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To: District Superintendents
Superintendents of Schools
Public School Administrators
Directors of Special Education
Directors of Pupil Personnel Services
Chairpersons of Committees on Preschool Special Education
Administrators of State-Administered Prekindergarten Programs
Approved Preschool Special Education Programs
Organizations, Parents and Individuals Concerned with Special Education

From: Christopher Suriano

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Subject: School District Responsibilities for Preschool Inclusion in Publicly Funded Prekindergarten Programs

The purpose of this field advisory is to supplement and clarify existing New York State (NYS) and federal guidance pertaining to the expectations for the inclusion of preschool students with disabilities in prekindergarten programs operated or administered by a school district (PreK) including State-administered prekindergarten programs¹ and district prekindergarten programs that are government-funded and free for those who attend it. The continued expansion of these early learning opportunities offers high-quality, developmentally, culturally, and linguistically appropriate educational environments for young children to learn and grow. As of July 1, 2021, NYS will be investing \$970 million into State-administered prekindergarten programs. This figure will most likely be \$1 billion by the end of the 2023-24 school year due to expansion grants.

School districts must ensure resident preschool students with disabilities have equal access to enroll and attend the district's public PreK programs in accordance with NYS and federal expectations for the provision of a free appropriate public education (FAPE) in the

¹ As of the date of this memo, there are four State-Administered Prekindergarten programs for three- and four-year old children in New York State including Targeted Prekindergarten (TPK), Universal Prekindergarten (UPK), Statewide Universal Full-Day Prekindergarten (SUFDPK), and Federal-Funded Expanded Universal Prekindergarten.

least restrictive environment (LRE). Under the Individuals with Disabilities Education Act (IDEA), the presumption is that students with disabilities will attend the same schools they would have attended if they did not have disabilities and that removal or restriction from their regular schools and classrooms can only occur for reasons related to the student's disability when the student's individualized education program (IEP) cannot be satisfactorily implemented in that setting, even with the use of supplementary aids and services. The LRE requirements are applicable to all preschool recommendations made by the Committee on Preschool Special Education (CPSE).

Each school district must ensure that its CPSE members understand their responsibilities for LRE determinations and that each annual review include consideration of special education services and supplementary supports and services that would enable the student to receive education services in the student's regular school and in age appropriate general education classrooms. Consistent with LRE requirements, preschool students with disabilities are eligible to participate in all PreK programs and receive their special education programs and services while enrolled. Frequently, this dual-enrollment in PreK and preschool special education is accomplished via group or individual itinerant services (related services and special education itinerant services) delivered to preschool students with disabilities at the PreK site location. The dual-enrollment in PreK and preschool special education must also be designed to support preschool students with disabilities with moderate to intensive program and service needs which may be accomplished via a special class in an integrated setting (SCIS) program within the PreK classroom.

The SCIS program model offers specially-designed instruction and related services within a regular early childhood program on a half-day or full-day basis.² As the SCIS program is designed for special education to be delivered in a regular classroom setting, school districts must not place any restriction on children recommended for SCIS from also enrolling in a PreK program while receiving their IEP services. In addition to other outreach activities conducted by the school district for student participation in PreK programs, the CPSE must provide parents of referred children with information to encourage their child's enrollment in district PreK programs, provided that the child is a resident of the school district and meets applicable age requirements.

If the preschool student with a disability satisfies the enrollment and selection requirements applicable to other resident children for the district's PreK program, the CPSE must develop or review the student's IEP to identify the appropriate supplementary supports and services and special education services to support the child within the PreK program, including the related services, special education itinerant services or SCIS program components for specially-designed instruction and related services. Pursuant to Commissioner's Regulations section 200.16(e)(3)(i), the CPSE must determine how appropriate special education services will be delivered to the child enrolled in the PreK program. Removal of that child from the PreK program and provision of special education services in a setting with no regular contact with age-appropriate peers without disabilities

² For data collection purposes, United States Department of Education defines a regular early childhood program as a program that includes a majority (at least 50 percent) of children who do not have IEPs. The SCIS program model requires a greater number of enrolled children without an IEP compared to children with an IEP.

must be documented on the child's IEP and may only be considered when the nature or severity of the child's disability is such that education in a less restrictive environment with the use of supplementary aids and services cannot be achieved satisfactorily. The CPSE must coordinate with the appropriate school district PreK administrators to determine where PreK classrooms are approved to provide preschool special education services and consider the total class size and needs of the preschool students with disabilities attending PreK when determining which PreK classroom the preschool student with a disability will attend.

When enrolled in a PreK program, preschool students with disabilities must have equal access to all program benefits. There should be no difference in access to the prekindergarten curriculum to the maximum extent possible, the desired learning results established for all students, length of school day, protocols for Emergent Multilingual Learners, family engagement and parent choice activities, school facilities, and food programs. Equal access will promote the full acceptance of each child as an engaged and participating member of the classroom and better achieve the principles of inclusion.

The effectiveness of school district efforts to ensure preschool inclusion in conformation with FAPE in the LRE for preschool students with disabilities is evaluated by the New York State Education Department (NYSED) in the Special Education Data Collection System Preschool LRE Setting Report³ and the NYS Prekindergarten Final Report.

PreK programs offer an essential early education foundation by providing high quality, developmentally appropriate, and responsive programs designed to meet the social, cognitive, linguistic, emotional, cultural, and physical needs of children. As this foundation continues to grow, NYSED expects that school districts are ensuring the provision of special education programs and services in the LRE consistent with federal and State requirements and affording preschool students with disabilities with the same program benefits as other resident children.

Additional Federal and NYS Guidance and Resources:

[Dear Colleague Letter on Preschool Least Restrictive Environments \(2017\) OSEP:](#) Reaffirms the position of the United States Department of Education (USDE) that all young children with disabilities have access to inclusive high-quality early childhood programs where they are provided with individualized and appropriate supports to enable them to meet high expectations.

[Policy Statement on Inclusion of Children with Disabilities in Early Childhood Programs:](#) The USDE and Health and Human Services released joint guidance detailing the legal foundation, evidence-based practices, state and local level infrastructure recommendations, and resources to support inclusion of children with disabilities in early childhood programs.

³ The USDE requires states to report annually on Preschool LRE performance. Each school district's performance is published at data.nysed.gov in the District Student Data, Special Education Data Indicator 6: Preschool Least Restrictive Environment.

[School Districts' Responsibilities to Provide Students with Disabilities with Specially-Designed Instruction and Related Services in the Least Restrictive Environment](#): A comprehensive special education field advisory was published to outline School Districts' LRE responsibilities.

[Emergent Multilingual Learners in Prekindergarten Programs Resources](#): Language Profile, Profile Process, Emergent Multilingual Learners Profile Process Flow Chart, Guidance on Identification, Instructional Planning and Programming, and Parent Brochure translated into 11 Languages.

Questions and Answers

NYSED is interested in how it may further assist and support school districts as they implement inclusive preschool programs. Please submit additional questions, comments, or areas where assistance is needed to SPECED@nysed.gov. NYSED will use information from the field to inform future guidance and policy, including the development of an additional Questions and Answers document to accompany the below information contained in this guidance. As an initial step, below please find responses to some previously submitted questions:

1. How can SCIS students be dually enrolled in both programs (PreK and preschool special education)? What procedures must districts follow?

The preschool student with a disability would be counted in the PreK program enrollment and also the preschool special education (also known as 4410 program) enrollment. The school district would follow the separate enrollment procedures that are applicable to both programs, and the child would be considered enrolled in both programs.

2. How can a school district access both funding sources (PreK and 4410) for students who are dually enrolled in PreK and SCIS?

PreK funding is based on student counts. The preschool student with a disability would contribute toward the student count for PreK funding. The 4410 funding for SCIS is based on enrollment, the student would contribute toward the enrollment for the SCIS program to share in the expenses that are allocated toward that program and paid via a NYSED authorized tuition rate.

3. What is a SCIS collaborative agreement?

A collaborative agreement is an agreement between two programs. Typically, it is between a program approved by NYSED to provide SCIS and a regular early childhood

program (such as a PreK program). While there are not specific forms for the agreement, it must include the following factors:

- Description of the shared mission, goals, and outcomes;
- Definition of the programmatic and financial responsibilities of the collaborative partners;
- Delineation of leadership roles and responsibilities by title and/or position;
- Description of services to be provided by each collaborative partner;
- Plan for communication, including schedule for meetings;
- Procedures for conflict resolution;
- Financial plan which clearly allocates costs based on the funding agency for each partner;
- Description of how confidentiality of personally identifiable data, information and records pertaining to the students with disabilities will be ensured; and
- Specified time period of the agreement and the conditions for renewal.

4. How do school districts determine what to claim regarding funding for dually enrolled students in PreK and SCIS?

That would be established in the collaborative agreement. 4410 funding is assigned only to the preschool students with disabilities and may be allocated on the basis that the expense is reasonable, necessary, and directly related to the provision of special education or related services (for a center-based program this includes both direct care services and also facility, supplies, administration, etc.). PreK funding may be assigned to both preschoolers with and without disabilities enrolled in the program. Approved expenditures for PreK are defined in Commissioner's Regulations 151-1.2(a) as "any expenses for which grant funds may be used, such as, but not limited to, program components, professional salaries, professional development, support services, materials and supplies, administrative support services, transportation services, leasing expenses or other appropriate facilities expenses and other costs as approved by the commissioner."

5. Is there an approval time to consider for dual enrollment?

All SCIS programs and program sites are required to be approved by NYSED. If the 4410 provider is approved by NYSED to operate a SCIS program and the district or district's community-based organization meets PreK program requirements, there is no separate NYSED approval needed for dual enrollment.

6. Is the county responsible for funding transportation for students enrolled in SCIS?

Yes, for the preschool students with disabilities per the IEP.