



THE NEW YORK CITY DEPARTMENT OF EDUCATION

JOEL I. KLEIN, *Chancellor*

SCHOOL PROGRAMS & SUPPORT SERVICES

Francine B. Goldstein, Chief Executive • 110 Livingston Street, Room 510 • Brooklyn, NY 11201

MEMORANDUM

September 11, 2002

**TO:** District Administrators Of Special Education  
High School Executive Assistants, Special Education  
CSE Chairpersons

**FROM:** Francine B. Goldstein, Chief Executive  
School Programs and Support Services

**SUBJECT:** Variance Request Procedures

As you are aware Part 200 of the Commissioner's Regulations delineates specific criteria for the operation of special classes. The maximum class size for special classes and maximum chronological age ranges within these classes are also specified in Regulations.

The Regulations, however, allow some flexibility in permitting a variance from each of these requirements, on a case by case basis, based on appropriate educational justification. Regulations are as follows:

- Special Class [8 NYCRR 200.6(g)(4-5)]
- (a) The maximum class size/staffing ratios are: 15:1, 12:1 (In New York City), 12:1:1, 8:1:1, 6:1:1 and 12:1:4. A class size variance request may be submitted to expand the special class size.
- (b) The maximum chronological age range within special classes of disabled students who are under 16 years of age is 36 months. An age range variance request may be submitted to extend the chronological age range beyond 36 months. There is no limitation on the age range within special classes of disabled students who are all 16 years of age and older or for groups of students placed in special classes organized under a 12:1:4 class size/staffing ratio.

A request for a variance from any of these regulations must be submitted to the State Education Department (SED) for consideration of approval on an individual student basis before the student is placed into the proposed program. Such a request requires documented evidence that the student would be placed in a group or class where other students have comparable functioning in academic, social, physical and management needs areas. If necessary, it is permissible to submit both age and class size variance requests for an individual student. The request and supporting justification for class size and/or age range variance(s) will be reviewed by SED. Since a student may not enter a proposed special class program until the variance request is approved, such a request is treated as a priority. A two-week turnaround is the maximum amount of time for closure on a variance request review. Once the review has been completed, a letter will be sent to the superintendency indicating whether the request has been approved, disapproved or additional information is required.

All approvals are in effect only for the school year (or the remainder thereof) in which the variance is granted. It is expected that steps will be taken to remedy the need for the variance by the commencement of the following school year.

### *Variance Request Submissions*

#### **1. Procedure for Submission of Variances**

Variance requests for New York City Public School special education students are submitted to SED, Special Education Quality Assurance, New York City Regional Office, 55 Hanson Place, Brooklyn, New York 11217 by the Superintendent or their designee using the enclosed Variance Request Form. An individual letter explaining the reason for the request and accompanying class functional profile must be submitted with the completed form. Variance requests may only be submitted and granted for specific students; SED does not grant "blanket" variances.

Variance requests should be submitted, where necessary and appropriate, for specific students in each special class instructional group. Thus, where students remain grouped together for the entire instructional day, one variance request submitted for the individual student is sufficient. However, where students are regrouped for any part of the instructional day or where classes operate in a departmentalized manner, a variance request for the individual student must be submitted for each applicable instructional grouping.

#### **2. Required Supporting Information**

Each variance request must include justification for approval on educational grounds and evidence of appropriateness for both the individual for whom it is requested and for the other students in the class. The type (age and/or class size) of variance requested should be indicated in the materials submitted with the request. Documentation should also include the name, date of birth and functional levels of the student for whom the request is being made.

Current class information must be provided as follows: period/subject, if departmentalized; class size/staffing ratio; register; age range; functional levels in the academic, cognitive, social skills, physical development and management needs areas. In all cases, specific information must be submitted and functional grouping must be documented. A rationale for grouping must also be provided.

It is important to note that the variance process should not be used to circumvent due process procedures. SED reviews the frequency and/or multiple requests from any one district or school and will contact the district to ascertain the circumstances leading to those requests. Although the regulations do not limit the number of variance requests which can be approved for a group or a class, more than one approved variance for a specific class would be highly unusual.

FBG:jm

Enclosure

c: Superintendents  
Linda Wernikoff