



August 2007

TO: District Superintendents
Superintendents of Schools
Presidents of Boards of Education
New York City Board of Education
Principals of Public Schools
Directors of Pupil Personnel Services
Chairpersons, Committees on Preschool Special Education
Executive Directors of Approved Preschool Programs
Organizations, Parents and Individuals Concerned with Special Education
Impartial Hearing Officers
Commissioner's Advisory Panel for Special Education Services
Early Childhood Direction Centers
SETRC Professional Development Specialists

FROM: James P. DeLorenzo

SUBJECT: Child-Specific Allowance to Temporarily Exceed an Approved Special Class Size for Preschool Students with Disabilities – **Revised 8/07**

The purpose of this memorandum is to describe **revised procedures** to admit one or two additional preschool students with disabilities in a special class or special class in an integrated setting that is at its maximum approved class size capacity. The revised procedures add a process to **temporarily exceed the maximum of 12 preschool students with disabilities in a special class or in a special class in an integrated setting by one student** pursuant to section 200.16(i)(3)(iii)(b) of the Regulations of the Commissioner of Education which was amended, effective July 1, 2007, to read as follows:

(b) The maximum class size shall not exceed 12 preschool students with at least one teacher and one or more supplementary school personnel assigned to each class. (1) If a committee on preschool special education recommends a preschool student to an approved program which has no space available in the specific special class which will meet the student's unique needs as recommended on the individualized education program (IEP), the approved program may temporarily



increase the enrollment of a class up to a maximum of 13 preschool students for the remainder of the school year, by a procedure to be established by the Commissioner, to ensure that the student receives a free appropriate public education. If the attendance during the instructional time exceeds 12 students, another staff member shall be assigned to the class. Other staff members may include related service providers and/or supplementary school personnel.

Procedures to temporarily increase a program's approved student-to-staff ratio that would not otherwise result in more than 12 preschool students in a class remain unchanged from guidance previously issued. Any temporary increases in approved special class sizes as described in this memorandum, including those to exceed the maximum 12 students, will be allowed only in those extenuating circumstances when adding a student to a special class is necessary to ensure that the student receives a free appropriate public education (FAPE). Temporary increase means the addition of **no more than one or two preschool students with a disability** beyond the program's approved student-to-staff ratio **or more than one** beyond the maximum 12 students, for a period not to exceed the remainder of the school year. For special classes in integrated settings, it is expected that the number of students with disabilities does not exceed the number of non-disabled students.

Please note that these procedures are for temporary increases only and DO NOT REPLACE procedures for agencies to apply for approval of any new or expanded special class¹ or special class in an integrated setting program. The application for new preschool special education programs and the preschool modification application are both available at:

<http://www.vesid.nysed.gov/publications/preschool/home.html>.

New procedures to temporarily increase the enrollment of a class up to a maximum of 13 preschool students:

1. The State Education Department (SED) may grant a request to temporarily exceed the maximum class size of 12 preschool students up to a maximum of 13 preschool students for the remainder of the school year when the program is otherwise at capacity in the specific special class which will meet the student's unique needs as recommended on the IEP.
2. If the attendance during the instructional time exceeds 12 students, another staff member must be assigned to the class. Other staff members may include related service providers and/or supplementary school personnel (supplementary school personnel is defined in the Regulations of the Commissioner of Education as a teacher aide or teaching assistant).

¹ Procedures for Application and Approval of Any New or Expanded Programs in Settings which Include Only Preschool Children with Disabilities, January 2002, Preschool 2000-02.

3. Any temporary expansion of classes to 13 preschool children made **before** January 1 of the school year will require SED approval before the student is enrolled (see "**Prior Approval Request**" procedures).
4. Any temporary expansion of classes to 13 preschool children made **after** January 1 of the school year may be made by notification to SED, i.e., prior approval not required (see: **Child-Specific Preschool Notification** procedures).

PROCEDURES TO TEMPORARILY INCREASE CLASS SIZE:

A preschool program may implement a temporary increase in class size under one of the following two procedures:

For special classes and special classes in an integrated setting approved to serve less than 12 preschool students with disabilities

Child-Specific Preschool Notification:

After the start of the school year in September, an approved preschool program may temporarily, for the remainder of the school year, enroll **one** additional preschool student with a disability in each of its special classes or special classes in an integrated setting that are at maximum approved class size capacity through a **notification process** without prior approval by SED.

These temporary increases apply when it is determined that the placement is needed for a preschool student with a disability to receive FAPE.

To implement this notification process, **within ten (10) business days of the student's enrollment**, the approved program must submit a written notification to SED using the attached form. One form per student must be submitted.

Prior Approval Request:

In the event that an approved program has already enrolled one preschool student with a disability beyond the approved special class size capacity through the "Child-Specific Preschool Notification" process (see above) and now requests approval to temporarily, for the remainder of the school year, enroll a second preschool student with a disability in the same class, the approved preschool program must submit a request for **prior child-specific approval** to SED using the attached form.

These temporary increases apply when such placements are needed for the preschool students to receive FAPE. One form per student must be submitted.

SED will review the child-specific approval request and respond to the program indicating approval or disapproval of the request.

SED may deny a program approval to temporarily exceed an approved special 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 cannot meet the assurances provided. If the request is not approved, the program must inform the CPSE that an alternate placement must be recommended for the preschool student.

For special classes and special classes in an integrated setting approved to serve 12 preschool students with disabilities

Prior Approval Request:

After the start of the school year in September, and **prior to January 1** of the school year, an approved preschool program may temporarily, for the remainder of the school year, enroll **one** additional preschool student with a disability in each of its special classes approved to serve 12 preschool students with disabilities that are at maximum approved class size capacity through submission of a request for **prior child-specific approval** to SED on the attached form.

- The temporary increase cannot result in an enrollment of more than 13 preschool students with disabilities.
- These temporary increases apply when such placements are needed for the preschool students to receive FAPE. One form per student must be submitted.
- SED will review the child-specific approval request and respond to the program indicating approval or disapproval of the request.
- SED may deny a program approval to temporarily exceed an approved special 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, if the class enrollment would exceed 13 preschool students with disabilities and/or if the program cannot meet the assurances provided. If the request is not approved, the program must inform the CPSE that an alternate placement must be recommended for the preschool student.

OR

Child-Specific Preschool Notification:

After January 1 of the school year, an approved preschool program may temporarily, for the remainder of the school year, enroll **one** additional preschool student with a disability in each of its special classes approved to serve 12 preschool students with disabilities that are at maximum approved class size capacity through a **notification process** without prior approval by SED.

- The temporary increase cannot result in an enrollment of more than 13 preschool students with disabilities.
- These temporary increases apply when it is determined that the placement is needed for a preschool student with a disability to receive FAPE.
- To implement this notification process, **within ten (10) business days of the student's enrollment**, the approved program must submit a written notification to SED using the attached form. One form per student must be submitted.

The attached form is used for either:

- (1) Submission of a child-specific preschool notification **or**
- (2) Submission of a prior approval request.

The form includes information on the specific class affected, the student to be enrolled, the educational justification for the placement and assurances that:

- the Committee on Preschool Special Education (CPSE) has determined that no other appropriate placement is available in either a special class in an integrated setting that is not at full capacity or one that has not exceeded its approved class size through the notification process;
- the program has the resources to implement the IEP 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 applicable requirement for preschool and program approval, including fire, safety, facility (e.g., Certificate of Occupancy) and day care requirements of the State and municipality;
- the parents of the other preschool students enrolled in the class will be notified of the temporary increase in class size upon approval by SED;
- requests to enroll one or two additional students that result in 13 preschool students with disabilities in the class have been made in accordance with the procedures herein;
- when the enrollment of a special class is temporarily increased to a maximum of 13 preschool students, another staff member will be assigned to the class if the attendance during the instructional time exceeds 12 preschool students with disabilities; and
- the class size will return to its approved student-to-staff ratio no later than the end of the school year (i.e., June 30 or August 31) in which the preschool student is enrolled.

In some circumstances, based on preschool student needs, programs may need to use the tuition funds generated by the additional preschool student(s) to temporarily hire additional staff (e.g., supplementary school personnel or related service providers) in order for appropriate services to be provided to all enrolled students. No adjustment in the tuition rate is necessary for this to occur.

Questions regarding the procedures to request a temporary increase in class size should be addressed to your Special Education Quality Assurance Regional Office at:

Central New York Regional Office	(315) 428-3287
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

Attachment



CHILD-SPECIFIC ALLOWANCE TO TEMPORARILY EXCEED AN APPROVED SPECIAL CLASS SIZE FOR PRESCHOOL STUDENTS WITH A DISABILITY

- Use this form for either:
 - (1) Submission of a child-specific preschool notification **or**
 - (2) Submission of a prior approval request.
- Submit one form per student.
- **All sections of the form must be completed or it will be returned unprocessed.** Any returned forms must be revised and resubmitted within five days.
- Child-specific preschool notifications must be submitted **within 10 business days of the student's enrollment** with a copy kept for your files.
- Prior approval requests must be submitted to the State Education Department (SED) and SED approval must be received **before** the student is enrolled in the class.

Legal Name of Preschool Agency: _____

BEDS Code: _____

Program Site Name: _____

Program Site Address: _____

Contact Person for this Notification: _____

Phone: _____ Fax: _____ Email: _____

Date submitted: _____

Complete one box below to indicate the type of request:

For special class or special class in an integrated setting approved to serve less than 12 preschool students with disabilities:

Child-Specific Preschool Notification (enrolling one additional preschool student with a disability)

OR

Prior Approval Request (seeking approval to add a second preschool student with a disability – the program must have already submitted notification to SED of enrollment of one additional preschool student with a disability to the same class)

For special class or special class in an integrated setting approved to serve 12 preschool students with disabilities:

Child-Specific Preschool Notification (enrolling one additional preschool student with a disability to a maximum of 13 preschool students with disabilities after January 1 of the school year)

OR

Prior Approval Request (seeking approval to add one additional preschool student with a disability to a maximum of 13 preschool students with disabilities after the start of the school year but prior to January 1 of that school year)

Approved Preschool Program

<p>Classroom number or teacher's name for the classroom in which the additional student is enrolled:</p> <p>_____</p> <p><input type="checkbox"/> full-day (more than 2½ hours)</p> <p style="text-align: center;">OR</p> <p><input type="checkbox"/> half-day (2 ½ hours per day)</p> <p style="padding-left: 20px;"><input type="checkbox"/> a.m. session</p> <p style="padding-left: 20px;"><input type="checkbox"/> p.m. session</p> <p><input type="checkbox"/> ten month</p> <p><input type="checkbox"/> two month</p>	<p><input type="checkbox"/> Special class</p> <p>Approved student/staff ratio consistent with program's SED approval letter, as appropriate (prior to enrolling one additional student):</p> <p>_____ : _____ : _____</p> <p>Student: teacher: supplemental school personnel</p>	<p><input type="checkbox"/> Special class in an integrated setting</p> <p>Approved overall student/ staff ratio consistent with program's SED approval letter, as appropriate (prior to enrolling one additional student):</p> <p>_____ : _____ : _____</p> <p>Student: teachers: supplemental school personnel</p> <p>Approved special education student/staff ratio consistent with program's SED approval letter, as appropriate (prior to enrolling one additional student):</p> <p>_____ : _____ : _____</p> <p>Student: teacher: supplemental school personnel</p>
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The addition of this preschool student to the class will result in a class of 13 preschool students with disabilities. yes no

The addition of this preschool student to the class will result in hiring additional staff on a temporary basis. yes no Specify:

- ***Note: When a temporary enrollment increase results in a class of 13 preschool students, an additional staff member must be assigned to the class if the attendance during the instructional time exceeds 12 students.***

If the special class is in an integrated setting, describe the effect of the increase of one or two additional preschool student(s) with a disability has on the ratio of preschool students with disabilities to nondisabled children in the class:

Preschool Student Information		
Name of the <u>one</u> additional student enrolled: <hr/> Student's DOB _____ <p style="text-align: center;">OR</p> Name of the <u>second</u> student requested to be enrolled: <hr/> Student's DOB _____	Date the <u>one</u> additional student entered the class listed above: <hr/> <p style="text-align: center;">OR</p> Date the <u>second</u> student is proposed to enroll in the class listed above: <hr/>	Student's school district of residence: <hr/> Student's municipality of Residence: <hr/>
The educational justification for the placement:		

The undersigned assures that:

- the Committee on Preschool Special Education (CPSE) has determined that no other appropriate placement is available in a special class or special class in an integrated setting that is not at full capacity;
- the program has the resources to implement the individualized education program (IEP) of the additional preschool student, as well as all other students in the program;
- the temporary increase in class size will not result in non-compliance with any applicable requirement for preschool program approval, including fire, safety, facility (Certificate of Occupancy) and day care requirements of the State and municipality;
- the parents of the preschool students enrolled in the class have been notified of the temporary increase in special class;
- requests to enroll one or two additional students that result in 13 preschool students with disabilities in the class have been made in accordance with the procedures herein;
- for temporary increases of class size to 13 preschool students, another staff member will be assigned to the class when the attendance during the instructional time exceeds 12 students; and
- the class size will return to its approved student-to-staff ratio no later than the end of the school year (i.e., June 30 or August 31) in which the preschool student is enrolled.

Name of Chief Executive Officer

Signature

Date

For notification to SED to enroll one additional preschool student with a disability and/or notification to temporary increases in class size to 13 students requested after January 1 of the school year:

- Submit the form with an original signature to: SED/VESID, Special Education Quality Assurance, Attention: Preschool Notifications, Room 1623, One Commerce Plaza, Albany, NY 12234
- Send one copy of the form to the CPSE of the student.
- Send one copy of the form to the 4410 municipality representative of the student. The New York City municipality copy should be sent to: Central Based Support Team, New York City Department of Education, 52 Chambers Street, Room 220, New York, NY 10007.

For prior approval requests to enroll a second additional preschool student with a disability in classes and/or to temporarily enroll 13 preschool students in a special class before January 1:

- Prior to enrolling the student, submit the form with an original signature to: SED/VESID, Special Education Quality Assurance, Attention: Preschool Notifications, Room 1623, One Commerce Plaza, Albany, NY 12234

<p><u>For SED Use</u></p> <p>Date Received: _____</p> <p>For Requests to Adding A Second Student</p> <p><input type="checkbox"/> Approved</p> <p><input type="checkbox"/> Not approved – Reason: _____</p> <p>For Requests to Exceed Maximum 12 students prior to January 1:</p> <p><input type="checkbox"/> Approved</p> <p><input type="checkbox"/> Not approved – Reason: _____</p>	<p>SED Representative: _____</p> <p>Signature: _____</p> <p>Date: _____</p>
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