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TO: School District Superintendents
BOCES District Superintendents
Superintendents of Schools
Superintendents, Special Act School Districts
Superintendents, State-Operated Schools
Superintendents, State-Supported Schools
School Administrators
Charter School Administrators
Administrators of Nonpublic Schools with Approved Special Education Programs
Preschool Providers of Special Education Programs and Services
Chairpersons of Committees on Special Education and Chairpersons of Committees on Preschool Special Education
Special Education Directors
Directors of Pupil Personnel Services
Impartial Hearing Officers
Organizations, Parents and Individuals Concerned with Special Education

FROM: Christopher Suriano, Office of Special Education

SUBJECT: Emergency Regulations for the Provision of Special Education Programs and Services and Due Process Procedures in Response to the Novel Coronavirus (COVID-19) Outbreak in New York State

The New York State Education Department (NYSED) recognizes the unprecedented challenges that school districts, charter schools, nonpublic schools with approved special education programs, preschool programs, families, and impartial hearing officers are facing during the COVID-19 pandemic. In light of these challenges, NYSED sought regulatory amendments to make changes to assist in effective operations during this crisis. At their April 6, 2020 meeting, the Board of Regents adopted the following regulatory changes, effective Tuesday April 7, 2020, to specifically address special education programs and requirements impacted by school closures due to COVID-19:

- 1) Commissioner's Regulations **sections 200.7(b)(5)** and **200.20(a)(6)** were amended to permit Special Act School Districts, nonpublic schools with an approved special education program subject to articles 81 and/or 89 of the education law ("853 schools"), State-operated schools, State-supported schools

pursuant to article 85 of the education law (“4201 schools”) and approved preschool Special Class and Special Class in an Integrated Setting programs pursuant to section 4410 of the education law to operate for less than 180 days during the 10 month school year resulting from the period of closure pursuant to an Executive Order of the Governor in response to the State of Emergency for COVID-19.

- 2) Commissioner’s Regulation **section 200.5(j)(3)(xii)(c)** was amended to authorize an impartial hearing officer to receive testimony by video and Commissioner’s Regulation **section 200.5(j)(3)(xii)** adds a new clause **(h)** allowing impartial hearing officers to conduct special education due process hearings by video conference during the declared State of Emergency issued by the Governor pursuant to an Executive Order. Both regulatory sections reference the need to protect students’ personally identifiable data, information or records in accordance with the requirements of Commissioner’s Regulation section 200.5(e)(2).
- 3) Commissioner’s Regulation **section 200.5(j)(5)(i)** is amended to allow impartial hearing officers to extend cases up to 60 days rather than 30 days while schools are closed pursuant to an Executive Order issued by the Governor in response to a State of Emergency for COVID-19. This provides impartial hearing officers, districts, programs and families better flexibility while school witnesses, administrators and parents are unavailable to participate in due process hearings in-person. Extensions must still be made only at the request of the school district or the parent. Impartial hearing officers are not authorized to grant extensions on their own behalf or to unilaterally grant extensions to keep cases current.
- 4) Commissioner’s Regulation **section 200.20(b)(6)** was amended so that preschool providers, who would otherwise have to make-up missed services within 30 days of the missed session do not have to include days that the school is closed pursuant to an Executive Order of the Governor issued in response to a State of Emergency for COVID-19.
- 5) Commissioner’s Regulation **section 200.4(d)** was amended so that when a Board of Education is arranging for appropriate special education programs and services to be provided to a student with a disability within 60 school days of the receipt of consent to evaluate or referral for review, the 60 day time period will not include any days that the school is closed pursuant to an Executive Order of the Governor issued in response to a State of Emergency for COVID-19.
- 6) Commissioner’s Regulation **section 200.4(e)(1)** was amended so that when a Board of Education is arranging for appropriate special education programs and services to be provided to a student with a disability within 60 school days of the receipt of consent to evaluate or referral for review, except that if the recommendation is for an approved private school, the board will arrange for such program within 30 school days of receipt of the CSE’s recommendation, the 60 and 30 day time period will not include any days that the school is closed pursuant

to an Executive Order of the Governor issued in response to a State of Emergency for COVID-19.

A copy of the full text of the proposed regulations can be found on NYSED's Board of Regents website (<https://www.regents.nysed.gov/common/regents/files/420bra6.pdf>). Should you have questions regarding these provisions, please e-mail Speced@nysed.gov and check [NYSED's COVID-19 Website](#) frequently for further information.