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To: District Superintendents  
Superintendents of Public Schools  
Superintendents of State-Operated and State-Supported Schools  
Superintendents of Special Act School Districts  
Principals of Public, Nonpublic and Charter Schools  
New York City Department of Education  
Impartial Hearing Officers  
Special Education Parent Centers  
Regional Special Education Technical Assistance Support Centers  
Commissioner's Advisory Panel for Special Education Services  
Organizations, Parents and Individuals Concerned with Special Education

From: James P. DeLorenzo

Subject: Variance Procedures to Temporarily Exceed the Maximum Number of  
Students with Disabilities in an Integrated Co-teaching Services Class

The purpose of this memorandum is to provide the procedures that a school district must follow in order to obtain a variance to temporarily exceed 12 students with disabilities in a class where integrated co-teaching services are provided. "Integrated co-teaching services" as used in the Regulations of the Commissioner of Education means a general education teacher and a special education teacher jointly providing instruction to a class that includes both students with and students without disabilities to meet the diverse learning needs of all students in a class.

The regulatory maximum number of students with disabilities receiving integrated co-teaching services in a class is 12 students. The total of 12 students includes any student with a disability in that class, regardless of whether all of the students are recommended for integrated co-teaching services. For example, if two students with disabilities in a class are recommended for resource room and related services and ten are recommended for integrated co-teaching services, there are 12 students with disabilities in that classroom.

Effective December 8, 2010, section 200.6(g)(1) of the Regulations of the Commissioner of Education was amended to provide for variance procedures that would authorize a school district to increase the maximum number of students with disabilities in such classes by not more than two additional students. Two variance processes were established in regulation to authorize the temporary increase in the maximum number of

students with disabilities in an integrated co-teaching services class: (1) a variance by notification to increase the maximum number of students with disabilities to 13; and (2) a variance request for Commissioner's prior approval to increase the number of students with disabilities to not more than a total of 14. The amended regulations relating to these two processes are as follows:

ⓐ Variance by notification. A board of education or trustees of a school district may submit written notice to the commissioner to temporarily add one additional student with a disability to an integrated co-teaching class for the remainder of the school year, provided that at the start of classes in September of the current school year it is in compliance with the standards specified in this paragraph. Written notice to the commissioner shall be submitted on a form prescribed by the commissioner and shall sufficiently demonstrate educational justification and consistency with providing an appropriate education for all children affected.

ⓑ Variance with Commissioner approval. If the school district has enrolled one student with a disability beyond the maximum 12 students with disabilities in an integrated co-teaching services class pursuant to the procedures established in subparagraph (i) of this paragraph, and it determines there is a need to temporarily add one additional student to such class, the school district may submit to the commissioner for approval an application for a variance to enroll the one additional student in the same class for the remainder of the school year. The application to the commissioner shall be on a form prescribed by the commissioner and shall sufficiently demonstrate educational justification and consistency with providing an appropriate education for all children affected.

Any temporary increase in the number of students with disabilities in an integrated co-teaching class, as described in this memorandum, should only be used if, during the school year, exceptional circumstances arise (e.g., a student enrolled in an integrated co-teaching class is newly identified as a student with a disability during the school year; a new student moves into the district and there is no other appropriate class for the student with a disability). Temporary increase means the addition of not more than one or two students with a disability beyond the maximum number of 12 students with disabilities in an integrated co-teaching class, for a period not to exceed the remainder of the school year.

Any decision to temporarily increase the number of students with disabilities in a class where integrated co-teaching services are provided should consider the following State policy:

- The number of nondisabled students should be more than or equal to the number of students with disabilities in the class in order to ensure the level of integration intended by this program option;
- A Committee on Special Education's (CSE) recommendation for integrated co-teaching services should consider the overall size of the class enrollment (which includes students with disabilities and nondisabled students) and the ratio of students with disabilities to nondisabled students in relation to the individual student's learning needs; and

- An important consideration in determining the number of students with disabilities and nondisabled students on an integrated class roster is that the ratio must not result in a *de facto* segregated class which would undermine the philosophy of inclusive practices.

Additional information regarding integrated co-teaching services may be found in the April 2008 memorandum [Continuum of Special Education Services For School-Age Students with Disabilities](http://www.nysed.gov/special-education/continuum-special-education-services-school-age-students-disabilities) (<http://www.nysed.gov/special-education/continuum-special-education-services-school-age-students-disabilities>).

Attached are the procedures to request an increase in the numbers of students with disabilities in a class where integrated co-teaching services are provided (Attachment 1) and the prescribed form to submit such request (Attachment 2). 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, CSE 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](http://www.nysed.gov/special-education/special-education-quality-assurance-regional-offices) (<http://www.nysed.gov/special-education/special-education-quality-assurance-regional-offices>) in your region.

## **VARIANCE PROCEDURES TO TEMPORARILY INCREASE THE NUMBER OF STUDENTS WITH DISABILITIES IN AN INTEGRATED CO-TEACHING SERVICES CLASS:**

A school district may implement a temporary increase beyond the maximum number of students with disabilities in an integrated co-teaching services class under one of the following two procedures:

### **Child-Specific Variance by Notification:**

After the start of the school year in September, a school district may temporarily, for the remainder of the school year, enroll **one** additional student with a disability beyond the maximum of 12 students with disabilities in a class where integrated co-teaching services are provided through a **notification process** without prior approval by the New York State Education Department (NYSED).

The temporary increase should only be implemented in those extenuating circumstances when it is necessary for the student to be enrolled in a particular integrated co-teaching services class in order to participate and progress in the general education curriculum in accordance with his/her individualized education program (IEP).

To implement this notification process, **within ten (10) business days of the student's placement in the integrated co-teaching services class**, the school district must submit written notification to NYSED using the Procedures to Temporarily Exceed the Maximum of 12 Students with Disabilities in an Integrated Co-Teaching Service Class form. One form per student, identifying the student by his/her full name, must be submitted for each integrated co-teaching services class for which a variance is needed.

Upon receipt of a variance by notification, NYSED will send a letter of acknowledgement to the school district. A copy of the variance by notification will be forwarded for review by the Special Education Quality Assurance (SEQA) Regional Office. The Commissioner or his designee may revoke or preempt any increase in the number of students with disabilities in an integrated co-teaching services class beyond the regulatory maximum upon a finding that such increase would fail to be consistent with appropriate special education.

### **Child-Specific Variance with Commissioner Approval:**

In the event that a school district has already increased the maximum number of students with disabilities in an integrated co-teaching services class to 13 using the "Child-Specific Variance by Notification" process (see above) and now requests approval to temporarily, for the remainder of the school year, enroll a second student with a disability in that same integrated co-teaching services class, the school district must submit a request for prior **child-specific approval** to NYSED using the Procedures to Temporarily Exceed the Maximum of 12 Students with Disabilities in an Integrated Co-Teaching Service Class form.

The temporary increase should only be implemented in those extenuating circumstances when it is necessary for the student to be enrolled in the particular integrated co-teaching

class in order to participate and progress in the general education curriculum in accordance with his/her IEP.

A variance request must be submitted **and approval received from NYSED** prior to the placement of the student in the integrated co-teaching services class. One form per student, identifying the student by his/her full name, must be submitted for each integrated co-teaching class for which a variance is needed.

The NYSED SEQA office, on behalf of the Commissioner, will review the child-specific approval request and respond to the school district indicating approval or disapproval of the request.

NYSED may deny a program approval to temporarily increase the number of students with disabilities in an integrated co-teaching services class to 14 upon a finding that the school district did not provide the required information, if the reason for the temporary increase is determined to be unjustified, and/or if the school district cannot meet the assurances provided. If the request is not approved, the school district must inform the student's Committee on Special Education (CSE).

The Procedures to Temporarily Exceed the Maximum of 12 Students with Disabilities in an Integrated Co-Teaching Service Class form is used for either:

- (1) Submission of a variance by notification, **or**
- (2) Submission of a request for a variance with Commissioner approval.

The form includes information on the specific integrated co-teaching class affected, the student to be enrolled, the educational justification for the placement and assurances that the:

- CSE has determined that, for a "Child-Specific Variance by Notification," no other appropriate placement is available in an integrated co-teaching services class that has less than 12 students with disabilities; or, for a "Child-Specific Variance with Commissioner Approval," no other appropriate placement is available in an integrated co-teaching services class that has not increased the number of students with disabilities to 13 through the notification process;
- request to enroll the additional student with a disability in the integrated co-teaching services class has been made in accordance with the procedures herein; and
- maximum number of students with disabilities enrolled in the integrated co-teaching services class shall not exceed 12 students with disabilities at the start of classes the following September.