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SPECIAL EDUCATION FIELD ADVISORY

FROM: Patricia J. Geary

SUBJECT: New Requirements for Special Education Programs and Services: Amendment of Sections 200.4, 200.16 and 200.20 of the Commissioner's Regulations Relating to Recommendations for One-to-One Aides for Preschool and School-Age Students with Disabilities and Preschool Special Education Programs and Services

This memorandum is to inform you that the Board of Regents has approved for permanent adoption the amendment of sections 200.4, 200.16 and 200.20 of the Regulations of the Commissioner of Education. The effective date of the amendment is generally June 29, 2016, with certain requirements delayed to provide sufficient time for required implementation.

The following is a summary of the regulatory requirements. A copy of the full text of the amended regulations can be found at: **https://www.regents.nysed.gov/common/regents/files/616brca12.pdf**

One-to-One Aides

Section 200.4(d)(3) of the Regulations of the Commissioner of Education, relating to the assignment of an individual aide to a student with a disability, has been amended to add a requirement that both Committees on Special Education (CSE) and Committees on Preschool Special Education (CPSE) make certain considerations prior to determining that a student needs a one-to-one aide. These considerations must include:

- the management needs of the student that would require a significant degree of individualized attention and intervention;
- the skills and goals the student would need to achieve that will reduce or eliminate the need for the one-to-one aide;
- the specific support that the one-to-one aide would provide for the student (e.g.: assistance with personal hygiene or behaviors that impede learning);
- 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);

- 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;
- staff ratios in the setting where the student will attend school;
- 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;
- any 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
- the training and support provided to the one-to-one aide to help him or her 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 (IEP).

Section 200.4(d)(3) also clarifies that the assignment of shared one-to-one aides is at the discretion of the school to meet the individualized needs of students whose IEPs include the recommendation for one-to-one aides is not prohibited or limited. The duties of a teacher aide or a teaching assistant providing individualized support to a student with a disability must be consistent with the duties prescribed in 8 NYCRR 80-5.6.

Special Education Itinerant Services (SEIS)

Section 200.16(i)(3)(ii)(a) of the Regulations of the Commissioner of Education has been amended to specify that SEIS services recommended by the CPSE and included in a student's IEP, shall identify the setting where the services will be delivered; the frequency, duration, intensity and location of direct special education itinerant services; and, for students who attend a regular early childhood program, the frequency, duration and location for the provision of indirect SEIS, if any.

Section 200.20(b)(4) has been added to clarify that special education programs approved to provide SEIS shall ensure that the services are provided, consistent with the student's IEP, as an itinerant service at a regular early childhood program, or the student's home, or at another child care location identified by the parent.

Special Class Services

Section 200.16(i)(3)(iii)(d) has been added to clarify that a special class shall include the instructional services and related services, as specified in the student's IEP.

Preschool Special Education Program Requirements

Section 200.20(b)(5) has been added to require that educational directors of approved preschool programs, hired on or after September 1, 2016, possess New York State (NYS) teaching certification valid for teaching students with disabilities, birth-grade 2, or certification in early childhood education, or possess NYS certification or licensure in

speech-language pathology, psychology, occupational or physical therapy, or another related services field, and hold NYS certification as a School Building Leader or School District Leader or School Administrator/Supervisor. Approved preschool programs are not required to hire an educational director in addition to the executive director, when the executive director provides on-site direction of the program.

Section 200.20(b)(6) has been added to clarify that preschool providers ensure that the make-up of missed services occurs consistent with the duration and location specified in the individualized education program (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 the 30 days. This make-up policy pertains to services that were not provided due to staff absence and, as appropriate to the needs of the student, any excused student absences consistent with this policy herein. A provider may, but is not required to, make up sessions for unexcused student absences.

Section 200.20(b)(7) has been added to require that each provider adopt and implement the following program standards for the instruction of preschool students with disabilities:

Instructional Standards

- curricula aligned with the NYS Prekindergarten Foundation for the Common Core, by no later than September 1, 2017;
- instructional program based on the ages, interests, strengths and needs of the children;
- procedures to promote the active engagement of parents and/or guardians in the education of their children;

Positive Behavioral Supports

- a program-wide system of positive evidence-based practices to support social-emotional competence and teach social-emotional skill, by no later than September 1, 2017;
- a preschool student with a disability may not be suspended, expelled or removed from an approved program or service because of the student's behavior prior to the transfer of the student to another approved program, except as provided pursuant to 8 NYCRR 201.8; and

Progress Monitoring

- regular progress monitoring of student achievement data over time to adjust the student's instructional program as necessary and request meetings of the CPSE to consider changes to the student's IEP as appropriate, and provide regular written reports of the student's progress to the parent and CPSE.

Questions and answers pertaining to the amendment of sections 200.4, 200.16 and 200.20 of the Regulations of the Commissioner of Education relating to recommendations for one-to-one aides for preschool and school-age students with disabilities and preschool special education programs and services can be found at: Q and A pdf.

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, Committee on Special Education and Committee on Preschool Special Education Chairpersons, Guidance Counselors and Directors of Pupil Personnel and Parent Teacher Associations. Questions regarding this memorandum may be directed to the Special Education Preschool Unit at 518-473-6108 or to the Special Education Quality Assurance Office in your region:

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