

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

QUESTIONS AND ANSWERS

The following questions were raised during the public comment period prior to adoption of the regulations. The assessment of public comment can be accessed at <https://www.regents.nysed.gov/common/regents/files/616brca12.pdf>.

One-to-One Aides

For additional guidance on recommendations for one-to-one aides, see <http://www.p12.nysed.gov/specialed/publications/1-1aide-jan2012.htm>

Q: Do the requirements relating to considerations for one-to-one aides apply to preschool students?

A: Yes, section 200.4 applies to all students with disabilities, including preschool students with disabilities, except where such requirements are inconsistent with the requirements in section 200.16 pertaining to educational programs for preschool students with disabilities.

Q: Shouldn't the need for a one-to-one aide be determined by the Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE), rather than by a predetermined list of considerations?

A: The CSE or CPSE is responsible for determining when a one-to-one aide is appropriate, and this decision should be based on a discussion of the individual needs of the student. The list of considerations will ensure a thoughtful assessment of each unique situation.

Q: Why must staff ratios be considered when determining the need for a one-to-one aide?

A: Staff ratios are an important consideration in determining the need for a one-to-one aide. In classrooms that have a high staff-to-student ratio, or students with fewer needs, existing staff may be able to support a student with increased needs, and a one-to-one aide may not be necessary. In contrast, a student with management needs might be able to remain in his/her least restrictive environment with a one-to-one aide to provide support.

Q: What is the maximum number of students that can simultaneously share a one-to-one aide?

A: The amendment does not specify a maximum number of students that can simultaneously share the same one-to-one aide. The school must implement the IEP recommendation to meet a student's individualized needs. The same one-to-one aide can meet the individualized needs of more than one student, provided that

such shared services are consistent with each student's individualized education program (IEP).

Special Education Itinerant Services (SEIS)

Q: Where can SEIS be provided? Can SEIS be provided in the child's home?

A: The CPSE recommends, and specifies in the student's IEP, the site where SEIS will be delivered, as well as the location for provision of services within that setting. The purpose of SEIS is to ensure that preschool students with disabilities have the opportunity to receive their special education supports and services in settings other than special education programs. While the CPSE must select an approved provider of SEIS for the student, the SEIS provider's location is not the same as the location for SEIS delivery that must be specified in the IEP. Allowing SEIS providers to establish SEIS programs at their agencies would be inconsistent with this service. Consistent with section 4410 of the Laws of New York, SEIS may be provided in the child's home when recommended by the CPSE based on the special needs of the child.

Q: Must current IEPs that indicate SEIS will be provided at a place other than the student's regular early childhood program, the student's home or other child care location identified by the parent be amended to reflect one of these locations?

A: No, the regulations are effective for IEPs developed on or after the effective date of the proposed regulation. Retroactive changes to IEPs are not required.

Q: Can an alternate location be identified on the student's IEP, mutually agreed upon by the parent, where SEIS can be provided only when the regular early childhood program is closed?

A: There is nothing in regulations that prohibits the CPSE from designating on a student's IEP an alternate location for SEIS to be provided when the regular early childhood program is closed.

Q: Must SEIS only be provided during the regular school day?

A: Most students with disabilities can and should receive their special education services during the school day; however, if a student's IEP requires extended day services, he or she may need SEIS beyond the regular school day. There is nothing in regulations that prohibits the provision of SEIS outside of the regular school day.

Q: What is the maximum number of hours per day/week that a student may receive SEIS?

A: The State does not establish a maximum number of sessions for special education services needed by a student(s). The CPSE recommends the appropriate special

education services for students with disabilities, including the site setting and the frequency, duration, location and intensity of such services.

Q: Can SEIS be provided to an individual student or must it be provided to a group of students?

A: The intensity of services needed by a preschool student must be determined on a case-by-case basis by the CPSE. SEIS may be provided to a group of students when indicated in the student's IEP and when the other students in the group have similar instructional needs. There may also be instances when individual services are appropriate.

Q: Can SEIS be provided to a student attending a special class or a special class in integrated setting (SCIS)?

A: SEIS is defined as an approved program provided by a certified special education teacher on an itinerant basis for the purpose of providing specialized individual or group instruction and/or indirect services to preschool students with disabilities. SEIS are not intended to be provided in conjunction with special class or SCIS because a student's needs should be fully addressed in a special class or SCIS placement.

Q: May a SEIS teacher take on the role of a one-to-one aide in a classroom to support the regular teacher?

A: A SEIS teacher is responsible for providing specialized individual or group instruction to preschool students with disabilities and/or consultation to assist the regular early childhood program teacher to adjust the learning environment and/or modify his/her instructional methods to meet the individual needs of a preschool student with a disability. It is not appropriate for a SEIS teacher to take the place of a one-to-one aide in the classroom. Teaching should be a collaborative effort between the SEIS teacher and the regular early childhood teacher.

Special Class Services

Q: May a student enrolled in a special class receive his/her related services outside of the school day?

A: The purpose of related services is to assist students to benefit from their education programs. Therefore, unless the IEP indicates otherwise, related services must be provided in conjunction with the student's special education or regular early childhood program to the maximum extent possible.

Preschool Special Education Program Requirements

Educational Directors

Q: Do the requirements for educational directors apply to those directors who supervise both approved preschool programs and approved private schools, but have no direct responsibility for school building leadership?

A: Preschool program educational directors hired on or after September 1, 2016 must meet the qualifications as prescribed in the revised regulations. These requirements only apply to those individuals providing direct on-site oversight of the preschool special education program (i.e.: school building leadership).

Q: Is it permissible for small programs to share a director or hire an individual on a consultant basis if the size of the program prevents hiring?

A: There is nothing in the regulations that would limit or prohibit the sharing of a director or hiring of consultant staff, as appropriate.

Make Up of Missed Services

Q: Does the requirement for the make-up of missed sessions apply to all missed sessions?

A: The Department issued guidance in October 2015 that addressed the issue of make-up sessions for SEIS. See Attachment 2 at <http://www.p12.nysed.gov/specialed/publications/2015-memos/SpecialEducationItinerantServicesforPreschoolChildrenwithDisabilitiesSEIS.html>. Consistent with that guidance, SEIS providers must arrange to provide students with make-up sessions when the missed sessions were due to staff absence and, as appropriate to the individual student's needs, any excused student absences. Providers may, but are not required to, make-up sessions for unexcused student absences.

Q: Does the requirement for the 30-day make-up of missed sessions apply to all program types?

A: Yes.

Q: May providers individualize the frequency and location of make-up sessions that are due to student absences?

A: Providers must have a plan to provide make-up sessions in a timely manner in accordance with the student's IEP regarding duration, intensity, location, and as practicable, frequency.

Q: Make-up sessions are required to occur within 30 days of the missed session. Does this mean 30 school days or calendar days?

A: The term “30 days” refers to 30 calendar days. Make-up sessions must be delivered as close in proximity as possible to a missed session. Unless there is a documented child-specific reason (e.g., extended illness of the child, natural disaster), the make-up session should be provided within 30 calendar days of the missed session.

Program Standards: Instructional

Q: Why must preschool programs implement the State’s Preschool Learning Standards?

A: The New York State Prekindergarten Foundation for the Common Core has been approved and adopted by the Board of Regents and it is designed to ensure that all children, including students with disabilities, have rich and varied early learning experiences that prepare them for success in school, while laying the foundation for college and career readiness.

Program Standards: Behavioral Supports

Q: Does the prohibition of suspension apply to students in private preschools who receive related services?

A: Program standards for positive behavioral supports, including prohibiting suspension, are requirements for approved preschool special class programs. The proposed amendment does not govern policies and practices in regular early childhood programs.

Q: What actions are preschool programs expected to take if they are not permitted to suspend students who exhibit dangerous or disruptive behaviors?

A: Providers and CPSEs must ensure that positive behavioral supports and interventions have been developed and implemented to meet the child’s needs. If the current approved preschool program is not appropriate to meet the needs of the student, the CPSE must act in a timely manner to secure an alternate program/placement consistent with the timelines currently in regulation.

Q: When a student’s behaviors become a concern and are not able to be successfully addressed in the classroom, what steps should be taken if suspension is not an option?

A: The CPSE should meet to discuss the student’s behaviors and determine whether it would be appropriate to conduct a functional behavioral assessment (FBA). An FBA is the process of determining why a student engages in challenging behavior and how the student’s behavior relates to the environment. FBAs can provide the CPSE with information to develop a hypothesis as to why the student engages in the behavior, when the student is most likely to demonstrate the behavior, and the situations in which the behavior is least likely to occur. The results of the FBA are

reviewed by the CPSE and the development of a behavioral intervention plan (BIP) is considered. A behavioral intervention plan is a plan that is based on the results of the FBA and, at a minimum, includes a description of the problem behavior, global and specific hypotheses as to why the problem behavior occurs, and intervention strategies that include positive behavioral supports and services to address the behavior.

For technical assistance on preschool behavioral supports and interventions, contact the Preschool Behavior Specialists in the Regional Special Education Technical Assistance Support Centers (RSE-TASC). See <http://www.p12.nysed.gov/specialed/techassist/rsetasc/locations.htm>.

Q: If a student is in a regular early childhood education program and there is a recommendation in the student's IEP for a behavioral intervention plan, who is responsible for implementing and monitoring the plan?

A: The preschool special education provider is responsible for the development and implementation of the behavioral intervention plan, in consideration of the results of the FBA.

Program Standards: Progress Monitoring

Q: How is "regular" progress monitoring interpreted?

A: Regular progress monitoring of student achievement data must be consistent with the frequency or timetable for such periodic reports on the progress the student is making toward the annual goals as identified in the student's IEP.