



SUBJECT: Procedures to Temporarily Exceed an Approved Special Class Size for Preschool Students with Disabilities – **Revised July 20, 2023**

This guidance replaces the December 2017 memorandum regarding procedures to temporarily exceed an approved special class size for preschool students with disabilities. The purpose of this memorandum is to describe procedures to temporarily exceed the approved class size by one or two additional preschool students with disabilities in a special class or special class in an integrated setting (SCIS) program that is at its maximum approved class size capacity pursuant to section 200.16(i)(3)(iii)(b)(1) of the Regulations of the Commissioner of Education.

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 or SCIS is necessary to ensure that the student receives a free appropriate public education (FAPE).

- For a classroom approved to serve fewer than 12 preschool students with disabilities, 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.
- For a classroom approved to serve 12 preschool students with disabilities, temporary increase means the addition of **no more than one student with a disability** beyond the maximum of 12 students with disabilities.

The maximum duration of the temporary increase in approved class size is a period not to exceed the remainder of the 10-month school year or 2-month extended school year program, as applicable. Specifically, a temporary increase in preschool class size is effective only for the duration of the 10-month program (ending on June 30th) or 2-month program (ending on August 31st) and therefore, when applicable, a separate variance is required for the 10-month September through June school year and 2-month July/August extended school year program sessions.

When adding preschool students with disabilities beyond an approved maximum class size in a SCIS classroom, programs must make every effort to ensure that the number of preschool students with disabilities does not exceed the number of general education students. If a variance request will result in the number of preschool students with disabilities exceeding the number of general education students, an explanation for this imbalance and documentation of the program's recruitment efforts for general education students must be included with the application.

The procedures outlined in this guidance 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. Furthermore, these procedures do not eliminate the requirement for the approved program to also ensure it continues to operate in accordance with applicable health and safety requirements pursuant to local code or licensure pursuant to the Office of Children and Family Services (OCFS) or the New York City Department of Health and Mental Hygiene (NYC DOHMH). To apply for approval of any new or expanded special class or SCIS programs, the applicable [Preschool Application](#) must be completed.

Procedures to Temporarily Increase Class Size

Chief Executive Officers of approved private preschool special class and SCIS programs will be given access to an electronic application in the New York State Education Department (NYSED) Monitoring and Vendor Performance System (SEDMON). Public school and boards of cooperative educational services (BOCES) leaders also have access to SEDMON for their approved preschool sites. The application for a temporary increase in preschool class size by one student (resulting in one student over enrolled) is titled “**Preschool Variance by Notification**” and the application for a temporary increase in preschool class size by a second student (resulting in two students over enrolled) is titled “**Preschool Variance by Approval.**” There are separate applications for the 10-month and 2-month programs. An application must be submitted in any instance where an approved class ratio is exceeded (i.e., if the request is to intensify two classrooms, then two separate applications must be submitted, one for each student).

The Chief Executive Officer (as reflected on the program’s approval letter) will have access to log into the [NYSED Business Portal](#) to submit an application. If the Chief Executive Officer would like to delegate the task of inputting information into the electronic applications, they may entitle a staff member access to data entry rights through the State Education Department Delegated Account System. Account administration and entitlement information is included in the [State Education Department Delegated Account User Guide](#) and [Entitling Users to SED Monitoring & Vendor Performance System](#). When data entry rights are delegated, the Chief Executive Officer retains exclusive rights to submission and therefore must perform the final submission to NYSED themselves. For school districts and BOCES preschool programs, submission rights reflect the site where the preschool program is located. A listing of approved preschool special education program sites is available on the [SED Public Reports Portal](#), titled “Preschool Approved Special Education Programs.”

Each application, “Preschool Variance by Notification” and “Preschool Variance by Approval,” will be issued in the month prior to the start of the applicable session (i.e., for the 10-month program, the applications will be available on August 1st and for the 2-month program, the applications will be available on May 1st). No applications may be submitted prior to these dates.

A preschool program may implement procedures to temporarily increase the class size of a special class or SCIS 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 approved to serve fewer than 12 students with disabilities without prior approval by NYSED through a child-specific notification process. Notifications may be submitted to NYSED via SEDMON no earlier than August 1st for the upcoming 10-month school year and May 1st for the upcoming 2-month extended school year.

- **Over Enrollment by Two Students through a 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 via SEDMON by completing the **Preschool Variance by Approval** survey. Approval for this request must be obtained from NYSED before the second student may be enrolled in the class. If the request is not approved, the program must inform the committee on preschool special education (CPSE) that it is unable to enroll the student.

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

1. Go to the [NYSED Business Portal](https://portal.nysed.gov/abp) (<https://portal.nysed.gov/abp>);
2. Click on the “Log In” button;
3. Chief Executive Officer: enter your username and password for your “parent” or “main” site; School district and BOCES building level leader: enter your username and password for the appropriate site (i.e., the site where the impacted classroom is located).
4. Click on “SED Monitoring and Vendor Performance System” under “My Applications”;
5. Select “View Surveys for Special Education – ASEP”;
6. Find the appropriate report titled “Preschool Variance by Notification” or “Preschool Variance by Approval” for the applicable site. This survey will be assigned to each of your approved preschool center-based site locations. For example, if you operate three preschool center-based sites, you will see three

separate surveys, one for each site. The surveys are site-specific and therefore you must choose the site specific to your notification or request for approval. If it is not evident which survey is associated with which site, information including institution ID, popular name, and physical address as listed on the NYSED record can be found on the first page of each available survey entitled “Provider Info”; and

7. Click on “view” to begin/continue to input information required for the application.

Important: Do not include personally identifiable information (PII) for a student via email or within the Identifying label portion of the SEDMON variance request. There is a discrete location for PII in the application and therefore, it should not be entered in any other section.

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

The SEDMON application will require the program to provide the following assurances prior to submission:

- The program has the resources to implement the individualized education program 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 municipality fire, safety, or facility requirements, and must conform with relevant programs’ or authorizing agencies’ maximum number of students per room (e.g., childcare licensed by OCFS or DOHMH, Head Start program, State-Administered Prekindergarten program);
- 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 variance is limited and will not extend beyond June 30th for the 10-month school year program and August 31st for the 2-month extended school year program. If applicable, a new class size variance is required for the extended school year and subsequent school year program;
- 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;
- When the variance is applicable to a SCIS program, if the number of preschool students with disabilities will exceed the number of preschool students without disabilities, an explanation for the imbalance and efforts to address is included with the application and the program understands that an applicable request to temporarily exceed the classroom ratio by a second student may be denied absent sufficient justification;
- The temporary increase in class size will not result in an enrollment of more than 13 preschool students with disabilities;
- The program is obligated to inform NYSED when this variance notification is no longer needed. Specifically, if the classroom associated with this variance notification subsequently decreases enrollment so not to exceed the approved classroom student ratio, the program must inform NYSED to document that the impacted classroom is no longer overenrolled; and
- A separate Preschool Variance Application 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. Only one Preschool Variance by Notification and one Preschool Variance by Approval Request, as applicable, may be valid at the same time for the same classroom.

Upon receipt of a Preschool Variance by Notification, the Chief Executive Officer or school district/BOCES building leader will receive an email acknowledging the first student over enrollment. Upon receipt of a Preschool Variance by Approval, NYSED will review the prior approval request and respond via email to the approved preschool program indicating approval or disapproval of the request. Acknowledgement and approval letters will no longer be sent via the United States Postal Service. 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](#).