

RULE REVIEW

Education Department

Review of Existing Rules Pursuant to State Administrative Procedure Act Section 207 - Notice of Continuation Without Modification

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 years 2007, 2002 and 1997 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.

a. Calendar Year 2007

OFFICE OF P-12 EDUCATION

Section 100.5 of the Commissioner's Regulations, regarding Regents diploma with honors

Justification for continuation without modification: To revise and clarify diploma requirements, provide flexibility to schools, and alternatives for students who seek a Regents Diploma with honors or a Regents Diploma with Advanced Designation with honors. Under prior regulations, a school district could award a student a Regents diploma with honors or a Regents diploma with advanced designation with honors if a student achieves an average of 90 percent in all required Regents examinations. The rule provides an opportunity for students to substitute up to two approved alternative assessments in lieu of required Regents examinations to be awarded the "Honors" designation on their diploma. The student's score on the alternative assessments will not be considered in the calculation to determine whether the student has achieved an average of 90 percent.

Legal basis for rule: Education Law sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 305(1) and (2), 308 (not subdivided), 309 (not subdivided) and 3204(3).

Assessment of Public Comment: No comments were received.

Section 120.4 of the Commissioner's Regulations, regarding Supplemental Educational Services (SES)

Justification for Continuation without modification: Prescribes requirements regarding the use of rewards and incentives by Supplemental Educational Services (SES) providers; revises reporting dates for SES providers and local educational agencies (LEAs); and corrects inaccurate references in the SES regulations. The rule is necessary to implement policy adopted by the Board of Regents regarding the provision of Supplemental Educational Services (SES). The rule:

a. Regulates the use of rewards and incentives by SES provider to prohibit SES providers from using incentives, gratuities, payments, or compensation to solicit enrollment, encourage parents to switch providers once students are enrolled, or attempt to influence parents, students, LEAs, LEA staff and/or school staff.

b. Amends reporting dates for SES providers and local educational agencies (LEAs) to so that accurate information and data are collected on a timeline that is most suitable for the providers and the LEAs; and
c. Corrects inaccurate references in current SES regulations.

Legal Basis for rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1), (2) and (3), 308(not subdivided), 309(not subdivided) and 3713(1) and (2).

Assessment of Public Comment: No comments were received.

Section 100.13 and amendment of section 170.12 of the Commissioner's Regulations, regarding Contracts for Excellence

Justification for continuation without modification: The rule establishes requirements for Contracts for Excellence, including allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures, and other requirements for purposes of preparation of the Contracts by certain specified school districts. The rule is needed to implement the statutory requirements. The rule establishes systems and processes that provide for transparency, simplicity and accountability in the use of additional aid to districts with the greatest concentrations of students in need who are at the same time, experiencing the greatest obstacles to improving their students' achievement. Moreover, it ensures that districts and schools use new funding on one or more of the following six programs and activities: class size reduction, increased time on task, middle and high school restructuring, full day prekindergarten and kindergarten, teacher and principal quality initiatives and experimental programs.

Legal basis for rule: Education Law sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2), 211-d(1-9), and Chapter 57 of the Laws of 2007.

Assessment of Public Comment: no comments were received.

Sections 21.3 and 100.12 of the Commissioner's Regulations, regarding loan of instructional computer hardware

Justification for continuation without modification: To implement Education Law sections 753 and 754, as added by Chapter 57 of the Laws of 2007, to provide for the loan of instructional computer hardware from public school districts to nonpublic school students. The rule is needed to implement statutory requirements. Education Law section 754, as added by Chapter 57 of the Laws of 2007, requires school authorities to loan instructional computer hardware to an individual or a group of individuals legally attending nonpublic schools located in the district, subject to such rules and regulations as prescribed by the Board of Regents. These requirements are detailed in an amendment to section 21.3 of the Rules of the Board of Regents, which detail loan procedures for computer hardware and software.

Education Law section 753, as added by Chapter 57 of the Laws of 2007, provides for an apportionment for approved school district expenses for computer hardware or technology equipment, or for repair of such equipment or staff development for instructional purposes. Such aid shall be provided pursuant to a plan developed by the district that demonstrates, to the satisfaction of the Commissioner, that the instructional computer hardware needs of the district's public and

nonpublic school students have been adequately met. Section 100.12, as amended, specifies that each school district's technology plan including an assurance that the school district has provided for the loan of instructional computer hardware to students legally attending nonpublic schools pursuant to Education Law section 754.

The rule establishes systems and processes that provide needed computer hardware to benefit students attending nonpublic schools in the state, which is a necessary component in raising academic achievement through additional computer training, education and instructional delivery.

Legal basis for rule: Education Law sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305 (1) and (2), 753 (1) and 754 (1) and sections 7-a and 7-b of Chapter 57 of the Laws of 2007.

Assessment of public comment: no comments were received.

Section 151-1 of the Commissioner's Regulations regarding, the Universal Pre-Kindergarten program

Justification for continuation without modification: Conforms the Commissioner's Regulations to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, by establishing uniform quality standards for prekindergarten programs, criteria relating to program design, procedures for applying for universal prekindergarten grants, procedures by which districts select eligible agency collaborators through a competitive process, and facility requirements. The rule is necessary to conform Subpart 151-1 to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007.

Legal basis for rule: Education Law sections 101 (not subdivided), 207 (not subdivided) and 3602-e(1), (2), and (5)-(16), and section 19 of Chapter 57 of the Laws of 2007.

Assessment of public comment: no comments were received.

Sections 100.2, 120.6, 200.1 through 200.9, 200.13, 200.14, 200.16, 200.22, 201.2 through 201.11 of the Commissioner's Regulations, regarding special education programs and services

Justification for continuation without modification: The rule continues to be necessary to conform the Commissioner's Regulations to the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et. seq.), as amended by Public Law 108-446, and recent amendments to 34 CFR Part 300 which became effective on October 13, 2006. The rule is also necessary to ensure consistency in procedural safeguards; promote timely evaluations and services; and facilitate services in the least restrictive environment for students with disabilities. The rule was subsequently revised in 2008 and again in 2009 to conform the Commissioner's Regulations the federal IDEA statutes and regulations and State statute. The rule was also revised in 2009 to extend the date for requiring the State's forms for IEPs, prior written notice and meeting notice. The rule was further revised in 2010 to authorize school districts to add up to two additional students to integrated co-teaching classes and to make certain technical amendments.

Legal basis for rule: Education Law sections 207 (not subdivided), 3208(1-5), 3209(7), 3214(3), 3602-c(2), 3713(1) and (2), 4002(1-3), 4308(3), 4355(3), 4401(1-11), 4402(1-7), 4403(3), 4404(1-5), 4404-a(1-7), and 4410(13).

Assessment of public comments: No comments were received.

Section 154.2, repeal and addition of section 154.3 and repeal of section 154.4 of the Commissioner's Regulations, regarding pupils with limited English proficiency

Justification for continuation without modification: Prescribes requirements for the development of comprehensive plans for students with limited English proficiency by school districts pursuant to Education Law section 3204, as amended by Chapter 57 of the Laws of 2007, and otherwise conforms Part 154 of the Commissioner's Regulations to the statute. The rule is necessary to conform the Commissioner's Regulations to section 10 of Chapter 57 of the Laws of 2007. Pursuant to Chapter 57 of the Laws of 2007, school districts no longer claim State limited English proficiency aid. Beginning in 2007-08, all districts receive total foundation aid. Each school district that receives total foundation aid must develop a comprehensive plan consistent with Education Law section 3204(2-a)(1) and Part 154 of the Commissioner's Regulations.

Legal basis for rule: Education Law sections 207, 215, 2117(1), 3204(2), (2-a), (3) and (6) and section 10 of Chapter 57 of the Laws of 2007.

Assessment of public comment: no comments were received.

Section 175.5 of the Commissioner's Regulations, regarding superintendents' conference days

Justification for continuation without modification: To extend for two years the provision in Commissioner's Regulations section 175.5(f) that allows a school district to use up to two of its superintendents' conference days for teacher rating of State assessments. The rule extends for two years the provision in section 175.5(f) that permits a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001. The rating of students' performance on the State assessments is an effective way for teachers to learn the new learning standards and therefore constitutes permissible staff development activities relating to implementation of the new high learning standards and assessments, as authorized by Education Law section 3604(8). The rule continues to provide school districts with additional flexibility and discretion to use this staff development function to fulfill their State test scoring requirements while minimizing impact on student instructional time.

Legal basis for rule: Education Law sections 101 (not subdivided), 207 (not subdivided) and 3604(8).

Assessment of public comment: no comments were received.

Section 3.16 of the Rules of the Board of Regents, regarding charter schools

Justification for continuation without modification: Delegates to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a). Having the Board of Regents personally conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter is not deemed to be the most appropriate and efficacious means to address this matter, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members. It has been determined that delegation of such responsibility to the Commissioner will provide for the most efficient and expeditious means to conduct such hearings.

Legal basis for rule: Education Law sections 101 (not subdivided), 206 (not subdivided), 207 (not subdivided), 305(1), (2) and (20) and 2857(1) and (1-a) and section 7 of Part D-2 of Chapter 57 of the Laws of 2007.

Assessment of public comment: no comments were received.

Section 119.4 of the Commissioner's Regulations, regarding charter school public hearings

Justification for continuation without modification: Establishes procedures for the conduct of public hearings by school districts to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1). It has been determined that the procedures set forth in the rule will provide for the most efficient, thorough and expeditious means to conduct such hearings.

Legal basis for rule: Education Law sections 101 (not subdivided), 206 (not subdivided), 207 (not subdivided), 305(1), (2) and (20) and 2857(1) and section 7 of Part D-2 of Chapter 57 of the Laws of 2007.

Assessment of public comment: no comments were received.

Section 170.13 of the Commissioner's Regulations, regarding fiscal maintenance of effort

Justification for continuation without modification: Defines "city funds" for purposes of determining maintenance of effort in cities having a population of one hundred twenty-five thousand or more inhabitants and less than one million inhabitants pursuant to Education Law section 2576(5-b), including state and private funding sources

over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement. The rule is needed to implement the statutory requirements. The rule establishes a definition of “city funds” for purposes of determining the fiscal maintenance of effort requirement in Education Law section 2576(5-b), thus ensuring that the requirement pertains only to funds over which the cities have control. State Education Department research on the maintenance of local effort in support of schools has documented that school districts tend to reduce local effort when they receive State Aid increases. Without a statutory requirement or formula structure that requires maintenance of local effort there is no way to ensure that State Aid increases provided for the purpose of increasing student achievement will result in additional programs and services for students, rather than tax relief or the funding of other city services.

Legal basis for rule: Education Law sections 101 (not subdivided), 207 (not subdivided) and 305(1) and (2) and 2576(5-b) and section 9 of Part B of Chapter 57 of the Laws of 2007.

Assessment of public comment: no comments were received.

Section 100.3 of the Commissioner’s Regulations, regarding program requirements for students in prekindergarten and kindergarten

Justification for continuation without modification: Aligns program requirements for prekindergarten and kindergarten programs operated by school districts and voluntarily registered nonpublic schools with those established for State-funded universal kindergarten programs. The rule is necessary to achieve consistency between the provisions of this Part and those in other Parts of the Regulations of the Commissioner of Education. Specifically, the rule revises section 100.3(a) to align the program requirements for prekindergarten and kindergarten programs operated by school districts and voluntarily registered nonpublic schools with those established in Subpart 151-1 for state-funded universal prekindergarten programs. These rule requires school districts to adopt and implement curricula that ensure strong instructional content aligned with the State learning standards and integrated with the instructional program in grades one through twelve; redefine the required components of early literacy and emergent reading instruction; identify the types of learning experiences that must be provided; and require procedures to ensure the active engagement of parents in the education of their children.

Legal basis for rule: Education Law sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 215 (not subdivided), 305(1) and (2), 308 (not subdivided), and 309 (not subdivided).

Assessment of public comments: no comments were received.

Section 117 of the Commissioner’s Regulations, regarding diagnostic screening for students who are new entrants or who have low test scores in reading or mathematics

Justification for continuation without modification: Provides for the diagnostic screening of students who are new entrants to school or who have low test scores on the statewide reading or mathematics assessment and to provide consistency between definitions in Part 117 and other provisions of the Commissioner’s Regulations, specifically, by conforming the definition of “handicapping condition” to the definitions of a “preschool student with a disability” and a “student with a disability”. The rule is necessary to achieve consistency between the definitions in Part 117 and those in other provisions of the Regulations of the Commissioner of Education. Specifically, the definition of a pupil with a possible “handicapping condition” [section 117.2(a)] is amended to conform to the definitions of a “preschool student with a disability” and a “student with a disability” as defined in sections 200.1(mm) and 200.1(zz) respectively. The definition of pupils who must receive diagnostic screening based on their performance on statewide tests [section 117.2(e)] is amended to reflect the definition of a student with low test scores established in Education Law section 3208(5).

Further, the rule clarifies the existing screening requirements. Section 117.2(d) is amended to clarify that prekindergarten students are included in the definition of “new entrants”. A new section 117.2(g) is added to define “health care provider”. This definition is consistent with that found in Part 136 of the Commissioner’s Regulations pertaining to school health services and provides districts and parents

with greater flexibility regarding the type of health care professional who can provide the required health and immunization certifications. Section 117.3(b) is amended to incorporate the health screening requirements set forth in section 136.3.

Legal basis for rule: Education Law sections 101 (not subdivided), 207 (not subdivided), 3208(5) and 4403(3).

Assessment of public comment: no comments were received.

Sections 100.14 and 100.15 of the Commissioner’s Regulations, regarding Excelsior Scholars Program and Grants for Summer Institutes for Mathematics and Science Teachers

Justification for continuation without modification: Establishes criteria for the award of grants for the Excelsior Scholars Program pursuant to Education Law section 3641-a and grants for Summer Institutes for Mathematics and Science Teachers pursuant to Education Law section 3641-b. The rule is necessary to implement Education Law sections 3641-a(1), (2) and (3) and 3641-b, as added by section 39 of Part B of Chapter 57 of the Laws of 2007. The rule establishes criteria for the award of grants for the Excelsior Scholars summer programs for high performing students in mathematics and science who have completed seventh grade, and grants for summer institutes for teachers of mathematics and science in grades five through eight in middle schools, junior high schools, intermediate schools or junior/senior high schools.

Legal basis for rule: Education Law sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2) and sections 3641-a(1), (2) and (3) and 3641-b(not subdivided), as added by section 39 of Part B of Chapter 57 of the Laws of 2007.

Assessment of public comment: no comments were received.

OFFICE OF HIGHER EDUCATION

Section Subpart 4-1 of the Commissioner’s Regulations, regarding Voluntary Institutional Accreditation for Title IV purposes

Justification for continuation without modification: The rule establishes requirements and clarifies existing standards and procedures that must be met by institutions of higher education voluntarily seeking institutional accreditation or renewal of such accreditation by the Board of Regents and the Commissioner of Education. In June 2001, the Board of Regents adopted Part 4 of the Rules of the Board of Regents, Voluntary Institutional Accreditation for Title IV Purposes (now Subpart 4-1) as part of a process of complying with the requirements in regulations of the U.S. Department of Education (34 CFR Part 602) for continued recognition of the Board of Regents as an institutional accrediting agency. One of the Federal regulations requires each Nationally Recognized Accrediting Agency to have “a systematic program of review that demonstrates that its standards are adequate to evaluate the quality of the education or training provided by the institutions and programs it accredits and relevant to the educational or training needs of students” (34 CFR 602.21[a]).

In compliance with the Federal requirement, the Department began a multi-year review of the institutional accreditation standards and procedures. This review included examination of the standards of other accrediting agencies; surveys of accredited institutions and of New York higher education institutions accredited by other agencies; annual colloquia on selected standards involving faculty and administrators from accredited institutions and from other New York degree-granting institutions, members of the Regents Advisory Council on Institutional Accreditation, and Department accreditation staff; review of the findings of peer review teams in site visits for institutional accreditation and extended discussions by the Regents Advisory Council. As a result of this multi-year process, the rule was adopted to provide clarity and address any deficiencies in the previous regulation.

The rule permits the Commissioner to extend the 10-year term of accreditation for up to 12 months on one or more occasions for good cause. The Department believes a brief extension of the accreditation term for good cause is necessary to provide regulatory flexibility, due to the challenges institutions face in preparing for accreditation or renewal of accreditation, and the demands on the Department in scheduling so many site visits.

The rule expands on what should be included in an institutional mission statement to ensure it is of sufficient scope and depth to be able to evaluate an institution’s activities in support of their mission.

The rule requires an institution to submit a plan, acceptable to the commissioner, to improve graduation rates or job placement rates if its most recent rates fall more than five percentage points below the statewide mean. This rule is needed to hold institutions more accountable for their graduation and job placement rates.

The lack of transferability of courses from institutions accredited by the Board of Regents to regionally accredited institutions has also been identified as a problem. This rule prohibits institutions from denying transfer credits based solely on the sending institutions' choice of an accrediting agency approved by the U.S. Department of Education and requires the learning objectives of each course to be at a level and rigor that warrant acceptance in transfer by other higher education institutions. The rule defines and clarifies the minimum credentials expected of faculty teaching in undergraduate programs.

The rule establishes as a standard for accreditation that an institution shall not be in violation of a State or Federal statute, where such violation demonstrates incompetence and/or fraud in the management of the institution. This assures that accredited institutions are not operating fraudulently or incompetently, in terms of New York State or Federal statutes, and thereby strengthens the Regents standards for the operation of accredited institutions.

The rule requires that any institution admitting students with academic deficiencies provide adequate support services so that students admitted by accredited institutions with "open admission" policies receive the academic services they need in order to successfully complete their programs. It further requires that all students receive instruction in information literacy to assure that all students can utilize the institution's library effectively in their courses and other academic requirements.

The rule clarifies requirements that institutions must meet in reference to catalogs. It requires institutions to archive annually all print and online catalogs, and requires archived copies to be retained permanently. This is needed to address the use of multi-year and online catalogs and how the information contained in such catalogs is to be maintained by institutions.

The rule requires an institution and/or the Deputy Commissioner, if they plan on appealing the findings of the Advisory Board pursuant to section 4-1.5 of the Rules of the Board of Regents, to file a notice of intention to appeal within 10 days of receipt of the Advisory Council's recommendation. Similarly, the rule requires an institution intending to file an appeal of a Regents adverse determination under section 4-1.5 of the Rules of the Board of Regents to file a notice of intention to appeal within five days of such determination. The Department believes this is necessary for regulatory flexibility and to provide the Commissioner with adequate time and notice to process the appeal.

Legal basis for rule: Education Law sections 207 (not subdivided); 210 (not subdivided); 214 (not subdivided), 215 (not subdivided), and 305(1) and (2).

Assessment of public comment: no comments were received.

Section 70.3 of the Commissioner's Regulations, regarding examination requirements for licensure in public accountancy

Justification for continuation without modification: The purpose of the rule is to revise standards and procedures relating to the examination for licensure in public accountancy. Specifically, the rule makes the following changes:

The rule changes the grading of the licensure examination from pass/fail to a numeric score. Pass/fail scoring was previously implemented in 2003 because the Department expected the computer-based examination would provide candidates with detailed diagnostic information with the pass/fail result, making numeric scores unnecessary. However, the diagnostic information provided to candidates was not as detailed as expected, and therefore the rule imposes a requirement for numeric scores as a means to help candidates who have failed sections of the examination to understand areas in which they need to improve.

The rule is also lengthens the period of time of validity for passed sections of the licensure examination and the period of time in which all four sections must be passed. This is needed because the examination provider did not provide examination results to candidates as

frequently as expected, in some cases resulting in candidates having difficulty passing all four sections of the examination in the time limits prescribed in the regulation. The changes allow a candidate to maintain credit for passed sections of the examination for longer periods of time, providing additional time to re-take a failed section of the examination and meet the time requirements for passing all four sections.

Legal basis for rule: Education Law sections 207(not subdivided); 6504 (not subdivided); 6507(2)(a) and (3)(a); 6508(2) and 7404(1)(4).

Assessment of public comment: no comments were received.

Section 66.5(f) and addition of section 66.6 of the Commissioner's Regulations, regarding continuing education requirements for optometrists certified in the use of therapeutic pharmaceutical agents

Justification for continuation without modification: The rule establishes and clarifies existing continuing education requirements that must be met by licensed optometrists certified to use therapeutic pharmaceutical agents. The rule also provides the Commissioner with the flexibility to adjust the continuing education requirements in exceptional situations leading to non-compliance. The rule clarifies existing mandatory continuing education requirements and provide more flexibility to the Department for exceptional circumstances that lead to non-compliance.

The rule is also needed to address the Department's current lack of ability to adjust the continuing education requirements for exceptional circumstances that lead to non-compliance. It provides the Department with the flexibility to permit an applicant to complete all or part of the continuing education requirement through an acceptable alternative course of study if the applicant documents good cause that prevents compliance with the regular continuing education requirements. However, the applicant will not be able to renew his/her certification until the continuing education requirement is met. The rule further requires licensed optometrists to certify to the Department that they have complied with the continuing education requirements; or that the applicant has an approved adjustment to such continuing education requirements from the Department.

Under prior regulations, there were no requirements for the approval of program sponsors or courses. The rule provides that the Department shall deem approved courses approved by the Council on Optometric Practitioner Education or an organization determined by the Department with assistance from the State Board for Optometry to have adequate standards or a course offered by a postsecondary institution authorized to offer a program in optometry leading to licensure. Any course not deemed approved must be reviewed by the Department. For Department review, the sponsor will be required to submit an application for advance approval of the course 14 days prior to the date of commencement of such course. Any course approved by the Department will only be approved for the specified dates that the course is offered.

In order to ensure compliance, the rule also provides the Department with the authority to conduct site visits of, or request information from a sponsor of an approved course and provides the Department with the discretion to deny a course or terminate a course's approved status if they are not meeting the requirements set forth in this section.

Legal basis for rule: Education Law sections 207 (not subdivided); 6507(2)(a); 7101 (not subdivided) and 7101-a(7).

Assessment of public comment: no comments were received.

Sections 80-1, 80-3, 80-4 and 80-5 of the Commissioner's Regulations, regarding requirements for teachers' certification and teaching practice

Justification for continuation without modification: The rule clarifies existing standards and procedures that must be met by teachers (classroom teachers, school leaders and pupil personnel professionals) when seeking certification by the Board of Regents and the Commissioner of Education. The rule also provides the Commissioner with the flexibility to accept candidates who substantially meet certain certification requirements and/or who have a valid certificate from another state or an authorization to practice from another country evidencing knowledge, skills and abilities comparable to those

required for certification in New York State. Specifically, the rule makes the following major changes:

The rule permits the Commissioner to extend the time validity of an expired provisional, initial or transitional certificate for an additional year, beyond the two-year extension currently provided for, if a candidate is faced with extreme hardship or other circumstances beyond the control of the individual. This change is needed to provide the Commissioner with the flexibility to extend the time validity of certain certificates in extreme circumstances.

For purposes of qualifying for a teaching certificate, the rule provides the Commissioner with the flexibility to accept a candidate's baccalaureate degree from a higher education institution that the Commissioner deems substantially equivalent to a baccalaureate degree from a regionally accredited institution of higher education. This change is needed to provide the Commissioner with the flexibility to accept a candidate who has received teacher preparation from a higher education institution that the Commissioner deems substantially equivalent to that of a regionally accredited institution.

The rule permits the Commissioner to accept academic preparation that the Commissioner deems to be substantially equivalent to that specified in regulation for a teaching certificate. This change is needed to allow the Commissioner to accept coursework from a candidate that, while not technically meeting a specified requirement, satisfies the required competencies.

The rule provides the Commissioner with the flexibility to accept paid full-time experience in lieu of the college-supervised practicum in the classroom teaching titles that require a practicum: literacy, library media specialist, and speech and language disabilities. This change is needed to provide an option, for example, for those out-of-state candidates who graduated from programs that did not include a practicum but who may have several years of professional experience or applicants who have completed programs years ago and practiced in non-public schools successfully for many years.

For purposes of certification as a school building leader, a school district leader or school district business leader, the rule permits the Commissioner to accept a candidate who has successfully completed an educational leadership program accredited by a United States Department of Education recognized accrediting body at a regionally accredited institution outside New York State. This is needed to provide the Commissioner with a mechanism to accept successful candidates who have completed programs that have been rigorously reviewed by national accrediting bodies and found to be of high quality in the field of school leadership.

The rule sets forth the specific teaching certificate titles to which an extension as coordinator of work-based learning programs for career awareness may be appropriately attached and those teaching certificate titles for which an extension as a coordinator of work-based learning programs for career development may be attached. The prior regulatory language lacked the specificity needed to advise candidates appropriately.

The rule also clarifies that the holder of an extension as a coordinator of work-based learning programs for career development may also coordinate programs for career awareness. This clarification is needed to advise candidate's appropriately because the requirements for a coordinator of work-based learning programs include and are more rigorous than the requirements for career awareness.

The rule also authorizes the Commissioner to accept an out-of-state certificate or an authorization to practice from another country that evidences comparable knowledge, skills, and abilities with those required for initial certification in New York State. This is needed to provide the Commissioner with the flexibility to accept certificates or authorizations to practice presented by applicants from foreign countries or non-reciprocal states.

Legal basis for rule: Education Law Sections 207 (not subdivided), 208 (not subdivided), 305(1), (2) and (7), 308 (not subdivided), 3001(2), 3004(1), 3006(1)(b), 3007(not subdivided), and 3009.

Assessment of public comment: no comments were received.

Sections 80-1.11, 87.1, 87.2, 87.4, 87.5, 87.6, 87.8 and the addition of section 87.10 of the Commissioner's Regulations, regarding the

fingerprinting and criminal history record check of prospective employees of nonpublic and private elementary or secondary schools

Justification for continuation without modification: The rule is needed to implement the requirements set forth in sections 305, 3001-d and 3035 of the Education Law, as amended by Chapter 630 of the Laws of 2006. Specifically, rule makes the following major changes:

In order to conform the regulations to the requirements set forth in Sections 305, 3001-d and 3035 of the Education Law, as amended by Chapter 630 of the Laws of 2006, the rule revises the definitions in Part 87 for clearance for employment, conditional appointment, conditional clearance for employment and covered school to permit nonpublic and private schools to seek such clearances and appointments from the Department beginning July 1, 2007. The rule also authorizes nonpublic or private elementary or secondary schools to be a designated fingerprinting entity if they choose to fingerprint prospective school employees.

The rule further clarifies that the fingerprinting and criminal history record check requirements under Part 87 apply to all prospective school employees appointed to compensated positions in a nonpublic or private elementary school that elects to fingerprint and seek clearance from the Department for prospective employees on or after July 1, 2007 and not to prospective employees appointed to such schools prior to July 1, 2007.

The rule authorizes the Department to consider the criminal history record and any related information obtained by the Department pursuant to such review, when the criminal history record check reveals that the prospective school employee was convicted of a crime or has a pending criminal charge.

The rule also makes technical changes to the due process requirements of Part 87 to reflect the change in title of the executive director of the Office of Teaching Initiatives to the Assistant Commissioner of the Office of Teaching Initiatives. The rule also clarifies that the Department will accept a credit card for the fee charged for a criminal history information request under Part 87 to conform with current practice.

In order to implement the requirements of Chapter 630 of the Laws of 2006, the rule requires that beginning July 1, 2007, any nonpublic or private elementary or secondary school that elects to fingerprint and seek clearance from the Department for prospective employees must notify the Assistant Commissioner of the Office of Teaching Initiatives, or his designee, on forms provided by the Department of its intent to seek clearance from the Department through the Department's TEACH online services system.

The rule further clarifies that any nonpublic or private elementary or secondary school that elects to submit requests for criminal history record review to the Department for prospective employees shall do so with respect to each such prospective employee and shall develop a policy for the safety of the children who have contact with an employee holding conditional appointment or emergency appointment.

Legal basis for rule: Education Law sections 207 (not subdivided), 3012-b and Section 9 of Part 12 of Chapter 57 of the Laws of 2007.

Assessment of public comment: no comments were received.

Sections 80-1.11, 87.1, 87.2, 87.4, 87.5, 87.6, 87.8 and the addition of section 87.10 of the Commissioner's Regulations, regarding the fingerprinting and criminal history record check of prospective employees of nonpublic and private elementary or secondary schools

Justification for continuation without modification: Establishes requirements and procedures for the fingerprinting and criminal history record check of prospective school employees for nonpublic and private elementary or secondary schools in order to implement the requirements of Chapter 630 of the Laws of 2006. The purpose of the rule is to clarify the existing procedures for institutions of higher education seeking accreditation of their teacher education programs, or renewal of such accreditation, by the Board of Regents. Specifically, the rule clarifies that the Deputy Commissioner may accept and/or consider additional information from the institution, other than the record before the standards board or subcommittee, when making a recommendation during a comprehensive review for accreditation, a compliance review or when reviewing programs on probationary

status. The rule also clarifies that the Deputy Commissioner may request additional written information from the standards board or subcommittee, provided that the Deputy Commissioner transmits such additional written information to the institution by first class mail within fifteen days of receipt of such information.

This rule provides the Deputy Commissioner with the flexibility to accept and/or request additional information from the institution and/or standards board before making a recommendation. It also provides the institution with the opportunity to notify the Deputy Commissioner if it has corrected any identified deficiencies.

Legal basis for rule: Education Law sections 207(not subdivided), 305(30), 3001-d and 3035.

Assessment of public comment: no comments were received.

Sections 52.26 and 61.9, repeal section 61.13 and add a new section 61.13 of the Commissioner's Regulations, regarding scope of practice for certified dental assistants and dental hygienists and the curriculum requirements for registration as a program leading to licensure in certified dental assisting

Justification for continuation without modification: The rule is necessary to implement Chapter 300 of the Laws of 2006 amended Sections 6608 and 6608-b of the Education Law to expand the scope of practice for certified dental assistants and dental hygienists and amending the curriculum requirements for registration as a program leading to licensure in certified dental assisting.

In order to conform with the new requirements set forth in 6608-b of the Education Law, as amended by chapter 300 of the Laws of 2006, the rule also amends the current curriculum requirements for programs leading to licensure in certified dental assisting. Specifically, the rule provides that an equivalent approved one year course of study by a non-degree granting institution for certified dental assistants shall not be provided by a professional association or organization, and specifies that an alternate course of dental assisting shall be provided by a degree-granting institution or a board of cooperative educational services. The rule also revises the definition of clinical content area for registration as a program leading to licensure in certified dental assisting to include course work in other clinical procedures, including placing and removing temporary restorations; placing, condensing, and carving amalgam restorations; and placing, condensing and finishing non-metallic restorations due to the expansion of the certified dental assistant's scope of practice.

Section 6608 of the Education Law provides that all dental supportive services performed by certified dental assistants may also be performed by currently registered dental hygienists. With the expansion of the scope of practice of dental assistants, the rule revises the scope of practice for dental hygienists to include any dental supportive services that a licensed dentist authorizes a certified dental assistant to perform, and establishes a definition of unprofessional conduct relating to such practice.

Legal basis for rule: Sections 207(not subdivided); 6506(1); 6507(2)(a), 6606(2), 6608(not subdivided) and 6608-b(4) of the Education Law.

Assessment of public comment: no comments were received.

Section 145-2.15 of the Commissioner's Regulations, regarding administration of ability-to-benefit tests for eligibility for awards

Justification for continuation without modification: Education Law section 661 prescribes eligibility requirements and procedures governing awards under the State student financial aid programs established in Education Law Articles 13 and 14. Education Law section 661(4)(d) and (e) establishes new requirements for students who do not hold diplomas from high schools located within the U.S., or its recognized equivalent, seeking State financial aid for the first time in the 2007-2008 academic year.

Currently, under the federal Higher Education Act, students seeking to qualify for Pell grants or other federal Title IV aid who do not have a high school diploma or its recognized equivalent must demonstrate the ability to benefit from the education or training provided by achieving a score set by the Secretary of the U.S. Department of Education ("Secretary") on a test approved by the Secretary.

Prior to the 2007-2008 academic year, a student applying for State

student financial aid who did not have a diploma from a U.S. high school, or its recognized equivalent, was required to achieve a passing score set by the Secretary, on an ability-to-benefit test approved by the Secretary. Education Law section 661(4)(e) modifies this requirement. Students seeking State aid for the first time in the 2007-2008 academic year, without a high school diploma or the recognized equivalent of such, must achieve a passing score on an ability-to-benefit test approved by the Regents and the test must be independently administered as defined by the Commissioner.

The rule requires the Regents to publish a list of the federally approved ability-to-benefit tests the Regents identify as satisfactory in determining eligibility for State aid for students without a high school diploma from the U.S., or its recognized equivalent. For the 2007-2008 academic year fall semester, all seven federally approved ability-to-benefit tests may be used. For subsequent academic terms, the Department intends to identify and publish a list of federally approved ability-to-benefit tests that the Board of Regents identifies as satisfactory in determining eligibility to receive a State aid award. Once identified, such tests shall be without term unless the Department determines a test is no longer satisfactory in determining eligibility for awards or the Secretary discontinues federal recognition of such test.

Each eligible institution must submit for Regents approval, the passing score it proposes to utilize on any approved ability-to-benefit test, which passing score may not be lower than the federally approved score for such test. For the 2007-2008 academic year fall semester, eligible institutions may utilize any passing score that is not lower than the federally approved score. For subsequent academic terms, in determining whether to approve an institution's proposed passing score, the regulation requires the Regents to consider certain specified factors. Once approved, an institution's passing score(s) will remain approved unless the institution proposes to change such score(s) or the Regents determine that such passing score is no longer satisfactory in determining eligibility for awards under Education Law section 661.

The rule also establishes factors the Department will consider to determine if an ability-to-benefit is independently administered and evaluated. For the 2007-2008 academic year fall semester, the test will be deemed independently administered if its administration meets the criteria set forth in federal regulations. For subsequent academic terms, the regulation provides that an ability-to-benefit test is independently administered if the test is administered by an assessment center not located at, or affiliated with, the institution for which the student is seeking enrollment and the test administrator is an employee of such center. If the ability-to-benefit test is administered at an eligible degree-granting institution, the institution's chief executive officer shall provide the Department an annual certification that it independently administers such tests according to the factors in the regulation. If the ability-to-benefit test is administered by an eligible institution that does not grant degrees, the ability-to-benefit test must be administered pursuant to the federal regulations' criteria. If the Department finds an institution has violated the certification procedure or the federal ability-to-benefit procedures, it may require the institution to use an assessment center external to the institution.

Legal basis for rule: Education Law sections 207 (not subdivided), 215 (not subdivided) and 661(4) and Sections 1 and 2 of Part E-1 of Chapter 57 of the Laws of 2007.

Assessment of public comment: no comments were received.

Section 150.2 and addition of section 150.4 of the Commissioner's Regulations, regarding State aid awards for high needs nursing programs at certain independent colleges and universities

Justification for continuation without modification: The rule establishes eligibility criteria and the requirements and procedures for certain eligible independent colleges and universities to follow when applying for, or awarding, State aid awards for high needs nursing programs in order to implement the requirements of Chapter 57 of the Laws of 2007. Section 6401-a of the Education Law, as added by Chapter 57 of the Laws of 2007, authorizes the Commissioner of Education to award state aid for high needs nursing programs at certain independent institutions of higher education within the State. In order to conform with the requirements set forth in section 6401-a of the Education Law, the rule establishes eligibility criteria and the require-

ments and procedures for certain eligible institutions and the Commissioner of Education to follow when applying for, and awarding, state aid under this section.

Legal basis for rule: Education Law sections 207 (not subdivided) and 6401-a(4) and Part E-4 of Chapter 57 of the Laws of 2007.

Assessment of public comment: no comments were received.

Section 27-1.1 of the Rules of the Board of Regents, regarding Student Eligibility for the Higher Education Opportunity Program

Justification for continuation without modification: The rule is needed in order to update the current criteria for determining student economic eligibility for the Higher Education Opportunity Program by: (1) taking into account inflationary conditions and changes in annual income; (2) accounting for New York State and local taxes and regional maintenance costs; (3) assuring consistency across the State-supported postsecondary opportunity programs; (4) maintaining the continuing linkage of these eligibility criteria with federally approved methods of needs analysis; and (5) recognizing the costs associated with a household that is solely supported by one member who is employed by two or more employers.

Legal basis for rule: Education Law sections 207 (not subdivided); 6451(1).

Assessment of public comment: no comments were received.

Sections 74.2, 74.3, 74.4 and 74.6 of the Commissioner's Regulations, regarding requirements relating to licensure as a licensed clinical social worker, limited permits to practice licensed clinical social work and the supervision of clinical social work services provided by a licensed master social worker

Justification for continuation without modification: The rule is needed to conform to the content of the licensing examination, which is based on the expectation that the applicant will have completed at least two years of post-degree supervised experience. The rule also clarifies the current regulations to require supervision of at least one hour per week of individual or group supervision, with at least two hours of individual supervision each month. The rule is needed to eliminate confusion in the supervised experience requirements in the existing regulations.

Legal basis for rule: Education Law sections 207 (not subdivided), 6501, 6504, 6507(2)(a), 7704(2)(c), (2)(d) and 7705.

Assessment of public comment: no comments were received.

Section 50.1, amendment of paragraph (4) of subdivision (c) of section 52.2 and addition of subdivision (g) of section 145-2.1 of the Commissioner's Regulations, regarding disaster planning

Justification for continuation without modification: The rule permits an institution to provide a statement of academic standards establishing equivalency of instruction and study in the temporary closure of an institution as a result of a disaster. The rule is needed in order to provide regulatory relief in the event of a temporary closure of an institution as a result of a disaster.

Legal basis for rule: Education Law sections 101 (not subdivided), 202(1), 207 (not subdivided), 210 (not subdivided), 215 (not subdivided), and 305 (1), (2) and (20).

Assessment of public comment: no comments were received.

Section 52.21(b)(2)(iv)(c)(3)(i) and (ii) of the Commissioner's Regulations, regarding accreditation of teacher education programs

Justification for continuation without modification: The purpose of the rule is to enable certain teacher education programs to complete the accreditation process, by extending for six months the date by which teacher education programs registered prior to September 1, 2001 that are awaiting an accreditation decision following an accreditation review which included a site visit conducted on or before December 31, 2006, must achieve accreditation. In addition, the rule extends by six months the period of eligibility in which certain teacher education programs denied accreditation may request a deferral of the date for accreditation. The rule is needed to provide the Department with regulatory flexibility to accommodate sound teacher education programs that demonstrate the ability to earn accreditation within the short term. The rule is intended to provide needed flexibility to permit programs to address deficiencies, thereby limiting disruptions to students while helping to ensure improvements in program quality.

Legal basis for rule: Education Law sections 207 (not subdivided); 210 (not subdivided); 215 (not subdivided); 305(1) and (2); 3001(2); and 3004(1).

Assessment of public comment: no comments were received.

OFFICE OF THE PROFESSIONS

Addition of Part 31 of the Rules of the Board of Regents, regarding civil enforcement proceedings for the unauthorized practice of the professions and the unauthorized use of a professional title

Justification for continuation without modification: The rule is needed to implement the requirements of Section 6516 of the Education Law by specifying the requirements for the submission of complaints, investigations, hearing requests and stay requests; the contents of a cease and desist order; the standards for the imposition of civil penalties and restitution and the procedures for hearings and appeals.

Legal basis for rule: Sections 207 (not subdivided); 6506(1); 6512(1); 6513(1); and 6516(1), (2), (3), (4), (5), (6), and (7) of the Education Law.

Assessment of public comment: None received.

Section 64.7 of the Commissioner's Regulations, regarding the execution by registered professional nurses of non-patient specific orders to administer human immunodeficiency virus tests

Justification for continuation without modification: Chapter 429 of the Laws of 2005, effective August 2, 2005, added a new paragraph (d) to section 6909 of the Education Law, permitting registered professional nurses to execute non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner for the administration of HIV tests. The existing list of procedures that registered nurses can currently perform pursuant to a non-patient specific order include: (1) administration of certain immunizations, (2) anaphylactic treatment medications and (3) tuberculin skin tests.

Section 6909(5) of the Education Law directs the Commissioner of Education to promulgate regulations concerning the execution of such non-patient specific orders by registered professional nurses. The rule establishes uniform requirements for registered professional nurses to meet when executing non-patient specific orders to administer HIV tests. Specifically, the rule defines what information should be included in the non-patient specific order and the requirements that must be set forth in the protocol, for a registered professional nurse to follow when administering an HIV test through a non-patient specific order. The rule also requires registered professional nurses to either maintain or ensure the maintenance of a copy of the non-patient specific order and protocol for a specified period of time.

The rule is needed to advise registered professional nurses of the requirements that they must meet to execute a non-patient specific order for the administration of HIV tests; to provide uniformity and consistency in the information that must be contained in the order and the protocols to be followed when administering such tests and the requirements for the maintenance of such records.

Legal basis for rule: Education Law sections 207 (not subdivided); 6507(2)(a); 6527(6); 6902(1) and 6909(4)(d) and (5).

Assessment of public comment: None received.

Sections 29.17 and 77.9 of the Commissioner's Regulations, regarding physical therapy

Justification for continuation without modification: Chapter 298 of the Laws of 2006 added a new section 6731(d) to the Education Law to permit licensed physical therapists who have practiced physical therapy on a full-time basis equivalent to not less than three years to provide treatment to patients without a referral from a physician, dentist, podiatrist or nurse practitioner. The rule implements the requirements of section 6731(d) of the Education Law by defining the experience requirement that a licensed physical therapist must meet to provide treatment without a referral, clarifying the content of the notice of advice provided to a patient prior to treatment without a referral, and establishing a definition of unprofessional conduct relating to such practice.

The rule is needed to advise licensed physical therapists of the requirements that they must meet in order to provide treatment without

a referral and to provide uniformity and consistency in the information that must be contained in the written notice provided to a patient.

The rule establishes an additional definition of unprofessional practice in the practice of physical therapy: failing to meet the requirements of subdivision (d) of section 6731 of the Education Law and/or section 77.9 of the Commissioner's Regulations. This will provide a way for the State Education Department to enforce the requirements that licensed physical therapists must meet to provide treatment without a referral.

Legal basis for rule: Education Law sections 207(not subdivided); 6504(not subdivided); 6506(1); 6507(2)(a); 6509(9), and 6731(d).

Assessment of public comment: None received.

Section 70.3 of the Commissioner's Regulations, regarding examination requirements for licensure in public accountancy

Justification for continuation without modification: The rule is needed to revise standards and procedures relating to the examination for licensure in public accountancy. Specifically, the rule makes the following changes:

The rule changes the grading of the licensure examination from pass/fail to a numeric score. Pass/fail scoring was previously implemented in 2003 because the Department expected the computer-based examination would provide candidates with detailed diagnostic information with the pass/fail result, making numeric scores unnecessary. However, the diagnostic information provided to candidates was not as detailed as expected, and therefore the rule imposes a requirement for numeric scores as a means to help candidates who have failed sections of the examination to understand areas in which they need to improve.

The rule also lengthens the period of time of validity for passed sections of the licensure examination and the period of time in which all four sections must be passed. This is needed because the examination provider did not provide examination results to candidates as frequently as expected, in some cases resulting in candidates having difficulty passing all four sections of the examination in the time limits prescribed in the regulation. The changes allow a candidate to maintain credit for passed sections of the examination for longer periods of time, providing additional time to re-take a failed section of the examination and meet the time requirements for passing all four sections.

Legal basis for rule: Education Law sections 207(not subdivided); 6504 (not subdivided); 6507(2)(a) and (3)(a); 6508(2)and 7404(1)(4).

Assessment of public comment: None received.

Section 66.5(f) and addition of section 66.6 of the Commissioner's Regulations, regarding continuing education requirements for optometrists certified in the use of therapeutic pharmaceutical agents

Justification for continuation without modification: The rule clarifies existing mandatory continuing education requirements and provides more flexibility to the Department for exceptional circumstances that lead to non-compliance.

The rule is also needed to address the Department's current lack of ability to adjust the continuing education requirements for exceptional circumstances that lead to non-compliance. It provides the Department with the flexibility to permit an applicant to complete all or part of the continuing education requirement through an acceptable alternative course of study if the applicant documents good cause that prevents compliance with the regular continuing education requirements. However, the applicant will not be able to renew his/her certification until the continuing education requirement is met. The rule further requires licensed optometrists to certify to the Department that they have complied with the continuing education requirements; or that the applicant has an approved adjustment to such continuing education requirements from the Department.

Under prior regulations, there were no requirements for the approval of program sponsors or courses. The rule provides that the Department shall deem approved courses approved by the Council on Optometric Practitioner Education or an organization determined by the Department with assistance from the State Board for Optometry to have adequate standards or a course offered by a postsecondary institution authorized to offer a program in optometry leading to licensure.

Any course not deemed approved must be reviewed by the Department. For Department review, the sponsor will be required to submit an application for advance approval of the course 14 days prior to the date of commencement of such course. Any course approved by the Department will only be approved for the specified dates that the course is offered.

In order to ensure compliance, the rule also provides the Department with the authority to conduct site visits of, or request information from a sponsor of an approved course and provides the Department with the discretion to deny a course or terminate a course's approved status if they are not meeting the requirements set forth in this section.

Legal basis for rule: Education Law sections 207 (not subdivided); 6507(2)(a); 7101 (not subdivided) and 7101-a(7).

Assessment of public comments: no comments received.

Sections 52.26 and 61.9, repeal section 61.13 and add a new section 61.13 of the Commissioner's Regulations, regarding scope of practice for certified dental assistants and dental hygienists and the curriculum requirements for registration as a program leading to licensure in certified dental assisting

Justification for continuation without modification: The rule is necessary to implement Chapter 300 of the Laws of 2006 amended Sections 6608 and 6608-b of the Education Law to expand the scope of practice for certified dental assistants and dental hygienists and amending the curriculum requirements for registration as a program leading to licensure in certified dental assisting.

In order to conform with the new requirements set forth in 6608-b of the Education Law, as amended by chapter 300 of the Laws of 2006, the rule also amends the current curriculum requirements for programs leading to licensure in certified dental assisting. Specifically, the rule provides that an equivalent approved one year course of study by a non-degree granting institution for certified dental assistants shall not be provided by a professional association or organization, and specifies that an alternate course of dental assisting shall be provided by a degree-granting institution or a board of cooperative educational services. The rule also revises the definition of clinical content area for registration as a program leading to licensure in certified dental assisting to include course work in other clinical procedures, including placing and removing temporary restorations; placing, condensing, and carving amalgam restorations; and placing, condensing and finishing non-metallic restorations due to the expansion of the certified dental assistant's scope of practice.

Section 6608 of the Education Law provides that all dental supportive services performed by certified dental assistants may also be performed by currently registered dental hygienists. With the expansion of the scope of practice of dental assistants, the rule revises the scope of practice for dental hygienists to include any dental supportive services that a licensed dentist authorizes a certified dental assistant to perform, and establishes a definition of unprofessional conduct relating to such practice.

Legal basis for rule: Sections 207(not subdivided); 6506(1); 6507(2)(a), 6606(2), 6608(not subdivided) and 6608-b(4) of the Education Law.

Assessment of public comment: no comments were received.

Sections 74.2, 74.3, 74.4 and 74.6 of the Commissioner's Regulations, regarding requirements relating to licensure as a licensed clinical social worker, limited permits to practice licensed clinical social work and the supervision of clinical social work services provided by a licensed master social worker

Justification for continuation without modification: Section 74.2 is needed to conform to the content of the licensing examination, which is based on the expectation that the applicant will have completed at least two years of post-degree supervised experience. Sections 74.3, 74.4 and 74.6, relating to the experience requirements for licensure as an LCSW, were amended by the Board of Regents in 2010. The revised rules clarify the experience requirements and supervision, as well as practice under a limited permit. The rule changes were necessary to eliminate confusion in the supervised experience requirements in the prior regulations and must be continued to ensure public protection.

Legal basis for rule: Education Law sections 207 (not subdivided), 6501, 6504, 6507(2)(a), 7704(2)(c), (2)(d) and 7705.

Assessment of public comment: no comments were received.

OFFICE OF CULTURAL EDUCATION

Section 90.12 of the Commissioner's Regulations, regarding state aid for public library construction

Justification for continuation without modification: The rule is necessary so that the Commissioner's Regulations conform to changes made to Education Law section 273-a by Chapter 57 of the Laws of 2007, which update the payment schedule for library construction State Aid from a 90/10 percent basis to a 50/40/10 percent basis. In addition, this rule ensures that the \$14 million in capital funds appropriate in the State Budget for public library construction and renovation projects are awarded to eligible public libraries and public library systems, as well as in a timely manner pursuant to statutory requirements.

Legal basis for rule: Education Law sections 207 (not subdivided), 215 (not subdivided) and 273-a(5), section 1 of Chapter 53 of the Laws of 2007, and section 4 of Part B Chapter 57 of the Laws of 2007.

Assessment of public comment: no comments were received.

Section 90.12 of the Commissioner's Regulations, regarding state aid for public library construction

Justification for continuation without modification: The rule prescribes eligibility requirements and criteria for applications for state aid for library construction and renovation projects, and to conform the Commissioner's Regulations to Education Law section 273-a, so that the payment schedule of State aid for library construction is changed to a 50/40/10 percent basis from a 90/10 percent basis and further, so that funds for public library construction and renovation projects are timely awarded, pursuant to statutory requirements, to eligible public libraries and public library systems.

Legal basis for rule: Education Law sections 207 (not subdivided), 215 (not subdivided) and 273(5), section 1 of Chapter 53 of the Laws of 2007, and section 4 of Part B of Chapter 57 of the Laws of 2007.

Assessment of public comment: no comments were received.

OFFICE OF OPERATIONS AND MANAGEMENT SERVICES

Section 3.2 of the Regents Rules, regarding Quality Committee name and responsibilities

Justification for continuation without modification: the rule revised the provision on Regents standing committees to replace the Committee on Quality with a new Committee on Policy Integration and Innovation, to conform the Regents Rules with changes to the committee structure of the Board of Regents.

Legal basis for rule: Education Law section 207(not subdivided).

Assessment of public comment: no comments were received.

b. Calendar Year 2002

P-12 EDUCATION

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

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.

Legal basis for rule: 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).

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)

Justification for continuation without modification: The rule is needed to ensure compliance of the State and local educational agen-

cies 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 definitions. 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.

Legal basis for rule: 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.

Assessment of public comment: No comments were received.

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

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.

Legal basis for rule: Education Law sections 207(not subdivided) and 917(1) and (2) and Chapters 60 and 61 of the Laws of 2002.

Assessment of public comment: No comments were received.

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

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.

Legal basis for rule: 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.

Assessment of public comment: No comments were received.

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

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.

Legal basis for rule: 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.

Assessment of public comment: No comments were received.

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

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. The rule was subsequently revised in 2010 to make technical amendments to update Federal law citations and change the address where a copy of federal regulations may be obtained within the New York State Education Department.

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

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)

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.

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

Assessment of public comment: No comments were received.

OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES (ACCES)

Sections 246.3 and 246.6, relating to the Vocational Rehabilitation Program

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.

Legal basis for rule: Education Law sections 101(not subdivided), 207(not subdivided) and 1004(1).

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

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.

Legal basis for rule: Sections 207(not subdivided), 210(not subdivided), 218(1), and 224(4) of the Education Law.

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

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.

Legal basis for rule: Education Law sections 207(not subdivided), 210(not subdivided), 212-c (not subdivided), 214(not subdivided), 215(not subdivided), and 305(1) and (2).

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

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.

Legal basis for rule: 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.

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

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.

Legal basis for rule: Sections 207(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), and 3004(1) of the Education Law.

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

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.

Legal basis for rule: Education Law sections 207(not subdivided), 305(1), (2), and (7), 3004(1) and 3006(1).

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

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.

Legal basis for rule: Sections 207(not subdivided), 305(1), (2), and (7), 3004(1) and 3006(1) of the Education Law.

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

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.

Legal basis for rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6506(1) and 6509(9).

Assessment of public comment: None 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

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.

Legal basis for rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6506(1) and 6509(7) and (9), and 6801(not subdivided).

Assessment of public comment: None 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

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

Legal basis for rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6506(1) and 6509(9), and 7401(not subdivided).

Assessment of public comment: None received.

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

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.

Legal basis rule: Education Law sections 207(not subdivided), 6507(1) and (2), 6902(1) and (2), and 6951(1), (2) and (3).

Assessment of public comment: None received.

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

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.

Legal basis for rule: 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.

Assessment of public comment: None received.

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

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

Legal basis for rule: Sections 207(not subdivided), 6502(1), 6504(not subdivided), 6507(2)(a), and 6604-a(2) and (4) of the Education Law.

Assessment of public comment: None received.

OFFICE OF CULTURAL EDUCATION

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

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.

Legal basis for rule: Education Law section 207(not subdivided) and Arts and Cultural Affairs Law section 57.25(2).

Assessment of public comment: No comments were received.

OFFICE OF MANAGEMENT SERVICES

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

Justification for continuation without modification: 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).

Legal basis for rule: Education Law sections 101(not subdivided), 206(not subdivided), 207(not subdivided), 305(1), (2) and (20) and 2855(1), (2), (3), and (4).

Assessment of public comment: No comments were received.

c. Calendar year 1997

P-12 EDUCATION

Section 108.7(b) - Flag

Justification for continuation without modification: This rule complies with Chapter 601 of the Laws of 1996 which requires public schools to provide specific instruction regarding respect for the flag of the United States of America, its display and use, to include, at a minimum, instruction regarding the provisions of sections 170 through 177 of Title 36 of the United States Code.

Legal basis for rule: Education Law sections 207 and 802(1) and Chapter 601 of the Laws of 1996

Assessment of public comment: no public comments were received.

Section 100.2(m) - Public School Performance Report

Justification for continuation without modification: This rule is necessary as part of the Board of Regents plan for educational reform and requires a comprehensive assessment report for nonpublic schools and a public school performance report that must include certain data and be reported to the public. The rule also satisfies federal public reporting requirements under the 1994 reauthorization of the Elementary and Secondary Education Act.

Legal basis for rule: Education Law sections 101, 207, 215 and 305(1) and (2)

Assessment of public comment: no comments were received.

Section 135.4(c)(7)(ii)(b)(1) - Athletic Eligibility

Justification for continuation without modification: This rule sets forth policy of the Board of Regents to promote safe and equitable competition particularly in contact sports and eliminates the potential incentive of students staying in school longer in order to compete in athletic programs.

Legal basis for rule: Education Law sections 207, 305(1) and (2), 803(1) and (5) and 3204(3).

Assessment of public comment: no comments were received.

Sections 176.1 and 176.2 - Mandated Services Reimbursement

Justification for continuation without modification: This rule provides relief to nonpublic schools for services such as State testing that the State mandates they conduct, and responds to the recommendations of the State Comptroller's Audit Report on the Mandated Services Program.

Legal basis for rule: Education Law sections 207 and Chapter 507 of the Laws of 1974, as amended by Chapter 903 of the Laws of 1984

Assessment of public comment: no comments were received.

Section 100.2(bb) - School District Report Cards

Justification for continuation without modification: This rule complies with Chapter 474 of the Laws of 1996 which requires the Commissioner of Education to establish criteria for the issuance and dissemination of school district report cards. It also satisfies federal public reporting requirements under the 1994 reauthorization of the Elementary and Secondary Education Act.

Legal basis for rule: Education Law sections 207, 1608, 1716, 2554(24), 2509-e(23), 2509-g(21) and 2601-a(7) and sections 157 through 162 of Chapter 474 of the Laws of 1996.

Assessment of public comment: no comments were received.

Section 156.12 - Contracts for Pupil Transportation Services

Justification for continuation without modification: This rule complies with section 305(14)(e) of the Education Law, which requires the Commissioner of Education to establish a process for boards of education to award a transportation contract through a request for proposals.

Legal basis for rule: Education Law sections 207, 305(14) and 3625 and Chapter 698 of the Laws of 1996

Assessment of public comment: no comments were received.

Section 156.3(c) - Qualifications for School Bus Drivers

Justification for continuation without modification: This rule clarifies the standards of fitness for school bus drivers consistent with the recommendation of the Commissioner's School Bus Driver Instructor Advisory Committee convened pursuant to section 156.3 of the Commissioner's Regulations.

Legal basis for rule: Education Law sections 101, 207, 215 and 305(1) and (2)

Assessment of public comment: no comments were received.

Section 100.2(cc) - BOCES Report Cards

Justification for continuation without modification: This rule is consistent with the Board of Regents policy to publicly report on school performance and complies with Chapter 436 of the Laws of 1997.

Legal basis for rule: Education Law sections 101, 207, 215 and 1950(4)(kk) and section 13 of Part A of section 1 of Chapter 436 of the Laws of 1997

Assessment of public comment: no comments were received.

Section 155.17 - Contracts for Mobile Instructional Units

Justification for continuation without modification: This rule establishes a process that school districts and BOCES must follow in the award and approval of contracts for mobile instructional units and is necessary to comply with Education Law sections 207 and 305(14), as amended by Chapter 464 of the Laws of 1997.

Legal basis for rule: Education Law sections 207 and 305(14), as amended by Chapter 464 of the Laws of 1997

Assessment of public comment: no comments were received.

Section 170.3 - Instructional Support Services

Justification for continuation without modification: This rule implements the provisions of Chapter 436 of the Laws of 1997, by defining the term "instructional support services" for purposes set forth in Education Law section 1950(8-c).

Legal basis for rule: Education Law sections 101, 207 and 1950(8-c) and section 14 of Chapter 436 of the Laws of 1997

Assessment of public comment: no comments were received.

Section 170.8 - Annual School Budgets

Justification for continuation without modification: This rule complies with Chapter 436 of the Laws of 1997 which requires school districts to prepare annual budgets containing three components: administrative, program, and capital.

Legal basis for rule: Education Law sections 207, 1608 and 1716 and sections 5 and 7 of Part A of section 1 of Chapter 436 of the Laws of 1997.

Assessment of public comment: no comments were received.

Sections 200.1(o) and (q), 200.1(tt) and (uu), 200.9(f)(2) and (f)(3)(iii), 200.16 and 200.20(a)(1) and (3) - Special Education Programs and Services to Preschool Students with Disabilities

Justification for continuation without modification: These regulations establish procedures relating to the evaluation of preschool students with disabilities and the recommendation for appropriate special education programs and services in the least restrictive environment, and also establish approved rates for preschool programs and tuition reimbursement. The regulations are necessary to comply with Education Law section 4410, as amended by sections 164, 165, 166 and 169 of Chapter 474 of the Laws of 1996. Sections 200.1(o), (q) (tt) and (uu) of the rule were subsequently re-lettered in 1998 and 2000 to sections 200.1(q), (v), (p) and (u) respectively. Section 200.16 of the rule was subsequently revised in 2000, 2001 and 2005 to conform the Commissioner's Regulations to the federal IDEA statutes and regulations and State statute; to re-order the provisions of this section; and to make certain technical amendments, including correction of cross citations.

Legal basis for rule: Education Law sections 207 and 4410, as amended by sections 164, 165, 166 and 169 of Chapter 474 of the Laws of 1996

Assessment of public comment: No comments were received.

Section 200.2(c) - District Plans for Special Education Programs and Services

Justification for continuation without modification: These regulations are necessary to comply with State statute, which requires that district plans be revised and made available for public inspection and review by the Commissioner every two years. The rule was subsequently revised in 1999 and 2010 to conform the Commissioner's Regulations to State statute and to correct a cross citation.

Legal basis for rule: Education Law sections 207, 3602(3) and (10), 4402(1), (2) and (3), and 4410(13)

Assessment of public comment: No comments were received.

Section 200.6(b)(6) - Specially Designed Reading Instruction to Students with Disabilities

Justification for continuation without modification: This regulation is necessary to ensure that specially designed instruction is provided by individuals with certification and expertise in the area of reading. The rule was subsequently revised in 2006 to correct a cross citation.

Legal basis for rule: Education Law sections 207 and 4403(3)

Assessment of public comment: No comments were received.

Section 200.9(f)(4) - Reimbursement of Transportation Expenses for Preschool Students with Disabilities

Justification for continuation without modification: This regulation complies with Education Law section 4410(c)(1) and is necessary to ensure that transportation rates for preschool children between counties in the same geographic regions of the State are not widely discrepant.

Legal basis for rule: Education Law sections 207, 4401(4), 4402(4), 4405(2) and 4410(8), (10) and (13), and sections 171 and 175 of Chapter 474 of the Laws of 1996

Assessment of public comment: No comments were received.

OFFICE OF STATE REVIEW

Sections 276.1(c), 276.10 and Part 279 - State Level Review of Impartial Hearing Officer Determinations Regarding Services for Students with Disabilities

Justification for continuation without modification: This rule, portions of which have been further modified since promulgation, continues to be necessary to ensure that impartial hearing officers (IHOs) are aware of their responsibilities to determine disputes over a student's pendency placement pursuant to statute and to otherwise ensure that disagreements regarding a student's status during the due process proceeding are addressed in a timely manner; to ensure clear identification of the challenge(s) to an IHO's decision or portion thereof and the relief sought; to clarify procedures to be followed when a board of education initiates an appeal from an IHO's decision; to clarify procedures for cross-appeals; and conform appeals practice to federal and State requirements.

Legal basis for rule: Education Law sections 207, 311, 4403(1) and (3), 4404(2) and 4410(13)

Assessment of public comment: no public comments were received

OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES (ACCES)

Part 247- Vocational Rehabilitation Program

Justification for continuation without modification: This rule is necessary to ensure that the vocational rehabilitation program is conducted according to federal requirements set forth in the 1992 amendments to the Rehabilitation Act and the implementing regulations.

Legal basis for rule: Education Law sections 207 and 1004(1)

Assessment of Public Comment: no comments were received.

OFFICE OF MANAGEMENT SERVICES

Sections 3.8, 3.9 and 3.15 - Chief Operating Officer

Justification for continuation without modification: This rule reflects a change in the internal organization of the State Education Department which replaced the position of Executive Deputy Commissioner with the position of Chief Operating Officer.

Legal basis for rule: Education Law section 101.

Assessment of public comment: no comments were received.

OFFICE OF CULTURAL EDUCATION

Sections 185.5 and 185.12 - Local Government Records

Justification for continuation without modification: This rule is necessary to update references to Records Retention and Disposition Schedule ED-1, which was substantially revised from its last issue in 1993/94. Paragraph (3) of subdivision (a) of section 185.5 was amended to remove the date of the last revision (1994) and add the date of the current revision (1997) of ED-1, retention schedule for school districts, boards of cooperative educational services, teacher resources and computer training centers and county vocational education and extension boards. In addition, section 185.12 was amended to remove the date of an earlier revision (1993) and add the date of the current revision (1997) of ED-1.

Legal basis for rule: Education Law section 207 and Arts and Cultural Affairs Law section 57.25(2).

Assessment of public comment: no comments were received.

Section 185.10(a) - Local Government Records:

Justification for continuation without modification: The rule is necessary to streamline the records management improvement grant application process. It removed a requirement that each local government develop and approve a records management plan to be eligible to apply to the Commissioner for a records management improvement grant.

Legal basis for rule: Education Law section 207 and Arts and Cultural Affairs Law section 57.35(1) and (2)

Assessment of public comment: no comments were received.

Sections 185.1, 185.7, 185.8, 188.2 and 188.20 Local and State Government Records Management:

Justification for continuation without modification: These rule changes are necessary because they updated language to reflect current technologies and removed the sometimes burdensome requirement that local government officials must maintain the paper original, or a paper copy, or a microform copy of all electronically imaged records which are scheduled to be retained for ten or more years. The rule also reduces paperwork because local governments no longer need to keep or create and file a paper or microform copy of certain electronically imaged records. In addition, the repeal of section 185.8 and amendment of 188.20 consolidated in one regulation the provisions concerning the retention and preservation of electronic records of local and state government.

Legal basis for rule: Education Law section 207 and Arts and Cultural Affairs Law sections 57.05, 57.17, 57.23(2) and (3) and 57.29

Assessment of public comment: no comments were received.

Section 188.21 - State Government Records Management:

Justification for continuation without modification: : This rule is necessary to implement Arts and Cultural Affairs Law section 57.05(9) and (11)(i) and (j), which authorizes the Commissioner of Education to implement a fee schedule to support records management activities for State government agencies and to promulgate rules and regulations setting forth fees to be paid for records management services.

Legal basis for rule: Education Law section 207 and Arts and Cultural Affairs Law section 57.05(9) and (11)(i) and (j)

Assessment of public comment: no comments were received.

OFFICE OF THE PROFESSIONS

Section 24.3(c) - Waiver of Citizenship/Immunizations Requirement

Justification for continuation without modification: This rule is required to implement statutory amendments to Education Law § 6524(b), which authorizes the Board of Regents to grant time-limited waivers of the citizenship or immigration status requirements for licensure in medicine. Prior to the implementation of this rule, applicants for licensure seeking a waiver had to wait several months for a Regents meeting before the waiver could be granted and a license issued. This rule delegates to the Committee on the Professions the ability to grant such waivers allowing the Department to issue licenses at least one to two months earlier than could be done without the rule. This rule has been effective in expediting the licensure of qualified physicians to work in medically underserved areas.

Legal basis for rule: Education Law sections 207, 6504, 6506(1) and (10), 6507(4)(b) and 6524(6)

Assessment of public comment: None received.

Section 24.7(h) - Restoration of License

Justification for continuation without modification: This rule is necessary to provide a process for consideration by the Board of Regents of petitions for the restoration of a professional license that was revoked or surrendered pursuant to Education Law section 6511. The procedures established by this rule for the submission of an application and fee for the restoration of a professional license is working well. Applicants now realize that there is a formal procedure they must follow and the waiting period allows them time to make the necessary behavioral modifications in their life and take whatever measures are necessary to demonstrate a compelling case for the restoration of their licenses by the Board of Regents.

Legal basis for rule: Education Law sections 207, 6504, 6506(1) and (10), 6508(4) and 6511

Assessment of public comment: None received.

Part 65 - Licensure in Podiatry

Justification for continuation without modification: In 1992, the Department ceased requiring a practical examination for the licensure of podiatrists. This regulation was added to assure that podiatrists have adequate clinical experience, given discontinuance of the practical examination as an evaluative method of determining minimal competence.

Legal basis for rule: Education Law sections 207, 6501, 6504, 6506(1), 6507(2)(a) and (3)(a), 7004(3) and (4) and 7007(1)(c)

Assessment of public comment: None received.

Section 61.15 - Dentistry

Justification for continuation without modification: This rule provides specific information for dentists licensed in New York State on how to comply with their mandatory continuing education requirement. It also assists the State Education Department in administering the continuing education requirement. Upon review of the rule, it has been determined that it serves the purpose for which it was intended. Therefore, the rule should be continued without modification.

Legal basis for rule: Education Law sections 207, 212(3), 6502(1), 6504, 6507(2)(a), 6508(1) and 6604-a(1)(a), (b) and (c), (2), (3), (4) and (5)

Assessment of public comment: None received.

Section 61.16 - Dental Hygiene

Justification for continuation without modification: This rule provides specific information for dental hygienists licensed in New York State on how to comply with their mandatory continuing education requirement. It also assists the State Education Department in administering the continuing education requirement. Upon review of the rule, it has been determined that it serves the purpose for which it was intended. Therefore, the rule should be continued without modification.

Legal basis for rule: Education Law sections 207, 212(3), 6502(1), 6504, 6507(2)(a), 6508(1) and 6609-a(1)(a), (b) and (c), (2),(3),(4) and (5)

Assessment of public comment: None received.

Section 63.7 - Pharmacy

Justification for continuation without modification: These regulations are required to administer continuing education requirements for registered pharmacists pursuant to Education Law section 6827. No changes have occurred in the law mandating continuing education for pharmacists since its inception, hence no changes are needed to the existing regulation.

Legal basis for rule: Education Law sections 207, 212(3), 6502(1), 6504, 6507(2)(a), 6508(1) and 6827(1)(a), (b) and (c), (2), (3), (4), (5) and (6)

Assessment of public comment: None received.

Section 29.10 - Public Accountancy

Justification for continuation without modification: These modifications to Regents Rules were made to reflect federal actions designed to limit anti-competitive practices in the accounting profession and to update the Regents Rules to reflect contemporary practice. No changes have occurred since these changes were implemented that would require modifications to the existing Regents Rules.

Legal basis for rule: Education Law sections 207, 6504, 6506(1) and (9), 6508(1) and 6509(9)

Assessment of public comment: None received.

Section 29.13 - Massage Therapy

Justification for continuation without modification: These sections were changed to conform with statutory changes. They do not have a negative impact on the public or those applying for licensure or currently licensed.

Legal basis for rule: Education Law sections 207, 6504, 6506(1) and (9), 6508(1) and 6509(9).

Assessment of public comment: None received.

Sections 52.15, 78.1, 78.2, 78.3 and 78.4 - Massage Therapy

Justification for continuation without modification: These regulations were adopted to comply with statutory changes as well as other recommendations of the State Board, schools for massage therapy, and professional associations. They have been essential in assuring that the education, training, and examination of massage therapists meet the current practice requirements of licensees for safe and effective professional practice.

Legal basis for rule: Education Law sections 207, 210, 6501, 6504, 6506(6), 6507(2)(a) and (4)(a), 6508(1), 7801, 7804(2) and 7805(3).

Assessment of public comment: None received.

Section 78.4(b) - Massage Therapy

Justification for continuation without modification: This rule is necessary to conform the regulatory language to statutory requirements. In addition, the regulation facilitates the New York State licensure of persons who are licensed in other jurisdictions and provides clarification that the State Education Department recommends to the Regents the endorsement of a license issued by another jurisdiction.

Legal basis for rule: Education Law sections 207, 6501, 6504, 6506(6), 6507(2)(a) and 7804(2).

Assessment of public comment: None received.

Sections 52.10, 72.1, 72.2 and 72.3 - Psychology

Justification for continuation without modification: These rules are needed to ensure the quality of applicant's preparation for entry-level licensure in psychology by upgrading educational requirements for professional programs. The rules specify core education coursework, while permitting a diversity of specializations in educational programs. Entry-level competency is further ensured by requiring that registered doctoral programs leading to licensure include one year of applied training. These changes in licensure requirements have received a positive response from the profession, licensees, and the public.

Legal basis for rule: Education Law sections 207, 210, 6501, 6504, 6507(2)(a) and (4)(a), 6508(1), 7603(2), (3) and (4) and 7605(2) and (3).

Assessment of public comment: None received.

OFFICE OF HIGHER EDUCATION

Sections 85.1 and 85.2 - Mentor-Teacher Internship Program

Justification for continuation without modification: This rule is needed to conform the Commissioner's Regulations with the requirements and limitations for interns and mentors set forth in Education Law section 3033, as amended by section 117-b of Part A of section 1 of Chapter 436 of the Laws of 1997.

Legal basis for rule: Education Law sections 207 and 3033(4) and (5) and section 117-b of Part A of section 1 of Chapter 436 of the Laws of 1997.

Assessment of public comment: no comments were received.

Section 145-9 - Merit Scholarships

Justification for continuation without modification: This rule is needed to implement the requirements of Education Law sections 605-a and 670-b, as promulgated by sections 11 and 12 of Chapter 309 of the Laws of 1996. Section 605-a requires the Commissioner to establish selection criteria for scholarship nominees at those high schools that do not offer the Regents examinations enumerated in statute. Section 605-a requires the Commissioner to define the high schools that would receive an allocation of scholarships for their students. The rule also establishes reporting procedures for participating high schools.

Legal basis for rule: Education Law sections 207, 605-a(1)(a) and (b) and 670-b(1) and sections 11 and 12 of Chapter 309 of the Laws of 1996.

Assessment of public comment: no comments were received.

Department of State

Review Pursuant to State Administrative Procedure Act Section 207 of Rules Adopted by the Department of State in Calendar Years 2006 and 2001

Pursuant to section 207(4) of the State Administrative Procedure

Act (SAPA), the Department of State published notice in the January 5, 2011 edition of the New York State Register (and on its Proposed Regulatory Activity webpage from January thru June, 2011) of rules the Department intended to review in calendar year 2011. No public comments on the continuation or modification of such rules were received by the Department of State, which hereby gives notice that it has reviewed the following regulations that were adopted during 2006 and 2001:

RULES ADOPTED IN 2006

(1) DOS-33-06-00004. Qualifying Courses for Home-Inspection Applicants.

This rule added Subpart 197-2 to Title 19 NYCRR to establish standards for home-inspection courses, and procedures for course approval.

The rule is needed pursuant to Article 12-B of the Real Property Law to ensure that schools and students will know which courses are required in order for an applicant to qualify for a home inspector license. There have been no statutory amendments or changes in policy to warrant any modification of changes made by this regulation.

(2) DOS-33-06-00005. General Liability Insurance for Licensed Home Inspectors.

This rule added Part 197 and Subpart 197-1 to Title 19 NYCRR to establish the type and amount of liability coverage required of licensed home inspectors.

The rule is needed pursuant to Article 12-B of the Real Property Law to ensure that prospective applicants for home inspector licenses will know the terms and conditions of the required liability coverage. There have been no statutory amendments or changes in policy to warrant any modification of changes made by this regulation.

RULES ADOPTED IN 2001

(1) DOS-46-00-00001. Employee Identification Cards.

This rule repealed section 195.11(a)(1) and added a new section 195.11(a)(1) to Title 19 NYCRR to prescribe a new size and content for employee identification cards issued by licensed security and fire alarm installers.

Section 69-m(1) of the General Business Law provides that a licensed security or fire alarm installer shall issue identification cards to employees who assist with the installation, servicing, or maintenance of alarm systems. Section 69-m(1) further provides that the identification card shall be in a form prescribed by the Secretary of State. The identification card required prior to the adoption of this rule was 2 inches by 3 1/4 inches with prescribed information printed on both sides of the card. Industry representatives indicated that the prescribed size of the card was not a standard size and that this made the card more expensive to produce than a card of standard size. These representatives also stated that the cost of producing the card would be reduced if information was not required to be printed on both sides. Consequently, at the recommendation of the Department of State's Security and Fire Alarm Advisory Committee, the Department adopted this rule, which prescribed a standard size card of 3 3/8 inches by 2 1/8 inches printed on one side only. There have been no statutory amendments or changes in policy to warrant any modification of changes made by this regulation.

(2) DOS-46-00-00002. Maximum Experience Credit for Review Appraisals.

This rule amended section 1102.4(c) of Title 19 NYCRR to provide that experience credit for review appraisals would not exceed 25 percent of the total experience required for licensing or certification of real estate appraisers.

Prior to adoption of this rule, 19 NYCRR section 1102.4(c) provided that a review appraisal would be equivalent, in terms of appraisal experience, to 25 percent of the appraisal experience gained by preparing an appraisal report. Since performance of a review appraisal does not include performing the research and field work that are the basis for the reviewed appraisal report, the rule limited the total experience that could be claimed by an applicant for review appraisal to no more than 25 percent of the total number of hours required for licensing or certification. This rule was intended to ensure that applicants have sufficient experience in preparing appraisal reports. There have

been no statutory amendments or changes in policy to warrant any modification of changes made by this regulation.

(3) DOS-46-00-00016. Hearing Aids.

This rule repealed Part 191 and added a new Part 192 to Title 19 NYCRR concerning registration and regulation of hearing aid dispensers and businesses engaged in dispensing hearing aids.

Chapter 599 of the Laws of 1998, as amended by Chapter 133 of the Laws of 1999, repealed existing Article 37-A of the General Business Law and replaced it with a new Article 37-A entitled "Registration of Hearing Aid Dispensers." Chapter 301 of the Laws of 2000 made further technical amendments to Article 37-A. Adoption of a new Part 192 to Title 19 NYCRR was necessary to meet the requirement of General Business Law section 803 that the Secretary of State promulgate regulations necessary to effect the purposes of Article 37-A and to ensure the enforcement of its provisions. There have been no statutory amendments or changes in policy to warrant any modification of changes made by this regulation.

(4) DOS-21-01-00003. State Cemetery Vandalism Restoration and Administration Fund.

This rule amended section 200.11 of Title 19 NYCRR to establish procedures for public cemetery corporations to obtain monies from the State Cemetery Vandalism Restoration, Monument Repair or Removal, and Administration Fund to repair or remove monuments that create a dangerous condition.

Section 1507(h) of the Not-for-Profit Corporation Law was amended by Chapter 380 of the Laws of 2000 to authorize payments from the State Cemetery Vandalism Restoration, Monument Repair or Removal, and Administration Fund to reimburse public cemetery corporations for the cost of repairing or removing monuments not owned by the corporation which create a dangerous condition. Not-for-Profit Corporation Law section 1504(h)(7) contains a requirement that the State Cemetery Board promulgate rules defining standards for maintenance of cemeteries as well as describing what type of out-of-repair or dilapidated monuments or other markers would qualify for payment for repair or removal by cemeteries. There have been no statutory amendments or changes in policy to warrant any modification of changes made by this regulation.

(5) DOS-27-01-00005. Bail Enforcement Agents and their Employees.

This rule amended Part 170 and section 172.3 of Title 19 NYCRR to provide for the licensing of bail enforcement agents.

Chapter 562 of the Laws of 2000 provided for the licensing of bail enforcement agents. Section 13 of Chapter 562 authorized the Secretary of State to promulgate rules necessary to implement the provisions of Chapter 562. This rule merely implemented the nondiscretionary provisions of Chapter 562. There have been no statutory amendments or changes in policy to warrant any modification of changes made by this regulation.

(6) DOS-31-01-0000. Coastal Policies for Long Island Sound.

This rule amended Part 600 of Title 19 NYCRR to implement the Long Island Sound Coastal Management Program.

The rule was adopted to establish policies to which State agencies must adhere when they certify the consistency of actions, which are intended to be taken in the coastal area of Long Island, with the coastal policies in Article 42 of the New York State Executive Law. Among the matters concerning the Long Island Sound coastal area addressed by the rule are: overall development patterns, historical resources, visual quality and scenic resources, erosion and flood hazards, water quality and supply, ecosystem issues, air quality, solid waste and hazardous wastes, public access and recreation, water-dependent uses, living aquatic resources, agricultural lands, and energy and mineral resources. There have been no statutory amendments or changes in policy to warrant any modification of changes made by this regulation.

