



OFFICE OF SPECIAL EDUCATION  
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December 2010

To: District Superintendents  
Superintendents of Public Schools  
Superintendents of State-Operated and State-Supported Schools  
Superintendents of Special Act School Districts  
Principals of Charter Schools  
Administrators of Nonpublic Elementary and Secondary Schools  
New York City Department of Education  
Impartial Hearing Officers  
Special Education Parent Centers  
Regional Special Education Technical Assistance Support Centers  
Commissioner's Advisory Panel for Special Education Services  
Organizations, Parents and Individuals Concerned with Special Education

From: James P. DeLorenzo 

Subject: Special Education Programs and Services: Amendment to sections 200.2, 200.4, 200.5, 200.6, 200.9, 200.10, 200.11, 200.13, 200.20, 201.2 and 201.11 of the Regulations of the Commissioner of Education, effective December 8, 2010

The Board of Regents has approved for permanent adoption the amendment of sections 200.2, 200.4, 200.5, 200.6, 200.9, 200.10, 200.11, 200.13, 200.20, 201.2 and 201.11 of the Regulations of the Commissioner of Education. The amendment provides mandate relief to schools in certain areas of special education that exceed federal requirements; conforms State regulations to federal regulations (34 CFR Part 300) that implement the Individuals with Disabilities Education Act (IDEA) and State Law; and corrects certain cross citations. The amended regulations relate to the:

- requirements for district plans of service;
- notification to parents of the individuals who will be in attendance at a Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE) meeting;
- definition of a CSE/CPSE "meeting;"
- minimum service delivery requirement for speech and language services;
- establishment of a variance provision for the maximum number of students receiving integrated co-teaching services; and
- minimum level of service requirement for instructional services to meet the individual language needs of students with autism.

The amended regulations also:

- conform the Commissioner's Regulations with Mental Hygiene Law to change the name of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities; and
- due to reorganization within the New York State Education Department, change the name of the Office of Vocational and Educational Services for Individuals with Disabilities (VESID) to the Office of Special Education.

Attached is a summary of the changes to the Regulations of the Commissioner of Education that were adopted at the November 2010 Regents meeting. A copy of the amended regulations may be found at <http://www.regents.nysed.gov/meetings/2010Meetings/November2010/1110p12a1.doc>.

To ensure dissemination to appropriate individuals within a school district, I ask Superintendents to please share this memorandum with individuals such as Directors of Special Education, School Psychologists, CSE and CPSE Chairpersons, Guidance Counselors and Directors of Pupil Personnel and Parent Teacher Associations. Questions regarding this memorandum may be directed to the Special Education Policy Unit at 518-473-2878 or to the Special Education Quality Assurance Office in your region:

Central Regional Office	(315) 476-5081
Eastern Regional Office	(518) 486-6366
Hudson Valley Regional Office	(518) 473-1185
Long Island Regional Office	(631) 884-8530
New York City Regional Office	(718) 722-4544
Western Regional Office	(585) 344-2002
Nondistrict Unit	(518) 473-1185

Attachment

**Amendment to Sections 200.2, 200.4, 200.5, 200.6, 200.9,  
200.10, 200.11, 200.13, 200.20, 201.2 and 201.11 of the  
Regulations of the Commissioner of Education, Relating to  
Special Education Mandate Relief**

Effective December 8, 2010

The following is a summary of the new regulatory requirements. A copy of the regulations, as amended, can be found at:

<http://www.regents.nysed.gov/meetings/2010Meetings/November2010/1110p12a1.doc>

**Underlined** language is language added

**Bracketed** language [ ] is language that is repealed.

**SECTION 200.2  
BOARD OF EDUCATION RESPONSIBILITIES**

***District Plans of Service for Special Education – section 200.2(c)(1)***

Section 200.2(c)(1) has been amended, as follows, to require that district plans of service be kept on file and made available for public inspection and review by the Commissioner of Education.

(1) *Each board of education which receives an apportionment for eligible students with disabilities, pursuant to [subdivision 19 of] section 3602 of the Education Law, or preschool students with disabilities pursuant to section 4410 of the Education Law shall use such apportionments for special education programs and services which are in accordance with the provisions of this Part. Each board of education which receives such apportionment shall [prepare satisfactory plans periodically at the intervals] keep on file and make available for public inspection and review by the commissioner an acceptable plan as required by subdivision [10] 8(b) of section 3602 of the Education Law.*

**Note:** *The amendment was necessary to conform State Regulations to changes in New York State (NYS) Education Law. The Regulations previously required Boards of Education to prepare plans periodically at intervals required by section 3602(10) of NYS Education Law (i.e., every two years). District plans should be kept current and be reviewed periodically by the Board of Education to ensure that the plan reflects the appropriate use of State aid for the purposes of making special education programs and services available to meet the individual needs of students with disabilities in the district.*

## **SECTION 200.5 PROCEDURAL SAFEGUARDS**

### ***Notice of meetings – section 200.5(c)(2)(i)***

Section 200.5(c)(2)(i) has been amended, as follows, to ensure consistency with federal regulations relating to notice of Committee on Special Education (CSE) or Committee on Special Education (CPSE) meetings.

*(c) Meeting Notice. (1) Whenever the committee on special education proposes to conduct a meeting related to the development or review of a student’s IEP, or the provision of a free appropriate public education to the student, the parent must receive notification in writing at least five days prior to the meeting....*

*(2) Such notice shall:*

*(i) inform the parent(s) of the purpose, date, time, and location of the meeting and the name and title of those persons [expected to attend] who will be in attendance at the meeting;*

#### **Notes:**

- ✓ *34 CFR section 300.322(b)(1)(i) requires that notification provided to the parent about a CSE/CPSE meeting include who will be in attendance.*
- ✓ *While “persons expected to attend” and “persons who will be in attendance” substantively mean the same thing, the amended regulation ensures consistency in language and interpretation.*
- ✓ *If one or more of the members of the Committee, pursuant to sections 200.3 and 200.4 of the Regulations of the Commissioner of Education, cannot attend the meeting, the meeting should be rescheduled except when alternative means of participation can be arranged; or the school district and parent, in accordance with the procedures established in State law and regulation, reach an agreement that the attendance of an individual(s) is not necessary or that the individual could be excused for all or a portion of the meeting.*

### ***Parent participation in CSE meetings – section 200.5(d)(2)***

Section 200.5(d)(2) has been amended, as follows, to repeal the language “if those issues are not addressed in the student’s IEP” to ensure consistency with federal regulations.

*(2) A meeting does not include informal or unscheduled conversations involving school personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision [if those issues are not addressed in the student’s IEP]. A meeting also does not include preparatory activities that school personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.*

**Note:** Consistent with 34 CFR section 300.501(b)(3), the language “if those issues are not addressed in the student’s IEP” were removed since issues such as teaching methodology, lesson plans or coordination of service provision are not required to be included in the IEP.

## **SECTION 200.6 CONTINUUM OF SERVICES**

### ***Speech and language services – section 200.6(e)(2)***

Section 200.6(e)(2) has been amended, as follows, to repeal the minimum service delivery requirement for two 30-minute sessions for speech and language services.

*(e) Related services shall be recommended by the committee on special education to meet the specific needs of a student with a disability as set forth in the individualized education program (IEP).*

*(1) The frequency, duration and location of each such service shall be in the IEP, based on the individual student’s need for the service.*

*(2) For students with disabilities determined to need speech and language services, [such services shall be provided for a minimum of two 30-minute sessions each week, and] the total caseload of such students for teachers providing such services shall not exceed 65.*

*(3)-(5) ....*

#### **Notes:**

- ✓ *While most students with disabilities will continue to require a frequency/duration of speech and language services at a level equal to or greater than twice weekly for 30-minute sessions, the repeal of the minimum level of service requirement provides appropriate authority to the CSE/CPSE to determine the frequency and duration of a related service recommendation based on each student’s individual needs (e.g., when a student is determined by the CSE/CPSE to require one session a week to reinforce generalization of skills or when a student’s requires two 20 minute sessions per week ).*
- ✓ *A school district does not have the authority to unilaterally reduce the frequency of a related service that is recommended for one or more students based on the repeal of the minimum level of service requirement outside of the CSE/CPSE process.*

### ***Integrated co-teaching services – section 200.6(g)(1)***

Section 200.6(g)(1) has been amended, as follows, to authorize a variance to the maximum number of students with disabilities in an integrated co-teaching class to allow up to two additional students with disabilities when it is necessary to do so to address the unique needs of students in that class. The regulations authorize two variance

processes: (1) a variance by notification to increase the maximum number of students with disabilities to 13; and (2) a variance request for Commissioner's prior approval to increase the number of students with disabilities to 14.

*(g) The maximum number of students with disabilities receiving integrated co-teaching services in a class shall be determined in accordance with the students' individual needs as recommended on their IEPs, provided that [effective July 1, 2008,] the number of students with disabilities in such classes shall not exceed 12 students, unless a variance is provided pursuant to subparagraph (i) or (ii) of this paragraph.*

*(i) Variance by notification. A board of education or trustees of a school district may submit written notice to the commissioner to temporarily add one additional student with a disability to an integrated co-teaching class for the remainder of the school year, provided that at the start of classes in September of the current school year it is in compliance with the standards specified in this paragraph. Written notice to the commissioner shall be submitted on a form prescribed by the commissioner and shall sufficiently demonstrate educational justification and consistency with providing an appropriate education for all children affected.*

*(ii) Variance with Commissioner approval. If the school district has enrolled one student with a disability beyond the maximum 12 students with disabilities in an integrated co-teaching services class pursuant to the procedures established in subparagraph (i) of this paragraph, and it determines there is a need to temporarily add one additional student to such class, the school district may submit to the commissioner for approval an application for a variance to enroll the one additional student in the same class for the remainder of the school year. The application to the commissioner shall be on a form prescribed by the commissioner and shall sufficiently demonstrate educational justification and consistency with providing an appropriate education for all children affected.*

**Notes:**

- ✓ School districts must begin the school year in compliance with the 12 students with disabilities rule.
- ✓ School districts should only use this variance process if, during the school year, exceptional circumstances arise (e.g., A student enrolled in an integrated co-teaching class is newly identified as a student with a disability during the school year; a new student moves into the district and there is no other appropriate class for the student with a disability and a variance is needed to ensure FAPE to the student).
- ✓ The application must be submitted on a form prescribed by the Commissioner; and sufficiently demonstrate educational justification and consistency with providing an appropriate education for all children affected.
- ✓ The Department will issue separate guidance on the procedures for requesting a variance to the maximum number of students with disabilities in integrated co-teaching classes, consistent with the existing procedures for special class size and chronological age variances.

## SECTION 200.13 EDUCATIONAL PROGRAMS FOR STUDENTS WITH AUTISM

### ***Instructional services to meet the language needs of students with autism - section 200.13(a)(4)***

Section 200.13(a)(4) has been amended, as follows, to repeal the minimum daily frequency and duration for instructional services to address a student with autism's individual language needs (i.e., 30 minutes daily in groups not to exceed two, or 60 minutes daily in groups not to exceed six), while retaining the general requirement that the IEP of the student include instructional services to meet the student's individual language needs.

*(a) The functioning levels of students with autism, based upon the criteria set forth in section 200.6(h)(2) of this Part, shall govern their individual or small group instruction.*

*(1) – (3) ...*

*(4) Instructional services shall be provided to meet the individual language needs of a student with autism [for a minimum of 30 minutes daily in groups not to exceed two, or 60 minutes daily in groups not to exceed six].*

*(5) – (6) ....*

#### **Notes:**

- ✓ *Difficulty in the area of communication is a manifestation of the disability for most students with autism.*
- ✓ *The repeal of the minimum level of service requirement recognizes, however, that not all students classified with autism at the various age and grade levels will need the intensity of instructional services previously mandated in section 200.13(a)(4).*
- ✓ *Consistent with federal requirements, decisions regarding the provision of services must be based on a student's unique needs, and not on the disability category in which the child is classified.*
- ✓ *The repeal of the minimum daily frequency and duration of instructional services to meet the individual language needs of a student with autism ensures that CSEs and CPSEs have the flexibility to make recommendation regarding the appropriate frequency and duration of such services based on the individual needs of the student, not on his or her classification.*
- ✓ *CSEs and CPSEs must address the language needs identified in each student's IEP (e.g., receptive language, expressive language, social communication, pragmatic language, etc.) and could do so by recommending that such services be provided through instruction in the student's class and/or resource room by the student's special education teacher and/or through a related service by a related service provider.*