

RULE REVIEW

Education Department

Section 207 of the State Administrative Procedure Act (SAPA) requires that each State agency review, after five years and thereafter at five-year intervals, each of its rules which is adopted on or after January 1, 1997 to determine whether such rules should be modified or continued without modification.

Pursuant to SAPA section 207, the State Education Department submits the following list of rules that were adopted during calendar year 2000 that the Department has reviewed and determined should be continued without modification. All section and part references are to Title 8 of the New York Code of Rules and Regulations.

OFFICE OF ELEMENTARY, MIDDLE, SECONDARY AND CONTINUING EDUCATION

Section 21.2(a) of the Regents Rules - definition of "textbook"

Statutory authority: Education Law sections 207 and 701(2) and section 8 of Chapter 405 of the Laws of 1999

Justification for continuation without modification: Section 21.2(a) of the Regents Rules defines "textbook" for purposes of the New York State Textbook Loan Program and Textbook Aid and clarifies that certain materials in electronic format qualify for this program and aid. It is necessary to implement Chapter 405 of the Laws of 1999.

Assessment of public comment: no public comment was received.

Section 100.2(ff) of the Commissioner's Regulations - education and employment discharge planning for youth released from residential care of other State agencies

Statutory authority: Education Law sections 101, 207, 305(1) and (2), 112(1)

Justification for continuation without modification: Section 100.2(ff) of the Commissioner's Regulations requires boards of education to ensure the prompt enrollment and admittance to attendance of youths released or conditionally released from residential facilities operated by or under contract with the Office of Children and Family Services, the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities or a local department of social services; requires boards of education to request the youth's educational records from the school the student attended while in the residential facility and to implement an educational plan for the student's release or conditional release; and requires each school district to designate an employee or representative to facilitate the prompt enrollment of such students. It is necessary to implement section 21 of Chapter 181 of the Laws of 2000, Project SAVE (Safe Schools Against Violence in Education Act).

Assessment of public comment: no public comment was received.

Section 100.2(c) of the Commissioner's Regulations - instruction in false reporting of crimes

Statutory authority: Education Law sections 207 and 808(1) and Chapter 207 of the Laws of 1999

Justification for continuation without modification: Section 100.2(c) of the Commissioner's Regulations requires schools and

BOCES to provide instruction to all students on the dangers of falsely reporting a criminal incident or impending explosion or fire emergency involving danger to life or property or impending catastrophe. It is necessary to implement Chapter 207 of the Laws of 1999.

Assessment of public comment: no public comment was received.

Section 100.2(l) of the Commissioner's Regulations - school district code of conduct relating to Safe Schools Against Violence in Education Act

Statutory authority: Education Law sections 101, 207, 305(1) and (2), 2801(1) through (5) and 3214(3) and (3-a)

Justification for continuation without modification: Section 100.2(l) of the Commissioner's Regulations requires each board of education and each BOCES to adopt and amend, as appropriate, a code of conduct for the maintenance of order on school property and at school functions, which shall govern the conduct of students, teachers and other school personnel as well as visitors. It is necessary to implement Chapter 181 of the Laws of 2000.

Assessment of public comment: no public comment was received.

Sections 100.2, 100.3, 100.4 and 100.5 of the Commissioner's Regulations - technical changes to State Learning Standards, State Assessments and New Graduation and Diploma Requirements

Statutory authority: Education Law sections 101, 207, 208, 209, 305(1) and (2), 308 and 309

Justification for continuation without modification: Sections 100.2, 100.3, 100.4 and 100.5 of the Commissioner's Regulations make technical changes to correct errors in citations and to reinstate certain original language incorrectly stated or inadvertently revised relating to State learning standards, State assessments and new graduation and diploma requirements. It is necessary to be consistent with Regents policy.

Assessment of public comment: no public comment was received.

Sections 100.2(m) and (p) and 100.7(h) and (i) of the Commissioner's Regulations - registration of public schools and school accountability performance criteria

Statutory authority: Education Law sections 101, 207, 210, 215, 305(1), (2) and (20), 308, 309, 3204(2) and (2-9) and 4403(3)

Justification for continuation without modification: Sections 100.2(m) and (p) and 100.7(h) and (i) of the Commissioner's Regulations establish criteria for school accountability; enable the Commissioner to designate school performance on State assessments on three levels; establish adequate yearly progress targets for schools and require improvement plans for schools that fail to make adequate programs; and use a cohort measure for high school accountability. It is necessary to implement Regents policy. The regulations were amended in July 2003 to align the State's System of Accountability for Student Success with the federal No Child Left Behind accountability requirements.

Assessment of public comment: no public comment was received.

Section 100.3(b)(2) of the Commissioner's Regulations - State Assessment requirements for students in grades pre-kindergarten through sixth

Statutory authority: Education Law sections 207, 208, 209, 305(1) and (2), 308, 309 and 3204(3)

Justification for continuation without modification: Section 100.3(b)(2) of the Commissioner's Regulations changes the date from November 2000 to November 2001 for administration in grade 5 of the new State elementary assessment in social studies and requires school districts to retest fifth grade students who scored at Level 1 of the State designated performance level on the English language arts and/or mathematics elementary level assessments administered in grade 4. Such students must receive at least one semester of academic intervention services and be retested using multiple sources of evidence, including, but not limited to, a commercial test or other external test determined by the school district to be a valid and reliable means of evaluating a student's progress in achieving the elementary level State learning standards in these subjects. It is necessary to implement Regents policy.

Assessment of public comment: no public comment was received.

Section 100.11 of the Commissioner's Regulations - school-based planning and shared decision-making in the NYC School District

Statutory authority: Education Law sections 101, 207, 215, 305(1) and (2), 308, 309, 2590-e(1) and (3), 2590-f(1) and (2) and 2590-h(15)

Justification for continuation without modification: Section 100.11 of the Commissioner's Regulations ensure that each community school district in the New York City school district will operate with a single, consistent school-based planning and shared decision-making plan. It is necessary to align the Commissioner's Regulations with the provisions of Chapter 720 of the Laws of 1997 relating to the New York City school governance system.

Assessment of public comment: no public comment was received.

Section 119.3 of the Commissioner's Regulations - charter school report card

Statutory authority: Education Law sections 207 and 2857(2) and Chapter 4 of the Laws of 1998

Justification for continuation without modification: Section 119.3 of the Commissioner's Regulations requires each charter school to submit an annual report by August 1 of each year for the preceding school year, one component of which is a charter school report card that includes measures of the school's comparative academic and fiscal performance. It is necessary to implement Education Law section 2857(2).

Assessment of public comment: no public comment was received.

Sections 151-1.4 and 151-1.8 of the Commissioner's Regulations - Universal Pre-Kindergarten Program

Statutory authority: Education Law sections 101, 207, 3602-e(12) and section 39 of Part L of Chapter 405 of the Laws of 1999

Justification for continuation without modification: Sections 151-1.4 and 151-1.8 of the Commissioner's Regulations establishes criteria for school districts to apply for a waiver to operate a summer-only universal prekindergarten program. It is necessary to implement Chapter 405 of the Laws of 1999.

Assessment of public comment: no public comment was received.

Section 155.2 of the Commissioner's Regulations - school district construction plans and specifications

Statutory authority: Education Law sections 101, 207, 305(1), (2) and (19) and 408(1), (2) and (3)

Justification for continuation without modification: Section 155.2 of the Commissioner's Regulations streamlines documentation submittal procedures for public school construction projects and is necessary to provide mandate relief for school districts.

Assessment of public comment: no public comment was received.

Section 155.9 of the Commissioner's Regulations - State Environmental Quality Review and school district capital construction projects

Statutory authority: Education Law sections 101, 207, 305(1), (2) and (19), 408(3) and 1950(4)(t) and Environmental Conservation Law sections 8-0113(3) and 8-0117(5)

Justification for continuation without modification: Section 155.9 of the Commissioner's Regulations refines the process by which local educational authorities are required to conduct environmental reviews of potential capital construction projects and the mitigation of any adverse environmental effects discovered during the process. It is necessary to subject local educational authorities to the full extent of the Department of Environmental Conservation regulations and appropriately removes the State Education Department as the lead agency.

Assessment of public comment: no public comment was received.

Section 155.17 of the Commissioner's Regulations - school safety plans

Statutory authority: Education Law sections 101, 207, 305(1) and (2) and 2801-a

Justification for continuation without modification: Section 155.17 of the Commissioner's Regulations requires school districts to develop, implement and annually review a district-wide school safety plan as well as building-level school safety plans; each school district and BOCES must submit its district-wide plan to the State Education Department. It is necessary to implement Chapter 181 of the Laws of 2000.

Assessment of public comment: no public comment was received.

Section 155.22 of the Commissioner's Regulations - Qualified Zone Academy Bonds

Statutory authority: Education Law sections 101, 207, 305(1) and (2) and 26 USC section 1397E

Justification for continuation without modification: Section 155.22 of the Commissioner's Regulations establishes the process by which local educational agencies will receive interest-free funding through the issuance of Qualified Zone Academy Bonds for rehabilitating for repairing facilities, the purchase of equipment, the development of course materials, and teacher and staff training. It is necessary for local educational agencies to gain access to a federal tax credit program.

Assessment of public comment: no public comment was received.

Section 170.11 of the Commissioner's Regulations - school property tax report cards

Statutory authority: Education Law sections 207, 1608(7) and 1716(7) and sections 10-a and 10-b of Part L of Chapter 405 of the Laws of 1999

Justification for continuation without modification: Section 170.11 of the Commissioner's Regulations requires school districts to prepare an annual school tax report card and specifies the format for the content, describes how it must be made available to the public and specifies when school districts must submit their school property tax report cards to the State Education Department. It is necessary to comply with Chapter 405 of the Laws of 1999.

Assessment of public comment: no public comment was received.

Section 175.5 of the Commissioner's Regulations - use of Superintendent's conference days

Statutory authority: Education Law sections 207 and 3604(8) and section 44 of Chapter 405 of the Laws of 1999

Justification for continuation without modification: Section 175.5 of the Commissioner's Regulations allows public school districts and BOCES to use superintendent's conference days in hourly units for the purpose of advancing the implementation of the new high learning standards and assessments, and to satisfy deficiencies in the length of public school sessions for the instruction of pupils. It is necessary to implement Chapter 405 of the Laws of 1999.

Assessment of public comment: no public comment was received.

Section 175.42 of the Commissioner's Regulations - aid to partitioned school districts

Statutory authority: Education Law sections 207 and 3602-f(5) and section 83-a of Part L of Chapter 405 of the Laws of 1999

Justification for continuation without modification: Section 175.42 of the Commissioner's Regulations specifies the apportionment of moneys during the first school year of a reorganization of school districts as a result of the partitioning of territory and formation of new school districts by district superintendents when the effective date of such reorganization is after July 1. It is necessary to implement Education Law section 3602-f(5).

Assessment of public comment: no public comment was received.

Section 175.44 of the Commissioner's Regulations - partial full day kindergarten conversion aid

Statutory authority: Education Law sections 101, 207 and 3602(12-a) and section 12 of Part A of Chapter 60 of the Laws of 2000

Justification for continuation without modification: Section 175.44 of the Commissioner's Regulations establishes standards for partial full-day kindergarten conversion aid for school districts that are converting to full-day kindergarten during the 2000-2001 school year but were unable, due to limiting and extenuating circumstances, to serve all children who wish to attend a full-day program. It is necessary to implement Chapter 60 of the Laws of 2000.

Assessment of public comment: no public comment was received.

Part 57 and section 100.2(dd) of the Commissioner's Regulations - approval of providers of coursework and training in school violence prevention and intervention

Statutory authority: Education Law sections 101, 207, 305(1) and (2) and 3004(3)

Justification for continuation without modification: Part 57 and section 100.2(dd) of the Commissioner's Regulations establishes standards for Department approval of providers of coursework or training in school violence prevention and intervention and requires school districts and BOCES to include in their professional development plans provisions for training of employees holding a teaching certificate or license in the classroom teaching service, school service, or administrative and supervisory service in school violence prevention and intervention. It is necessary to implement Chapter 181 of the Laws of 2000.

Assessment of public comment: no public comment was received.

OFFICE OF HIGHER EDUCATION

Section 52.21 of the Commissioner's Regulations - teacher education programs

Statutory authority: Education Law sections 207, 210, 215, 305(1) and 3004(1)

Justification for continuation without modification: the regulation is needed because it clarifies, corrects omissions in, and makes technical corrections to the requirements for teacher education programs adopted by the Board of Regents in September 1999 and makes the requirements more responsive to school staffing needs, while preserving the standards for preparing effective classroom teachers.

Assessment of public comment: no public comment was received.

Sections 52.21, 80-1.1, 80-3.4, 80-3.5, 80-5.13 and 80-5.14 - alternative teacher certification program

Statutory authority: Education Law sections 207, 210, 215, 305(1), (2) and (7), 3004(1) and 3006(1)

Justification for continuation without modification: the regulation is needed because it provides an alternative method for teacher candidates to obtain a provisional or initial teaching certificate and provides a means to alleviate teacher shortages in the public schools.

Assessment of public comment: no public comment was received.

Sections 52.21, 80-1.4, 80-3.5 and 80-5.14 of the Commissioner's Regulations - requirements for teacher certification and teacher education programs concerning school violence prevention and intervention

Statutory authority: Education Law sections 207, 210, 305(1), and 3004(1) and (3)

Justification for continuation without modification: the regulation is needed to implement the requirements of Education Law section 3004(3), as amended by Chapter 181 of the Laws of 2000, part of the Safe Schools Against Violence in Education Act (SAVE).

Assessment of public comment: no public comment was received.

Sections 80.2, 80.6, 80.7, 80.8, 80.10, 80.15 and 80.16 of the Commissioner's Regulations - requirements for provisional teacher certification

Statutory authority: Education Law sections 305(1), (2) and (7), 3004(1), 3006(1), 3007(1) and 3030(1)

Justification for continuation without modification: The above-described amendments were necessary to assist New York State in obtaining a sufficient supply of properly qualified teachers to provide instruction to public school students. These amendments specifically enabled appropriately certified teachers from other states to obtain a conditional provisional certificate authorizing the holder to teach in the public schools of New York for two years, during which time the teacher would be required to take and pass the New York State teacher certification examinations required for provisional certification. The opportunity to obtain a conditional provisional certificate sunset upon implementation of the reorganized Part 80 of the Commissioner's Regulations which established new certificate types and titles for classroom teachers effective February 2, 2004. The Board of Regents subsequently adopted a new regulation, section 80-5.17 of the Regulations of the Commissioner of Education, that provides a similar opportunity for appropriately certified teachers from other states to obtain a conditional initial certificate in the classroom teaching service to provide instruction in the public schools of New York. Holders of conditional initial certificates must take and pass all necessary certification examinations within two years of the issuance of such certificates.

Assessment of public comment: no public comment was received.

Part 80 and 100.2(dd) - requirements for teachers' certificates, teaching practice and professional development for teachers

Statutory authority: Education Law sections 101, 207, 215, 305(1), 3003(1), 3004(1), 3006(1)(b) and 3604(8)

Justification for continuation without modification: These amendments are essential components in the implementation of the systemic teaching reforms embodied in the Task Force on Teaching's 1998 report "New York's Commitment: Teaching to Higher Standards" that was subsequently adopted as the policy of the State of New York by the Board of Regents. The requirements for the certification of classroom teachers has been recast to implement the Regents' policy and to conform to previous changes in section 52.21 of the Commissioner's Regulations on the registration of teacher education programs enacted in 1999. The standards embodied in these amendments provide essential direction to implement the sweeping teaching reforms recommended by the Task Force on Teaching and adopted by the Board of Regents in 1998.

Assessment of public comment: no public comment was received.

Sections 83.4, 83.5 and 83.6 of the Commissioner's Regulations - penalties in moral character proceedings for certified teachers

Statutory authority: Education Law sections 207 and 305(7) and section 12 of Chapter 181 of the Laws of 2000

Justification for continuation without modification: the regulation is necessary to implement section 12 of Chapter 181 of the Laws of 2000, the Safe Schools Against Violence in Education Act (SAVE). These amendments are necessary to maintain the full range of penalty

options (revocation, suspension, practice limitation, financial fine and/or mandatory coursework) available for imposition when a certified teacher is determined to have committed an act (or acts) evincing a lack of the good moral character required for certification.

Assessment of public comment: no public comment was received.

Section 85.2 of the Commissioner's Regulations - Mentor Teacher-Internship Programs

Statutory authority: Education Law sections 207 and 3033(1) and (2)

Justification for continuation without modification: the regulation permits a school district or board of cooperative educational services seeking a variance allowing an evaluative role for mentors to be eligible for funding of a Mentor Teacher-Internship program, provided that the terms of the applicable collective bargaining agreement prescribe such activity. The regulation ensures that all qualified school districts and BOCES are given the opportunity to obtain funding for a mentoring program.

Assessment of public comment: no public comment was received.

Part 126 of the Commissioner's Regulations - requirements for licensed private schools and registered business schools/computer training facilities

Statutory authority: Education Law sections 207, 5001(1), (2) and (4)(b), 5002(2)(c), (3)(c), (4)(c) and (e), (6)(a) and (c), and (7), 5003(1)(d) and 5007(10) and Chapter 434 of the Laws of 1999

Justification for continuation without modification: the regulation establishes requirements for licensed private schools and registered business schools/computer training facilities, and is necessary to implement Chapter 434 of the Laws of 1999.

Assessment of public comment: no public comment was received.

OFFICE OF THE PROFESSIONS

Section 59.2 of the Commissioner's Regulations - education requirements for professional licensure

Statutory authority: Education Law sections 207, 6504 and 6507(1), (2)(a) and (3)(a)

Justification for continuation without modification: the regulation requires applicants for professional licensure who seek to meet the education requirement for licensure through programs that are not registered or accredited to submit adequate evidence of verification of their educational credentials by an acceptable independent credentials verification organization. The regulation is needed to ensure that only individuals who meet the educational requirements for licensure are licensed and to protect the public from attempts by individuals to submit fraudulent licensure credentials.

Assessment of public comment: no public comment was received.

Section 61.10 of the Commissioner's Regulations - certification of licensed dentists in the use of conscious sedation, deep sedation or general anesthesia

Statutory authority: Education Law sections 207, 6506(1), 6507(2)(a), 6601 and 6605-a(2)

Justification for continuation without modification: the regulation establishes educational and training requirements for licensed dentists to be certified to employ conscious sedation, deep sedation, or general anesthesia in the practice of dentistry at any location other than a general hospital, and to establish practice requirements for the use of conscious sedation, deep sedation, or general anesthesia by such licensed dentists. The regulation is needed to implement Education Law section 6605-a, as amended by Chapter 615 of the Laws of 1999, which directs the Commissioner of Education to establish requirements in regulation.

Assessment of public comment: no public comment was received.

Section 64.7 of the Commissioner's Regulations and section 29.14 of the Regents Rules - administration of immunization and anaphylaxis treatment agents by registered professional nurses.

Statutory authority: Education Law sections 207, 6503(3), 6506(1) and (9), 6507(2)(a), 6509(9), 6527(6), 6807(3), 6902(1) and 6909(4) and (5)

Justification for continuation without modification: the regulation establishes requirements that registered professional nurses must meet to administer immunization and anaphylaxis treatment agents through non-patient specific orders and protocols, the immunization and anaphylaxis treatment agents that may be administered, the requirements for orders and the protocols, and special requirements which define unprofessional conduct for the profession of nursing. The regulation is needed to implement Chapter 573 of the Laws of 1999, which directs the Commissioner of Education to promulgate regulations concerning the administration of immunization and anaphylaxis treatment agents by registered professional nurses pursuant to non-patient specific orders of licensed physicians or certified nurse practitioners.

Assessment of public comment: no public comment was received.

Section 69.6 of the Commissioner's Regulations - mandatory continuing education for architects

Statutory authority: Education Law sections 207, 212(3), 6502(1), 6504, 6507(2)(a), 6508(1) and 7308(1)(a), (b) and (c)

Justification for continuation without modification: the regulation establishes continuing education requirements and standards for the registration of licensed architects. The regulation implements Education Law section 7308, as added by Chapter 521 of the Laws of 1999.

Assessment of public comment: no public comment was received.

Section 70.6 of the Commissioner's Regulations - mandatory continuing education for public accountancy

Statutory authority: Education Law sections 207, 6502(1), 6504, 6507(2)(a) and 7409(1)(a)(2) and (4)

Justification for continuation without modification: the regulation requires individuals licensed in public accountancy to participate in at least four contact hours of continuing education study in professional ethics during each triennial registration period and to prescribe that full contact hour credit would be given for interactive self-study programs used to fulfill the continuing education requirement. The regulation conforms the public accountancy continuing education requirements for self-study programs to the national authority's recommended guidelines and to ensure that licensees focus a portion of their continuing education on the subject of professional ethics.

Assessment of public comment: no public comment was received.

Sections 79-4.6 and 79-4.7 of the Commissioner's Regulations - mandatory continuing education for respiratory therapists and respiratory therapy technicians.

Statutory authority: Education Law sections 207, 212(3), 6502(1), 6504, 6507(2)(a), 6508(1), 8504-a(1)(a), (b) and (c), (2) through (6), and 8510-a(1)(a)(b) and (c), (2) through (6)

Justification for continuation without modification: the regulation establishes continuing education requirements and standards that licensed respiratory therapists and licensed respiratory therapy technicians must meet to be registered to practice in New York State and requirements for approval of sponsors of continuing education.

Need for Rule: the regulation clarifies and implements the requirements of Education Law sections 8504-a and 8510-a, as added by Chapter 505 of the Laws of 1999, by establishing standards for what constitutes acceptable formal continuing education, educational requirements when there is a lapse in practice, requirements for licensees under conditional registration, standards for the approval of sponsors of continuing education to licensed respiratory therapists and licensed respiratory therapy technicians, and the fee for the review of sponsors of continuing education to defray the cost of such review by the State Education Department.

Assessment of public comment: no public comment was received.

OFFICE OF MANAGEMENT SERVICES

Part 281 of the Commissioner's Regulations - appeals to Commissioner of Education pursuant to Education Law section 3020(3) relating to employees or titles in the NYC School District

Statutory authority: Education Law sections 101, 207, 305(1) and (2), 308 and 3020(3) and Chapter 3 of the Laws of 2000

Justification for continuation without modification: the regulations establish procedures for appeals to the Commissioner of Education of certain disciplinary determinations for employees or titles in the City School District of the City of New York. The regulation is necessary to implement Chapter 3 of the Laws of 2000.

Assessment of public comment: no public comment was received.

Department of Taxation and Finance

Regulations Continued Without Modification

Pursuant to section 207.4 of the State Administrative Procedure Act, the Department of Taxation and Finance hereby gives notice of the following:

As part of the Department's 2005 review of regulations that were adopted during 2000, it has reviewed 20 NYCRR Section 4-4.2 (Allocation – Dock Sales). The statutory authority for the rule is contained in sections 171, subd. First; 210(3)(a)(2); and 1096(a) of the Tax Law.

This regulation amended Section 4-4.2 of the Article 9-A regulations in response to taxpayer concerns and changing business practices by providing a more reasonable approach to allocating receipts from the sale of tangible personal property. It set forth a destination rule for the allocation of receipts where a customer picks up goods from a taxpayer's place of business (dock sales) and transports them to another state. The regulation is being continued without modification because there have been no statutory amendments or changes in policy to warrant any modification of the regulation.

A summary of the regulation was published in the Rule Review section of the January 5, 2005, issue of the *State Register*. The 2005 Regulatory Agenda was also posted to the Department's Web site (http://www.tax.state.ny.us/pubs_and_bulls/regulations/regulatory_agenda.htm) on December 23, 2004. The Department did not receive any public comments regarding this regulation.

For further information contact: Diane M. Ohanian, Department of Taxation and Finance, Technical Services Division, Building 9, W A Harriman Campus, Albany, New York 12227, (518) 457-2254

