

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 2001 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 7.1 of the Regents Rules and section 135.4 of the Commissioner's Regulations, regarding professional coaching certificates

Statutory authority: Education Law sections 101, 207, 212(3), 305(1) and (2), 803(5), 3006(1)(b) and (2)(a)(iii) and 3204(2).

Justification for continuation without modification: The rule is necessary to comply with Regents policy. The rule provides flexibility to school districts to hire the most qualified candidates for interschool athletic coaching positions and to create a stable pool of qualified non-teacher coaching candidates to offset decreases in qualified certified teacher coaching candidates caused by teacher retirements.

Section 7.1 of the Regents Rules and section 135.4 of the Commissioner's Regulations establish a professional coaching certificate that is valid for three years to a candidate who has completed the first aid requirements as set forth in section 135.4 of the Commissioner's Regulations and three course requirements established for coaching by the State Education Department, and has a minimum of three years coaching experience in a specific sport in a New York State interschool athletic program. The professional coaching certificate may be renewed for an additional three-year period if the candidate meets the requirements of section 135.4 and has received a satisfactory evaluation by the principal or athletic director for each of the preceding three years that the candidate coached in the specific sport.

Assessment of public comment: no public comment was received. Part 57 and section 100.2(dd)(2) of the Commissioner's Regulations, regarding training in school violence prevention and intervention

Statutory authority: Education Law sections 101, 207, 305(1) and (2) and 3004(3) and section 9 of Chapter 181 of the Laws of 2000.

Justification for continuation without modification: The rule is necessary to comply with the Safe Schools Against Violence in Education Act signed into law in July 2000. The rule establishes standards for Department approval of providers of course work or training in school violence prevention, and requires school districts to include such training in their professional development plans.

Part 57 and section 100.2(dd)(2) of the Commissioner's Regulations establish standards for Department approval of providers of coursework or training in school violence prevention and intervention and require

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.

Assessment of public comment: no comments were received. Section 100.2(hh) of the Commissioner's Regulations, regarding reporting of Child Abuse in an educational setting

Statutory authority: Education Law sections 101, 207, 305(1) and (2), 1125(6), 1128(1), (2) and (3), 1128-a(1) and (2), 1132(2) and 3028-b and sections 12 and 13 of Chapter 180 of the Laws of 2000.

Justification for continuation without modification: The rule is necessary to implement Chapter 180 of the Laws of 2000. Section 100.2(hh) of the Commissioner's Regulations requires school administrators and superintendents, upon receipt of a written report alleging that a child has been abused in an educational setting, to promptly provide the parent of the child with a written statement setting forth parental rights, responsibilities and procedures, and requires each school district and BOCES to establish and implement on an ongoing basis a training program regarding the procedures for reporting of child abuse in an educational setting for all current and new teachers, school nurses, school counselors, school psychologists, school social workers, school administrators, other personnel required to hold a teaching or administrative certificate or license, and school board members. Section 100.2(hh) of the Commissioner's Regulations was further modified to clarify that charter schools must also comply with these provisions.

Assessment of public comment: no comments were received. Section 100.5 and 100.2 of the Commissioner's Regulations, regarding Career and Technical Education programs and high school diploma requirements

Statutory authority: Education Law sections 101, 207, 208, 209, 215, 305(1) and (2), 308, 309 and 3204(3).

Justification for continuation without modification: The rule is necessary to implement Regents policy. The rule establishes criteria by which school districts and BOCES may operate career and technical education programs approved by the Commissioner and award high school diplomas to students who successfully complete such programs. Approved programs will provide students pursuing career and technical education programs with flexibility in attaining required units of credit for graduation and will provide for a technical endorsement on a Regents diploma, Regents diploma with advanced designation or a local diploma upon completion of an approved program. The rule is also necessary to correct certain technical errors concerning the units of credit requirement for mathematics and certain citation errors.

Section 100.5 and 100.2 of the Commissioner's Regulations create a process of program approval for career and technical education programs that will allow flexibility in the attainment of graduation requirements; provide for a diploma with a technical endorsement to be awarded to students who successfully complete certain requirements, including an industry-developed technical assessment of skills in a

specific technical field; and correct technical errors concerning the units of credit for mathematics to meet graduation requirements.

Assessment of public comment: no comments were received.

Section 100.5(a)(5) and (b)(7) of the Commissioner's Regulations, regarding the State assessment system and diploma requirements for students with disabilities

Statutory authority: Education Law sections 101, 207, 208, 209, 305(1) and (2), 308, 309, 3204(3) and 4403(3).

Justification for continuation without modification: The rule is necessary to implement Regents policy relating to State learning standards, State assessments and graduation and diploma requirements, to provide additional time to gather data on how students with disabilities are performing on required Regents examinations, including the effect of multiple tests, to increase the participation of students with disabilities in the general education curriculum, and to study the impact of academic intervention services for these students. In December 2003, the Board of Regents again amended section 100.5 to extend for an additional four years the provision permitting students with disabilities who fail one or more of the Regents examinations required for high school graduation, to meet local diploma requirements by passing the respective Regents Competency Tests or their equivalent in these subject areas. In July 2005, the Board of Regents adopted an amendment to section 100.5 to provide an additional safety net for all students with disabilities entering grade 9 in the 2005-06 school year, by allowing students with disabilities to meet local diploma requirements by achieving a passing score of 55-64 on the five required Regents examinations to meet local diploma requirements.

Section 100.5(a)(5) and (b)(7) of the Commissioner's Regulations extended for four years the existing provisions that permit students with disabilities who enter grade nine in or after September 2001 and prior to September 2005, and who fail one or more of the Regents examinations in English, mathematics, United States history and government, global history and geography, and science required for high school graduation, to meet local diploma requirements by passing the respective Regents Competency Tests or their equivalent in these subject areas.

Assessment of public comment: no comments were received.

Sections 100.13 and 175.43 of the Commissioner's Regulations, regarding requirements and calculations for operating standards aid

Statutory authority: Education Law sections 207 and 3602(38) and section 31 of Part A of Chapter 60 of the Laws of 2000.

Justification for continuation without modification: The rule is necessary to comply with Chapter 60 of the Laws of 2000. Sections 100.13 and 175.43 of the Commissioner's Regulations identify the calculation used to determine whether school districts qualify for additional Operating Standards Aid, provided to recognize improvement in meeting Regents higher learning standards.

Assessment of public comment: no comments were received.

Section 104.1 of the Commissioner's Regulations, regarding pupil attendance recordkeeping

Statutory authority: Education Law sections 101, 207, 305(1) and (2), 3024, 3205(1), (2) and (3), 3210(1) and (2) and 3211(1).

Justification for continuation without modification: The rule is needed to implement Regents policy to ensure effective school attendance programs by requiring that schools collect data through accurate attendance recordkeeping, and analyze attendance data to identify individual and group patterns so as to provide programs and services that will assist each student to successfully meet higher academic standards. Section 104.1 of the Commissioner's Regulations requires each school district, BOCES, charter school, and county vocational educational extension board to adopt a comprehensive attendance policy; keep records of each pupil's presence, absence, tardiness and early departure in a register of attendance; record atten-

dance of students in non-departmentalized kindergarten through grade 8 once per school day; record attendance in each period of scheduled instruction of students in grades 9-12 or in departmentalized schools at any grade level; record absences as excused or unexcused; establish local policy regarding student attendance and the awarding of course credit; annual review student attendance records and make revisions to the comprehensive attendance policy that are deemed necessary; and provide parents or persons in parental relation a summary of the attendance policy and each teacher with a copy of the attendance policy.

Assessment of public comment: no comments were received.

Section 110.6 of the Commissioner's Regulations, regarding summer school programs

Statutory authority: Education Law sections 101, 207, 305(1) and (2), 308, 309 and 3602(39) and section 32 of Chapter 60 of the Laws of 2000.

Justification for continuation without modification: The rule is necessary to implement Chapter 60 of the Laws of 2000. The rule establishes standards for the receipt of State aid for summer school programs and summer camp programs pursuant to Education Law section 3602(39), as added by section 32 of Chapter 60 of the Laws of 2000. Section 110.6 of the Commissioner's Regulations establishes standards relating to aid for summer school programs and summer camp programs; provides aid to summer school programs designed to improve student performance in required academic subjects, to prepare students for Regents examinations, and to prepare students to retake parts of the Regents examinations; and provides aid to summer camps designated by the Chancellor of the New York City School District that provide summer school services for at least three hours per day by a certified teacher.

Assessment of public comment: no comments were received.

Section 155.22 of the Commissioner's Regulations, regarding 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: the rule establishes procedures for the reallocation of unused or unclaimed State limitation amount allocations of Qualified Zone Academy Bonds (QZABs). The rule is needed to establish a method for the Commissioner to reallocate any unused or unclaimed amounts of the State limitation amount for the issuance of QZABs so that such amounts may be applied towards qualified projects who otherwise would not be eligible to receive them.

Assessment of public comment: no comments were received.

Section 155.23 of the Commissioner's Regulations, regarding multi-year cost allowance for school district building aid

Statutory authority: Education Law sections 207 and 3602(6) and section 5 of Part A of Chapter 60 of the Laws of 2000.

Justification for continuation without modification: Section 155.23 of the Commissioner's Regulations establishes the methodology school districts and BOCES must apply when establishing a multi-year cost allowance for computation of building aid and the procedures to appeal the determination. The rule is necessary to comply with Chapter 60 of the Laws of 2000, which requires the Commissioner to promulgate regulations prescribing the methodology for establishing a multi-year cost allowance for the purpose of computation of building aid to school districts and to establish procedures for school districts to appeal a determination that a building has not been adequately maintained.

Assessment of public comment: no comments were received.

Section 155.24 of the Commissioner's Regulations, regarding school pesticide neighbor notification

Statutory authority: Education Law sections 101, 207, 305(1) and (2), 409(1) and 409-h(1)-(3) and section 6 of Chapter 285 of the Laws of 2000.

Justification for continuation without modification: The rule is necessary to implement Education Law section 409-h, as added by Chapter 285 of the Laws of 2000, by establishing the process by which the statute is implemented, including provisions relating to State notification and

withholding of State aid with respect to a school's noncompliance with the statute.

Section 155.24 of the Commissioner's Regulations requires public school districts, nonpublic elementary and secondary schools, and BOCES to establish a pesticide notification procedure to provide information to staff who regularly work at school facilities, and to persons in parental relation to children regularly receiving instruction at school facilities, to inform them that pesticide products may be used periodically throughout the school year and how to register to receive 48-hour advance notification of certain applications. The rule also establishes a procedure for individuals to notify the State Education Department of any school's failure to comply with these requirements and authorizes the Commissioner to withhold State aid if schools fail to adopt notification procedures or otherwise fail to implement these requirements.

Assessment of public comment: no comments were received.

Sections 168.1, 168.2 and 168.6 of the Commissioner's Regulations, regarding Employment Preparation Education programs

Statutory authority: Education Law sections 101, 207 and 3602(24) (a-1) and section 23 of Chapter 60 of the Laws of 2000.

Justification for continuation without modification: The rule is necessary to comply with Chapter 60 of the Laws of 2000. Sections 168.1, 168.2 and 168.6 of the Commissioner's Regulations establish criteria by which failure to demonstrate basic educational competencies is to be determined for the purpose of determining Employment Preparation Education Aid to enable school districts and BOCES to provide educational services to adults with limited basic skills who have previously been precluded for participating in the program.

Assessment of public comment: no comments were received.

Section 170.3(k) of the Commissioner's Regulations, regarding career education instructional equipment reserve fund

Statutory authority: Education Law sections 207 and 1950(4)(ee).

Justification for continuation without modification: Section 170.3(k) of the Commissioner's Regulations establishes procedures for the establishment, use, maintenance and liquidation of BOCES career education instructional equipment reserve funds. The rule is necessary to be consistent with Education Law section 1950(4)(ee).

Assessment of public comment: no comments were received.

Section 175.10 of the Commissioner's Regulations, regarding statute of limitations on State aid payments

Statutory authority: Education Law sections 207 and 3602(6).

Justification for continuation without modification: Section 175.10 of the Commissioner's Regulations changes the requirement for submitting claims for building aid so that it is consistent with other statute of limitation requirements for all State aid claims. The rule eliminates an inconsistency for submission of State aid claims for building aid, by requiring more timely annual submissions, consistent with current statute of limitation requirements for other State aid claims.

Assessment of public comment: no comments were received.

OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES

Sections 200.1, 200.2, 200.5 and 200.21 of the Commissioner's Regulations, regarding the impartial hearing process for students with disabilities

Statutory authority: Education Law sections 101, 207, 4403(3), 4404(1) and 4410(13).

Justification for continuation without modification: The rule is needed to ensure that impartial hearings are conducted in a timely manner consistent with Federal requirements by individuals who have the necessary and appropriate procedural and content knowledge and background to conduct an impartial hearing related to special education.

The rule establishes requirements relating to the impartial hearing process for students with disabilities, including the qualifications of impartial hearing officers, procedures for the appointment of an impartial hearing officer, procedures to conduct the hearing, data

reporting requirements and procedures for the suspension or revocation of the impartial hearing officer determination.

Section 200.1(x) was amended, regarding the definition of "impartial hearing officer" and the officer's qualifications. This section was subsequently amended pursuant to a separate rule making in September 2001 to conform to the Individuals with Disabilities Education Improvement Act. In 2005, the rule was again amended to conform to the Individuals with Disabilities Education Improvement Act.

Section 200.2(b) was amended to provide that the board of education is responsible for administrative procedures to appoint an impartial hearing officer.

Section 200.2(e) was amended to establish procedures for the timely and impartial appointment of impartial hearing officers.

The amendment to section 200.5(i): (1) added that parental request for impartial hearings must be in writing; (2) clarified that school districts or parents may initiate an impartial hearing; (3) relocated language within regulation regarding board of education responsibilities to impartially appoint hearing officers using a rotational list, rescinding an impartial hearing officer and their reporting requirements to section 200.5; (4) required that impartial hearing officers only accept appointment if available to initiate the hearing within the first 14 days of being contacted; (5) established a five day rule for disclosing information at a hearing; (6) established a timeline for rendering and mailing a decision when an extension has been granted; and (7) required the impartial hearing officer's decision to include a statement that either party has the right to appeal the decision.

The amendment to section 200.21(b): (1) required that complaints regarding impartial hearing officers be made in a signed written statement to the Commissioner and contain documentation of the facts upon which the complaint is based; (2) established a process by which the investigation must occur; and (3) established actions the Commissioner may take when misconduct is determined, including suspension and revocation of hearing officer certification.

Assessment of public comment: no comments were received.

Sections 200.1-200.7, 200.13, 200.16, 201.7, 201.11, 276.1, 279.3, 279.8 and 100.6 of the Commissioner's Regulations, regarding conforming and technical amendments to implement IDEA

Statutory authority: Education Law sections 101, 207, 3214(3), 4403(3) and (20), 4404(1) and (2) and 4410(13).

Justification for continuation without modification: The rule is needed to conform the Commissioner's Regulations to the federal regulations implementing the Individuals with Disabilities Education Act, and strengthen the link between transition services and a student's movement from school to post-school activities and correct certain cross-citations.

The rule relates to definitions; board of education responsibilities; membership on Committees on Special Education; procedures for referral, evaluation, Individualized Education Program (IEP) development, placement and review; due process procedures; continuum of services; students with disabilities being educated in private schools and State-operated or State-supported schools; educational programs for students with autism; educational programs for preschool students with disabilities; general procedures for suspensions and removals of students with disabilities; expedited due process hearings; procedures for appeals to the State Review Office; rules of practice; and local certificates.

Section 200.1(dd) and (zz)(8) were amended regarding, respectively, the definition of "mediator" and "multiple disabilities."

Section 200.2(e)(1) was amended to replace the requirement that boards of education establish a list of the resumes of each impartial hearing officer with a requirement that boards of education establish a list that includes a statement of the qualification of each impartial hearing officer. The rule is needed to ensure that boards of education are appointing impartial hearing officers who have been certified through the State Education Department.

Section 200.3 was amended to clarify that the determination of knowledge or special expertise of persons appointed to be members of committees on special education, committees on preschool special education, and subcommittees on special education shall be made by the party who invited the individual to be members of the committee. The rule is needed to ensure compliance with 34 CFR section 300.344.

Section 200.4(b)(1) was amended to require that the individual evaluation of a referred preschool child be initiated by a committee on preschool special education and include a variety of assessment tools to gather relevant and functional data about the student and information related to enabling a preschool child to participate in appropriate activities. The rule is needed to conform State regulations to 34 CFR sections 300.532 and 300.535 and clarify that a variety of assessment tools are needed when evaluating a preschool child.

Section 200.4(b)(4) was amended to clarify that a committee on special education shall arrange for an appropriate reevaluation of each student with a disability if conditions warrant a reevaluation or if the student's parent or teacher requests a reevaluation, but at least once every three years by a multidisciplinary team or group of persons. This provision was subsequently amended pursuant to a separate rule making, effective September 13, 2005, to conform to the Individuals with Disabilities Education Improvement Act to provide that unless the parties agree, a reevaluation could not occur more frequently than once per year and at least every three years. The rule is needed to conform State regulations to 34 CFR 300.536.

Section 200.4(b)(6) was amended to add language requiring that materials and procedures used to assess a student with limited English proficiency measures the extent to which the student has a disability and needs special education, rather than measure the student's English language skills. This provision was subsequently amended pursuant to a separate rule making, effective September 13, 2005, to conform to the Individuals with Disabilities Education Improvement Act regarding the procedures used to assess a student with limited English proficiency. The rule is needed to conform State regulations to 34 CFR section 300.532.

Section 200.4(c)(4) was amended to clarify that a free appropriate public education must be available to any student with a disability who needs special education or related services, even though the student is advancing from grade to grade. The rule is needed to conform State regulations to 34 CFR section 300.121.

Section 200.4(d)(2)(i)(c) to add language requiring that present levels of performance for students, age 15 or younger if determined appropriate, include a statement of the student's needs taking into account the student's preferences and interests, as they relate to transition from school to post-school activities. This provision was subsequently amended pursuant to a separate rule making, effective September 13, 2005, to conform to the Individuals with Disabilities Education Improvement Act to include other transition related components to the IEP. The rule is needed to strengthen the Department's ability to ensure compliance in the area of transition, consistent with CFR sections 300.29 and 300.347.

Section 200.4(d)(2)(ix) adds language that requires that individualized education program recommendations include a statement of the student's projected post-school outcomes, based on the student's needs, preferences and interests, in the areas of employment, post secondary education and community living. This provision was subsequently amended pursuant to a separate rule making, effective September 13, 2005, to conform to the Individuals with Disabilities Education Improvement Act to include several other transition related components in the IEP. The rule is needed to strengthen the Department's ability to ensure compliance in the area of transition, consistent with CFR sections 300.29 and 300.347.

Section 200.4(e)(7) was amended to require school districts to provide special education and related services in accordance with the

student's IEP and make a good faith effort to assist the student to achieve the goals and objectives or benchmarks listed in the student's IEP. This provision was subsequently amended pursuant to a separate rule making, effective September 13, 2005, to conform to the Individuals with Disabilities Education Improvement Act to repeal objectives or benchmarks for certain students with disabilities. The rule is needed to conform State regulations to 34 CRR section 300.350.

Section 200.4(f) was amended to require that for any meeting to develop, review or revise the IEP, the committee must consider the strengths of a student, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the student, the result of the student's performance on assessments and other special factors and revise the IEP as appropriate upon consideration of those factors. The rule is needed to conform State regulations to 34 CFR section 300.346.

Section 200.5(b) was amended to: (1) repeal language stating that parental consent is not required for a functional behavioral assessment; (2) add language allowing school districts to continue to pursue initial evaluations or reevaluations using the due process procedures if parents of students with disabilities refuse consent; and (3) add language clarifying that a school district may not use a parent's refusal to consent to one service or activity to deny the parent or child any other service, benefit or activity of the school district. The rule is needed to conform to 34 CFR 300.505.

Section 200.5(d)(3) was amended to clarify that a school district may conduct a CSE meeting without a parent in attendance, if they are unable to convince the parent to attend, and that the school must keep detailed records of its attempts to contact a parent and the results of those attempts. The rule is needed to conform to 34 CFR sections 300.345, 300.503 and 300.505.

Section 200.5(h)(4) was amended to clarify that mediation is provided by community dispute resolution centers through a contract with the State Education Department. The rule is needed to conform to 34 CFR section 300.506.

Section 200.5(i)(4) was amended to clarify that except for preschool and expedited hearings, an impartial hearing officer shall render a decision, and mail a copy of the written, or at the option of the parent, electronic findings of fact and the decision to the parents, the board of education, and to the Office of Vocational and Educational Services for Individuals with Disabilities; and that the record of the findings of fact and the decision shall be provided at no cost to the parents. The rule is needed to conform to 34 CFR sections 300.508 and 300.509.

Section 200.5(j) was amended to: (1) clarify that any party aggrieved by the finding of fact and the decisions of an impartial hearing officer may appeal to a State review officer of the State Education Department; (2) require that a copy of the written decision of a State review officer, or at the option of the parents, electronic findings of fact and decision, be mailed to each of the parties; and (3) clarify that the State review officer may grant extensions beyond the specified time period to either party. The rule is needed to conform to 34 CFR sections 300.509, 300.510 and 300.511.

Section 200.5(k)(1)(iii)(a) was amended to clarify that a complaint must be received within one year of the date of the alleged violation, except upon the finding that a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date that the written complaint is received. The rule is needed to conform to 34 CFR sections 300.504 and 300.662.

Section 200.5(m)(3)(iv) was amended to require that a surrogate parent be assigned to a student for as long as a surrogate parent is required. The rule is needed to conform to 34 CFR section 300.515.

Section 200.6(g)(8) and section 200.13(d) were amended to change the term "parent counseling or education" to "parent counseling and

training" as defined in section 200.1. The rule is needed to conform to 34 CFR section 300.24.

Section 200.7(b)(3) establishes that the content of a school conduct and discipline policy for an approved private school, a State-operated school or a State-supported school be consistent with the provisions of subparagraphs (a-d), (f) and (g) of paragraph (1) of section 100.2(l). The rule is needed to conform to the Save Schools Against Violence (SAVE) legislation.

Section 200.16(c)(3) was amended to repeal language that allowed committees, prior to making any recommendation to place a preschool child in an approved program owned or operated by the agency which conducted the initial evaluation, to inform parents that the committee cannot proceed with the process to review the child's needs within the established timelines until an additional evaluation has been completed. The rule is needed to conform to 34 CFR 300.343.

Section 200.16(h)(3)(iii) was amended to clarify that special classes for preschool students are to be provided on a half-day or full-day basis pursuant to sections 200.1(p), (q) and (v). The rule is necessary to standardize and simplify the rate setting and preschool approval process, consistent with 34 CFR section 300.121.

Section 201.7(b) was amended to clarify that the trustees or the board of education of any school district, a district superintendent of schools or a building principal with authority to suspend a student pursuant to Education Law section 3214(3)(b) and (g) have authority to order placement of a student with a disability into an appropriate interim alternative educational setting. The rule is necessary to conform to SAVE legislation.

Section 201.11(a)(3) established that in reviewing a decision with respect to the manifestation determination, an impartial hearing officer must determine whether the school district has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of section 201.4 of this Part. The rule is needed to conform to 34 CFR section 300.525.

Section 201.11(c) was amended to require an impartial hearing officer to mail a copy of the written, or at the option of the parents, electronic findings of fact and decisions to the parents, to the board of education, and to the Office of Vocational and Educational Services for Individuals with Disabilities (VESID) of the State Education Department. The rule is needed to conform to 34 CFR section 300.509.

Section 276.1(c) was amended to make technical corrections as a result of amendments to other sections of the regulations.

Section 279.3, as amended: (1) repealed language allowing a State Review Officer to base his or her decision on statements contained in a petition, which are deemed to be true, if an answer to the allegations in a petition is not served and filed according to the provisions of such regulations; and (2) authorized a State Review Officer to make a decision, that is considered final unless an aggrieved party seeks judicial review.

Section 279.8, as amended: (1) repealed language stating that oral argument before a State review officer is not permitted; (2) added language giving a State Review Officer the authority to determine if oral argument is necessary and to direct that such argument be heard at a time and place reasonably convenient to the parties; (3) authorized the State Review Officer to seek additional oral testimony or documentary evidence if determined necessary; (4) clarified that hearings to take additional evidence will be conducted before a State Review Officer at a time and place reasonably convenient to both parties; and (5) ensures that the procedures at such hearings are consistent with the due process requirements of section 200.5(i)(3).

Section 100.6 was amended to make technical corrections to cross citations related to the definition of a student with a disability and to local certificates.

Assessment of public comment: no comments were received. Sections 200.2 and 200.5 of the Commissioner's Regulations, regarding procedures for appointment of impartial hearing officers

Statutory authority: Education Law sections 101, 207, 4403(3), 4404(1) and 4410(13).

Justification for continuation without modification: The rule is necessary to ensure the timely conduct of impartial hearings as required by the federal Individuals with Disabilities Education Act.

The rule establishes the time period for the board of education to appoint the impartial hearing officer and to ensure the State Education Department has the data to monitor the initiation and completion of impartial hearings.

Section 200.2(e) established additional procedures for boards of education to follow when appointing and rescinding appointments of impartial hearing officers and established hearing reporting procedures.

Section 200.5(i)(3)(i), as amended: (1) established that the board of education appoint an impartial hearing officer no later than five business days after receipt of the request for the hearing; (2) provided the board of education the authority to designate member(s) to appoint the impartial hearing officer; and (3) relocated language regarding rescinding the impartial hearing officer's appointment.

Assessment of public comment: no comments were received.

Sections 200.4 and 200.7 of the Commissioner's Regulations, regarding technical amendments to conform to State and federal requirements

Statutory authority: Education Law sections 101, 207, 4401-a(2) and 4403(3).

Justification for continuation without modification: The rule is needed to conform the Commissioner's Regulations to State and federal requirements and to correct certain cross citations.

The rule enacts technical amendments relating to the information that must be included in the written referral of a student suspected of having a disability and corrects certain cross citations.

Section 200.4(a) was amended to require that a referral include a written description of the interventions and strategies used to remediate the student's performance prior to referral. The rule also provides that the building administrator may request a meeting with the parents to determine if the referred student would benefit from other services designed to meet the learning needs of the student while maintaining the student in general education.

Section 200.4(d)(2)(iv) and section 200.7(d)(1)(ii) were amended to correct certain cross citations.

Assessment of public comment: no comments were received.

Part 247 of the Commissioner's Regulations, regarding conforming and technical amendments pertaining to the vocational rehabilitation program

Statutory authority: Education Law sections 101, 207 and 1004(1).

Justification for continuation without modification: The rule is needed to conform to federal requirements. The rule enacts technical changes to conform the Commissioner's Regulations relating to the State vocational rehabilitation program to Title I of the Rehabilitation Act, as reauthorized by Public Law 105-22, and the federal regulations promulgated under such Act. The rule should continue without modification as federal requirements for the vocational rehabilitation program have not been amended.

Assessment of public comment: no comments were received.

OFFICE OF HIGHER EDUCATION

Section 80-1.11 and Part 87 of the Commissioner's Regulations, regarding fingerprinting and criminal history check of prospective school employees and applicants for teaching certification

Statutory authority: Education Law sections 207, 305(3)(a) and (b), 1604(39) and (40), 1709(39) and (40), 1804(9) and (10), 1950(4), (11) and (mm), 2503(18) and (19), 2554(25) and (26), 2854(3)(a-2) and (a-3),

3004-b(1) and (2), 3004-c, 3035(1), (3) and (4) and Chapter 180 of the Laws of 2000.

Justification for continuation without modification: the rule establishes requirements and procedures for the fingerprinting and criminal history record check of prospective school employees and applicants for teaching certification in order to implement the requirements of Chapter 180 of the Laws of 2000.

The rule is necessary to implement Chapter 180 of the Laws of 2000 to set forth requirements and procedures for fingerprinting and criminal history record checks of prospective school employees. The rule establishes requirements for applicants for certification, as well as the requirements for school employer's vis-à-vis prospective school employees. It also describes the Department's obligations with respect to issuing clearances for employment as well as due process considerations for individuals who may be denied clearance for employment. Additionally, the rule outlines the process for notifying school employers about subsequent arrests. Finally, it sets forth the fee amount, who is obligated to pay the fee, and sets forth the rules surrounding the destruction of an individual's criminal history record.

Assessment of public comment: no comments were received.

OFFICE OF THE PROFESSIONS

Sections 52.30, 74.1, 74.2, 74.4 and 74.5 of the Commissioner's Regulations, regarding standards for licensure qualifying social work programs

Statutory authority: Education Law sections 207, 210, 6504, 6507(1),(2)(a), and (4)(a); 6508(1); 7703, 7704(2) and (4), 7705 and Insurance Law sections 3221(1)(4)(A) and (D) and 4303(i) and (n).

Justification for continuation without modification: the rule establishes standards for licensure qualifying programs in social work, education and examination requirements for licensure, requirements for applicants for limited permits to practice as a certified social worker (CSW), and requirements that must be met by certified social workers to qualify for reimbursement under certain group health insurance policies for psychotherapy services. Since their adoption in 2001, these regulations were substantially modified in 2004 and 2005, as a result of changes to Article 154 of the Education Law.

Section 52.30 established the requirements for licensure qualifying programs leading to the professional preparation for a licensed CSW, including specific course area requirements. Section 52.30 was repealed in 2004 due to the implementation of the new statutory scheme that provided for two new licensed professions (Licensed Master Social Worker and Licensed Clinical Social Worker) and therefore required two new licensure-qualifying programs.

Section 74.1 established the requirements for acceptable professional study leading to the professional preparation for a licensed CSW, including those programs conforming to section 52.30 and other programs that were comparable. Section 74.1 was amended in 2004 due to the implementation of the new statutory scheme that provided for two new licensed professions (Licensed Master Social Worker and Licensed Clinical Social Worker) and therefore required two new licensure-qualifying programs.

Section 74.2 established the requirements for licensure qualifying professional examinations leading to the professional preparation for a licensed CSW. The section contained the specific subject areas of the examination and set forth the qualifications for admission to the examination. Section 74.2 was amended in 2004 due to the implementation of the new statutory scheme that provided for two new licensed professions (Licensed Master Social Worker and Licensed Clinical Social Worker) and therefore required two new licensure qualifying programs.

Section 74.4 established the requirements for receiving a limited permit to practice CSW while waiting to take the examination. The section required that applicants for limited permits must meet all other licensing

requirements except for passing the exam. Section 74.4 was repealed in 2004 due to the implementation of the new statutory scheme that provided for two new licensed professions (Licensed Master Social Worker and Licensed Clinical Social Worker) and therefore required two new licensure qualifying programs.

Section 74.5 established the requirements leading to the CSW gaining authorization to seek certain reimbursement for services from insurance carriers. The section contained the specific experience requirements that a candidate must meet, primarily in the area of psychotherapy. Section 74.5 was amended in 2004 due to the implementation of the new statutory scheme that provided for two new licensed professions (Licensed Master Social Worker and Licensed Clinical Social Worker) and therefore required two new licensure-qualifying programs.

The rule is needed to establish standards to ensure the quality of social work programs that are registered or seeking registration, to set criteria to measure the acceptability of social work programs offered outside the United States and its territories, to allow certain master's degree programs, within limitations, to permit students to use advanced standing credit for meeting their requirements, to ensure that candidates have adequate educational preparation prior to taking the licensing examination, to enable an applicant who has met the education requirement in substance to obtain employment in the social work field, and to clarify supervised experience requirements that must be met to qualify for reimbursement under certain group health insurance policies for psychotherapy services.

Assessment of public comment: no comments were received.

Section 71.3 of the Commissioner's Regulations, regarding examination requirement for licensure as a certified shorthand reporter

Statutory authority: Education Law sections 207, 6504, 6507(1), (2)(a) and (3)(a), 6508(1) and (2), 7503 and 7504(4).

Justification for continuation without modification: the rule changes the examination requirement for licensure as a certified shorthand reporter to reduce the amount of time the candidate must take dictation and to permit candidates to use transcription equipment to transcribe dictation. The rule is needed to conform to realistic testing requirements for the dictation portion of the licensure test, as recommended by the State Board for Certified Shorthand Reporting. The rule is also needed to update the examination to reflect current widespread use of computer assisted dictation equipment in the practice of certified shorthand reporter. The rule was adopted to closely align the examination with the actual practice of certified shorthand reporting and that continues to be the case today. As a result, it has been determined that the rule should be continued.

Assessment of public comment: no comments were received.

Section 75.4 of the Commissioner's Regulations, regarding mandatory continuing competency for speech-language pathologists and audiologists

Statutory authority: Education Law sections 207, 212(3), 6502(1), 6504, 6507(2)(a), 6508(1) and 8209(1)(a), (b) and (c), (2), (3), (4), (5) and (6) and Chapter 266 of the Laws of 2000.

Justification for continuation without modification: The rule is needed to clarify and implement the requirements of Education Law section 8209, as added by Chapter 266 of the Laws of 2000. The rule establishes continuing competency requirements and standards that licensed speech-language pathologists and/or audiologists must meet to be registered to practice in New York State and requirements for sponsors of continuing education. Section 75.4 establishes the continuing competency requirements for speech -language pathologists and/or audiology. This section was implemented as a result of a statutory requirement that all licensees in this area complete certain continuing competencies during each three-year registration period. This rule specifically set forth the methods for meeting this requirement including professional study, self -study and independent study. The rule sets forth important requirements of continuing education in speech language

pathology and has been appropriate and well received. As a result, there are no immediate plans to modify and it has been determined that the rule should be continued.

Assessment of public comment: no comments were received.

OFFICE OF MANAGEMENT SERVICES

Section 3.31 of the Regents Rules, regarding removal of trustees of education corporations

Statutory authority: Education Law section 101, 201, 202(1), 206, 207, 214, 215, 216 and 226(4).

Justification for continuation without modification: the rule establishes procedures to be used in proceedings of the Board of Regents pursuant to Education Law section 226(4) to remove trustees of education corporations created by the Board of Regents, for misconduct, incapacity, neglect of duty and/or failure or refusal of the institution to carry into effect its educational purposes. The rule is needed to codify in the Regents Rules the procedures for removal of trustees of education corporations created by the Board of Regents, and thereby ensure the consistent, systemized practice with respect to such proceedings.

Assessment of public comment: no comments were received.