

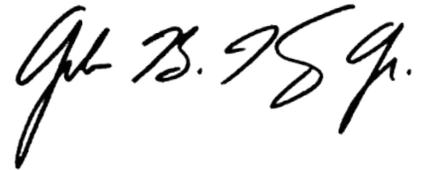


THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** The Honorable the Members of the Board of Regents  
**FROM:** Ken Slentz   
**SUBJECT:** Proposed Amendment to Sections 155.2, 155.12, and 200.2 of the Regulations of the Commissioner of Education Relating to Special Education Space Plans

**DATE:** September 9, 2013

**AUTHORIZATION(S):**



#### SUMMARY

#### Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the proposed amendment of sections 155.2, 155.12, and 200.2 of the Regulations of the Commissioner of Education, relating to special education space plans, to conform State regulations to Chapter 57 of the Laws of 2013?

#### Reason for Consideration

Required by Statute (L. 2013, Ch. 57, sections 2-a and 2-b).

#### Proposed Handling

The proposed amendment will be submitted to the Full Board for adoption at the September 2013 meeting.

#### Procedural History

On March 29, 2013, the Governor signed Chapter 57 of the Laws of 2013 which amended Education Law sections 1950 and 2215 to repeal the special education space plan requirements and add a requirement that the district superintendents of boards of cooperative educational services (BOCES) must determine the adequacy and appropriateness of facilities space housing special education programs in the geographic area of their BOCES.

The proposed amendment was discussed by the P-12 Education Committee at the June 2013 Regents meeting. A Notice of Proposed Rule Making was published in the State Register on July 10, 2013. Public comment on the proposed amendment was accepted for 45 days from the date of publication in the State Register (i.e., until August 26, 2013).

### Background Information

The purpose of the proposed amendment is to conform the Regulations of the Commissioner of Education to Education Law sections 1950 and 2215, as amended by Chapter 57 of the Laws of 2013. Chapter 57 amended Education Law section 1950 to repeal the requirement for every board of cooperative educational services (BOCES) to submit a special education space plan to the Commissioner and amended Education Law section 2215 to require superintendents of schools to determine the adequacy and appropriateness of facilities space available to house special education programs in the least restrictive environment and ensure that programs will not be relocated without adequate consideration of the needs of participating students with disabilities.

Since publication of a Notice of Proposed Rule Making in the State Register on July 10, 2013 the Department received three comments on the proposed amendment. Attached is the full text of the proposed terms of the rule (Attachment 1) and the Assessment of Public Comment (Attachment 2). Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

### Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That paragraph (2) of subdivision (b) of section 155.2, paragraph (6) of subdivision (b) of section 155.12, and paragraphs (2) and (3) of subdivision (c) of section 200.2 of the Regulations of the Commissioner of Education be amended, and that subdivision (g) of section 200.2 be repealed and a new subdivision (g) of section 200.2 of the Regulations of the Commissioner of Education be added, as submitted, effective October 2, 2013.

### Timetable for Implementation

If adopted at the September Regents meeting, the proposed amendment will become effective October 2, 2013.

### Attachments

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 308, 309, 1950, 2215, 4402, and 4403.

1. Paragraph (2) of subdivision (b) of 155.2 of the Regulations of the Commissioner of Education is amended, effective October 2, 2013 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] needs of participating students with disabilities for placement in the least restrictive environment and for the stability and continuity of their program placements.

2. Paragraph (6) of subdivision (b) of section 155.12 of the Regulations of the Commissioner of Education is amended, effective October 2, 2013 as follows:

(6) for a district seeking aid for lease expense pursuant to subdivision 6 of section 3602 of the Education Law, a certification by the superintendent of schools that:

(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]; and

(ii) . . .

3. Paragraph (2) of subdivision (c) of section 200.2 of the Regulations of the Commissioner of Education is amended, effective October 2, 2013 as follows:

(2) Each such plan shall include, but need not be limited to, the following:

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(vi) . . .

(vii) . . .

(viii) the date on which such plan was adopted by the board of education[; and]\_

[(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.]

4. Paragraph (3) of subdivision (c) of section 200.2 of the Regulations of the Commissioner of Education is amended, effective October 2, 2013, as follows:

(3) Any change to the allocation of space for special education programs [which is not consistent with the regional special education space requirements plan developed pursuant to subdivision (g) of this section] shall be made [pursuant to the provisions of paragraph (g)(5) of this section] in consideration of the needs of participating students with disabilities for placement in the least restrictive environment and for the stability and continuity of their program placements.

5. Subdivision (g) of section 200.2 of the Regulations of the Commissioner of Education is repealed, effective October 2, 2013.

6. A new subdivision (g) of section 200.2 of the Regulations of the Commissioner of Education is added, effective October 2, 2013 as follows:

(g) Facilities for special education programs. The district superintendent of schools shall determine the adequacy and appropriateness of the facilities space available to house special education programs in the geographic area served by the board of cooperative educational services, consistent with the least restrictive environment requirement and to ensure the stability and continuity of program placements for 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.

PROPOSED AMENDMENT OF SECTIONS 155.2, 155.12 AND 200.2 OF THE  
REGULATIONS OF THE COMMISSIONER OF EDUCATION PURSUANT TO SECTIONS  
101, 207, 305, 308, 309, 1950, 2215, 4402 and 4403 OF THE EDUCATION LAW,  
RELATING TO SPECIAL EDUCATION SPACE PLANS

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on July 10, 2013, the State Education Department received the following comments on the proposed amendment.

1. COMMENT:

Elimination of the space plan requirements will provide necessary relief and allow for more natural discussions regarding the needs of the region in leadership forums. Overly restrictive regulations cost districts money and remove their ability to devise common sense solutions to meet the learning needs of students and fiscal needs of local communities. Overly redundant procedures are a waste of tax payer dollars. Unless there is a proposed change to existing space there should be no need for review. Proposal greatly reduces bureaucratic waste by decentralizing approval authority for special education instructional space. Placing trust in the hands of local authorities is a sound organizational decision that saves the State and individual districts money while still meeting the needs of students with disabilities.

DEPARTMENT RESPONSE:

Comments are supportive in nature and no response is necessary.

2. COMMENT:

Support adding that the district superintendent of schools of each BOCES must determine the adequacy and appropriateness of the facilities space available to house special education programs in the geographic area served by the BOCES. The district superintendent is well connected with the component district superintendents and will be able to hold these discussions adequately in the monthly forums with school administrators. Monthly regional meetings of various groups such as the superintendents, assistant superintendents for instruction, and Pupil Personnel staff will allow for consideration of the needs of students with disabilities.

DEPARTMENT RESPONSE:

Comments are supportive in nature and no response is necessary.

3. COMMENT:

One commenter opposed the proposal to repeal the special education space plan requirements. It is imperative that standards be developed and adhered to.

DEPARTMENT RESPONSE:

Consistent with Chapter 57, the proposed amendment repeals the special education space plan requirements, but requires the district superintendent of each board of cooperative educational services (BOCES) to determine the adequacy and appropriateness of the facilities space available to house special education programs in the geographic area served by the BOCES. The facilities space must be consistent with the least restrictive environment (LRE) requirement and ensure the stability and continuity of program placements for 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. In addition, as part of the State Performance Plan and Annual Performance Report, required by the reauthorized Individuals with Disabilities Education Act, New York

must collect and publicly report on each school district's LRE placements for students with disabilities in relation to the State's targets. These requirements will continue to ensure that each school district provides appropriate educational space for students with disabilities in the least restrictive environment, which was the intended purpose of special education space planning requirements.