



April 2014

SPECIAL EDUCATION FIELD ADVISORY

FROM: James P. DeLorenzo

SUBJECT: New Requirements Relating to Programs and Placements for Preschool Students with Disabilities: Amendment to Sections 200.16(c) and 200.20(b) of the Regulations of the Commissioner of Education (Effective April 17, 2014)

At their March 2014 meeting, the Board of Regents approved, through emergency action, an amendment to sections 200.16(c) and 200.20(b) of the Regulations of the Commissioner of Education to conform to section 4410 of Education Law, as amended by Chapter 545 of the Laws of 2013. A copy of the express terms and Regents item may be found at <http://www.regents.nysed.gov/meetings/2014/March2014/314p12a4.pdf>. While these regulations become effective April 17, 2014, they are also available for public comment (see <http://www.p12.nysed.gov/specialed/comment/announce-comment-20016-20020.htm>) prior to permanent adoption.

Section 200.16(c)(3): Placement of Preschool Students with the Same Provider That Evaluated the Student

Regulatory Language

(3) Prior to making any recommendation that would place a child in an approved program owned or operated by the same agency which conducted the [initial] evaluation of the child, the committee may exercise its discretion to obtain an evaluation of the child from another approved evaluator. If the committee recommends placing a child in an approved program that also conducted an evaluation of the child, it shall indicate in writing that the placement is appropriate for the child and shall provide written notice to the commissioner of such recommendation on a form prescribed by the commissioner.

Underlined language is new language; [bracketed] language is deleted language.

Effective April 17, 2014, if the committee on preschool special education (CPSE) places a preschool student with a disability in a program operated by the same provider agency that conducted the evaluation of the student (i.e., the approved multidisciplinary

evaluation program), the district must submit a written notice of the placement recommendation to the Commissioner along with assurance that the placement is appropriate for the student. Such notice must be provided on the “Preschool STAC-1: Request for Commissioner’s Approval of Reimbursement for Services for Students with Disabilities”, which districts are currently required to submit for each preschool student with a disability. On the Preschool STAC-1 form, the district must identify the recommended service provider for special class, special class in an integrated setting or special education itinerant services and indicate whether this is the same provider that conducted the most recent evaluation for this student. The signature on the Preschool STAC-1 form provides assurance that the selection of the provider has been determined appropriate by the CPSE. This original authorization of placement must be maintained by the county when submitting the STAC-1 form to the STAC Unit electronically. A copy of the revised Preschool STAC-1 form can be found at http://www.oms.nysed.gov/stac/forms/stac-1_form_preschool.pdf.

While the regulation requires reporting to the Commissioner whenever the CPSE recommends placement in a program operated by the same agency that evaluated the student, there is no requirement that such a recommendation be a last resort consideration for the student; nor does it require that the parent select an evaluator in consideration of whether the evaluator may potentially be appropriate as the provider of preschool services to the child.

Multidisciplinary evaluators are reminded that the evaluation summary report must include a detailed statement of the preschool student's individual needs, if any. The summary report **must not**:

- include a recommendation as to the general type, frequency, location and duration of special education services and programs that should be provided;
- address the manner in which the preschool student can be provided with instruction or related services in the least restrictive environment; and
- make reference to any specific provider of special services or programs. Evaluators should not discuss placement possibilities with the parent at the time of the evaluation. The evaluator should also avoid making recommendations and suggestions for excessive services or recommendations based on those services that the agency that conducted the evaluation may be able to offer to the child.

The CPSE is responsible to review the evaluation report, determine eligibility, develop the IEP and then select a provider to implement the child’s IEP. Prior to making any recommendation that would place a child in an approved program owned or operated by the same agency which conducted the initial evaluation of the child, the CPSE may exercise its discretion to obtain an evaluation of the child from another approved evaluator¹. For additional guidance on the evaluation and IEP development process for preschool children with disabilities, see the *Guide for Determining Eligibility and Special Education Programs and/or Services for Preschool Students with Disabilities* at <http://www.p12.nysed.gov/specialed/publications/preschool/guide/home.html>.

¹ 8 NYCRR §200.16(c)(3)

Section 200.20(b): Qualifications of Executive Directors of Approved Section 4410 Programs

Regulatory Language

(3) Each approved preschool program shall ensure that:

(i) the executive director or person assigned to perform the duties of a chief executive officer hired or assigned on or after April 17, 2014, shall have earned a bachelor's degree or higher from an accredited or approved college or university in a field related to business, administration and/or education and shall have, but not be limited to, the following qualifications:

- (a) knowledge of the requirements for providing appropriate evaluations and/or special education services and supervision to preschool students with disabilities;
- (b) knowledge of and ability to comply with applicable laws and regulations;
- (c) ability to maintain or supervise the maintenance of financial and other records;
- (d) ability to establish the approved program's policy, program and budget; and
- (e) ability to recruit, employ, train, direct and evaluate qualified staff.

(ii) the executive director or person assigned to perform the duties of a chief executive officer shall reside within a reasonable geographic distance from the program's administrative, instructional and/or evaluation sites to ensure appropriate oversight of the program; and

(iii) if paid as a full time executive director, the executive director shall be employed in a full-time, full-year position and shall not engage in activity that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

Underlined language is new language.

The amendment requires that each approved preschool program ensure that its executive director or person assigned to perform the duties of the executive director, hired or assigned on or after April 17, 2014, have an education background in a field related to business, administration and/or education and have the knowledge and ability to oversee and operate a preschool special education program. In addition, each approved preschool program must ensure that:

- the executive director resides within a reasonable geographic distance from the program to ensure appropriate oversight of the day-to-day activities of the program; and
- if assigned in a full-time role, that the executive director is employed full-time for the full year and does not engage in activities that would interfere with or impair the executive director's ability to carry out and perform his or her duties, responsibilities and obligations.

The New York State Education Department's applications for initial approval, modifications and reapproval will be revised consistent with the above requirements. These applications can be found at <http://www.p12.nysed.gov/specialed/applications/>.

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 CPSE Chairpersons, 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:

Central Regional Office	(315) 428-4556
Eastern Regional Office	(518) 486-6366
Hudson Valley Regional Office	(518) 473-1185
Long Island Regional Office	(631) 952-3352
New York City Regional Office	(718) 722-4544
Western Regional Office	(585) 344-2002
Nondistrict Unit	(518) 473-1185