*COVID-19 Special Education Administrative* *Advisory 2021-1*

Procedures for Temporary Waiver of Classroom Ratios in Preschool Inclusionary Programs

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| To: | Superintendents, Administrators of Special Education, Other Education Personnel, Students, Families, and Other Interested Parties |
| From: | Russell Johnston, Senior Associate Commissioner, Massachusetts Department of Elementary and Secondary Education |
| Date: | October 23, 2020 |

**Introduction and Purpose**

On June 25, 2020, the Department of Elementary and Secondary Education (Department) issued its [Initial Fall Reopening Guidance](http://www.doe.mass.edu/covid19/return-to-school/). Subsequently, the Department issued [Comprehensive Special Education Guidance for the 2020-21 School Year](http://www.doe.mass.edu/covid19/on-desktop/2020-0709special-ed-comp-guide-memo.docx). In guidance documents, the Department informed districts that they should prioritize in-person instruction for students with disabilities, particularly students with complex and significant needs and preschool-aged students.[[1]](#footnote-2)

Due to the implementation of various learning models (remote, hybrid, or in-person), the Department recognizes that school districts may face challenges in maintaining appropriate class ratios of children with and without disabilities required by 603 CMR 28.06(7)(e)(2) in preschool inclusionary programs for children with disabilities, aged 3-5. The regulation at 603 CMR 28.06(7)(e)(2) states that in “public school programs that integrate children with and without disabilities, the class size shall not exceed 20 with one teacher and one aide and no more than five students with disabilities. If the number of students with disabilities is six or seven then the class size provides may not exceed 15 students with one teacher and one aide.”

The purpose of this advisory is to describe how, in limited circumstances during the COVID-19 pandemic, schools and districts can request a limited waiver under [603 CMR 28.03(5)](http://www.doe.mass.edu/lawsregs/603cmr28.html?section=03) of therequirements in [603 CMR 28.06(7)(e)(2)](http://www.doe.mass.edu/lawsregs/603cmr28.html?section=06) relating to class ratios of children with and without disabilities. A district’s application for such a waiver does not impact or change the requirements that IEP Teams must make individualized decisions about special education services for eligible children and districts must ensure placement in the least restrictive environment.[[2]](#footnote-3)

**Prior to Applying for a Waiver**

**Communicate and Collaborate with Families**

Family engagement and input are critical components of school operations during the COVID-19 pandemic. As described in the [Comprehensive Special Education Guidance](http://www.doe.mass.edu/covid19/on-desktop/2020-0709special-ed-comp-guide.docx), it is important that school districts and families have regular and ongoing communication about how special education services will be delivered throughout the 2020-2021 school year. Parents must receive written notification describing any differences in the mode of delivering Individualized Education Program (“IEP”) services. Examples of written notification forms that may be used for this purpose include the COVID-19 Special Education Learning Plan and the Notice of Proposed School District Action (N1). These notifications must be provided in the primary language of the home and in language that is understandable to the general public.

**Consider Creatively Providing In-Person Services in Community Based Settings**

If a school district believes that it is unable to provide for the class ratios of children with and without disabilities required by 603 CMR 28.06(7)(e)(2) in an inclusionary program for young children, districts should work with parents to identify locations where eligible children can be engaged in activities (i.e., community based programs, childcare centers, parent/child groups) with nondisabled peers and determine if there are appropriate settings outside of the public preschool classroom where IEP services may be delivered in the least restrictive environment for preschool children.

**Procedures for Requesting a Temporary Waiver During the COVID-19 Pandemic**

A school district must complete the attached form to request a temporary compliance waiver from the classroom ratio requirements described in 603 CMR 28.06(7)(e)(2). This waiver may only be sought to provide temporary relief in exceptional circumstances related to the COVID-19 pandemic. Waivers may be requested for remote or in-person classes.

A public school district may request the waiver if it:

1. Attempted to meet the classroom ratio requirements in [[603 CMR 28.06(7)(e)](http://www.doe.mass.edu/lawsregs/603cmr28.html?section=06)(2)](http://www.doe.mass.edu/lawsregs/603cmr28.html?section=06) and faced significant challenges in enrolling sufficient numbers of nondisabled peers.
2. Documented communication with families, including communication with parents about opportunities for young children with IEPs to receive services in community-based or other programs, and showing districts’ outreach to families of nondisabled peers about participation in preschool inclusionary programs.
3. Has developed plans for continuing to make every effort to provide the required classroom ratios of children with and without disabilities in preschool inclusionary programs.

Waivers must be submitted to the Department’s Problem Resolution System (PRS) office at compliance@doe.mass.edu for approval. The Department may approve such a waiver if it shows substantial promise of contributing to improvements in the methods for meeting the goals of 603 CMR 28.00 and if it does not conflict with any provision of law. Districts must obtain approval from the Department before implementing alternative classroom ratios of children with and without disabilities in preschool inclusionary programs. Documentation of the waiver request and any response received from the Department must be maintained by the district and made available upon request.



**Waiver Application for Classroom Ratios in Preschool Inclusionary Programs**

**Due to the COVID-19 Pandemic**

Public School Districts

603 CMR 28.06(7)(e)(2)

**School District: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Proposed Effective Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Districts applying for a waiver of classroom ratios for preschool inclusionary programs must use this form to request approval from the Department of Elementary and Secondary Education (DESE)*.* Districts may attach additional pages as needed to respond fully to the items below. Districts must obtain approval from the Department before implementing alternative classroom ratios of children with and without disabilities in preschool inclusionary programs.

**For all waiver applications, districts must provide:**

* A brief summary and any supporting documentation of the districts’ specific challenges in meeting the requirements in 603 CMR 28.06(7)(e)(2) during the COVID-19 pandemic and detailed descriptions of the district’s efforts to overcome the specific challenges. For example, documents showing district’s outreach to families of nondisabled peers about participation in preschool inclusionary programs.
* Plans for continuing to make every effort to provide the required classroom ratios in preschool inclusionary programs.
* A brief summary and any supporting documentation showing communication with parents about opportunities for young children with IEPs to receive services in community-based or other programs.
* A brief description of the proposal’s substantial promise of contributing to improvements in the methods for meeting the goals of 603 CMR 28.00.

Any approved compliance waiver will be in effect for three months.

1. [Guidance on Fall 2020 Special Education Services](http://www.doe.mass.edu/covid19/on-desktop/2020-0709special-ed-comp-guide-memo.docx) (July 9, 2020), at 3. [↑](#footnote-ref-2)
2. See e.g., [OSEP Dear Colleague Letter (DCL) related to Preschool LRE](https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/preschool-lre-dcl-1-10-17.pdf) (January 9, 2017), at 2. [↑](#footnote-ref-3)