

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 June 29, 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) prior to the IEP recommendation of assignment of additional supplementary school personnel (or one-to-one aide) to meet the individualized needs of a student with a disability, consider:

(a) the management needs of the student that would require a significant degree of individualized attention and intervention;

(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 or behaviors that impede learning) that the one-to-one aide would provide for the student;

(d) other supports, accommodations and/or services that could support the student to meet these needs (e.g., behavioral intervention plan; environmental accommodations or modifications; 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;

(g) the extent to which assignment of a one-to-one aide might enable the student to be educated with nondisabled students and, to the maximum extent appropriate, in the least restrictive environment;

(h) any potential harmful effect on the student or on the quality of services that he or she needs that might result from the assignment of a one-to-one aide; and

(i) the training and support that shall be provided to the one-to-one aide to help the one-to-one aide understand the student's disability-related needs, learn effective strategies for addressing the student's needs, and acquire the necessary skills to support the implementation of the student's individualized education program.

Nothing in this subparagraph shall be construed to prohibit or limit the assignment of shared one-to-one aides at the discretion of the school to meet the

individualized needs of students whose IEPs include the recommendation for one-to-one aides. The duties of a teacher aide or teaching assistant providing individualized support to a student with a disability shall be consistent with the duties prescribed pursuant to section 80-5.6 of this Title.

2. Subparagraph (ii) of paragraph (3) of subdivision (i) of section 200.16 of the Regulations of the Commissioner of Education is amended, effective June 29, 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 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. *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) the service shall be recommended by the Committee on Preschool Special Education and shall be included in the student's individualized education program. Such recommendation shall identify the setting where such services would be delivered; specify the frequency, duration, intensity and location of direct special education itinerant services; and, for students who attend a regular early childhood program, specify, if any, the frequency, duration and location for the provision of indirect special education itinerant services as such term is defined in this subparagraph;

- (b) . . .
- (c) . . .
- (d) . . .
- (e) . . .

3. Subparagraph (iii) of paragraph (3) of subdivision (i) of section 200.16 is amended, effective June 29, 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) such services shall be provided for not less than two and one half hours per day, two days per week; and

(d) consistent with the requirements of section 200.20(a)(9) of this Part, the special class shall include instructional services and related services, as specified in the student's individualized education program.

4. Subdivision (b) of section 200.20 is amended, effective June 29, 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.

(4) Each program approved to provide special education itinerant services shall ensure that such service is provided, consistent with the recommendations in the students' individualized education programs, as an itinerant service to the preschool student at a regular early childhood program or the student's home or other child care

location identified by the parent, consistent with the requirements of section 200.16(i)(3)(ii) of this Part.

(5) Each approved preschool program shall ensure that the educational director, if hired on or after September 1, 2016, shall possess a NYS teaching certificate pursuant to section 80-3.3 of this Title valid for classroom teaching services to students with disabilities, birth-grade 2, or certification in early childhood education, or possesses New York State certification or licensure in speech-language pathology, psychology, occupational or physical therapy or another related services field as such term is defined in section 200.1(qq) of this Part; and, consistent with the requirements of section 80-3.10 of this Title, shall hold New York State certification as a School Building Leader or School District Leader or School Administrator/Supervisor. Nothing in this paragraph shall require that an approved preschool program hire an educational director in addition to the executive director, when the executive director otherwise provides the on-site direction of the program.

(6) Make-up of missed services. Each preschool provider shall, consistent with Department guidelines, 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.

(7) 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, 2017, providers shall adopt and implement curricula aligned with the New York State Prekindergarten Learning Standards, which ensures continuity with instruction in the early elementary grades; and shall provide early literacy and emergent reading programs based on developmentally appropriate, effective and evidence-based instructional practices.

(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 promote 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, 2017, 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 written reports of student progress to the student's parent and committee on preschool special education, consistent with frequency or timetable for such periodic reports on the progress the student is making toward the annual goals as identified in the student's individualized education program.



