



December 2017

TO: District Superintendents
Superintendents of Schools
Public School Administrators
Charter School Administrators
Nonpublic School Administrators
Directors of Special Education
Directors of Pupil Personnel Services
Chairpersons of Committees on Special Education
Chairpersons of Committees on Preschool Special Education
Organizations, Parents and Individuals Concerned with Special Education
Preschool Providers of Special Education Programs and Services

FROM: Christopher Suriano 

SUBJECT: Procedures to Temporarily Exceed an Approved Special Class Size for Preschool Students with Disabilities – **Revised December 2017**

The purpose of this memorandum is to describe revised procedures to temporarily exceed the approved class size by one or two additional preschool students with disabilities in a special class¹ or special class in an integrated setting (SCIS)² that is at its maximum approved class size capacity. The revised procedures include a new requirement for committees on preschool special education (CPSE) to provide a written assurance to the New York State Education Department (NYSED) that the CPSE has determined that no other appropriate class placement is available that is not at full capacity or has not already exceeded its approved class size through the child-specific notification process. In addition, the teacher of the classroom where the additional student has been enrolled will be notified prior to the student's attendance in that class to ensure the teacher is prepared to implement the student's individualized education program (IEP).

The authority to temporarily exceed the approved class size is provided pursuant to section 200.16(i)(3)(iii)(b)(1) of the Regulations of the Commissioner of Education, which states, "if

¹ 8 NYCRR 200.16(i)(3)(iii)(b): Special classes shall assure that the maximum class size shall not exceed 12 preschool students with at least one teacher and one or more supplementary school personnel assigned to each class.

² 8 NYCRR 200.9(f)(2)(x): Integrated special class programs are defined as those programs employing a special education teacher and one or more supplementary school personnel in a classroom made up of no more than 12 preschool students with and without disabilities, or a classroom that is made up of no more than 12 preschool students with disabilities staffed by a special education teacher and one or more supplementary school personnel that is housed in the same physical space as a preschool class of students without disabilities taught by a nonspecial education teacher.

a committee on preschool special education recommends a preschool student to an approved program which has no space available in the specific special class which will meet the student's unique needs as recommended on the IEP, the approved program may temporarily increase the enrollment of a class up to a maximum of 13 preschool students for the remainder of the school year, by a procedure to be established by the Commissioner, to ensure that the student receives a free appropriate public education. If the attendance during the instructional time exceeds 12 students, another staff member shall be assigned to the class. Other staff members may include related service providers and/or supplementary school personnel."

Any temporary increases in approved class sizes as described in this memorandum will be allowed only in those **extenuating circumstances** when adding a preschool student with a disability to a special class is necessary to ensure that the student receives a free appropriate public education (FAPE). Temporary increase means the addition of **no more than one or two preschool students with a disability** beyond a program's approved student-to-staff ratio, or **no more than one student with a disability** beyond the maximum of 12 students with disabilities, for a period not to exceed the remainder of the school year (June 30th for a 10-month program, or August 31st for a 12-month program). In a change to previous procedures, a preschool program may send NYSED a notification no earlier than August 1st to over enroll one student in a special class or SCIS effective at the start of the upcoming school year in September. When adding preschool students with disabilities beyond an approved maximum class size in a SCIS, programs must make every effort to ensure that the number of preschool students with disabilities does not exceed the number of nondisabled students. If a variance request will result in the number of preschool students with disabilities exceeding the number of nondisabled students, an explanation for this imbalance and documentation of the program's recruitment efforts for nondisabled students must be included with the application.

Please note: These procedures are for temporary increases only and DO NOT REPLACE procedures for agencies to apply for approval of any new or expanded special class or SCIS program. The application for new preschool special education programs and the preschool modification application are both available on [NYSED's website \(http://www.p12.nysed.gov/specialed/applications/\)](http://www.p12.nysed.gov/specialed/applications/).

Procedures to Temporarily Increase Class Size

A preschool program may implement procedures to temporarily increase the class size of a special class or SCIS³ under the following procedures:

- **Over Enrollment by One Student through a Child-Specific Notification:**
An approved preschool program may temporarily, for the remainder of the school year, enroll up to one additional preschool student with a disability in each of its special classes or SCIS that are at maximum approved class size of 12 or fewer preschool students with disabilities without prior approval by NYSED through a child-

³ When there is a total of no more than 12 preschool students with or without disabilities in a special class or SCIS, only one special education teacher and one or more supplementary school personnel are required.

specific notification process. Notifications may be submitted to NYSED no earlier than August 1st for the upcoming school year using the attached **Preschool Variance by Notification/Prior Approval Request Form**.

- **Over Enrollment by Prior Approval Request:**

If a special class or SCIS approved to serve fewer than 12 students with disabilities has already enrolled one additional preschool student with a disability beyond its maximum approved class size capacity through the notification process described above, an approved program may temporarily, for the remainder of the school year, enroll a second preschool student with a disability in the same class through submission of a prior approval request to NYSED. Such request may be submitted using the attached **Preschool Variance by Notification/Prior Approval Request Form**. If the request is not approved, the program must inform the CPSE that it is unable to enroll the student.

Process to Temporarily Exceed an Approved Special Class Size for Preschool Students with Disabilities

To provide notification to or request prior approval from NYSED to temporarily exceed an approved class size for a preschool special class or SCIS, the approved preschool program must complete and submit the attached **Preschool Variance by Notification/Prior Approval Request Form**, along with the attached **School District Justification** form, which has been completed and signed by the CPSE chairperson of the district recommending the student's placement in such class. The **School District Justification** form is a new requirement and provides written assurance from the CPSE that placed the student that it has determined that no other appropriate placement is available for such student in either a special class or SCIS that is not at full capacity or one that has not exceeded its approved class size through the notification process.

Please note: A separate **Preschool Variance by Notification/Prior Approval Request Form** and **School District Justification** must be completed and submitted to NYSED for each preschool student with a disability that the approved preschool program is enrolling or seeking to enroll beyond its approved class size.

In addition to the new requirement for CPSEs to provide the School District Justification, the approved preschool program must also provide the following assurances:

- The program has the resources to implement the IEP of the additional preschool student, as well as all other students in the program;
- The temporary increase in class size will not result in noncompliance with any New York State and municipality requirement for preschool and program approval, including fire, safety, facility (e.g., Certificate of Occupancy), and day care requirements;
- The parents of the other preschool students enrolled in the class will be notified of the temporary increase in class size upon submission of notification/prior approval request to NYSED;

- The teacher whose classroom will receive the additional student will be notified prior to the student's attendance in that class;
- The class size will return to its approved student-to-staff ratio no later than the end of the school year (i.e., June 30th or August 31st) in which the preschool student is enrolled;
- Whenever the total number of preschool students exceeds 12, an additional staff member will be assigned to the class if the attendance during the instructional time exceeds 12 students. Staff members may include related service providers and/or supplementary school personnel;
- When the approved variance requires staffing changes, the program will adhere to relevant regulations and ensure that all staff are appropriately credentialed for the position;
- If the number of preschool students with disabilities will exceed the number of nondisabled students, an explanation for the imbalance and history of recruitment efforts for nondisabled students is included with the application;
- The temporary increase in class size will not result in an enrollment of more than 13 preschool students with disabilities; and
- The number of children in a room must conform with relevant programs' or authorizing agencies' maximum number of students per room (e.g., day care, Head Start, State Administered Prekindergarten).

Important: NYSED will review the notification or prior approval request and respond to the approved preschool program indicating acknowledgment of the notification or approval or disapproval of the request. NYSED may deny a program's request to temporarily exceed an approved class size upon a finding that the form does not provide the required information, if the reason for the temporary increase is determined to be unjustified, and/or if the program and/or school district cannot meet the required assurances. If the request is not approved, the program must inform the CPSE that it cannot enroll the student.

No adjustment in the tuition rate will occur to temporarily hire additional staff (e.g., teachers, paraprofessionals or related service providers) resulting from temporarily increasing the enrollment of a class up to a maximum of 13 preschool students with disabilities for the remainder of the school year.

Questions regarding the procedures to request a temporary increase in class size should be addressed to your Special Education Quality Assurance Regional Office. Please see [NYSED's website \(http://www.p12.nysed.gov/specialed/quality/home.html\)](http://www.p12.nysed.gov/specialed/quality/home.html) for locations and contact information for Special Education Quality Assurance Regional Offices.

Attachment