



OFFICE OF P-12 EDUCATION: Office of Special Education  
ASSISTANT COMMISSIONER  
Room 301M EB, 89 Washington Avenue, Albany, NY 12234  
[www.p12.nysed.gov/specialed/](http://www.p12.nysed.gov/specialed/)

Telephone (518) 402-3353  
Fax: (518) 402-3534

October 2013

## SPECIAL EDUCATION FIELD ADVISORY

FROM: James P. DeLorenzo

SUBJECT: New Requirements for Special Education Programs and Services: Amendment of Sections 155.2, 155.12 and 200.2 Relating to Special Education Space Requirements Plans (Effective October 2, 2013)

At their September meeting, the Board of Regents approved, for permanent adoption, the amendment of sections 155.2, 155.12 and 200.2 of the Regulations of the Commissioner of Education relating to special education space requirements plans. The amendments, which became effective October 2, 2013, conform State regulations to Chapter 57 of the Laws of 2013.

Consistent with Chapter 57, the amended regulations repeal the requirement for every board of cooperative educational services (BOCES) to submit a special education space plan to the Commissioner and adds the requirements that each BOCES district superintendent must determine the adequacy and appropriateness of facilities space available to house special education programs in the least restrictive environment (LRE) and ensure that programs will not be relocated without adequate consideration of the needs of participating students with disabilities.

This memorandum provides information and technical assistance regarding these requirements and includes:

- pertinent background information;
- a summary of the regulatory requirements;
- guidelines for determining the adequacy and appropriateness of facilities space; and
- questions and answers.

### **Background**

The special education space requirements plan was first established in 1989 to ensure the provision of appropriate long-term education space for students with disabilities in the geographic area served by BOCES. This regional planning requirement was extremely effective in providing for appropriate educational space for students with disabilities in each BOCES region of the State with high rates of placements in separate settings.

Subsequent to the initiation of the space requirements plan, the reauthorized Individuals with Disabilities Education Act instituted a range of data submissions that each state must include in their State Performance Plan and Annual Performance Report. As a result, the State collects and publicly reports on each school district's LRE placements for students with disabilities in relation to the State's targets. These reporting requirements, in addition to the new general provision for the BOCES district superintendent to determine the adequacy and appropriateness of facilities space available for special education programs, will continue to ensure that each school district provides appropriate educational space for students with disabilities in the LRE.

### **Summary of Regulatory Requirements**

The following is a summary of the regulatory requirements. A copy of the full text of the amended regulations can be found at <http://www.regents.nysed.gov/meetings/2013Meetings/September2013/913brca12.pdf>.

#### ***Educational Facilities - Part 155***

- Section 155.2 of the Regulations of the Commissioner of Education, relating to the construction and remodeling of school district facilities, has been amended to remove the reference to the “special education space requirements plan” and add that specifications for the creation of new instructional space must be consistent with the needs for placement in the LRE and for the stability and continuity of program placements for participating students with disabilities.
- Section 155.12 of the Regulations of the Commissioner of Education, relating to lease approval and building aid for leased school buildings and facilities by school districts, has been amended to remove the reference to the special education space requirements plan.

#### ***District Plans and Facilities for Special Education Programs - Section 200.2(c) and (g)***

- Section 200.2(c) of the Regulations of the Commissioner of Education relating to district plans has been amended to remove the reference to the “special education space requirements plan” and add that any change to the allocation of space for special education programs must be made in consideration of the needs of participating students with disabilities for placement in the LRE and for the stability and continuity of their program placements.
- Section 200.2(g) of the Regulations of the Commissioner of Education relating to the “special education space requirements plan” was repealed. A new section 200.2(g) *Facilities for Special Education Programs* was added to require the district superintendent to determine the adequacy and appropriateness of the facilities space available to house special education programs in the geographic area served by the BOCES, consistent with the needs for placement in the LRE and for the stability and continuity of program placements for participating students with disabilities, including procedures that ensure that special education programs and services located in appropriate facilities will not be relocated without adequate consideration of the needs of participating students with disabilities.

## **Determining the adequacy and appropriateness of facilities space**

As regional leaders, BOCES District Superintendents have in-depth knowledge of district needs within their regions including the availability of special education services and program space in local school districts, BOCES and other programs. District Superintendents will need to work closely with their component school districts and the approved private schools in their region to carry out the necessary collaboration and planning to ensure the provision of appropriate long-term education space for students with disabilities.

In determining the adequacy and appropriateness of the facilities space available for students with disabilities in their BOCES region, District Superintendents should ensure that:

- the allocation of instructional space is sufficient and appropriate to meet current and future special education space needs of all students with disabilities in their BOCES region;
- any change to the allocation of space in the BOCES region, including specifications for the creation of any new instructional space, is consistent with the needs for placement in the LRE and for the stability and continuity of program placements for participating students with disabilities;
- special education programs and services located in appropriate facilities are relocated only with adequate consideration of the needs of participating students with disabilities (e.g., BOCES classes being relocated from public school buildings to a BOCES center-based program to accommodate school district growth in enrollment and classroom space needs); and
- any changes to allocate, lease, renovate or construct space in the BOCES region that include special education programs are structured to ensure that students with disabilities have appropriate access to the general education curriculum.

## **Questions and Answers**

### **1. *Does a 2009-14 Special Education Space Requirements Plan Annual Progress Report need to be submitted for the 2013-14 school year?***

No. The requirements for the Special Education Space Requirements Plan, including those relating to the Annual Progress Report, have been repealed starting with the 2013-14 school year.

### **2. *Does the amendment of section 200.2 of the Regulations of the Commissioner of Education eliminate the need for school districts and BOCES to plan how they will meet the needs of student with disabilities in the LRE?***

No. While the amended regulations repealed the requirements for the development of and submission of the five-year special education space requirement plan, it replaced it with a general provision that requires each BOCES district superintendent to determine the adequacy and appropriateness of facilities space housing special education programs in the geographic area of their BOCES. District Superintendents and local school districts must still carry out the necessary planning and implementation of procedures to ensure the stability and continuity of their program placements for students with disabilities.

In addition, under section 155 of the Regulations of the Commissioner of Education, each school district's long-range plan pertaining to educational facilities must 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.

**3. Does the BOCES district superintendent still need to approve capital projects involving the creation of new instructional space within the geographic area served by the BOCES?**

Yes. An Instructional Space Review Form must still be submitted as part of a district's preliminary approval documentation for all capital projects involving new instructional space. NYSED will be revising the "Certification of Instruction Space Review by Superintendent of Schools, District Superintendent and Special Education Regional Associate" section of the form to remove references to the "space requirements plan" and instead indicate that the Superintendent of Schools has conferred with the District Superintendent and they agree that the proposed project is consistent with the: (1) continual allocation of appropriate space within the district for special education programs; (2) district's long-range plan for educational facilities; and (3) needs of participating students with disabilities for placement in the LRE and for the stability and continuity of their program placements.

To ensure dissemination to appropriate individuals within a school district, I ask Superintendents to please share this memorandum with individuals such as Directors of Special Education, School Psychologists, Committee on Special Education and Committee on Preschool Special Education Chairpersons, Guidance Counselors and Directors of Pupil Personnel and Parent Teacher Associations. Questions regarding this memorandum may be directed to the Special Education Policy Unit at 518-473-2878 or to the Special Education Quality Assurance Office in your region:

Regional Office	Telephone Number
Central Regional Office	(315) 428-4556
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