71, No. 156/ August 14, 2006/ pp. 46758-46759 – Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington, DC 20001;] Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 - available at the [Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624, One Commerce Plaza,] Office of Counsel, New York State Education Department, Room 148, State Education Building 89 Washington Avenue, Albany, NY 12234), to provide special education programs and services;

2. Section 200.2(c)(1) of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(1) Each board of education which receives an apportionment for eligible students with disabilities, pursuant to [subdivision 19 of] section 3602 of the Education Law, or preschool students with disabilities pursuant to section 4410 of the Education Law shall use such apportionments for special education programs and services which are in

accordance with the provisions of this Part. Each board of education which receives such apportionment shall [prepare satisfactory plans periodically at the intervals] keep on file and make available for public inspection and review by the commissioner an acceptable plan as required by subdivision [10] 8(b) of section 3602 of the Education Law.

3. Paragraph (1) of subdivision (i) of section 200.2 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(1) Responsibility for ensuring the availability of instructional materials in alternative formats for students with disabilities. By July 1, 2002, each BOCES shall establish a plan to ensure that all instructional materials to be used in the programs of the BOCES are available in a usable alternative format, which shall meet National Instructional Materials Accessibility Standard in accordance with appendix C to part 300 of title 34 of the Code of Federal Regulations (Code of Federal Regulations, [2006] 2009 edition, title 34, part 300, appendix C, [Federal Register/ Vol. 71, No. 156/ August 14, 2006/ pp. 46814-46817 - Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington DC 20001;] Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 - available at the [Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624, One Commerce Plaza,] Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, New York 12234), for each student with a disability in accordance with the student's educational needs and course selections at the same time that such materials are available to nondisabled students. For purposes of this subdivision, alternative format is defined as any medium or format for the presentation of instructional materials, other than a traditional print textbook, that is needed as an accommodation for a student with a disability enrolled in a program of the BOCES, including but not limited to Braille, large print, open and closed captioned, audio, or an electronic file. An

electronic file must be compatible with at least one alternative format conversion software program that is appropriate to meet the needs of the individual student. The plan shall:

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

4. Paragraph (9) of subdivision (b) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(9) No student shall be required to obtain a prescription for a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812[c]) as a condition of receiving an evaluation under this Part (United States Code, [2000] 2006 edition, volume [11] 13; Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001; 2008 - available at the [Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624, One Commerce Plaza,] Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234).

5. Clause (b) of subparagraph (i) of paragraph (4) of subdivision (d) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(b) where a child is determined to be at risk of a future placement in a residential school, the committee must, with parental consent or consent of a student 18 years of age or older, request in writing that a designee of the appropriate county or State agency participate in any proceeding of the committee to make recommendations concerning the appropriateness of residential placement

and other programs and placement alternatives, including but not limited to, community support services that may be available to the family. The committee must notify the local social services district when a student who is in a foster care placement is at risk of a future placement in a residential school. A copy of such request must be forwarded to the Office of Mental Health and the [Office of Mental Retardation and Developmental Disabilities] Office for People With Developmental Disabilities. In the event that such persons are unable to attend such meetings, the committee shall attempt alternative means allowing for their participation, such as individual or conference telephone discussions, and such attempts shall be documented;

6. Subparagraph (iii) of paragraph (8) of subdivision (d) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(iii) Transmittal of Records. (a) To facilitate the transition for a student described in this paragraph, the new school district in which the student enrolls shall take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education services to the student, from the previous school in which the student was enrolled pursuant to 34 C.F.R. section 99.31(a)(2) (Code of Federal Regulations, [2004] 2009 edition, Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001: [2004] 2009 – available at the [Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624, One Commerce Plaza,] Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234).

7. Paragraph (9) of subdivision (d) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:



(9) The school district shall not require a student with a disability to obtain a prescription for a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. section 812[c]) as a condition of receiving services under this Part (United States Code, [2000] 2006 edition, volume [11] 13; Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001 [:2001] ; 2008 – available at the [Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624, One Commerce Plaza,] Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234).

8. Subparagraph (v) of paragraph (1) of subdivision (b) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(v) prior to each time the school district accesses a parent's private or public insurance proceeds in accordance with the requirements of 34 CFR sections 300.154(d)(2)(iv)(A) and (e)(1) and (e)(2)(i) (Code of Federal Regulations, [2006] 2009 edition, title 34, section 300.154, [Federal Register/ Vol. 71, No. 156/ August 14, 2006/ pp. 46771-46772, Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington, DC 20001;] Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 - available at the [Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624 One Commerce Plaza,] Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234);

(a) . . .

9. Subparagraph (i) of paragraph (2) of subdivision (c) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(i) inform the parent(s) of the purpose, date, time, and location of the meeting and the name and title of those persons [expected to attend] who will be in attendance at the meeting;

10. Paragraphs (2) and (6) of subdivision (d) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(2) A meeting does not include informal or unscheduled conversations involving school personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision [if those issues are not addressed in the student's IEP]. A meeting also does not include preparatory activities that school personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(6) The parents of a student with a disability must be afforded an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student, in accordance with the requirements of 34 C.F.R. sections 300.613 through 300.625 (Code of Federal Regulations, [2006] 2009 edition, title 34, sections 300.613 – 300.625, [Federal Register/ Vol. 71, No. 156/ August 14, 2006/ pp. 46803-46804, Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington, DC 20001;] Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 - available at the [Office of Vocational and Educational Services for Individuals

with Disabilities, Room 1624 One Commerce Plaza,] Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234).

11. Paragraph (2) of subdivision (e) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(2) Each public school, public agency and approved private school subject to the provisions of this Part shall preserve the confidentiality of personally identifiable data, information or records pertaining to students with disabilities. Such confidentiality must be preserved in a manner consistent with the procedures adopted pursuant to section 200.2(b)(6) of this Part and/or in accordance with [20 USC 1232(g)] 20 USC 1232g and the provisions of part 99 of title 34 of the Code of Federal Regulations or its successor and sections 300.610 through 300.625. (United States Code, [2000] 2006 edition, volume [11] 12; [,2001] 2008; [United States Code, 2000 edition, supplement III, volume two, 2005,] Superintendent of Documents, U.S. Government Printing Office, Stop SSOP Washington, DC 20402-9328: 2004; Code of Federal Regulations, [2006] 2009 edition, title 34, part 99, Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001; Code of Federal Regulations, [2006] 2009 edition, title 34, sections 300.610-300.625, [Federal Register/ vol. 71, No. 156/ August 14, 2006/ pp. 46802-46804 - Office of the Federal Register, National Archives and Records Administration, 800 North Capitol Street, NW, Suite 700, Washington, DC 20001] Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2009 – available at the [Office of Vocational and Educational Services for Individuals with Disabilities; Room 1624, One Commerce Plaza,] Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234).

12. Subparagraph (xvi) of paragraph (3) of subdivision (j) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(xvi) Commencing July 1, 2002, each board of education shall report information relating to the impartial hearing process, including but not limited to the request for, initiation and completion of each impartial hearing, to the Office of [Vocational and Educational Services for Individuals with Disabilities] Special Education of the State Education Department in a format and at an interval prescribed by the commissioner.

13. Paragraph (5) of subdivision (j) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(5) Timeline to render a decision. Except as provided in section 200.16(h)(9) of this Part and section 201.11 of this Title, the impartial hearing officer shall render a decision, and mail a copy of the written, or at the option of the parents, electronic findings of fact and the decision to the parents, to the board of education, and to the Office of [Vocational and Educational Services for Individuals with Disabilities (VESID)] Special Education of the State Education Department, not later than 45 days from the date required for commencement of the impartial hearing in accordance with subparagraph (3)(iii) of this subdivision. In cases where extensions of time have been granted beyond the applicable required timelines, the decision must be rendered and mailed no later than 14 days from the date the impartial hearing officer closes the record. The date the record is closed shall be indicated in the decision. The record of the hearing and the findings of fact and the decision shall be provided at no cost to the parents. All personally identifiable information shall be deleted from the copy forwarded to [VESID] the Office of Special Education.

14. Paragraph (1) of subdivision (k) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(1) Any party aggrieved by the findings of fact and the decisions of an impartial hearing officer rendered in accordance with subdivision [(i)] (j) of this section may appeal to a State review officer of the State Education Department. Such a review shall be initiated and conducted in accordance with the provisions of Part 279 of this Title.

15. Subparagraph (iv) of paragraph (1) of subdivision (l) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(iv) The original signed complaint shall be filed with the [Office of Vocational and Educational Services for Individuals with Disabilities, New York State Education Department, One Commerce Plaza, Room 1624,] Office of Special Education, New York State Education Department, State Education Building Room 307, 89 Washington Avenue, Albany, New York, 12234.

16. Paragraph (2) of subdivision (e) of section 200.6 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(2) For students with disabilities determined to need speech and language services, [such services shall be provided for a minimum of two 30-minute sessions each week, and] the total caseload of such students for teachers providing such services shall not exceed 65.

17. Paragraph (1) of subdivision (g) of section 200.6 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(1) The maximum number of students with disabilities receiving integrated co-teaching services in a class shall be determined in accordance with the students' individual needs as

recommended on their IEPs, provided that [effective July 1, 2008,] the number of students with disabilities in such classes shall not exceed 12 students, unless a variance is provided pursuant to subparagraph (i) or (ii) of this paragraph.

(i) Variance by notification. A board of education or trustees of a school district may submit written notice to the commissioner to temporarily add one additional student with a disability to an integrated co-teaching class for the remainder of the school year, provided that at the start of classes in September of the current school year it is in compliance with the standards specified in this paragraph. Written notice to the commissioner shall be submitted on a form prescribed by the commissioner and shall sufficiently demonstrate educational justification and consistency with providing an appropriate education for all children affected.

(ii) Variance with Commissioner approval. If the school district has enrolled one student with a disability beyond the maximum 12 students with disabilities in an integrated co-teaching services class pursuant to the procedures established in subparagraph (i) of this paragraph, and it determines there is a need to temporarily add one additional student to such class, the school district may submit to the commissioner for approval an application for a variance to enroll the one additional student in the same class for the remainder of the school year. The application to the commissioner shall be on a form prescribed by the commissioner and shall sufficiently demonstrate educational justification and consistency with providing an appropriate education for all children affected.

18. Paragraphs (2) and (3) of subdivision (m) of section 200.6 of the Regulations of the Commissioner of Education are amended, effective December 8, 2010, as follows:

(2) Claims for State excess cost aid shall be based upon the minimum levels of service established in [subdivision 19 of] section 3602 of the Education Law.

(3) A child with a disability under the age of seven who is eligible for school-age services, not subject to compulsory attendance requirements and not on a regular school attendance register for school-age children shall be deemed enrolled for the purpose of claiming State aid pursuant to [subdivision 19 of] section 3602 of the Education Law for the provision of special education and related services in accordance with subdivision 2 of section 4401 of the Education Law as recommended by the committee on special education at a site to be arranged by the board of education.

19. Subdivision (g) of section 200.9 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(g) Procedures during close-down period. The owner(s) or operator(s) of an approved private program electing to cease operation, transfer ownership or [voluntary] voluntarily terminate the status as an approved program shall comply with the requirements of section 200.7(e) of this Part. For purposes of this subdivision, the close-down period means the period of time beginning with the date of the commissioner's receipt of notice and ending on the date of the program's cessation of operation, transfer of ownership or voluntary termination of its status as an approved program. Reimbursement shall be determined in accordance with the provisions set forth in paragraphs (f)(1) and (2) of this section. Financial reporting requirements following close down shall be in accordance with the provisions set forth in paragraph (e)(1) of this section. Such financial reports and financial statements shall be submitted to the commissioner no later than 90 days following close down.

20. Subdivision (e) of section 200.10 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(e) Budgets approved by the commissioner for a particular school year represent the maximum support for that year. State-supported schools shall limit items of expenditure and positions to those approved by the commissioner. Any transfer between line items of expenditure exceeding 10 percent [of] or \$1,000, whichever is greater, of the approved budget authorization for the school year shall have prior approval of the commissioner.

21. Section 200.11 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

200.11 Admission to public schools of students residing in facilities of OMH and [OMRDD] OPWDD or child care institutions.

(a) Students residing in hospitals of the Office of Mental Health (OMH) and schools of the [Office of Mental Retardation and Developmental Disabilities (OMRDD)] Office for People With Developmental Disabilities (OPWDD) shall be identified, evaluated and provided with special education and related services in accordance with the provisions of section 116.6 of this Chapter.

(1) . . .

(2) The school district committee on special education shall review the recommendation of the facility's committee, and all relevant supporting information and data, to determine whether the school district has an educational program appropriate to the needs of each student so recommended, or whether an appropriate program can be provided by a board of cooperative educational services or another school district by agreement with the school district in which the facility is located.

(i) . . .

(ii) . . .



(iii) If the committee on special education concludes that placement in a private school for students with a disability is the appropriate educational placement for the student, the committee's report to the board of education may include a recommendation that the board of education recommend that the Office of Mental Health or the [Office of Mental Retardation and Developmental Disabilities] Office for People With Developmental Disabilities place such a student in a private, nonresidential school for students with disabilities.

(b) . . .

(c) . . .

22. Paragraph (4) of subdivision (a) of section 200.13 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(4) Instructional services shall be provided to meet the individual language needs of a student with autism [for a minimum of 30 minutes daily in groups not to exceed two, or 60 minutes daily in groups not to exceed six].

23. Paragraph (5) of subdivision (a) of section 200.20 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(5) Notwithstanding the provisions of section 200.7(a)(2)(ii) of this Part, final approval of preschool programs shall be based on at least one site visit by program or fiscal staff of the [Office of Vocational and Educational Services for Individuals with Disabilities] State Education Department during the period of conditional approval and will take effect as of the date that a final approval letter is issued by the commissioner, or the commissioner's designee. No such final approval shall be granted for new or expanded programs subject to the moratorium established by subparagraph (iii) of paragraph [a] (a) of subdivision [9] (9) of section 4410 of the Education Law, except as authorized by such subparagraph.

24. Subdivision (c) of section 201.2 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(c) Controlled substance means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. section 812[c]) (United States Code, [1994] 2006 edition, volume [11] 13 ; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328 [: 1995] ; 2008 - available at the [Office of Vocational and Educational Services for Individuals with Disabilities, Room 1624, One Commerce Plaza,] Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234).

25. Paragraph (5) of subdivision (b) of section 201.11 of the Regulations of the Commissioner of Education is amended, effective December 8, 2010, as follows:

(5) The impartial hearing officer shall mail a copy of the written, or at the option of the parents, electronic findings of fact and the decision to the parents, to the board of education and the Office of [Vocational and Educational Services for Individuals with Disabilities (VESID)] Special Education of the New York State Education Department within 10 school days after the hearing.