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**SUBJECT: Procedures to Temporarily Exceed an Approved Special Class Size for Preschool Students with Disabilities – Revised July 20, 2023**

This guidance replaces the December 2017 memorandum regarding procedures to temporarily exceed an approved special class size for preschool students with disabilities. The purpose of this memorandum is to describe procedures to temporarily exceed the approved class size by one or two additional preschool students with disabilities in a special class or special class in an integrated setting (SCIS) program that is at its maximum approved class size capacity pursuant to section 200.16(i)(3)(iii)(b)(1) of the Regulations of the Commissioner of Education.

Any temporary increases in approved class sizes as described in this memorandum will be allowed only in those **extenuating circumstances** when adding a preschool student with a disability to a special class or SCIS is necessary to ensure that the student receives a free appropriate public education (FAPE).

- For a classroom approved to serve fewer than 12 preschool students with disabilities, temporary increase means the addition of **no more than one or two preschool students with a disability** beyond a program's approved student-to-staff ratio.
- For a classroom approved to serve 12 preschool students with disabilities, temporary increase means the addition of **no more than one student with a disability** beyond the maximum of 12 students with disabilities.

The maximum duration of the temporary increase in approved class size is a period not to exceed the remainder of the 10-month school year.

The procedures outlined in this guidance are for temporary increases only and do not replace procedures for agencies to apply for approval of any new or expanded special class or SCIS program. Furthermore, these procedures do not eliminate the requirement for the approved program to also ensure it continues to operate in accordance with applicable health and safety requirements pursuant to local code or licensure pursuant to the Office of Children and Family Services (OCFS) or the New York City Department of Health and Mental Hygiene (NYC DOHMH). To apply for approval of any new or expanded special class or SCIS programs, the applicable [Preschool Application](#) must be completed.

## **Procedures to Temporarily Increase Class Size**

Chief Executive Officers of approved private preschool special class and SCIS programs will be given access to an electronic application in the New York State Education Department (NYSED) Monitoring and Vendor Performance System (SEDMON). Public school and boards of cooperative educational services (BOCES) leaders also have access to SEDMON for their approved preschool sites. The application for a temporary increase in preschool class size by one student (resulting in one student over enrolled) is titled “**Preschool Variance by Notification**” and the application for a temporary increase in preschool class size by a second student (resulting in two students over enrolled) is titled “**Preschool Variance by Approval.**” There are separate applications for the 10-month and 2-month programs. An application must be submitted in any instance where an approved class ratio is exceeded (i.e., if the request is to intensify two classrooms, then two separate applications must be submitted, one for each student).

The Chief Executive Officer (as reflected on the program’s approval letter) will have access to log into the [NYSED Business Portal](#) to submit an application. If the Chief Executive Officer would like to delegate the task of inputting information into the electronic applications, they may entitle a staff member access to data entry rights through the State Education Department Delegated Account System. Account administration and entitlement information is included in the [State Education Department Delegated Account User Guide](#) and [Entitling Users to SED Monitoring & Vendor Performance System](#). When data entry rights are delegated, the Chief Executive Officer retains exclusive rights to submission and therefore must perform the final submission to NYSED themselves. For school districts and BOCES preschool programs, submission rights reflect the site where into092-3(lt)-3(o9221 0 0 1 257.8 252.53 Tm0 0

A preschool program may implement procedures to temporarily increase the class size of a special class or SCIS under the following procedures:

- **Over Enrollment by One Student through a Child-Specific Notification:**

An approved preschool program may temporarily, for the remainder of the school year, enroll up to one additional preschool student with a disability in each of its special classes or SCIS approved to serve fewer than 12 students with disabilities without prior approval by NYSED through a child-specific notification process. Notifications may be submitted to NYSED via SEDMON no earlier than August 1st for the upcoming 10-month school year and May 1st for the upcoming 2-month extended school year.

- **Over Enrollment by Two Students through a Prior Approval Request:**

If a special class or SCIS approved to serve fewer than 12 students with disabilities has already enrolled one additional preschool student with a disability beyond its maximum approved class size capacity through the notification process described above, an approved program may temporarily, for the remainder of the school year, enroll a second preschool student with a disability in the same class through submission of a prior approval request to NYSED. Such request may be submitted via SEDMON by completing the **Preschool Variance by Approval** survey. Approval for this request must be obtained from NYSED before the second student may be enrolled in the class. If the request is not approved, the program must inform the committee on preschool special education (

separate surveys, one for each site. The surveys are site-specific and therefore you must choose the site specific to your notification or request for approval. If it is not evident which survey is associated with which site, information including institution ID, popular name, and physical address as listed on the NYSED record can be found on the first page of each available survey entitled "Provider Info"; and

7. Click on "view" to begin/continue to input information required for the application.

Important: Do not include personally identifiable information (PII) for a student via email or within the Identifying label portion of the SEDMON variance request. There is a discrete location for PII in the application and therefore, it should not be entered in any other section.

**Please note:** A separate **Preschool Variance by Notification** or **Preschool Variance by Approval** must be completed and submitted to NYSED via SEDMON for each preschool student with a disability that the approved preschool program is enrolling

- When the approved variance requires staffing changes, the program will adhere to relevant regulations and ensure that all staff are appropriately credentialed for the position;
- When the variance is applicable to a SCIS program, if the number of preschool students with disabilities will exceed the number of preschool students without disabilities, an explanation for the imbalance and efforts to address is included with the application and the program understands that an applicable request to temporarily exceed the classroom ratio by a second student may be denied absent sufficient justification;
- The temporary increase in class size will not result in an enrollment of more than 13 preschool students with disabilities;
- The program is obligated to inform NYSED when this variance notification is no longer needed. Specifically, if the classroom associated with this variance notification subsequently decreases enrollment so not to exceed the approved classroom student ratio, the program must inform NYSED to document that the impacted classroom is no longer overenrolled; and
- A separate Preschool Variance Application and School District Justification must be completed and submitted to NYSED for each preschool student with a disability that the approved preschool program is enrolling or seeking to enroll beyond its approved class size. Only one Preschool Variance by Notification and one Preschool Variance by Approval Request, as applicable, may be valid at the same time for the same classroom.

Upon receipt of a Preschool Variance by Notification, the Chief Executive Officer or school district/BOCES building leader will receive an email acknowledging the first student over enrollment. Upon receipt of a Preschool Variance by Approval, NYSED will review the prior approval request and respond via email to the approved preschool program indicating approval or disapproval of the request. Acknowledgement and approval letters will no longer be sent via the United States Postal Service. NYSED may deny a program's request to temporarily exceed an approved class size upon a finding that the form does not provide the required information,