

The Commissioner of Education proposes to amend sections 200.7, 200.16, and 200.20 relating to remote instruction and its delivery under emergency conditions and length of school day requirements for approved school-age and preschool programs serving students with disabilities.

The Board of Regents voted to adopt the proposed amendment as an emergency measure, effective September 13, 2022 upon a finding that such action is necessary for the preservation of the general welfare to permit approved special education providers to provide remote instruction in the 2022-2023 school year on days they would otherwise close due to an emergency and to count such instructional days towards minimum requirements and to identify the ways in which such remote instruction may be delivered.

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on September 28, 2022 for a 60-day public comment period in accordance with the State Administrative Procedure Act (SAPA). It is anticipated that the proposed amendment will be presented for permanent adoption at the January 2023 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. Because the emergency action will expire before the January 2023 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the November 2022 meeting. If adopted at the January 2023 meeting, the proposed amendment will become effective as a permanent rule on January 25, 2023.

Communications regarding the proposed action may be submitted to Christopher Suriano, Assistant Commissioner of the Office of Special Education, Room 301M, Education Building, 89 Washington Avenue, Albany, NY 12234 (REGCOMMENTS@nysed.gov). Comments must be received by the State Education Department on or before November 28, 2022.

The text of the proposed rule follows:

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, 4002, 4401, and 4410 of the Education Law.

1. Paragraph (4) of subdivision (b) of section 200.7 of the Regulations of the Commissioner of Education is amended to read as follows:

(4) The length of the school day for a full-day session shall meet the requirements of section 200.1(q) of this Part and the length of the school day for a half-day session shall meet the requirements of section 200.1(v) of this Part [shall be comparable to that required by section 175.5 of this Title]. The school day shall include instructional services and related services, as required, but shall not include transportation.

2. Subdivision (b) of section 200.7 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (10) to read as follows:

(10) Remote instruction due to emergency conditions.

(i) If a school governed by this section or approved preschool program serving preschool students with disabilities, other than a multidisciplinary evaluation program, would otherwise close due to an emergency, including but not limited to, extraordinary adverse weather conditions, impairment of heating facilities, insufficiency of water supply, shortage of fuel, destruction of a school building, or a communicable disease outbreak, the school or program may remain in session and provide remote instruction, as defined in section 100.1(u) of this Title. Beginning with the 2023-2024 school year, such remote instruction shall be consistent with such school's or program's emergency remote instruction plan pursuant to subparagraph (ii) of this paragraph. Instruction

provided on these session days may be counted towards the 180 day requirement provided in paragraph (5) of this subdivision.

(ii) Emergency remote instruction plan. Beginning with the 2023-2024 school year, schools governed by this section and approved preschool programs serving preschool students with disabilities, other than a multidisciplinary evaluation component of a preschool program, shall develop and adopt an emergency remote instruction plan, and shall annually update such plan. Schools and programs must provide an opportunity for public comments at least thirty days prior to the plan's adoption to allow school personnel, parents, students and any other interested parties to inform the emergency remote instruction plan. Such plan shall be posted on the school or program website, provided, however, that if a school or program does not have a public website, the school or program may identify an online platform that allows the plan to be directly communicated to students and parent(s) or person(s) in parental relationship, school or program staff, and the public. For purposes of this paragraph, remote instruction shall have the same meaning as defined in section 100.1(u) of this Chapter. Emergency remote instruction plans shall include:

(a) policies and procedures to ensure computing devices will be made available to students or other means by which students will participate in synchronous instruction and policies and procedures to ensure students receiving remote instruction under emergency conditions will access internet connectivity. Each school or program shall survey students and parents and persons in parental relation to such students to obtain information on student access to computing devices and access to internet connectivity to inform the emergency remote instruction plan;

(b) expectations for school or program staff as to the proportion of time spent in synchronous and asynchronous instruction of students on days of remote instruction under emergency conditions with an expectation that asynchronous instruction is supplementary to synchronous instruction;

(c) a description of how instruction will occur for those students for whom remote instruction by digital technology is not available or appropriate;

(d) a description of how special education and related services will be provided to students with disabilities, as defined in section 200.1(zz) of this Chapter, and preschool students with disabilities, as defined in section 200.1(mm) of this Chapter, as applicable, in accordance with their individualized education programs to ensure the continued provision of a free appropriate public education.

3. Subdivision (f) of section 200.16 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (7) to read as follows:

(7)(i) The provision of remote instruction due to emergency conditions by approved preschool programs serving preschool students with disabilities, other than a multidisciplinary evaluation program, shall be provided in accordance with the requirements contained in 200.7(b)(10) of this Part;

(ii) The provision of remote related services to preschool students receiving related services only, and not part of an approved half-day or full-day program, shall be provided in accordance with (a) the emergency remote instruction plan included in the district-wide school safety plan pursuant to section 155.17(c)(1) of this Chapter of the school district responsible for the provision of special education services and programs for such student, or (b) as specified in the student's IEP or (c) as specified in the

student's contingency plan to address remote learning needs in the event of intermittent or extended school closures developed by the committee on preschool special education of such school district. Remote related services shall only be provided by individuals appropriately licensed and registered under Title 8 of the Education Law or otherwise qualified individuals with appropriate certification or license in each area of related service and in accordance with applicable professional practice guidelines for engaging in telepractice.

4. The opening paragraph of subdivision (a) of section 200.20 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) The approval and operation of preschool programs for preschool students with disabilities shall be conducted in a manner consistent with section 200.7(a)(1) through (3) and (b)(3), (5), (6), (8), ~~and~~ (9) and (10) of this Part, except that the following requirements shall apply: