



NJOSE Guidance Memo
2013-8

CHRIS CHRISTIE
Governor

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Lt. Governor

State of New Jersey
DEPARTMENT OF EDUCATION
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CHRISTOPHER D. CERF
Commissioner

June 4, 2013

TO: Chief School Administrator
Director of Special Education
Administrator of a State Facility
Administrator of a Charter School
Administrator of an Approved Private School for the Disabled
Administrator of a College-Operated Program
Statewide Special Education Advisory Council
Agencies or Organizations Concerned with Special Education

FROM: Peggy McDonald, Director
Office of Special Education Programs

SUBJECT: Preschool Child with a Disability

I am writing to provide clarification with respect to the definition of "Preschool child with a disability" in N.J.A.C. 6A:14-3.5(c)10. As stated in the memorandum from this office dated January 9, 2007, the definition of this term was amended in the September 5, 2006 re-adoption with amendments of N.J.A.C. 6A:14. That amendment inadvertently removed from the definition the provision that a child with an identified disabling condition also falls within the definition of a preschool child with a disability.

The Individuals with Disabilities Education Act of 2004 (IDEA 2004) defines a preschool student with a disability as a child with an identified disabling condition or a child experiencing a developmental delay as defined by state law (20 U.S.C. §1402(3) 34 C.F.R. §§300.8(b) and 300.111(b)). Although eligibility due to a "disabling condition" was omitted from the state regulations, the federal regulation continues to apply. Therefore, when determining whether a preschooler is a child with a disability, either factor (disabling condition or developmental delay) can be utilized pursuant to the provisions of N.J.A.C. 6A:14.

To date, the state regulations have not yet been amended to reflect the information set forth above. Thus, this memorandum is a reminder that the existence of a disabling condition and/or developmental delay may serve as a basis for determining a child eligible as a preschool child with a disability.

Should you have any questions or require additional information, please contact Kathy Ehling at 609-292-7602.

PM/JW/KE

c: Members, State Board of Education
Commissioner Christopher D. Cerf
Senior Staff
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