



TO: P-12 Education Committee
Adult Career and Continuing Education Services (ACCES)
Committee

FROM: Angelica Infante-Green

Kevin G. Smith

SUBJECT: Proposed Amendment of Sections 200.4, 200.9, 200.16
and 200.20 of the Commissioner's Regulations, Relating
to Preschool Special Education Programs and Services

DATE: October 19, 2015

AUTHORIZATION(S):

SUMMARY

Issue for Discussion

Should the Board of Regents adopt the proposed amendment of sections 200.4, 200.9, 200.16 and 200.20 of the Regulations of the Commissioner of Education relating to preschool special education programs and services?

Reason(s) for Consideration

Review of policy.

Proposed Handling

This item will come before a joint meeting of the P-12 Education Committee and the Adult Career and Continuing Education Services (ACCES) Committee for discussion at the October Regents meeting.

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on November 10, 2015. A copy of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

The Department has oversight responsibilities for the preschool special education program, which includes approximately 500 approved providers, private and public schools and boards of cooperative educational services (BOCES), and their provision of preschool special education services to approximately 80,000 preschoolers with disabilities, ages 3-4, annually. Approved¹ special education programs include Special Education Itinerant Services and Special Classes, including special classes in integrated settings.

- SEIS programs are instructional services provided by a special education teacher on an itinerant basis (i.e., the teacher goes to the setting where the child is - for example: Universal Prekindergarten Program (UPK), Head Start; other day care or regular preschool program; hospital or another child care location arranged for by the parent). In instances where the child has documented medical or other special needs indicating that the child cannot be transported to another site, the child could receive SEIS in the student's home.
- Special class programs are classes consisting of students with disabilities who have been grouped together because of similar individual needs for the purpose of being provided specially designed instruction. Preschool special classes are approved to operate for either half or full days.
- Special classes in integrated settings (SCIS) are classes that include both students with and without disabilities. SCIS classes are approved to operate for either half or full days.

In April 2015, staff discussed data on outcomes for preschool students with disabilities, including a federal report on suspensions and expulsions of preschool students. To improve outcomes for preschool students with disabilities, the Department recommended consideration of policy changes to enhance the quality of preschool special education instruction and behavioral supports, improve efficient use of staff resources, improve effectiveness, coordination and continuity of special education services and support inclusion of preschool students with disabilities in regular early childhood programs and activities and in classes with nondisabled peers in the areas of:

- Curriculum and instructional standards;
- Quality of behavioral supports;
- SEIS, including the definition of SEIS and clarity on where such services could be delivered;
- Related services for students in special classes;
- Use of one-to-one aides;
- Data reporting and progress monitoring; and
- Other program and governance quality standards

¹ Related services only programs are provided by the municipalities.

After further discussion with the Commissioner's Advisory Panel for Special Education and other regional stakeholder groups, the Department has drafted proposed regulations to address these areas for Regents discussion.

Summary of Proposed Amendment

Consistent with the discussion at the April 2015 Board of Regents meeting, the proposed amendment includes the following policy changes to improve programs and outcomes for students with disabilities:

1. Amends section 200.4(d)(3) to require both Committees on Special Education and Committees on Preschool Special Education (CPSE) to make certain considerations prior to determining that a student needs a one-to-one aide.
2. Amends section 200.9(f)(2)(ix)(c) and (d) and section 200.16(i)(3)(ii) to repeal that special education itinerant services includes indirect services but retains that a SEIS teacher must assist the child's teacher in adjusting the learning environment and/or modifying their instructional methods to meet the individual needs of a preschool student with a disability who attends an early childhood program.
3. Amends section 200.16(i)(3)(ii) to clarify that, except for extenuating health and safety reasons or when a student needs to receive such services at home based on documented medical or special needs of the preschool student, SEIS must be provided during the regular school day and cannot be provided as individualized or group instruction at the site of the approved SEIS provider.
4. Amends section 200.16(i)(3)(iii) to clarify that special class programs must provide all related services specified in students' IEPs during the school day.
5. Amends section 200.20(b) to require that each approved preschool program:
 - has an appropriately qualified educational director;
 - has a plan and staffing to ensure make up of missed services;
 - provides instruction in the Prekindergarten Foundation for the Common Core, early literacy and emergent reading programs;
 - provides instruction based on the ages, interests, strengths and needs of the children;
 - ensures the active engagement of parents and/or guardians in the education of their children;
 - establishes and implements a program wide system of positive, evidence-based practices to support social-emotional competence and teach social-emotional skills to preschool students;
 - prohibits the suspension, expulsion or removal of a preschool child from a special education program or services because of behavior until the appropriate transfer of the child can be arranged by the CPSE, with an

exception when maintaining the current placement of the student is likely to result in injury to the student or others; and

- conducts progress monitoring of student achievement data and regular reports of students' progress to the students' parents and to the CPSEs.

Timetable for Implementation

It is anticipated that the proposed amendment will be presented for adoption at the January 2016 Board of Regents meeting, after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period prescribed for State agency rule makings. The proposed amendment would generally become effective on January 27, 2016, with certain requirements delayed for required implementation to provide sufficient time for preschool providers to benefit from professional development offered by the Department and to implement the new instructional and behavioral standards.

Attachment

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 308, 3214(3), 4402, 4403 and 4410.

1. Paragraph (3) of subdivision (d) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective January 27, 2016, to read as follows:

(3) Consideration of special factors. The CSE shall:

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) consider whether the student requires assistive technology devices and services, including whether the use of school-purchased assistive technology devices is required to be used in the student's home or in other settings in order for the student to receive a free appropriate public education; [and]

(vi) include a statement in the IEP if, in considering the special factors described in this paragraph, the committee has determined a student needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the student to receive a free appropriate public education; and

(vii) for a student whose management needs require a significant degree of individualized attention and intervention, prior to a recommendation of assignment of a one-to-one aide, consider:

(a) the student's individual needs that require additional adult assistance;

(b) the skills and goals the student would need to achieve that will reduce or eliminate the need for the one-to-one aide;

(c) the specific support (e.g., assistance with personal hygiene) that the one-to-one aide would provide for the student;

(d) other natural supports, accommodations and/or services that could support the student to meet these needs (e.g., behavioral intervention plan; environmental accommodations or modifications; changes in scheduling; instructional materials in alternate formats; assistive technology devices; peer-to-peer supports);

(e) the extent (e.g., portions of the school day) or circumstances (e.g., for transitions from class to class) the student would need the assistance of a one-to-one aide;

(f) staff ratios in the setting where the student will attend school; and

(g) potential positive benefits and negative impact of assignment of a one-to-one aide.

2. Clauses (c) and (d) of subparagraph (ix) of paragraph (2) of subdivision (f) of section 200.9 of the Regulations of the Commissioner of Education is amended, effective January 27, 2016, as follows:

(c) Rates for the certified special education teacher providing special education itinerant services shall be published as half hour rates and billing by providers to municipalities must be done in half hour blocks of time. Billable time includes time spent providing direct [and/or indirect] special education itinerant services as defined in section 200.16(i)(3)(ii) of this Part in accordance with the student's individualized education program (IEP). The difference between the total number of hours employed in the special education itinerant teacher's standard work week minus the hours of direct [and/or indirect] special education itinerant service hours must be spent on required functions. Such functions include but are not limited to: coordination of service when

both special education itinerant services and related services are provided to a student pursuant to section 4410(1)(j) of the Education Law; preparation for and attendance at committee on preschool special education meetings; conferencing with the student's parents; classroom observation; and/or travel for the express purposes of such functions as stated above. For the purpose of this subparagraph, parent conferencing may include parent education for the purpose of enabling parents to perform appropriate follow-up activities at home. Billable time shall not be less than 66 percent or more than 72 percent of any special education itinerant teacher's total employment hours; provided that the approved reimbursement methodology, developed by the commissioner and approved by the Director of the Budget, may adjust this billable time threshold. Providers shall maintain adequate records to document direct [and/or indirect] service hours provided as well as time spent on all other activities related to each student served.

(d) Special education itinerant service rates will be calculated so that reimbursable expenditures shall be divided by the product of the number of days in session for which the program operates times the number of direct [and/or indirect] special education itinerant service hours per day times two. In instances where the special education itinerant services are provided in a group session, *i.e.*, two or more students with a disability within the same block of time, the half hour rate must be prorated to each student receiving services. Special education itinerant service rates shall be paid based on the number of half hour units delivered, provided that the total number of units delivered shall not exceed the recommendations for such services in the student's IEP.

3. Subparagraph (ii) of paragraph (3) of subdivision (i) of section 200.16 of the Regulations of the Commissioner of Education is amended, effective January 27, 2016, to read as follows:

(ii) Special education itinerant services as defined in section 4410(1)(k) of Education Law are services provided by a certified special education teacher of an approved program on an itinerant basis at a site determined by the board including but not limited to an approved or licensed prekindergarten or head start program; the student's home; a hospital; a State facility; or a child care location as defined in section 4410 of the Education Law. If the board determines that documented medical or special needs of the preschool student indicate that the student should not be transported to another site, the student shall be entitled to receive special education itinerant services in the preschool student's home. Such services shall be for the purpose of providing specialized individual or group instruction [and/or indirect services] to preschool students with disabilities [Indirect services means consultation provided by a certified special education teacher to] and to assist the child's teacher in adjusting the learning environment and/or modifying their instructional methods to meet the individual needs of a preschool student with a disability who attends an early childhood program; provided that effective until September 1, 2016, a preschool student with a disability may continue to receive indirect special education itinerant services which were recommended in the student's individualized education program. An *early childhood program*, for purposes of this paragraph, means a regular preschool program or day care program approved or licensed by a governmental agency in which a child under the age of five attends. Special education itinerant services shall be provided to a

preschool student with a disability for whom such services have been recommended as follows:

(a) . . .

(b) . . .

(c) . . .

(d) . . .

(e) . . .

(f) Except for extenuating health and safety reasons or when a student needs to receive such services at home because of documented medical or special needs of the preschool student, special education itinerant services shall be provided during the regular school day to assist the student to participate in a regular early childhood program and shall not be provided as individualized or group instruction at the site of the approved provider.

4. Subparagraph (iii) of paragraph (3) if subdivision (i) of section 200.16 is amended, effective January 27, 2016, as follows:

(iii) Special classes shall be provided on a half-day or full-day basis pursuant to section 200.1(p), (q), and (v) of this Part and in accordance with section 200.6(h)(2) and (3) or section 200.9(f)(2)(x) of this Part and shall assure that:

(a) . . .

(b) . . .

(c) . . .

(d) such special class services shall include all related services in the students' IEPs provided during the school day.

4. Subdivision (b) of section 200.20 is amended, effective January 27, 2016, as follows:

(b) Preschool programs funded pursuant to section 4410 of the Education Law shall also meet the following additional requirements:

(1) . . .

(2) . . .

(3) Each approved preschool program shall ensure that:

(i) . . .

(ii) the executive director or person assigned to perform the duties of a chief executive officer shall reside within a reasonable geographic distance from the program's administrative, instructional and/or evaluation sites to ensure appropriate oversight of the program; [and]

(iii) if paid as a full time executive director, the executive director shall be employed in a full-time, full-year position and shall not engage in activity that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations; and

(4) Each approved preschool program shall ensure that an educational director, who is hired on or after September 1, 2016, shall hold a New York State certificate, license or its equivalent in special education, speech and language, psychology, occupational or physical therapy or another related services field as such term is defined in section 200.1(qq) of this Part; early childhood education (nursery, Kindergarten and primary grades); nursery-kindergarten; or elementary education N-6 or K-6 with specialized preparation for teaching in early childhood grades; and, consistent with the requirements of Part 80 of this Title, shall hold New York State

certification as a School Building Leader or School District Leader or School Administrator/Supervisor.

(5) Make-up of missed services. Each preschool provider shall ensure it employs substitute teachers for special class and special education itinerant services to provide the student with the IEP recommended frequency and duration of services. Providers shall have policies and procedure, consistent with Department guidelines, to ensure the make-up of missed services occurs, consistent with the duration and location specified in the IEP, within 30 days of the missed session unless there is a documented child-specific reason why the make-up session could not be provided within 30 days.

(6) Program standards for instruction of preschool students with disabilities. Each approved provider shall, as applicable, ensure that preschool students with disabilities receive instruction and positive behavioral supports that are based on peer-reviewed or evidence-based practices and consistent with the standards in this paragraph.

(i) Instructional standards for approved preschool special class programs.

(a) By not later than September 1, 2016, providers shall adopt and implement curricula, aligned with the New York State Prekindergarten Foundation for the Common Core, which ensures continuity with instruction in the early elementary grades; and shall provide early literacy and emergent reading programs based on effective, evidence-based instructional practices, which includes the essential components of:

- (1) background knowledge;
- (2) phonological awareness;
- (3) expressive and receptive language;
- (4) vocabulary development; and
- (5) phonemic awareness.

(b) The instructional program for preschool students with disabilities shall be based on the ages, interests, strengths and needs of the children.

(c) Procedures shall be implemented to ensure the active engagement of parents and/or guardians in the education of their children. Such procedures shall include support to children and their families for a successful transition into kindergarten.

(ii) Program standards for positive behavioral supports for approved preschool special class programs.

(a) By not later than September 1, 2016, providers shall establish and implement a program-wide system of positive evidence-based practices to support social-emotional competence and teach social-emotional skills to preschool students, which shall include

(1) universal supports for all children through nurturing and responsive relationships and high quality environments;

(2) practices that are targeted social-emotional strategies to prevent problem behaviors; and

(3) practices related to individualized intensive interventions.

(b) Except as provided pursuant to section 201.8 of this Title, no preschool student with a disability may be suspended, expelled or otherwise removed by the provider from an approved preschool special education program or service because of the student's behavior prior to the transfer of the student to another approved program recommended by the committee on preschool special education.

(iii) Progress Monitoring. Approved preschool special education programs shall conduct regular progress monitoring of student achievement data over time to adjust, as appropriate, the student's instructional program and, as necessary, to request meetings

of the CPSE to consider changes to the student's individualized education program.

The program shall provide regular reports of student progress to the student's parent and committee on preschool special education.