



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

DEPUTY COMMISSIONER FOR VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES
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TO: District Superintendents
Presidents of Boards of Education
New York City Department of Education
Superintendents of Schools
Superintendents of State-Operated and State-Supported Schools
Superintendents of Special Act Schools
Organizations, Parents & Individuals Concerned with Special Education
Presidents, Local Teachers Associations
Directors of Special Education
Executive Directors of Approved Private Schools
Directors of Pupil Personnel Services
Chairpersons of Committees on Special Education
New York City Committee on Special Education Chairpersons and Administrators
School Psychologists
Impartial Hearing Officers
New York State Community Dispute Resolution Centers
Commissioner's Advisory Panel for Special Education Services
SETRC Project Directors and Professional Development Specialists
Independent Living Centers
Colleges with Special Education Teacher Training
Other State Agency Programs

FROM: Lawrence C. Gloeckler

SUBJECT: Planning for Instructional Space for Students with Disabilities: District Plans and the Special Education Space Requirements Plans

The Board of Regents approved amendments to Parts 155 and 200 of the Regulations of the Commissioner of Education, effective July 10, 2003, relating to Special Education Space Requirements Plans. The purpose of the amendments are to ensure that appropriate long-term education space is provided for students with disabilities and to expand opportunities for students with disabilities to be educated in sites that promote integration with nondisabled students while reducing the number of classrooms in separate settings.

A copy of the regulations, as amended, is attached. Following is a summary of the changes:



Part 155: Educational Facilities

The amendments to Part 155 ensure (1) that each school district's long-range plan pertaining to educational facilities considers the needs of students with disabilities; and (2) conditions the Commissioner's approval for new construction, remodeling and new leases upon consistency with an approved Special Education Space Requirements Plan.

- ❑ Section 155.1(a) is amended to require that each school district's comprehensive long-range plan pertaining to educational facilities include an appraisal of the allocation of instructional space to meet the current and future special education program and service needs, and to serve students with disabilities in settings with nondisabled peers. The number, types, space requirements and pupil capacities of facilities must be in relation to the present and projected needs of the school district programs, including mandated education requirements and the current and future special education program and service space needed to serve all students with disabilities.
- ❑ Section 155.2 is amended to require programmatic approval from the Office of Vocational and Educational Services for Individuals with Disabilities (VESID) for construction and remodeling of school districts or Boards of Cooperative Educational Services (BOCES), when such plans create new instructional space, to ensure consistency with an approved Special Education Space Requirements Plan.
- ❑ Section 155.12 is amended to require the superintendent of a school district to certify that any new space to be leased is consistent with an approved Special Education Space Requirements Plan, or, for New York City, with its district plan for the allocation of instructional space for students with disabilities.
- ❑ Section 155.15 is amended to require programmatic approval from VESID that a proposed lease and/or contract for the use of property by BOCES is consistent with an approved Special Education Space Requirements Plan.

Section 200.2: District Plan

- ❑ Section 200.2(c) is amended to add that the District Plan relating to services to students with disabilities describe how it is consistent with the Special Education Space Requirements Plan for the region.

Section 200.2: Special Education Space Requirements Plan

- ❑ Purpose of Plan: Section 200.2(g) is amended to add that the purpose of the Special Education Space Requirements Plan is to provide the framework for the allocation of instructional space to:
 - meet the current and future special education and program and service needs;
 - provide access to the general curriculum; and
 - serve students with disabilities in settings with nondisabled peers.

- ☐ Contents of Plan: Section 200.2(g)(2) is amended relating to the contents of the Special Education Space Requirements Plan to:

 - clarify that the plan must include a description of the current and future special education program and service space needed to serve all the students with disabilities within the geographic area served by the BOCES; and
 - add that the content of the plan must include a regional plan to allocate, lease, renovate or construct space that would include special education programs; and that plan must ensure that students with disabilities have appropriate access to the general curriculum.

- ☐ Approval of Plan: Section 200.2(g)(4) is amended to add a cross citation to Part 155 of the Regulations of the Commissioner of Education to condition the programmatic approval of new leases, new construction and renovation of instructional space within the geographic area served by the BOCES on consistency with the Special Education Space Requirements Plan.

- ☐ Amendments to Plan: Section 200.2(g)(5) is amended to:

 - specify that amendments to the plan must be in a format prescribed by the Commissioner;
 - add that an amendment must be submitted for each expansion of instructional space by a BOCES or a school district in the region that would result in additional special classes in separate settings; and
 - clarify that the regional space planning committee, or a representative subgroup thereof, must assist in the development of the amendment and ensure that an effective process for obtaining public comment on the proposed amendment is implemented.

- ☐ Annual Progress Report - Submission: Section 200.2(g)(6)(a) is added to:

 - require each district superintendent to submit an annual progress report to the Commissioner, by a date and in a format prescribed by the Commissioner; and
 - establish the required information to be provided in the report which includes, but is not limited to:
 - actual and projected numbers and projected percentages of students with disabilities in settings with nondisabled peers in the region;
 - a description of expected significant changes to the plan; and
 - a description of the procedures to ensure the stability and continuity of program placements for students with disabilities.

- ☐ Annual Progress Report – Review: Section 200.2(g)(6)(b) is added to establish that, in the event the annual progress report does not demonstrate sufficient progress in meeting the current and future needs of all students with disabilities, the Commissioner must require the region to submit a revised Special Education Space Requirements Plan for approval.

Further guidance on this topic will be provided in a memorandum to be issued regarding the Special Education Space Requirements Planning process for the next five-year planning cycle. You may direct questions regarding these regulatory changes to Patricia Geary in the Special Education Policy Development Unit at (518) 473-2878, Eileen Borden in the Special Education Quality Assurance Office at (518) 486-6260 or to your Regional Associate in the appropriate Special Education Quality Assurance Regional Office as follows:

Central New York Regional Office	(315) 428-3287
Eastern Regional Office	(518) 486-6366
Hudson Valley Regional Office	(914) 245-0010
Long Island Regional Office	(631) 884-8530
New York City Regional Office	(718) 722-4544
Western Regional Office	(585) 344-2112, ext. 420

Attachment

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

underlined language = added language
[bracketed language]= language repealed

Pursuant to sections 101, 207, 215, 305, 403-a, 1950, 3602, 4402 and 4403 of the Education Law.

1. Subdivision (a) of section 155.1 of the Regulations of the Commissioner of Education is amended, effective July 10, 2003, as follows:

(a) Each school district shall develop and keep on file a comprehensive long-range plan pertaining to educational facilities. Such plan shall be reevaluated and made current at least annually, and shall include appraisal of the following: the educational philosophy of the district, with resulting administrative organization and program requirements; present and projected pupil enrollments; space use and State-rated pupil capacity of existing facilities; the allocation of instructional space to meet the current and future special education program and service needs, and to serve students with disabilities in settings with nondisabled peers; priority of need of maintenance, repair or modernization of existing facilities, including consideration of the obsolescence and retirement of certain facilities; and the provision of additional facilities.

(1) The numbers, types, space requirements and pupil capacities of facilities shall be in relation to the present and projected needs of the school district programs, including mandated educational requirements and the current and future special education program and service space needed to serve all students with disabilities.

(2)

(3)

(4)

2. Paragraph (2) of subdivision (b) of section 155.2 of the Regulations of the Commissioner of Education is amended, effective July 10, 2003, as follows:

(2) Plans and specifications for portions of facilities which require approval by other departments of the State shall be approved by the appropriate agencies having jurisdiction as a condition of commissioner's approval of plans and specifications of a facility. All plans and specifications for the creation of new instructional space must be accompanied by

commissioner approval, on a form prescribed by the commissioner, that ensures that such plans and specifications are consistent with the region's special education space requirements plan developed pursuant to section 200.2(g) of this Title.

3. Subparagraph (i) of paragraph (6) of subdivision (b) of section 155.12 of the Regulations of the Commissioner of Education is amended, effective July 10, 2003, as follows:

(i) the leased school or facility meets requirements for access by individuals with disabilities to both facilities and programs by complying with section 200.2 of this Title and is consistent with the special education space requirements plan developed pursuant to section 200.2(g) of this Title.

4. Subparagraph (i) of paragraph (5) of subdivision (d) of section 155.12 of the Regulations of the Commissioner of Education is amended, effective July 10, 2003, as follows:

(i) the leased school or facility meets requirements for access by individuals with disabilities to both facilities and programs by complying with section 200.2 of this Title and, when the purpose of the leased space includes special education programs and services, the leased space is consistent with the district's comprehensive long-range plan for the allocation of instructional space to meet the current and future special education program and service needs and to serve students with disabilities in settings with nondisabled peers; and

5. Subdivision (c) of section 155.15 of the Regulations of the Commissioner of Education is amended, effective July 10, 2003, as follows:

(c) Leases. In order to obtain the approval of the commissioner, any original lease shall meet the following conditions:

(1)

(2)

(3) Any property leased for the special education program purposes of the board must first be approved by the commissioner, on a form prescribed by the commissioner, that ensures that the proposed lease is consistent with the approved special education space requirements plan developed pursuant to section 200.2(g) of this Title.

[(3)] (4)

[(4)] (5)

[(5)] (6)

[(6)] (7)

[(7)] (8)

6. A new subparagraph (ix) is added to paragraph (2) of subdivision (c) of section 200.2 of the Regulations of the Commissioner of Education, effective July 10, 2003, as follows:

(ix) a description of how the district plan is consistent with the special education space requirements plan developed pursuant to subdivision (g) of this section.

7. Subdivision (g) of section 200.2 of the Regulations of the Commissioner of Education is amended, effective July 10, 2003, as follows:

(g) Special education space requirements plans. [Responsibility of boards of cooperative educational services for special education space requirement plans.] The district superintendent of schools of each board of cooperative educational services (BOCES) shall submit a special education space requirements plan to the commissioner no later than February 1, 1989 and by February 1st of every fifth year thereafter in accordance with Education Law, section 1950(17). The purpose of such plan shall be to determine the need for additional facilities space for all special education programs in the geographic area served by the BOCES, including programs provided by the BOCES, component school districts of the BOCES, and those noncomponent public school districts, approved private schools for students with disabilities, and State-supported schools, which are located within the geographic boundaries of the supervisory district. Such plan shall provide the framework for the allocation of instructional space to meet the current and future special education program and service needs, provide access to the general curriculum, and serve students with disabilities in settings with nondisabled peers.

(1) . . .

(2) Contents of plan. The special education space requirements plan shall be in a [form] format prescribed by the commissioner and shall include, but need not be limited to, the following:

(i) . . .

(ii) a description of the current and future special education program and service space needed to serve [the] all students with disabilities [attending school] within the geographic area served by the BOCES;

(iii) a regional plan to allocate, lease, renovate or construct space [for] that would include special education programs and services within the geographic area served by the BOCES which is sufficient and appropriate to meet such current and future special education space needs of all students with disabilities, and which:

(a) ensures that students with disabilities, including students in public and approved private schools and other approved facilities, are educated in age-appropriate settings and to the maximum extent appropriate with students who are not disabled; [and]

(b) ensures that placement of students with disabilities in special classes, separate schooling or other removal from the regular education environment occurs only when the nature or severity of the disability is such that even with the use of supplementary aids and services, education cannot be achieved satisfactorily; and

(c) ensures that students with disabilities have appropriate access to the general curriculum.

(iv) . . .

(3) Submission of the plan. The district superintendent shall submit the special education space requirements plan to the commissioner and shall forward a copy of such plan to the board of education of each public school district within the geographic area served by the BOCES where it shall be available for public inspection. In addition, the district superintendent shall forward a copy of such plan to each approved private school located within the geographic area served by the BOCES.

(4) Approval of plan. The commissioner will review each special education space requirements plan and will notify the appropriate district superintendent of its approval or disapproval. Approval of new leases, new construction and renovation of instructional space within the geographic area served by the BOCES will be reviewed and approved, pursuant to Part 155 of this Title, consistent with an approved regional special education space requirements plan. In the event that the plan does not receive approval from the commissioner:

(i) the commissioner will notify the district superintendent in writing of the reasons for denial of approval;

(ii) the district superintendent shall reply to the commissioner's notification within 45 days of the date of notice, indicating the specific changes made in the plan to correct identified deficiencies; and

(iii) if, after revision, the plan does not receive approval, the commissioner shall convene a meeting of the planning committee which developed the plan for the purpose of resolving outstanding issues, according to procedures and timelines set at that time by the commissioner.

(5) Amendments to plan. When, due to changes in the availability of appropriate facility space, a public school district or a BOCES intends to reallocate existing and/or planned special education space, and such reallocation is not consistent with an approved special education space requirements plan:

(i) the district superintendent shall submit to the commissioner for approval an amendment to the special education space requirements plan in a format prescribed by the commissioner no later than 90 days prior to each relocation of a special education program operated by the BOCES that would result in moving such programs from one school district to another or from a regular school building to a separate special education facility and/or each expansion of instructional space that would result in additional special classes in separate settings.

(ii) in the event that a board of education within the geographic area served by the BOCES proposes to relocate a school district special education program from a regular school building to a separate special education facility and/or to expand instructional space that would result in additional special classes in separate settings, such board of education shall notify the appropriate district superintendent of schools within timelines to be established by the district superintendent. The district superintendent shall then submit to the commissioner for approval an amendment to the special education space requirements plan no later than 90 days after receipt of such notice by the district superintendent.

(iii) the regional space planning committee, or a representative subgroup thereof, shall assist in the development of the amendment and ensure that an effective process for obtaining public comment on the proposed amendment is implemented.

(6) Annual progress report. (a) Each district superintendent shall submit an annual progress report to the commissioner, by a date and in a format prescribed by the commissioner which includes, but is not limited to:

(i) actual and projected numbers and projected percentages of students with disabilities in settings with nondisabled peers in the region;

(ii) a description of expected significant changes to the plan; and

(iii) a description of the procedures to ensure the stability and continuity of program placements for students with disabilities.

(b) Review of the annual progress report. In the event that the annual progress report does not demonstrate sufficient progress in meeting the current and future needs of all students with disabilities, the commissioner shall require submission of a revised special education space requirements plan for approval pursuant to paragraph (4) of this subdivision.