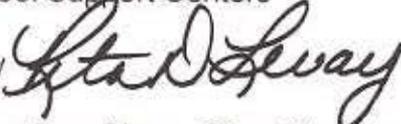




Policy 01-08

October 2001

TO: District Superintendents
Presidents of Boards 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
Directors of Special Education
Executive Directors of Approved Private Schools
Directors of Pupil Personnel Services
Chairpersons of Committees on Special Education
Chairpersons of Committees on Preschool Special Education
Commissioner's Advisory Panel for Special Education Services
SETRC Professional Development Specialists
Other State Agency Programs
Regional School Support Centers

FROM: Rita D. Levay 

SUBJECT: Special Education Class Size Variance by Notification for Middle and Secondary Students

The purpose of this memorandum is to remind schools of the requirements relating to special education class size variances. Education Law section 4402.2(d)(1) and (2) authorizes all schools, except the school district of the City of New York, to exceed, for the remainder of the school year, the special education class size standards established in regulation for special education classes for middle and secondary school students by no more than 20 percent upon written notice to the Commissioner and parental notification. Chapter 60 of the Laws of 2000 extended authority to schools to implement a special education class size variance until July 1, 2002.

Special education class size variances should be implemented only in those extenuating circumstances when adding students to an established class is necessary to ensure one or more students receive special education services in the least restrictive environment. Each notification for a class size variance must include an educational justification for the variance. An example of an appropriate educational justification might be to implement the individualized education program (IEP) recommendation of special class for



a student who moves to the district after the start of the school year. The following questions and answers highlight the related requirements for implementing a special education class size variance by notification:

1. Who may implement a special class size variance by notification?

Except for programs operated by the New York City Board of Education, any special education program serving public school students may implement a special class size variance upon written notice to the Commissioner. This includes local school districts, Board of Cooperative Educational Services (BOCES), State-operated and State-supported schools, approved private schools and State departments or agencies operating education programs.

2. Do special class size variances by notification apply to all age levels?

No. This variance is applicable only to special education classes for middle and secondary school students in grades 7 through 12 or classes serving students whose chronological ages are equivalent to those of students in these grades.

3. What is the limit to the increases to the class sizes by regulation through a class size variance by notification?

Special class sizes for middle and secondary students can be increased by no more than 20 percent of the special education class size standards established in regulation. The following provides examples of the class size student to staff ratios if a variance is implemented to the maximum 20 percent increase (rounded up to the nearest whole number):

Current Class Size Requirement		Maximum Variance Class Size
15 students to one teacher	15:1	18:1
12 students to one teacher and one paraprofessional	12:1+1	15:1+1
8 students to one teacher and one paraprofessional	8:1+1	10:1+1
6 students to one teacher and one paraprofessional	6:1+1	8:1+1
12 students to one teacher plus one paraprofessional for every 3 students	12:1+(3:1)	15:1+(3:1)

4. May a school begin the school year with a special class variance by notification?

No. The law requires that schools needing to exceed the class size standards established in regulation must begin each school year in September in compliance with the existing special class size regulatory standards.

5. What information must the notification to the Commissioner include?

The notice must be on a form prescribed by the Commissioner (attached) and must indicate the *number of classes* for which a variance will be implemented and the *educational justification* for the variance. The notice must also include assurances that:

- the special classes for which the class size variance has been implemented will be in compliance with special class size requirements pursuant to 8NYCRR sections 200.6(g) and 200.13(a)(3) at the start of the school year (for the purposes of this variance, the start of the school year is September 1);
- all students affected by the implementation of the class size variance will continue to receive appropriate special education programs and services to meet their individual needs; and
- the parents of all students who are enrolled in classes affected by the class size variance have been notified of the variance.

The Commissioner does not issue approval letters upon receipt of such notice from a school district.

6. Does the State Education Department have the authority to revoke or preempt any increase in class size?

Yes. The Commissioner has the authority to revoke or preempt any increase in class size upon finding that increasing class size as proposed would fail to be consistent with appropriate special education for students in these classes.

7. Must the school notify the parents of students who are proposed to be enrolled in classes affected by the special class size variance?

Yes. The notice to parents is for informational purposes and to ensure that all students affected by the implementation of the class size variance continue to receive appropriate special education programs and services to meet their individual needs.

8. Is there a different process for a school district to request a variance to increase the regulatory class size for elementary students?

Yes. A request for a child-specific variance to exceed the special class sizes for elementary students must be submitted to the Quality Assurance Regional Associate prior to implementation. The class size variance request must include a detailed educational justification for the request, which should provide:

- the student's name, date of birth, and pertinent information about the student for whom the variance is requested;

- the number of students in the class and the staff to student ratio of the class;
- a description of the class according to the four areas of learning rate and academic performance, social development, physical development and management needs;
- other alternative options available if the variance is not approved; and
- a plan of correction for the next school year.

The district is authorized to increase the size of the class only upon receipt of prior written approval from the State Education Department.

Questions regarding a special education class size variances should be directed to the Special Education Policy Unit at (518) 473-2878 or to the Regional Associate for your school district in one of the following Quality Assurance Regional Offices:

Central NY Regional Office	(315) 471-4796
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	(716) 344-2112, ext. 420

Attachment

**NEW YORK STATE EDUCATION DEPARTMENT
SPECIAL EDUCATION CLASS SIZE VARIANCE NOTIFICATION FORM
(MIDDLE AND SECONDARY CLASSES ONLY)**

INSTRUCTIONS

This Class Size Variance Notification Form applies to all special education programs serving public school students whether operated by the local district, BOCES, State-supported or State-operated school, an approved private school, or State department or agency. This variance procedure does not apply to the City School District of the City of New York.

1) Name of School

Provide name of the public school district, BOCES, Special Act School District, Private Approved School, State-supported/State-operated School, or State department or agency.

2) Number of Classes

Indicate the number of classes for which a variance will be implemented. This information should be provided for each regulatory class size which will have a variance.

3) Class Size with Variance

Indicate the maximum anticipated class size(s) resulting from the variance for the current school year.

4) Number of Middle School (or Age Equivalent) Classes

Indicate the number of middle school classes affected by the variance for each class size for which a variance is implemented. This pertains to classes for grades 7 and 8 or classes serving students age equivalent to these grades.

5) Number of Secondary School (or Age Equivalent) Classes

Indicate the number of secondary school classes affected by the variance for each class size for which a variance is implemented. This pertains to classes for grades 9 through 12 or classes serving students age equivalent to these grades.

6) Educational Justification

Provide the educational reasons for the implementation of the variance.

7) Signature

Provide the name and original signature of the Chief Executive Officer.

SUBMIT TWO COPIES OF THIS FORM TO:

Eileen Borden, Associate
VESID Special Education Quality Assurance
One Commerce Plaza - Room 1623
Albany, New York 12234

NEW YORK STATE EDUCATION DEPARTMENT

**SPECIAL EDUCATION CLASS SIZE VARIANCE NOTIFICATION FORM
(MIDDLE AND SECONDARY CLASSES ONLY)**

¹Name of School _____

Regulatory Class Size	²Total Number of Classes in Variance	³Class Size with Variance	⁴Number of Middle School Classes	⁵Number of Secondary School Classes
15:1				
12:1+1				
8:1+1				
6:1+1				
12:1+(3:1)				

⁶Please provide a statement regarding the educational justification for the variance(s) _____

The undersigned certifies that:

- The special classes for which the class size variance has been implemented will be in compliance with special class size requirements pursuant to 8NYCRR 200.6(g) and 200.13(a)(3) at the start of the school year (for the purposes of this variance, the start of the school year is September 1).
- All students affected by the implementation of the class size variance will continue to receive appropriate special education programs and services to meet their individual needs.
- The parents of all students who are enrolled in classes affected by the class size variance have been notified of the variance.

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Name of Chief Executive Officer

Signature

Date