

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 2002 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 3.32 of the Regents Rules and section 100.2(p) of the Commissioner's Regulations, regarding Public School registration

Statutory authority: Education Law sections 101 (not subdivided), 207 (not subdivided), 210 (not subdivided), 214 (not subdivided), 215 (not subdivided), 305(1) and (2) and (19) and 309 (not subdivided).

Justification for continuation without modification: The rule establishes a formal process for the registration of new public schools to ensure the fulfillment of Regents standards relating to the accountability of public schools. The Board of Regents will grant approve if it is satisfactorily demonstrated that a school will be operated in an educationally sound manner; is in compliance with applicable statutes, rules and regulations relating to public schools; and will operate in accordance with applicable building codes and pursuant to a certificate of occupancy. The rule is needed to provide clarification of policy for the registration of public schools.

Assessment of public comment: No comments were received.

Part 120 of the Commissioner's Regulations, relating to the No Child Left Behind Act of 2001 (Pub. L. 107-110)

Statutory authority: Education Law sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1), (2) and (33), 2802(7), 3214(3)(d) and (f) and Chapter 425 of the Laws of 2002.

Justification for continuation without modification: The rule is needed to ensure compliance of the State and local educational agencies with the federal No Child Left Behind Act of 2001 (Pub. L. 107-110) and the conforming State legislation enacted by Chapter 425 of the Laws of 2002 as a condition of receipt of federal funding under Title I of the Elementary and Secondary Education Act of 1965, as amended. Sections 120.1 and 120.2 of the Regulations of the Commissioner provide a description of the purposes of Part 120 and applicable general defini-

tions. Section 120.3 provides for the implementation of the public school choice provisions that require a federal Title I local educational agency that has a school in school improvement status, corrective action status or restructuring status to provide all students enrolled in such school with the option to transfer to another public school served by the local educational agency at the same grade level that is not in school improvement, corrective action or restructuring status. Section 120.4 establishes criteria and procedures for the approval of providers of supplemental education services. Section 120.5 establishes requirements to ensure that local educational agencies implement provisions to allow any student who attends a persistently dangerous public elementary or secondary school or who is a victim of a violent criminal offense, to attend a safe public school within the local educational agency.

Assessment of public comment: No comments were received.

Section 136.4 of the Commissioner's Regulations, relating to Automated External Defibrillators

Statutory authority: Education Law sections 207 (not subdivided) and 917(1) and (2) and Chapters 60 and 61 of the Laws of 2002.

Justification for continuation without modification: The rule is needed to ensure compliance with Chapters 60 and 61 of the Laws of 2002. It requires school districts, BOCES, county vocational education and extension boards and charter schools to provide and maintain on-site in each instructional school facility automated external defibrillator (AED) equipment in quantities and types deemed to be adequate to ensure ready and appropriate access for use during emergencies, and to ensure the presence of at least one staff person who is trained in the operation and use of an AED whenever the facility is used for school-sponsored or school-approved curricular or extracurricular events or wherever activities for school-sponsored athletic contests or competitive athletic events are held

Assessment of public comment: No comments were received.

Sections 151-1.2 of the Commissioner's Regulations, relating to Universal Prekindergarten Programs

Statutory authority: Education Law sections 101 (not subdivided), 207 (not subdivided) and 3602-e(10)(a)(4) and (12) and section 1-a of Part F of Chapter 383 of the Laws of 2001.

Justification for continuation without modification: The rule is needed to ensure compliance with Chapter 383 of the Laws of 2001. It defines, for summer only universal prekindergarten programs, an "eligible child" as a child who resides within the school district and is five years of age on or after December 1st of the year in which he or she is enrolled, or who will otherwise be first eligible to enter public school kindergarten commencing with the current school year.

Assessment of public comment: No comments were received.

Section 155.25 of the Commissioner's Regulations, relating to Electrically Operated Partitions

Statutory authority: Education Law sections 101 (not subdivided), 207 (not subdivided), 305(1) and (2), 409-f(1) and (2) and 3602(6-c) and Chapter 217 of the Laws of 2001.

Justification for continuation without modification: The rule is needed to ensure compliance with Chapter 217 of the Laws of 2002 and Chapter 231 of the Laws of 2002. It establishes minimum standards for the construction, maintenance and operation of electrically operated partitions or room dividers located in classrooms or other facilities used by students in public and nonpublic schools, including charter schools, and BOCES within the State. It also requires appropriate and conspicuous notice regarding the safe and proper operation and supervision of the electrical device operating such partition, training of staff in the safe operation of the partition, and maintenance of all equipment.

Assessment of public comment: No comments were received.

OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES

Sections 246.3 and 246.6, relating to the Vocational Rehabilitation Program

Statutory authority: Education Law sections 101 (not subdivided), 207 (not subdivided) and 1004(1).

Justification for continuation without modification: The rule continues to be necessary to conform to State law and to ensure that the vocational rehabilitation program is conducted according to federal requirements set forth in the 1998 amendments to the Rehabilitation Act. The rule should continue without modification as federal requirements for the vocational rehabilitation program have not been amended and the standards continue to apply to community rehabilitation programs.

Assessment of public comment: No comments were received.

Section 200.2 of the Commissioner's Regulations, relating to Instructional Material in Alternative Formats

Statutory authority: Education Law sections 207, 1604(29-a), 1709(4-a), 1950(4-a), 2503(7-a), 2554(7-a), 3602(10)(b), 4403(3) and Chapter 377 of the Laws of 2001.

Justification for continuation without modification: The rule continues to be necessary to conform to State law and to implement the requirements set forth in the Individuals with Disabilities Education Act (IDEA) 2004 and federal regulations implementing the Act and Section 504 of the Rehabilitation Act and the corresponding federal requirements set forth in the 1998 amendments to the Act to ensure that a student who needs an accommodation to instructional materials because of his or her disability must be provided with such materials in the alternate format needed by the student. The rule was revised in 2005 to add the IDEA requirement that instructional materials meet the National Instructional Materials Accessibility Standard defined in section 1474(e)(3)(B) of IDEA 2004.

Assessment of public comment: No comments were received.

Sections 200.2, 200.4 and 200.16 of the Commissioner's Regulations, relating to Individualized Education Programs (IEPs)

Statutory authority: Education Law sections 101 (not subdivided), 207 (not subdivided), 4402(7), 4403(3), 4410(13) and Chapter 408 of the Laws of 2002.

Justification for continuation without modification: The rule continues to be necessary to conform regulations to State law to ensure that certain school personnel are provided with copies of the IEP and that appropriate staff are informed of their responsibilities for implementing the IEP. The rule was subsequently revised in 2003 and 2005 to clarify responsibilities and language and to ensure that amendments to the IEP were also required to be provided to certain school personnel to implement the flexibility to provide for amendments to the IEP under IDEA 2004.

Assessment of public comment: No comments were received.

OFFICE OF HIGHER EDUCATION

Sections 3.47(c)(4) and 3.50(b)(16) of the Regents Rules, relating to authorization of a degree abbreviation

Statutory authority: Sections 207 (not subdivided), 210 (not subdivided), 218(1), and 224(4) of the Education Law.

Justification for continuation without modification: Section 3.50 lists the titles and abbreviations of degrees authorized to be conferred in New York State and Section 3.47(c) classifies such degrees. At the request of New York institutions of higher education, the amendment added to the authorized abbreviation of the degree, Bachelor of Music (Mus.B.) the additional abbreviation B.M. This merely gives institutions authorized to confer that degree a choice of abbreviation. Since the institutions continue to want that choice, the regulation will be continued without modification.

Assessment of public comment: No comments were received.

Sections 3.14, Part 4 and 13.11 of the Regents Rules and section 52.23 of the Commissioner's Regulations, relating to accreditation of teacher education programs and voluntary institutional accreditation for Title IV purposes

Statutory authority: Sections 207 (not subdivided), 210 (not subdivided), 212-c (not subdivided), 214 (not subdivided), 215 (not subdivided), and 305(1) and (2) of the Education Law.

Justification for continuation without modification: These rules and regulations refer to the accreditation of teacher education programs as stated in Subpart 4-2, but not voluntary institutional accreditation for Title IV purposes, which is Subpart 4-1.

The rule continues to be needed to improve the quality of teacher education programs to ensure that teachers are well qualified to teach to the State Learning Standards for Students. The rule carries out the policy of the Board of Regents as stated in its policy paper, "New York's Commitment: Teaching to Higher Standards," and prescribed in the Regulations of the Commissioner of Education, that each teacher education program must be accredited by the Board of Regents or an acceptable professional education accrediting association. The rule responds to request from colleges that offer teacher education programs that the Regents offer an alternative means to become accredited. The rule establishes the process by which this will take place.

The rule also is needed to continue in the Regents Accreditation of Teacher Accreditation process the role of the State Professional Standards and Practices Board for Teaching. In addition, the rule states requirements relating to how colleges and universities with teacher education programs accredited by the Board of Regents may represent that accreditation. The rule also is needed to support denial of teacher education program reregistration based on a Regents accreditation review.

Assessment of public comment: No comments were received.

Sections 87.3, 87.4, 87.5 and 87.9 of the Commissioner's Regulations, relating to fingerprinting and criminal history check of prospective school employees and applicants for teaching certification

Statutory authority: Sections 207 (not subdivided), 305(3)(a), 3004-b(1), 3035(3) and (3-a) of the Education Law and Chapter 380 of the Laws of 2001.

Justification for continuation without modification: These sections were added in 2002 to implement §10 of Chapter 380 of the Laws of 2001 which amended Education Law §3035 to add a new subdivision 3-a to permit the sharing of criminal history records between the city school district of the City of New York and the New York State Education Department. These sections are necessary to maintain the conditions necessary to share these records.

These sections provide the conditions pursuant to which an individual's requirement to be fingerprinted for clearance for employment or certification can be satisfied through the use of a prior criminal history obtained by the city school district of the city of New York. These sections also prescribe the conditions under which the New York State Education Department may share an individual's criminal history with the city school district of the city of New York for the purpose of employment in such district.

Assessment of public comment: No comments were received.

Section 52.21(b)(2)(iv)(b)(1) of the Commissioner's Regulations, relating to requirements for teacher education programs

Statutory authority: Sections 207 (not subdivided), 210 (not subdivided), 215 (not subdivided), 305(1), and 3004(1) of the Education Law.

Justification for continuation without modification: The rule continues to be needed without modification as it is used as a measure of program success. Each year there have been a small number of institutions required to operate under a corrective action plan because fewer than 80 percent of program completers have successfully completed teacher certification examinations. This rule also provides a definition of program completer that is consistent with that of the U.S. Department of Education and that results in simplified reporting requirements for New York State institutions of higher education.

Assessment of public comment: No comments were received.

Section 80-2.6(c) of the Commissioner's Regulations, relating to requirements for certificate of teachers of the speech and hearing handicapped

Statutory authority: Sections 207 (not subdivided), 305(1), (2), and (7), 3004(1) and 3006(1) of the Education Law.

Justification for continuation without modification: Section 80-2.6 (c) establishes a pathway to certification for licensed and registered speech language pathologists, enabling them to obtain an initial certificate as teachers of the speech and hearing handicapped, and also specifies the testing, experience and professional development requirements for progression to the Professional certificate. This provision continues recruitment efforts previously established in regulation for the former Provisional/Permanent certificate series. The provision has proven successful in recruiting additional professionals into this shortage field.

Assessment of public comment: No comments were received.

80-1.7 and 80-5.15 of the Commissioner's Regulations, relating to requirements for the renewal of a provisional teaching certificate and the issuance of a limited certificate in the classroom teaching service

Statutory authority: Sections 207 (not subdivided), 305(1), (2), and (7), 3004(1) and 3006(1) of the Education Law.

Justification for continuation without modification: Section 80-1.7 established the conditions for renewal of the Provisional teaching certificate. This section was repealed, effective April 13, 2006, and replaced with a new Section 80-1.7.

Section 80-5.15 established a limited certificate available to candidates who taught under a temporary license during the 2002-2003 school year, enabling them to continue teaching during the 2003-2004 school year while completing coursework requirements to qualify for a Provisional certificate. Limited certificates were valid only for the period September 1, 2003 through August 31, 2004 and are not renewable. Therefore, this provision does not need to be modified.

Assessment of public comment: No comments were received.

OFFICE OF THE PROFESSIONS

Section 29.13(a) of the Regents Rules, relating to unprofessional conduct in the practice of massage therapy

Statutory authority: Education Law sections 207 (not subdivided), 6504 (not subdivided), 6506(1) and 6509(9).

Justification for continuation without modification: This regulation continues to maintain the requirement that licensed massage therapists keep adequate patient records for those patients that they see in non-traditional settings such as spas.

Assessment of public comment: No comments were received.

Section 29.7(a)(21)(ii)(a) of the Regents Rules, relating to unprofessional conduct in the practice of pharmacy and assistance to licensed pharmacists by unlicensed individuals

Statutory authority: Education Law sections 207 (not subdivided), 6504 (not subdivided), 6506(1) and 6509(7) and (9), and 6801 (not subdivided).

Justification for continuation without modification: This regulation continues to allow licensed pharmacists to utilize certain assistants in the dispensing of medications, subject to supervision and oversight. It further allows licensees to concentrate on non-administrative functions and decrease dispensing errors.

Assessment of public comment: No comments were received.

Section 29.10 of the Regents Rules, relating to the definition of unprofessional conduct and work paper documentation and retention in the practice of public accountancy

Statutory authority: Education Law sections 207 (not subdivided), 6504 (not subdivided), 6506(1) and 6509(9), and 7401 (not subdivided).

Justification for continuation without modification: This regulation continues to necessarily clarify the specific paperwork and documentation that licensed accountants must maintain.

Assessment of public comment: No comments were received.

Section 64.6 of the Commissioner's Regulations, relating to the practice of nursing and midwifery

Statutory authority: Education Law sections 207 (not subdivided), 6507(1) and (2), 6902(1) and (2), and 6951(1), (2) and (3).

Justification for continuation without modification: This regulation continues to clarify the ability of licensed midwives to order regimens to be provided by a registered nurse.

Assessment of public comment: No comments were received.

Part 77 of the Commissioner's Regulations, relating to the licensing of physical therapists and certification of physical therapy assistants

Statutory authority: Education Law sections 207 (not subdivided), 6506(1), 6507(2)(a), 6734(d), 6735(c), 6740(c-1), and 6741-a(c), and Section 4 of Chapter 404 of the Laws of 2002.

Justification for continuation without modification: This regulation continues to clarify the nature of examination to be completed by an applicant for licensure in physical therapy assistant.

Assessment of public comment: No comments were received.

Section 61.15(a) of the Commissioner's Regulations, relating to mandatory continuing education for dentists

Statutory authority: Sections 207 (not subdivided), 6502(1), 6504 (not subdivided), 6507(2)(a), and 6604-a(2) and (4) of the Education Law.

Justification for continuation without modification: This regulation continues to be necessary to ensure that dentists complete necessary continuing education relating to smoking cessation.

Assessment of public comment: No comments were received.

OFFICE OF CULTURAL EDUCATION

Sections 185.5, 185.13 and 185.14 of the Commissioner's Regulations, relating to Local Government Records Management

Statutory authority: Education Law section 207 (not subdivided) and Arts and Cultural Affairs Law section 57.25(2).

Justification for continuation without modification: The regulations are necessary to prescribe records retention and disposition schedules for counties and miscellaneous local governments pursuant to section 57.25(2) of the Arts and Cultural Affairs Law. The regulations adopted in 2002 were subsequently modified in 2006 to provide for a revised Records Retention and Disposition Schedule CO-2 and a revised Records Retention and Disposition Schedule MI-1.

Assessment of public comment: No comments were received.

OFFICE OF MANAGEMENT SERVICES

Agency Representative:

Sections 3.16 and 3.17 of the Commissioner's Regulations, relating to Charter School complaints

Statutory authority: Education Law sections 101 (not subdivided), 206 (not subdivided), 207 (not subdivided), 305(1), (2) and (20) and 2855(1), (2), (3), and (4).

Justification for continuation without modification: The rule is necessary to prescribe procedures for the conduct of charter school revocation proceedings by the Board of Regents pursuant to Education Law section 2855. The rule establishes procedures for the conduct of charter school revocation proceedings initiated by the Board of Regents, and delegates to the Commissioner the authority of the Board of Regents to investigate and respond to complaints against charter schools pursuant to Education Law section 2855(4), authority to issue remedial orders to charter schools pursuant to Education Law section 2855(4), and the authority to place a charter school on probationary status and to develop and impose a remedial action plan pursuant to Education Law section 2855(3).

Assessment of public comment: No comments were received.