

RULE REVIEW

Education Department

Section 207 of the State Administrative Procedure Act (SAPA) requires that each State agency review each of its rules which is adopted on or after January 1, 1997 in the calendar year specified in the notice of adoption for the rule, provided that at a minimum every rule shall be initially reviewed no later than in the fifth calendar year after the year in which the rule is adopted, and, thereafter, every rule shall be re-reviewed at five-year intervals, in order 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 its rules that were adopted during calendar years 2016, 2015, 2014, 2009, 2004 and 1999 and invites public comment on the continuation or modification of such rules. All section and part references are to Title 8 of the New York Code of Rules and Regulations. Comments should be sent to the respective agency representative listed below for each particular rule, and must be received within 45 days of the date of publication of this Notice.

A. CALENDAR YEAR 2016 (3 YEAR REVIEW)

2016

OFFICE OF P-12 EDUCATION

Sections 100.5 and 100.6 of the Regulations of the Commissioner of Education Relating to the Career Development Occupational Studies (CDOS) Pathway to Graduation

Description of Rule: Career development and occupational studies (CDOS) graduation pathway option

Need for Rule: To establish a Career Development and Occupational Studies (CDOS) graduation pathway option for all students who meet the requirements to earn a CDOS Commencement Credential, meet graduation course and credit requirements, and pass four required Regents Exams

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 305(1) and (2), 4402(1 - 7) and 4403(3)

Section 100.5(d)(7) of the Commissioner's Regulations to Expand the Eligible Score Band for the Appeal Process on Regents Examinations Passing Scores

Description of Rule: Appeals process on Regents exams passing score

Need for Rule: To expand by two additional points the eligible score band for the appeal process on Regents examinations passing scores and to eliminate the minimum attendance eligibility requirement for such appeals.

Legal Basis of 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)

Sections 200.4, 200.16 and 200.20 of the Commissioner's Regulations Relating to Recommendations for One-to-One Aides for Preschool and School-Age Students with Disabilities and Preschool Special Education Programs and Services

Description of Rule: Preschool special education programs and services

Need for Rule: To implement certain recommendations for one-to-one aides for preschool and school-age students with disabilities and preschool special education programs and services

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1), (2) and (20), 308(not subdivided), 3214(3), 4401(5), 4402, 4403(3) and 4410(3) and (10)

Subdivision (ee) of Section 100.2 of the Regulations of the Commissioner of Education Relating to the Methodology by Which School Districts Shall Identify Students in Grades 3-8 Who Receive Academic Intervention Services

Description of Rule: Academic intervention services.

Need for Rule: Revises methodology for students in grades 3-8 to receive academic intervention services

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided), 3204(3)

Amendment of section 100.2(gg) of the Regulations of the Commissioner of Education

Description of Rule: Uniform Violent or Disruptive Incident Reporting System (VADIR)

Need for Rule: To revise the categories of violent and disruptive incidents for VADIR reporting.

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 308, and 2802

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the continuation or modification of any of the above rules by contacting:

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Senior Deputy Commissioner for Education Policy

New York State Education Department

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OFFICE OF HIGHER EDUCATION

Subpart 4-1 of the Rules of the Board of Regents Relating to Voluntary Institutional Accreditation for Title IV Purposes

Description of Rule: Voluntary institutional accreditation for Title IV purposes

Need for Rule: To clarify existing standards and procedures that must be met by institutions of higher education seeking voluntary accreditation by the Board of Regents and the Commissioner of Education.

Legal Basis of Rule: Education Law sections 207(not subdivided), 210(not subdivided), 214(not subdivided), 215(not subdivided) and 305(1) and (2).

Section 52.21 of the Regulations of the Commissioner of Education Relating to Minimum Admission Standards for Graduate-Level Teacher and Educational Leadership Programs and Requirements for the Suspension and/or Deregistration of Certain Programs with Completers Who Fail to Achieve a Minimum Pass Rate on Certification Examinations for Three Consecutive Years

Description of Rule: Graduate-level teacher and educational leadership programs.

Need for Rule: To establish minimum admission standards for graduate level teacher and leader preparation programs and requirements for the suspension and/or deregistration of certain programs with completers who fail to achieve a minimum pass rate on certification examinations for three consecutive years.

Legal Basis of Rule: Education Law sections 207(not subdivided), 210(not subdivided), 210-a, 210-b, 305(1) and (2), 3001(2), 3004(1), 3006(1)(b) and 3009(1).

Sections 59.4 and 80-1.3 of the Regulations of the Commissioner of Education Relating to Citizenship Requirements for Professional Licensure and Teacher/Educational Leadership Certification

Description of Rule: Citizenship requirements for professional licensure and certification in teaching and educational leadership service

Need for Rule: To amend the citizenship requirements for professional licensure and certification in teaching and educational leadership.

Legal Basis of Rule: Education Law sections 207(not subdivided), 210(not subdivided), 215(not subdivided), 305(1) and (2), 3001(1) and (3), 3003(1), 3009(1), 6504(not subdivided) and 6506(1) and (2)

Section 80-5.4 of the Regulations of the Commissioner of Education Relating to the Employment of Substitute Teachers Without a Valid Teaching Certificate

Description of Rule: Substitute Teachers.

Need for Rule: To address the issue of school districts having difficulties finding certified teachers to serve as substitute teachers.

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 305(1) and (2), 3001(2), 3004(1), 3006(1), 3007(1) and (2) and 3009(1)

Section 80-5.8 and 80-5.20 of the Regulations of the Commissioner of Education Relating to Endorsement of Out-of-State Certificates for Service as a Teacher, School District Leader, School District Business Leader and School Building Leader in New York State

Description of Rule: Endorsement of out-of-state certificates for teaching and educational leaders.

Need for Rule: To provide an alternative pathway for endorsement of out-of-state certificates for service as a teacher or educational leader.

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 305(1) and (2), 3001(2), 3004(1), 3006(1), 3007(1) and (2) and 3009(1)

Extension of Existing Safety Nets for Candidates Who Take the New Teacher Certification Examinations (ALST, edTPA, EAS and the Redeveloped CSTs)

Description of Rule: Examinations for Teacher Certification

Need for Rule: Extension of the safety net for certain teacher certification examinations.

Legal Basis of Rule: Education Law sections 207(not subdivided), 215(not subdivided), 305(1) and (2), 3001(2), 3004(1) and 3009(1)

Sections 30-3.4 and 30-3.5 of the Rules of the Board of Regents Relating to a Hardship Waiver for Independent Evaluators for Annual Professional Performance Reviews for Classroom Teachers and Building Principals Commencing in the 2016-2017 School Year

Description of Rule: Annual Professional Performance Reviews (APPR) of classroom teachers and building principals

Need for Rule: Provide districts and BOCES with a hardship waiver commencing with the 2016-2017 school year from independent evaluator requirements.

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2), 3009(1),

3012-c and section 3012-d; section 3 of Subpart C of Chapter 20 of the Laws of 2015; and sections 1 and 2 of Subpart E of Part EE of Chapter 56 of the Laws of 2015.

Description of Rule: Annual Professional Performance Reviews (APPR) of classroom teachers and building principals

Amendment of section 30-2.3 and Subpart 30-3 of the Rules of the Board of Regents

Need for Rule: Technical Amendments

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2), 3009(1), 3012-c and section 3012-d; section 3 of Subpart C of Chapter 20 of the Laws of 2015; and sections 1 and 2 of Subpart E of Part EE of Chapter 56 of the Laws of 2015.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the continuation or modification of any of the above rules by contacting:

John D'Agati

Deputy Commissioner for the Office of Higher Education

New York State Education Department

Office of Higher Education

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OFFICE OF THE PROFESSIONS

Amendment of section 61.10 of the Regulations of the Commissioner of Education

Description of Rule: Dental Anesthesia Certification Requirements for Licensed Dentists

Need for Rule: To conform regulations to the current practice of dental anesthesia administration

Legal Basis of Rule: Education Law § § 207(not subdivided), 6504(not subdivided), 6506(1), 6507(2)(a), 6601(not subdivided), and 6605-a(2).

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the continuation or modification of any of the above rules by contacting:

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OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES (ACCESS)

Sections 100.7 and 100.8 of the Commissioner's Regulations related to the National External Diploma Program

Description of Rule: New York State High School Equivalency Diploma

Need for Rule: To establish the National External Diploma Program (NEDP) as a pathway to earn a NYS High School Equivalency Diploma

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1) and (2), 309(not subdivided) and 3204(3).

Section 126.14 of the Regulations of the Commissioner of Education relating to interest penalties for late annual assessment fees paid by licensed private career schools

Description of Rule: Interest penalties for late annual assessment fees paid by licensed private career schools

Need for Rule: To conform regulations to reflect current practices

Legal Basis of Rule: Education Law section 207(not subdivided), 305(1) and (2) and 5001(9)

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the continuation or modification of any of the above rules by contacting:

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B. CALENDAR YEAR 2015 (4 YEAR REVIEW)

2015

OFFICE OF P-12 EDUCATION

Section 100.5(d)(7) of the Commissioner's Regulations related to English Language Learners

Description of Rule: Graduation Requirements for English Language Learners

Need for Rule: To allow ELLs who enter the United States in 9th grade or above in the 2010-11 school year and thereafter to graduate with a Local Diploma if they score between 55 and 61 on the Regents Exam in English and meet all other conditions for appeal of a Regents score

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 215(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided), 2117(1) and 3204(2), (2-a), (3) and (6)

Sections 100.2 & 100.5 of the Commissioner's Regulations related to Multiple Pathways

Description of Rule: Pathways to Graduation

Need for Rule: To establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs, and to prescribe new unit of credit and examination requirements for social studies.

Legal Basis of 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)

Sections 100.4(e)(2) and 100.18(b)(14) of the Commissioner's Regulations to provide flexibility to school districts and charter schools regarding the administration of Regents Examinations in Mathematics (Common Core) to grades 7 and 8 students.

Description of Rule: Regents Examinations in Mathematics

Need for Rule: To provide flexibility to LEAs in the administration of Regents mathematics examinations (Common Core) students in grades 7-8

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2) and (20), 308(not subdivided), 309(not subdivided), 3204(3) and 3713(1) and (2)

Agency Representative:

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Jhone M. Ebert

Senior Deputy Commissioner for Education Policy

New York State Education Department

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OFFICE OF HIGHER EDUCATION

Amendment of 8 NYCRR sections 52.21, 80-1.5, 80-3.3, 80-3.4 and 80-5.13 and addition of section 80-1.5(c).

Description of Rule: Teacher certification requirements.

Need for Rule: Purpose of the rule: To provide a safety net for candidates who take the new teacher certification examinations (ALST, EAS, and the redeveloped CSTs) and to extend the time validity of the existing edTPA safety net.

Legal Basis of Rule: Education Law sections 207(not subdivided), 305(1) and (2), 3001(2), 3004(1), 3006(1)(b) and 3009(1)

Agency Representative:

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John D'Agati

Deputy Commissioner for the Office of Higher Education

New York State Education Department

Office of Higher Education

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C. CALENDAR YEAR 2014

OFFICE OF P-12 EDUCATION

Section 135.4(c)(7)(ii)(d) of the Commissioner's Regulations relating to Duration of Competition in High School Athletics

Description of Rule: Duration of competition in high school athletics

Need for Rule: To eliminate the one additional season limit on waivers for students with disabilities to participate in athletic competition.

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1) & (2), 803(not subdivided), and 3204(2) & (3).

Sections 154.2 and 154.3 of the Regulations of the Commissioner of Education Relating to Examination Requirements for Identifying Pupils with Limited English Proficiency

Description of Rule: Requires the use of the New York State Identification Test for English Language Learners (NYSITELL) for purposes of identifying pupils with limited English Proficiency

Need for Rule: To implement policy adopted by the Board of Regents by specifying a new test, the New York State Identification Test for English Language Learners (NYSITELL) for purposes of identifying pupils with limited English proficiency.

Legal Basis of Rule: Education Law sections 207(not subdivided), 208(not subdivided), 215(not subdivided), 305(1) and (2), 2117(1) and 3204(2), (2-a), (3) and (6).

Sections 200.1, 200.5, and 200.16 of the Regulations of the Commissioner of Education Relating to Special Education Impartial Hearings

Description of Rule: Special education impartial hearing timelines

Need for Rule: To align the State timelines for rendering a decision with federal regulations, address certain deficiencies in the process and to ensure that impartial hearings are carried out in the most effective and efficient manner for the benefit of both parties.

Legal Basis of Rule: Education Laws sections 101(not subdivided), 207(not subdivided), 305(1) and (2) and (20), 3214(3)(g), 4402(1) and (2), 4403(3), 4404(1) and 4410(7)(b) and (13).

Section 100.5(g)(2) of the Regulations of the Commissioner of Education relating to the transition to Common Core-aligned Regents Examinations in Mathematics (Geometry)

Description of Rule: Regents Examination in Geometry

Need for Rule: To provide flexibility in the transition to Common Core-aligned Regents Examinations in Mathematics by allowing, for a limited time and at the discretion of the applicable school district, students receiving Geometry (Common Core) instruction to take the Regents Examination in Geometry aligned to the 2005 Learning Standards in addition to the Regents Examination in Geometry (Common Core), and meet the mathematics requirement for graduation by passing either examination

Legal Basis of 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).

Sections 100.5 and 100.18 of the Commissioner's Regulations, relating to miscellaneous Common Core transition issues

Description of Rule: Common Core Transition

Need for Rule: To transition to the Common Core English Language Arts (ELA) and mathematics examinations in the following areas: (1) students with disabilities local diplomas; (2) Regents diploma with advanced designation; (3) credit by examination; and (4) transfer credit; and enact technical changes.

Legal Basis of Rule: Education Law sections 101, 207, 208, 209, 305, 308, 309 and 3204

Section 100.7 of the Regulations of the Commissioner, relating to the transition to the new High School Equivalency Test

Description of Rule: Transition to a new high school equivalency test

Need for Rule: To permit, for a limited time, acceptance of partial passing scores on up to four sub-tests of the current GED® examination for the corresponding sub-test on the new State High School Equivalency examination (the Test Assessing Secondary Completion – TASC).

Legal Basis of Rule: Education Law sections 101, 207, 208, 209, 305, 308, 3204 and 3205

Sections 200.7, 200.15 and 200.22 of the Regulations of the Commissioner of Education Relating to Chapter 501 of the Laws of 2012 ("Protection of People with Special Needs Act")

Description of Rule: Protection of people with special needs

Need for Rule: To conform the regulations to Chapter 501 of the Laws of 2012, which enacted into law various provisions of legislation for the protection of people with special needs, including revisions to sections 4212, 4314, 4358 and 4403 of Education Law

Legal Basis of Rule: Education Law sections 101, 207, 3208, 3602, 4002, 4308, 4355, 4401, 4402 and 4403

Section 102.4 of the Regulations of the Commissioner of Education Relating to Mandatory Reporting Requirements and Testing Misconduct

Description of Rule: State assessment security

Need for Rule: To enhance the security of the State assessment program by prohibiting certain testing misconduct, establishing a mandatory reporting requirement for certain school personnel who learn of any security breach or other testing misconduct, and to sanction those who fail to comply.

Legal Basis of Rule: Education Law sections 207 (not subdivided), 225(1)-(11) and 305(1) and (2) and Civil Service Law section 75-2(b)(a)

Section 100.5(g)(2) of the Regulations of the Commissioner, relating to the transition to Common Core-aligned Regents Examinations in Mathematics (Geometry)

Description of Rule: Transition to Common Core-aligned Regents Exams

Need for Rule: To provide flexibility in the transition to Common Core-aligned Regents Examinations in Mathematics by allowing, for a limited time and at the discretion of the applicable school district, students receiving Geometry (Common Core) instruction to take the Regents Examination in Geometry aligned to the 2005 Learning Standards in addition to the Regents Examination in Geometry (Common Core), and meet the mathematics requirement for graduation by passing either examination.

Legal Basis of 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)

Sections 100.4(e)(2) and 100.18(b)(14) of the Commissioner's Regulations to provide flexibility to school districts and charter schools regarding the administration of Regents Examinations in Mathematics (Common Core) to grade 7 and 8 students

Description of Rule: Elementary and Secondary Education Act (ESEA) Flexibility and school and school district accountability

Need for Rule: To provide flexibility to LEAs in the administration of Regents mathematics examinations (Common Core) to students in grades 7-8

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2) and (20), 308(not subdivided), 309(not subdivided), 3204(3) and 3713(1) and (2)

Sections 100.4(d)(4), 100.4(e)(4) and 100.18(b)(14) of the Regulations of the Commissioner of Education Relating to administration of Regents Examinations and Assessments in Science to Students in Grades 7 and 8

Description of Rule: Science intermediate assessments

Need for Rule: To provide flexibility to schools in the administration of Regents science assessments to students in grades 7-8

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2) and (20), 308(not subdivided), 309(not subdivided) and 3204(3)

Section 200.5 of the Regulations of the Commissioner of Education Relating to Parental Consent for Initial Provision of Special Education Services in a 12-month Special Service and/or Program

Description of Rule: Parental consent for the initial provision of special education services/programs to a student with a disability for July/August

Need for Rule: To conform the Commissioner's Regulations to section 16-a of Part A of Chapter 56 of the Laws of 2014.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207 (not subdivided), 305(1) and (2) and (20), 4402(2), 4403(3) and section 16-a of Part A of Chapter 56 of the Laws of 2014.

Section 100.17 of the Regulations of the Commissioner of Education Relating to the Distinguished Educator Program

Description of Rule: Distinguished Educators

Need for Rule: To modify criteria for appointment, roles, responsibilities, protocols and procedures for distinguished educators to ensure that they are better able carry-out their statutory responsibilities and functions to assist low performing schools pursuant to Education Law sections 211-b and 211-c.

Legal Basis of Rule: Education Law § § 207, 305(1), (2) and (20), 211-b(1-5), and 211-c(1-8)

Section 276.11 of the Regulations of the Commissioner, relating to appeals to the Commissioner under Education Law § § 310 and 2853(3)(e)

Description of Rule: Appeals to Commissioner of Education relating to New York City charter school co-location sites

Need for Rule: To implement Education Law § 2853(3)(e), as added by § 5 of Part BB of Chapter 56 of the Laws of 2014

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 310(1), (4), (6) and (7), 311(1-4) and 2853(3)(e), as added by § 5 of Part BB of Chapter 56 of the Laws of 2014

Sections 100.2(II) and 104.3, 100.3(b)(2), 100.4(b)(2), and 100.4(e) of the Regulations of the Commissioner relating to Promotion Determinations

Description of Rule: Student promotion/placement and permanent records and transcripts, and grades 3-8 State ELA and Mathematics assessments

Need for Rule: Conform Commissioner's Regs to Ed. Law section

305(45), (46) and (47), as added by Subparts B and C of Part AA of L. 2014, Ch.56

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2), (20), (45), (46) and (47), 308(not subdivided), 309(not subdivided) and 3204(3) and Subparts B and C of Part AA of Chapter 56 of the Laws of 2014.

Sections 100.3, 151-1.2 and 151-1.3 of the Commissioner's Regulations, relating to Traditional Standardized Tests in Grades Pre-K through 2

Description of Rule: Traditional standardized tests administration

Need for Rule: To prohibit administration of traditional standardized tests in prekindergarten programs and in grades kindergarten through two.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2), (20), (44), 308(not subdivided), 309(not subdivided), 3204(3) and 3602-e(12) and (15) and Subpart A of Part AA of Chapter 56 of the Laws of 2014.

Section 100.18 of the Regulations of the Commissioner relating to New York State's ESEA Flexibility Renewal Request, Annual Measurable Objectives, and Removal of Certain Focus Schools From Accountability Designation Without Replacement

Description of Rule: Elementary and Secondary Education Act (ESEA) Flexibility and school and school district accountability

Need for Rule: To partially implement New York State's ESEA Flexibility Waiver Renewal with respect to Annual Measurable Objectives (AMOs)

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 210(not subdivided), 215(not subdivided) 305(1), (2) and (20), 308(not subdivided), 309(not subdivided), 3204(3) and 3713(1) and (2)

Sections 200.16(c) and 200.20(b) of the Regulations of the Commissioner of Education Relating to Special Education Services and Programs for Preschool Children with Disabilities

Description of Rule: Special Education Services and Programs for Preschool Children with Disabilities

Need for Rule: To implement L. 2013, Ch. 545, relating to CPSE placement of a child in an approved program that also conducted an evaluation of the child, and qualifications for executive directors of approved preschool programs

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1), (2) and (20), 308(not subdivided), 4401(1) - (11), 4402(1) - (7), 4403(1)-(5), (9), (11), (13), (15) and (20), 4410(1) - (5), (9), (9-a), (9-b), (9-d), (10), (11) and (13) and sections 1 and 2 of Chapter 545 of the Laws of 2013

Section 100.5(d) of the Commissioner's Regulations Relating to Transfer High School Credit for Students in State Agency Educational Programs

Description of Rule: Provide transfer credit for students in an educational program administered by a State Agency pursuant to Education Law § 112

Need for Rule: Provide transfer credit for students in a State Agency educational program upon attestation of chief program administrator

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1) and (2) and 309(not subdivided)

Section 100.5(d)(6) of the Regulations of the Commissioner relating to Expansion of Integrated Credits in Approved CTE Programs

Description of Rule: Career and Technical Education (CTE)

Need for Rule: To expand from four to eight the number of required credits in English, science, mathematics and social studies that may be fulfilled through specialized courses, integrated CTE courses, or a combination of specialized and integrated CTE courses.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided),

215(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided) and 3204(3).

Addition of Subparts 154-1 and 154-2 of the Commissioner's Regulations

Description of Rule: Pupils with Limited English Proficiency

Need for Rule: To prescribe requirements for bilingual education and English as a New Language programs for English Language Learners

Legal Basis for Rule: Education Law sections 207(not subdivided), 208(not subdivided), 215(not subdivided), 305(1) and (2), 2117(1), 2854(1)(b) and 3204(2), (2-a), (3) and (6)

Section 100.18(b)(14) and 100.18(b)(15) of the Regulations of the Commissioner, Relating to Definition of Performance Levels for State Assessments and the Calculation of the Performance Index Based on the Student Performance Levels

Description of Rule: School accountability - high school performance levels and performance index

Need for Rule: To align Commissioner's Regulations with the June 2014 Board of Regents approval of the cut points for the five performance levels on the new Common Core Regents Examinations in English language arts and mathematics.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2) and (20), 308(not subdivided), 309(not subdivided), 3204(3) and 3713(1) and (2)

Addition of Subpart 154-3 of the Commissioner's Regulations

Description of Rule: Pupils with Limited English Proficiency (English Language Learner [ELL] programs)

Need for Rule: To prescribe identification/exit procedures for students with disabilities in ELL programs

Legal Basis for Rule: Education Law sections 207(not subdivided), 208(not subdivided), 215(not subdivided), 305(1) and (2), 2117(1), 2854(1)(b) and 3204(2), (2-a), (3) and (6)

Sections 57-1.1 and 135.4 and addition of Section 135.7 of the Regulations of the Commissioner of Education, relating to Child Abuse and Maltreatment Identification and Reporting Coursework or Training for Coaches

Description of Rule: Child abuse identification and reporting coursework or training for coaches

Need for Rule: To conform Commissioner's Regulations to Education Law section 3036, as added by Chapter 205 of the Laws of 2014

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1) & (2), 803(not subdivided), 3204(2) & (3) and 3036(1) and (2) and Chapter 205 of the Laws of 2014

Amendments to Subpart 154-2 of the Commissioner's Regulations

Description of Rule: Pupils with Limited English Proficiency

Need for Rule: To make certain technical amendments; to amend § 154-2.3(f)(3) to allow parents an additional five days to return to the school district the signed notification form regarding student placement; and to amend § 154-2.3(k) to permit school districts to apply for an exemption from the professional development requirements addressing the needs of English Language Learners under certain circumstances

Legal Basis for Rule: Education Law sections 207(not subdivided), 208(not subdivided), 215(not subdivided), 305(1) and (2), 2117(1), 2854(1)(b) and 3204(2), (2-a), (3) and (6)

Section 100.2(ee) of the Commissioner's Regulations, relating to Academic Intervention Services (AIS)

Description of Rule: Academic Intervention Services (AIS)

Need for Rule: To establish modified requirements for AIS during the 2014-2015 school year.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided) and 3204(3)

Agency Representative:

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OFFICE OF HIGHER EDUCATION

Section 80-1.1(b)(47) of the Regulations of the Commissioner of Education Relating to the Definition of Part-Time Experience for Permanent or Professional Certification

Description of Rule: Definition of Part-Time Experience for Permanent or Professional Certification

Need for Rule: To amend the definition of a year of experience for permanent or professional certification to provide candidates serving as substitute teachers with an alternative to meet the part-time continuous service experience requirements.

Legal Basis for Rule: Education Law sections 207 (not subdivided), 305(1), 3001(2), 3006(1)(a),(b) and 3009(1).

Sections 52.21, 80-1.1, 80-3.3 and 80-3.5 of the Commissioner's Regulations Relating to the Extension of the Availability of a Transitional A Certificate to Career and Technical Education Titles (Mechanical Technology 7-12, Electrical-Electronic Technology 7-12 and Computer Technology 7-12,) and the Family and Consumer Science Career and Technical Education Subjects (Food and Nutrition, Textile and Design, Human Services and Family studies) and the Addition of an Option for College Professors to Use Post-Secondary Teaching Experience in Lieu of Work Experience for Certification in the CTE Subjects

Description of Rule: Teacher certification requirements for career and technical education titles

Need for Rule: To extend the availability of a Transitional A certificate to the technical titles within the career and technical education (CTE) titles and the Family and Consumer Science CTE subjects, and to allow an option for college professors to use postsecondary teaching experience in lieu of work experience to gain certification in CTE subjects.

Legal Basis for Rule: Education Law sections 207, 305, 3001, 3004, 3006 and 3009.

Sections 80-3.3 and 80-3.7 of the Regulations of the Commissioner of Education Relating to Individual Evaluation

Description of Rule: Satisfaction of education requirements for certification in the classroom teaching service through individual evaluation.

Need for Rule:

To discontinue the individual evaluation pathway for certain certificate titles and continue the individual evaluation pathway for all other certificate titles.

Legal Basis for Rule: Education Law sections 207(not subdivided), 210(not subdivided), 305(1) and (2), 3001(2), 3004(1), 3006(1)(b) and 3009(1)(b).

Section 30-2.1 of the Rules of the Board of Regents to Define Performance for Purposes of Termination Decisions for Probationary Teachers Relating to Annual Professional Performance Reviews (APPR)

Description of Rule: Termination Decisions for Probationary Teachers Based on Annual Professional Performance Reviews (APPR)

Need for Rule: To define performance for purposes of termination decisions for probationary teachers related to APPRs.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2) and 3012-c.

Part 80 of the Regulations of the Commissioner of Education relating to reciprocity requirements for classroom teachers

Description of Rule: Reciprocity requirements for classroom teachers

Need for Rule: To establish a standardized reciprocity process for the review of teaching candidates from other jurisdictions

Legal Basis for Rule: Education law sections 207 (not subdivided), 305(1) and (2), 3001(2), 3004(1), 3006(1)(b), 3007(1) and (2) and 3009(1)

Section 52.21 and Part 80 of the Regulations of the Commissioner of Education to Provide Teacher Candidates, who Apply for Teacher Certification Prior to June 30, 2015 and Who Take and Fail the Teacher Performance Assessment (edTPA), with the Option of Obtaining an Initial Certificate if the Candidate Passes the ATS-W Prior to June 30, 2015 and Subsequent to Receiving His/Her Score on the edTPA or Who Pass the ATS-W Prior to the Requirements for the New Certification Examinations and Who Takes and Fails the edTPA Prior to June 30, 2015

Description of Rule: Flexibility Relating to Teacher Performance Assessment (edTPA)

Need for Rule:

To provide teacher Candidates, who apply for teacher certification prior to June 30, 2015 and who take and fail the teacher performance assessment (edTPA), with the option of either: (1) taking and passing the ATS-W after receipt of his/her failing score on the edTPA and prior to June 30, 2015, or (2) if the candidate had previously passed the ATS-W on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the edTPA prior to June 30, 2015, the candidate will be issued an initial certificate (this applies to Transitional B program candidates who apply for an initial certificate as well).

Legal Basis for Rule: Education Law sections 207(not subdivided), 305(1) and (2), 3001(2), 3004(1), 3006(1)(b) and 3009(1)

Proposed Amendment to Section 52.21 of the Regulations of the Commissioner of Education

Description of Rule: The requirements for student teaching, field experience and practica for teacher education preparation programs

Need for Rule: To provide teaching candidates with the option of completing a single teaching placement instead of two 20 day placements in a registered teacher education programs if certain conditions are met and to extend the sunset date for the clinically rich teacher education pilot program from June 30, 2016 to October 1, 2016.

Legal Basis for Rule: Education Law sections 207(not subdivided), 210(not subdivided) 305(1) and (2), 3001(2), 3004(1), 3006(1)(b) and 3009(1).

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OFFICE OF THE PROFESSIONS

Section 65.8 of the Regulations of the Commissioner of Education relating to Podiatric Ankle Surgery Privileges

Description of the Rule: Podiatric ankle surgery privileges

Need for Rule: Required by State statute (Chapter 438 of the Laws of 2012).

Legal Basis of Rule: Education Law sections 207, 6507, 7001 and 7009, and Chapter 438 of the Laws of 2012

Sections 79-9.4, 79-10.4, 79-11.4 and 79-12.4 of the Regulations of the Commissioner of Education relating to the Duration of Limited

Permits for Applicants Seeking Licensure as Mental Health Practitioners under Article 163 of the Education Law

Description of the Rule: The duration of limited permits for certain applicants for licensure as mental health counselors, marriage and family therapists, creative arts therapists or psychoanalysts

Need for Rule: To conform the Regulations of the Commissioner of Education to Chapter 485 of the Laws of 2013 that amended Article 163 of the Education Law by standardizing the duration of limited permits for applicants seeking licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst at two years for the initial permit with the possibility of up to two one-year extensions, at the discretion of the Department.

Legal Basis for Rule: Education Law sections 207, 6501, 6504, 6507, 6508, 8409, and Chapter 485 of the Laws of 2013

Section 74.10 of the Regulations of the Commissioner of Education Relating to Continuing Education Requirements for Licensed Master Social Workers and Licensed Clinical Social Workers

Description of the Rule: Continuing education requirements for licensed master social workers and licensed clinical social workers

Need for Rule: To conform the Regulations of the Commissioner of Education to Chapter 443 of the Laws of 2013 that added Section 7710 of the Education Law which requires licensed master social workers and licensed clinical social workers to complete 36 hours of mandatory continuing education when registering to practice in New York State, effective January 1, 2015. The rule also establishes standards for the Department's approval of continuing education providers, defines acceptable continuing education subjects and educational activities, establishes requirements when there is a lapse in practice, institutes requirements for licensees under conditional registration, and sets fees for licensees and providers.

Legal Basis for Rule: Sections 207, 212, 6504, 6507 and 7710 of the Education Law and Chapter 443 of the Laws of 2013.

Section 63.11 of the Regulations of the Commissioner of Education Relating to Interpretation and Translation Services for Limited English Proficient (LEP) Individuals by Mail Order Pharmacies

Description of Rule: Interpretation and translation services for Limited English Proficient (LEP) individuals by mail order pharmacies.

Need for Rule: To implement section 6829(4) of the Education Law, as added by Part V of Chapter 57 of the Laws of 2012.

Legal Basis for Rule: Sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6810(1) and 6829(4) of the Education Law, and Part V of Chapter 57 of the Laws of 2012.

Certification of Clinical Nurse Specialists and Nurse Practitioners under Article 139 of the Education Law

Description of Rule: Certification as a clinical nurse specialist (CNS).

Need for Rule: To implement Chapter 364 of the Laws of 2013.

Legal Basis for Rule: Sections 207(not subdivided), 212(3), 6504(not subdivided), 6507(2)(a), 6910(1), (2), (3), (4), and (5), 6911(1) and (2) of the Education Law, and Chapter 364 of the Laws of 2013.

Amendment to Sections 29.2 and 29.7 of the Rules of the Board of Regents and Sections 63.6 and 63.8 of the Regulations of the Commissioner of Education to Implement Part D of Chapter 60 of the Laws of 2014, Relating to the Registration and Regulation of Outsourcing Facilities.

Description of Rule: Outsourcing facilities engaged in the compounding of sterile drugs

Need for Rule: To implement L.2014, Ch.60, Part D by establishing criteria for registration of outsourcing facilities

Legal Basis for Rule: Education Law sections 207(not subdivided), 212(3), 215(not subdivided), 6504(not subdivided), 6507(2)(a), 6509(1-11), 6802(1-23), 6808(1), (5), (6), (7), 6808-b(1), (4)(f), 6810(14), 6811(26), 6811-a(1), (2), 6812(1), 6817(1) and 6831(1-14) of the Education Law, and Part D of Chapter 60 of the Laws of 2014.

Section 29.14 of the Rules of the Board of Regents and Section

64.5 of the Regulations of the Commissioner of Education Relating to the Regulation of Nurse Practitioner Practice

Description of Rule: Nurse Practitioner Collaborative Relationships.

Need for Rule: To implement Part D of Chapter 56 of the Laws of 2014

Legal Basis for Rule: Sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6509(9), and 6902(3) of the Education Law, and Part D of Chapter 56 of the Laws of 2014.

Section 61.9 of the Regulations of the Commissioner of Education Relating to the Practice of Dental Hygiene Pursuant to Collaborative Arrangements

Description of Rule: Dental Hygiene Collaborative Arrangements.

Need for Rule: To implement Chapter 239 of the Laws of 2013.

Legal Basis for Rule: Sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6606(1) and (2), 6608, and 6611(10) of the Education Law, and Chapter 239 of the Laws of 2013.

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D. CALENDAR YEAR 2009

OFFICE OF P-12 EDUCATION

Section 100.2(p) – Differentiated Accountability

Description of Rule: The purpose of the rule is to implement the No Child Left Behind (NCLB) Differentiated Accountability Pilot Program in order to increase the percentage of schools designated for Improvement that are able to make adequate yearly progress for two consecutive years and be returned to Good Standing.

Need for Rule: The rule is necessary to conform the Commissioner's Regulations with New York State's approval to participate in the No Child Left Behind (NCLB) Differentiated Accountability Pilot Program, as granted by the United States Department of Education (USED) on January 8, 2009.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2) and (20), 309(not subdivided) and 3713(1) and (2).

Section 100.5 – Special Education Safety Net Extension

Description of Rule: The rule extends the existing regulatory requirements of section 100.5 of the Regulations of the Commissioner of Education relating to the Regents Competency Test (RCT) safety net for students with disabilities.

Need for Rule: The rule extends the RCT safety net for an additional year to make it available to all students with disabilities entering grade nine in the 2010-11 school year. Extending the RCT safety net provided time for the Regents and Department to fully analyze all of the policy issues concerning graduation, including policy implications for students with disabilities.

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) and 309 (not subdivided).

Section 135.4 – Physical Education, Coaching and Interscholastic Athletics

Description of Rule: The rule provides flexibility for school districts that have organized their 5th and 6th grades into a middle school, by revising the physical education instruction requirements for elementary programs to include provisions for pupils in grades 5 and 6 who

attend a middle school. The rule also specifies the qualifications of those to be appointed (whether paid or unpaid) by school districts to fill existing athletic coaching positions, clarifies evidential requirements for extension of eligibility for interscholastic athletics, and adds provisions permitting coaches to apply to the Commissioner for extensions to complete required coursework.

Need for Rule: The Office of the State Comptroller Audit on Physical Education recommended the change in regulation to accommodate districts with middle schools and the New York State Public High School Athletic Association and the New York State Athletic Administrators' Association have actively pursued a change in Commissioner's Regulation section 135.4(c)(7)(i)(c), relating to the educational requirements of coaches, the timelines to complete required course work and duration of competition for athletes.

The prior regulations did not provide flexibility for school districts that have organized their 5th and 6th grades into a middle school. The rule revises the physical education instruction requirements for elementary programs to include provisions for pupils in grades 5 and 6 who attend a middle school. The rule eliminates scheduling and staffing issues in middle level schools. The change effected by the rule was listed in the recommendations of the Office of the State Comptroller Audit on Physical Education and recommended by administrators in middle level buildings.

Furthermore, the prior regulations did not reflect equality of coaching requirements for certified teacher coaches and non-teacher coaches. In addition, new teachers are required to complete a Master's degree within five years of receiving their baccalaureate. This has affected the time available to new coaches to complete the required coaching courses and has affected the number of certified teacher coaches available to school districts for appointment as an interscholastic athletic coach. The rule establishes equal timelines for coaches to complete required course work, extends the time for completing requirements, provides authority for additional extensions for individuals who have had a lapse in service due to extenuating circumstances, and clarifies extension of eligibility for interscholastic athletes. New York State Education Department oversight and control over the required instruction and coaching regulations remain intact.

The rule also clarifies the extension of eligibility rule to provide that in order to be an acceptable cause for extending a student's eligibility for interscholastic athletics, the chief school officer must present sufficient evidence that includes documentation showing that the student's education plan has been extended to a fifth year as a direct result of the illness, accident or other circumstance beyond the control of the student.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 803(5) and 3204(2).

Section 174.2 – Computation of nonresident pupil tuition rate

Description of Rule: The rule conforms the Commissioner's Regulations to changes in State statutes and corrects technical deficiencies.

Need for Rule: The rule is necessary to reflect the Foundation Aid provisions enacted by Chapter 57 of the Laws of 2007 and to otherwise bring the Commissioner's Regulations into compliance with those changes to the law.

Legal Basis for Rule: Education Law sections 207, 3202(4)(d) and 3602.

Section 175.5 – Superintendent's Conference Days

Description of Rule: The rule extends for four years the provision in the regulation that permits a school district to use up to two of its superintendents' conference days in each school year for teacher rating of State assessments.

Need for Rule: The rule provides 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).

Sections 200.1, 200.2, 200.4, 200.5, 200.6, 200.9 & 200.15 – Federal/State Conform Regulations

Description of Rule: The rule accomplishes the following:

- adds the definition of declassification support services consistent with the definition of such term in section 3202(i)(2) of the Education Law;
- conforms State regulations to federal requirements relating to participation in regular class, parent consent, including revocation of parent consent for special education and related services, and meeting notice;
- repeals language in the prior notice requirements relating to provision of a free appropriate public education after graduation with the receipt of a local high school or Regents diploma to be consistent with Education Law; and
- conforms State regulations to Chapter 323 of the NYS Laws of 2008 relating to procedures for prevention of abuse, maltreatment or neglect of students in residential placements.

Need for Rule: The rule is necessary to conform State regulations to federal regulations (34 CFR Part 300) and New York State (NYS) Social Services Law and Mental Hygiene Law, as amended by Chapter 323 of the Laws of 2008; and to make certain technical amendments, including correction of cross citations.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207 (not subdivided), 3208(1-5), 3602(i)(2), 3713(1) and (2), 4002(1-3), 4308(3) and 4355(3), 4401(2- 9), 4402(1-7) and 4410(13), and Chapter 323 of the Laws of 2008.

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OFFICE OF HIGHER EDUCATION

Sections 3.47, 3.48, and 3.50 – Masters of Study in Law

Description of Rule: The rule amends section 3.47(c) to delete the phrase "specialized study" from the definition of liberal arts content. The rule also creates a new degree title, Master of Studies in Law (M.S.L.), in the category of Professional Degrees and Specialized Degrees. The rule also adds a new section 3.48(c) to authorize community colleges to award honorary associate degrees in accordance with section 6306(5-b) of the Education Law.

Need for Rule: The amendment to section 3.47(c) clarifies the distinction between such content in an undergraduate degree program and courses directed toward a specific occupational or professional objective. The amendment to section 3.50, creating the M.S.L., makes a non-licensure legal education available to non-lawyers. The amendment to section 3.48(c) authorizes community colleges to award honorary associate degrees in accordance with section 6306(5-b) of the Education Law.

Legal Basis for Rule: Education Law sections 207(not subdivided), 210(not subdivided), 214(not subdivided), 215(not subdivided), 218(1), 224(4), 305(1) and (2) and 6306(5-b).

Sections 30-1.1, 30-1.2, 30-1.9, 80-1.1 and 80-5.21 – Teacher tenure area – instructional support services.

Description of Rule: The rule establishes qualifications and tenure and/or seniority rights for teachers performing instructional support services, and thus permits teachers employed in instructional support service positions in BOCES and school districts to receive tenure and seniority rights in a tenure area for which they are properly certified. (The regulations do not impact teachers serving in the New York City School District.)

Need for Rule: The rule is necessary because the number of individuals serving in these types of positions has grown considerably in the past three decades and these positions have never been formally

recognized as being educational in nature under section 35-g of the Civil Service Law. The effect is that teachers serving in these positions currently are not eligible to accrue tenure and seniority rights in any tenure area. Under the rule, these positions become part of the unclassified service, require an appropriate teaching certificate, and would be subject to Education Law in regard to appointment and tenure.

Legal Basis for Rule: Education Law section 207.

Sections 80-1.2, 80-1.6, 80-1.8, 80-5.9 – Processing and Requirements for Teacher’s Certificates.

Description of Rule: The rule imposes reasonable limits on transcript evaluation by limiting the length of time an application for a certificate will remain in active status to three years and limiting the number of evaluations an applicant can receive to two. Additional evaluations will require submission of a new application and fee. The rule imposes a \$50 fee for the issuance of an internship certificate, the same fee that the Department collects for all other college-recommended certificates. The rule specifies that certificates may be issued in electronic and/or paper format, in order to implement a policy change from the issuance of time limited certificates, in favor of a web based verification system. The rule only allows a holder of a provisional certificate to qualify for a time extension if he/she has passed the appropriate New York State Teacher Certification Examination content specialty test(s). The rule also streamlines the requirements for the reissuance of an initial certificate by requiring passage of the applicable Content Specialty Test(s) only if the certificate has been expired for more than two years, eliminates the requirement that the teacher submit evidence of being unable to secure a teaching position to qualify, establishes a uniform professional development requirement of 75 hours and requires that a candidate complete the 75 hours of professional development within one year of applying to the department for the reissued initial certificate.

Need for Rule: The rule is needed to streamline certificate evaluations and the processing of certificates under Part 80 of the Regulations of the Commissioner of Education, in light of the reduction in available resources to the State Education Department to perform these functions, in order to continue to provide core teacher certification services to school districts and candidates seeking a certificate in teaching, allow evaluation staff to work on more critical evaluation functions, and reduce the processing time for applicants.

Legal Basis for Rule: Education Law sections 207(not subdivided), 210, 212, 305, 3001, 3003, 3004, 3006, 3007, 3009 and 3604.

80-1.2, 80-1.6, 80-2.2, 80-2.9, 80-3.6, 80-4.3, 80-5.6, 80-5.7 and 80-5.9 – Patriot Plan

Description of Rule: The rule implements the provisions of the Patriot Plan by reducing the professional development requirement for certificate holders called to active duty for the time of such active service. The rule also extends the validity of teaching certificates for members of the military called to active duty for the period of such active service and an additional 12 months from the end of such service.

Need for Rule: The rule is necessary to implement the provisions of the Patriot Plan, which was enacted by the Legislature in Chapter 106 of the Laws of 2003. The Patriot Plan was enacted by the Legislature to recognize members of the military who are called to active duty so that such members are not discriminated against based upon their military status in areas such as housing, employment and education.

Legal Basis for Rule: Education Law sections 207, 210, 212, 305, 3001, 3004 and 3006.

Sections 80-2.9, 80-4.3 and 80-5.18 – Supplementary Extension in Bilingual Education

Description of Rule: The purpose of the rule is to establish a supplementary bilingual education extension to enable a certified teacher or pupil personnel service professional to provide bilingual instruction or services, in a demonstrated shortage area, while the teacher or pupil personnel service professional completes the remaining course requirements necessary to qualify for a bilingual extension. The supplementary bilingual education extension is valid for three years from its effective date and will not be renewable. It will be limited to employment with an employing entity. Due to continuing shortages of

classroom teachers in certain certificate titles (including but not limited to mathematics, the sciences and special education) and in certain geographic areas, the rule also removes the sunset date of September 1, 2009 for supplementary certificates, which authorizes a teacher certified in the classroom teaching service to teach in a different title when there is a demonstrated shortage of certified teachers, while the teacher is engaged in study at an institution of higher education to complete any necessary requirements to qualify for the new certificate.

Need for Rule: The rule is needed to facilitate the State’s ability to address persistent shortages of certified teachers and pupil personnel service professionals (such as school psychologists, school counselors and school social workers) who are qualified to provide bilingual instruction and services. The rule creates a practical mechanism for certified teachers and pupil personnel professionals to earn this additional credential, while continuing to be employed as a classroom teacher or pupil personnel service provider. The rule prescribes clearly defined standards to ensure the quality of the education of teachers and pupil personnel professionals certified in bilingual education. The rule is designed to support the Department’s continuing efforts to certify a sufficient number of properly qualified candidates to fill the need for bilingual instruction and support services in the State’s schools.

Legal Basis for Rule: Education Law sections 207(not subdivided), 305(1), (2) and (7); 3001(2); 3004(1) and 3006(1)(b).

Section 145-2.15 – Administration of Ability-to-Benefits Tests for purposes of Eligibility for Student Aid Awards

Description of Rule: The rule clarifies the requirements for the independent administration of ability-to-benefit tests, for purposes of eligibility for student aid awards.

Need for Rule: The rule replaces the phrase “assessment center” with “testing center to avoid confusion with the different meaning of “assessment center” in federal regulations governing the administration of HEA Title IV student aid funds (34 CFR 668.142). The rule also adds to the existing prohibition on test center employees, a prohibition on not only the use of any person employed through the admissions, student financial aid, or registrar’s offices at an institution, but a prohibition on the use of any employee who performs the duties of such offices. The rule also requires that the scoring of an ability-to-benefit test be “in accordance with the test publisher’s instructions.” The rule requires that tests, results, and databases be kept “secure” instead of “in locked and secured containers”, in light of the fact that tests may be offered on computer as well as in paper-and-pencil format. The rule also eliminates the prohibition against an institution employing a former student as a test administrator because it is unnecessarily restrictive, given the other constraints § 145-2.15 of the Commissioner’s regulations places on the administration of ability-to-benefit tests. The rule also amends section 145-2.15(e) to clarify that in order for the Department to consider a test “independently administered”, it must be administered at one of the following locations: (1) a testing center that is not located at and/or affiliated with the institution for which the student is seeking enrollment; (2) a degree-granting institution that confers two-year or four-year degrees or an institution that qualifies as an eligible public vocational institution provided that the chief executive officer certifies annually that certain procedures have been followed; or (3) an eligible non-degree granting institution that is not a public vocational institution provided that the test is given by a test administrator meeting certain requirements delineated in the rule.

Legal Basis for Rule: Education Law sections 207(not subdivided) and 661(4).

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OFFICE OF THE PROFESSIONS

Sections 29.7 & 63.3 – Pharmacy Electronic Records and Residency

Description of Rule: The rule enables licensed pharmacists to maintain required records in electronic format, and provides applicants seeking licensure in pharmacy with an alternative to passing a Department administered practical examination, one of three examinations that a pharmacist must complete to become licensed.

Need for Rule: As a general rule, licensed professionals are allowed to maintain records electronically. Pharmacy rules and regulations, however, previously retained references to hard-copy records, despite the extremely large volume of records contemporary community and hospital pharmacies generate. The rule removed this requirement and allows pharmacists and pharmacies the option of converting records to a secure, electronic format. The rule encourages greater acceptance of electronic prescribing which has been shown to be effective in reducing medication errors.

Pharmacists seeking licensure in New York State previously were required to complete a three-part series of examinations. The third part of the examination is a Department prepared and administered practical examination that tests candidates' abilities to actually compound and dispense medications, including sterile products. This examination is labor intensive, and the Department has been reviewing effective alternatives. An increasing number of pharmacy graduates voluntarily enroll in accredited residency programs wherein their knowledge and skills are further developed and confirmed. The rule authorizes the Department to accept a certification from the residency program director, attesting to the applicant's attainment of specified skills and competencies within an accepted residency program in lieu of successful completion of the current practical examination. The rule is similar to recent changes made in the licensure of dentists, who are now required to complete a dental residency in lieu of the previously administered practical examination. The rule permits an applicant to either complete certain competencies as part of an approved residency program or complete a Department administered practical examination.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6506(1), 6507(2)(a), 6507(4)(h), 6509(9), 6801(not subdivided) 6805(3) and 6810(4) and (5) of the Education Law.

Sections 29.10, 52.13 & Part 70 – Public Accountancy

Description of Rule: The rule enacts requirements in the following areas of professional licensure or practice impacted by Chapter 651 of the Laws of 2008:

(1) Commission and referral fees. In order to ensure that certified public accountants (CPAs) and public accountants (PAs) working in private industry or providing non-attest services through a public accounting firm may continue to receive commissions/referrals, the rule defines as unprofessional conduct in the practice of public accountancy the receipt of a commission or referral fee by a licensee or the public accounting firm employing such licensee for the referral of any product or service to a client if the licensee is performing certain attest and compilation services. The purpose of the rule is to retain the independent judgment of the CPA or PA. The rule also defines as unprofessional conduct the failure of a CPA or PA to provide specific written disclosure to a client when the licensee is performing professional services other than certain attest or compilation services for which a licensee may not receive a commission, and the licensee receives a commission or referral fee for recommending the products or services of a third party to the client.

(2) Firm Registration. Chapter 651 of the Laws of 2008 requires the Commissioner to establish a registration process for public accounting firms. The rule requires all firms (including sole proprietorships, partnerships, LLPs, LLCs, and PCs) to maintain a registration with the Department if the firm is performing attest or compilation services or

using the title "CPA" or "CPA firm" or the title "PA" or "PA firm." Firms performing only non-attest services described in Education Law § 7401(3) are not required to, but may, register with the Department. The rule requires firms applying for registration with the Department to provide a list of all offices within New York State and a list of all states or jurisdictions in which the firm maintains offices. It also requires firms to list any past denial, revocation or suspension of a registration or permit by any other state or jurisdiction within the past three years. The Board of Regents may revoke a firm's registration or take other disciplinary action against a firm to the same extent as an individual licensee, or pursuant to a settlement in which the firm neither admits nor denies the allegations of professional misconduct, or based upon other grounds including failure to undergo the required quality review every three years.

(3) Continuing Professional Education ("CPE"). Chapter 651 of the Laws of 2008 amends Education Law § 7409 to change the tracking year for CPE credit from a September 1 – August 31 year to a January 1 – December 31 year. The changes also allow licensees to meet their annual CPE requirement by completing either 40 credits in any combination of allowable subject areas or by completing 24 credits concentrated in any one subject area. Before this change, licensees were required to complete 40 credits in a combination of the following areas: accounting, auditing or taxation, or 24 credits concentrated, in either accounting, auditing or taxation. The legislation also requires that any licensed CPA or PA that engages in the new definition of public practice in § 7401 meet the CPE requirements. Any licensee who does not engage in public practice as defined in § 7401 may file a written request for an exemption from CPE. The rule implements these statutory changes, deletes prior exemptions from mandatory CPE for individuals who work in private industry or government and specifies that all registered CPAs and PAs are required to pay a CPE fee of \$50.

(4) Registration and Use of Professional Title. The rule requires CPAs and PAs to maintain an active registration with the Department if the licensee is practicing public accountancy or using the title "certified public accountant" or "public accountant" or the designation "CPA" or "PA." Licensees not practicing public accountancy or not using the title may request inactive status from the Department by filing a form to be approved by the Department requesting such status.

(5) Non-attest Services Performed by Out-of-State Licensed CPAs. Existing law was amended to add Education Law § 7406-a to authorize out-of-state CPAs to perform non-attest services such as accounting, management advisory, financial advisory, and tax in New York without a permit or license. As a condition of practicing in New York under this provision, the CPA and the firm that employs him or her agrees to be subject to the disciplinary authority of the Board of Regents; to comply with Article 149 of the Education Law, the Rules of the Board of Regents and the Regulations of the Commissioner of Education and to the appointment of the Secretary of State or other public official acceptable to the Department. The rule amends the Rules of the Board of Regents by defining as unprofessional conduct the willful or grossly negligent failure of an out-of-state CPA practicing non-attest services pursuant to Education Law § 7406-a to comply with substantial provisions of Federal, State or local laws, rules or regulations.

Need for Rule: The rule is necessary to conform the Commissioner's Regulations to Chapter 651 of the Laws of 2008.

Legal Basis for Rule: Education Law §§ 207(not subdivided), 6501(not subdivided), 6504(not subdivided), 6506(1), (2) and (6), 6507(2)(a), (3), (4)(a), 6508 (1) and §§ 7401, 7401-a, 7402, 7404, 7406, 7406-a, 7408, 7409 and 7410 and Chapter 651 of the Laws of 2008.

Section 77.10 – Physical therapy continuing education requirements

Description of Rule: The rule establishes mandatory continuing education requirements and the process for the Department's approval of sponsors of such continuing education.

Need for Rule: The rule is necessary to implement the requirements of Chapter 563 of the Laws of 2008.

Legal Basis for Rule: Education Law sections 207(not subdivided), 212(3), 6504(not subdivided), 6507(2)(a), and 6742-a(1)(2)(3)(4)(5) and (6); and section 2 of Chapter 207 of the Laws of 2008.

Section 150.4 – High Needs Nursing

Description of Rule: The purpose of the rule is to extend from June 1 to November 15 of each year the deadline for submission of annual reports certifying the number of students enrolled in a high needs nursing program at such institution.

Need for Rule: The rule is needed to provide institutions with an adequate amount of time to submit their annual reports.

Legal Basis for Rule: Education Law § § 207 and 6401-a and Chapter 57 of the Laws of 2008.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of any of the above rules by contacting:

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OFFICE OF CULTURAL EDUCATION

Section 90.3 – Public Library Systems

Description of Rule: The rule adds the definition of “developmentally or learning disabled” to the special populations who are served by coordinated outreach. The “Enriched coordinated outreach program” has been replaced with a more appropriate name, the “Family Literacy Library Services Grant Program.” Current operations of library systems are more accurately reflected and references to obsolete practices and terms are omitted.

Need for Rule: The rule is needed to update certain terminology and to clarify procedural requirements in the Commissioner’s Regulations relating to the approval of public library systems, specifically the Coordinated Outreach Services, Family Literacy Library Services grant program (formerly the “enriched coordinated outreach programs”), and Adult Literacy Library Services grant programs, in order to conform to Education Law section 273, as amended by Chapter 57 of the Laws of 2005, Part O, and to accurately reflect the current implementation of the statute.

Legal Basis for Rule: Education Law sections 207 (not subdivided), 215 (not subdivided), 254 (not subdivided), 255 (1 through 5), 272(1)(h) and 273(1).

Section 92.1 - State Library’s Circulation Policy

Description of Rule: The rule eliminates the restriction that certain State officials registered to borrow from the State Library may only borrow library materials for work-related purposes. The rule simplifies the registration process for a State official by only requiring proof that the individual is a permanent employee of State Government rather than requiring certification by a supervisor at the bureau chief level or above that the individual is currently a permanent employee of a State agency and requires library materials in connection with his or her official duties. The rule allows New York State residents 18 years and older to borrow library materials directly from the State Library if borrowed onsite and imposes a fine upon such individuals for overdue library materials. The rule also restricts the circulation of the only copy, or copy 1, of a New York State document. The rule also simplifies the return policy by providing that materials not returned within six weeks after the due date are considered lost and may be replaced at the borrower’s expense. Additionally, the rule clarifies that physicians and attorneys in New York State must be residents of the State as well as licensed to practice in the State in order to borrow library materials. The rule also makes technical amendments, including grammatical and stylistic changes.

Need for Rule: The rule is necessary to conform the Commissioner’s Regulations to the State Library’s current policy and practice relating to borrowing circulating library materials.

Legal Basis for Rule: Education Law sections 207 (not subdivided) and 249 (not subdivided).

Part 188 – State Government Archives and Records Management

Description of Rule: The rule revises and clarifies various provisions of the regulations, especially those pertaining to replacing original records with microforms, the retention and preservation of electronic records, the disposition of damaged records, and fees for records management services and the storage of records at the State records center.

Need for Rule: The rule is needed to update and clarify various provisions of Part 188. In particular, revisions to section 188.13 establish procedures to authorize the destruction of damaged records. Revisions to section 188.18 clarify and modernize requirements for replacing original records with microforms. Revisions to section 188.20 clarify and modernize requirements for the retention and preservation of electronic records. Revisions to section 188.21 update the list of agencies paying fees for records management services and the fee for storing records at the State records center. These changes establish improved and uniform standards for State government records management operations.

Legal Basis for Rule: Education Law section 207(not subdivided) and Arts and Cultural Affairs law section 57.05(9)

Agency Representative:

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OFFICE OF OPERATIONS AND MANAGEMENT SERVICES

Section 3.2(b) – Chancellor Emeritus

Description of Rule: The rule provides that a Chancellor Emeritus, who is also a current member of the Board of Regents, is an ex officio member of each standing committee of the Board of Regents.

Need for Rule: The Board of Regents has determined that this provision is appropriate and necessary to assist the Board of Regents to effectively meet its responsibilities to govern the University of the State of New York, determine the educational policies of the State and oversee the State Education Department.

Legal Basis for Rule: Education Law section 207(not subdivided).

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of any of the above rules by contacting:

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E. CALENDAR YEAR 2004

OFFICE OF P-12 EDUCATION

Section 156.3 – Nonpublic School Bus Drivers

Description of Rule: The rule conforms the Commissioner’s Regulations to Chapter 270 of the Laws of 2003 by applying the school bus safety practices instruction and retraining requirements for public school bus drivers to nonpublic school bus drivers.

Need for Rule: The rule is needed to implement the statutory requirements of Chapter 270 of the Laws of 2003. The rule will help to insure the safety of the 2.3 million students transported on school buses each day in New York State by applying, as required by Chapter

270 of the Laws of 2003, school bus safety practices instruction and retraining requirements prescribed pursuant to Education Law section 3624 to drivers who operate transportation which is owned, leased or contracted for by private and parochial schools to the same extent as such requirements apply to drivers who operate transportation which is owned, leased or contracted for by public school districts.

Legal Basis for Rule: Education Law § § 207, 305(34) and 3624 and Chapter 270 of the Laws of 2003.

Section 155.26 – Qualified Public Educational Facilities Bonds

Description of Rule: The rule establishes procedures, consistent with State and federal law, for the allocation of the State's qualified public educational facility bond limitation pursuant to 26 USC section 142(k).

Need for Rule: The rule is needed to implement the provisions of 26 USC section 142 by establishing the process for the allocation of the State's Qualified Public Educational Facilities (QPEF) bond limitation amount to local educational agencies within the State.

Legal Basis for Rule: Education Law § § 101, 207, 305(1) and (2) and 3713(1) and (2) and 26 USC 142(a) and 142(k).

Section 164.1(g) – Education for Gainful Employment (EDGE) Program

Description of Rule: The rule updates the Commissioner's Regulations by replacing references to the job opportunities and basic skills (JOBS) program with references to the Education for Gainful Employment (EDGE) program.

Need for Rule: The rule is needed to replace references to the Jobs Opportunities and Basic Skills Training (JOBS) program and the Aid to Families with Dependent Children (AFDC) program with, respectively, the Education for Gainful Employment (EDGE) program and Temporary Assistance for Needy Families (TANF) program. The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. Law 104-193) repealed the JOBS and AFDC programs, and created the TANF program. The rule sets forth the description, eligibility criteria and allowable activities for programs funded under the Welfare Education Program (WEP). A portion of WEP is sub-allocated for a match for TANF funds to create the EDGE program, which is administered in partnership with the State Department of Labor.

Legal Basis for Rule: Education Law § § 207, 3713(1) and (2) and § 1 of Chapter 53 of the Laws of 2003.

Sections 8.2, 8.3 and 100.7 – Admission to and Passing Mark on Regents Examinations and College Credits to Meet High School Equivalency Diploma Requirements.

Description of Rule: The rule implements policy enacted by the Board of Regents relating to admission to and passing mark for Regents examinations and high school equivalency diploma requirements.

Need for Rule: The rule requires principals of public schools to admit to Regents examinations a candidate who is a school district resident and who seeks to take such examinations for the purpose of meeting the requirements for an earned degree pursuant to Regents Rule section 3.47(a)(2). This provision is consistent with amendments to Regents Rules that establish an additional pathway for students beyond compulsory school age to earn a college degree by having passed and successfully completed all requirements for the following Regents examinations or the approved alternative assessments for these examinations: Comprehensive English, mathematics, U.S. history and government, global history and geography, and a science. The rule makes a technical change to add the citation in Regulations of the Commissioner of Education (section 100.5[a][5][i]) where there is an exception to the 65 passing mark on Regents examinations. The rule changes the subject distribution of the 24 college semester hours required for a pathway to earn a high school equivalency diploma. Provision is made to transition to the revised subject distribution that is anticipated to become effective September 30, 2004. The revised subject distribution will be consistent with recent amendments to Regents Rules relating to the satisfactory evidence candidates who are beyond compulsory school age must provide to degree-granting institutions to earn a college degree. The rule reduces the semester

hour requirement in mathematics from six to three, eliminates the three semester hours in career and technical education and/or foreign languages, and allows a candidate to complete six semester hours in courses within the registered degree program.

Legal Basis for Rule: Education Law § § 101, 207, 208, 209, 305, 308, 309 and 3204.

Section 100.8 – Local High School Equivalency Diploma

Description of Rule: The rule extends for three years the provision in the Commissioner's Regulations that allows boards of education specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner. The rule was subsequently amended to extend the provision through June 30, 2011.

Need for Rule: The rule is needed to allow the continuance of the External Diploma Program (EDP), which is a complete assessment program that allows adults to demonstrate and document the lasting outcomes and transferable skills for which a high school diploma is awarded. EDP is a competency-based, applied performance assessment system that expects adults to demonstrate their ability in a series of simulations that parallel job and life situations. Participants are evaluated against a criterion of excellence instead of by comparison with others. They take responsibility for acquiring instruction through existing community resources to achieve mastery of all the competencies required, plus an occupational or specialized skill.

Legal Basis for Rule: Education Law § § 101, 207, 208, 209, 305(1) and (2), 309, and 3204(3).

Section 164.2 – Adult Literacy Education Aid

Description of Rule: The rule amends certain requirements for not-for-profit organizations applying for adult literacy education grants and deletes references to obsolete provisions.

Need for Rule: The rule is needed to provide not-for-profit organizations with increased flexibility in offering adult literacy education (ALE) programs, which are designated by the commissioner to serve persons who are receiving public assistance, who are unemployed, or who are economically or educationally disadvantaged, by deleting the 10-pupil minimum class size requirement and the requirement that ALE programs meet certain frequency and duration criteria set forth in section 168.3(b)(5) and (6), relating to Employment Preparation Education programs. This will extend eligibility for State aid to not-for-profit ALE providers serving small populations, such as in situations involving one-on-one tutoring or small groups of no more than 4 students, in which students receive between 1 to 3 hours of instruction per week. The rule also deletes obsolete references to section 167.3(b) and 167.4, which applied to programs funded under the federal Job Training Partnership Training Act, which Act was repealed by the Workforce Investment Act of 1998 (Pub.L. 105-220).

Legal Basis for Rule: Education Law § 207 and § 1 of Chapter 53 of the Laws of 2003.

Section 200.1(i) and (h) Definitions

Description of Rule: The rule corrected certain citations and terms and replaced references to the term "paraprofessional" with the term "supplementary school personnel" in the definitions of class size and paraprofessional.

Need for Rule: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner's Regulations and the provisions of the federal No Child Left Behind (NCLB) Act (Public Law 107-110).

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Section 200.2(b)(11)(iii) Written Policies of the Board of Education

Description of Rule: The rule replaced the reference to the term "paraprofessional" with the term "supplementary school personnel."

Need for Rule: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner's Regulations and the provisions of the federal NCLB Act (Public Law 107-110).

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Section 200.2(h) Local Comprehensive System of Personnel Development (CSPD) Plan

Description of the Rule: The rule replaced the reference to the term “paraprofessional” with the term “supplementary school personnel”.

Need for Rule: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner’s Regulations and the provisions of the federal NCLB Act (Public Law 107-110). (The rule was amended in 2005 to repeal requirements for CSPD plans and to require that schools include professional development activities for professional staff and supplementary school personnel staff working with students with disabilities in the professional development plan pursuant to section 100.2 of the Commissioner’s Regulations.)

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Section 200.4(e)(3)(ii) and (iii) Individualized Education Program (IEP) Implementation

Description of the Rule: The rule replaced references to the term “paraprofessional” with the term “supplementary school personnel.”

Need for Rule: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner’s Regulations and the provisions of the federal NCLB Act (Public Law 107-110).

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Section 200.5(i)(3) Impartial Hearings

Description of the Rule: The rule clarified that the impartial hearing officer (IHO) may not accept appointment unless he or she is available to initiate the hearing within the first 14 days of being appointed; added that the hearing or a prehearing conference must be scheduled to begin within the first 14 days of the IHO’s appointment, unless an extension is granted; added that the IHO may assist an unrepresented party by providing information relating only to the hearing process at all stages of the hearing and that nothing contained in the regulations is to be construed to impair or limit the authority of the IHO to ask questions of counsel or witnesses to clarify or complete the record; added that a prehearing conference with the parties may be scheduled, that such conference may be conducted by telephone, and that a transcript or a written summary of the prehearing conference must be entered into the record by the IHO; delineated the purposes of the prehearing conference; required, except as provided for in section 201.11, that each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party’s evaluations that the party intends to use at the hearing at least five business days prior to a hearing; added that the IHO, wherever practicable, must enter into the record a stipulation of facts and/or joint exhibits agreed to by the parties; added that the IHO may receive any oral, documentary or tangible evidence except that the IHO must exclude evidence that he or she determines to be irrelevant, immaterial, unreliable or unduly repetitious and that the IHO may receive testimony by telephone, provided that such testimony must be made under oath and must be subject to cross examination; added that the impartial hearing officer may limit examination of a witness by either party whose testimony the IHO determines to be irrelevant, immaterial or unduly repetitious; added that the IHO may limit the number of additional witnesses to avoid unduly repetitious testimony; added that the IHO may take direct testimony by affidavit in lieu of in-hearing testimony, provided that the witness giving such testimony must be made available for cross examination; added that the IHO may receive memoranda of law from the parties not to exceed 30 pages in length, with typed material in minimum 12 point type (footnotes minimum 10 point type) and not exceeding 6 1/2 by 9 1/2 inches on each page, and added that each party will have up to one day to present its case unless the IHO determines that additional time is necessary for a full, fair disclosure of the facts required to arrive at a decision and that additional hearing days, if required, must be scheduled on consecutive days wherever practicable.

Need for Rule: The rule is necessary to prescribe procedures for the conduct of impartial hearings to comply with the Individuals with Disabilities Education Act (IDEA) and its implementing regulations.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1), (2) and (20), 4402(1), 4403(3) and 4404(1).

Section 200.5(i)(4) Impartial Hearing Officer Decisions

Description of the Rule: The rule provides that in cases where extensions of time have been granted beyond the applicable required timelines, the decision must be rendered and mailed no later than 14 days from the date the IHO closes the record and the date the record is closed must be indicated in the decision; provides that each extension of time granted by the IHO must be for no more than 30 days; added that the IHO may grant a request for an extension only after fully considering the cumulative impact of the following factors: (a) the impact on the child’s educational interest or well-being which might be occasioned by the delay; (b) the need of a party for additional time to prepare or present the party’s position at the hearing in accordance with the requirements of due process; (c) any financial or other detrimental consequences likely to be suffered by a party in the event of delay; and (d) whether there has already been a delay in the proceeding through the actions of one of the parties; added that absent a compelling reason or a specific showing of substantial hardship, a request for an extension shall not be granted because of school vacations, a lack of availability resulting from the parties’ and/or representatives’ scheduling conflicts, settlement discussions between the parties or other similar reasons and that the agreement of the parties is not a sufficient basis for granting an extension; added that the IHO shall respond in writing to each request for an extension and the response shall become part of the record; added that the IHO may render an oral decision to an oral request for an extension, but must subsequently provide that decision in writing and include it as part of the record, and for each extension granted, the IHO must set a new date for rendering his or her decision and notify the parties in writing of such date; provided that the IHO shall determine when the record is closed and notify the parties of the date the record is closed; required the decision to reference the hearing record to support the findings of fact and that the IHO attach to the decision a list identifying each exhibit admitted into evidence by date, number of pages and exhibit number or letter; and required the decision to include an identification of all other items the IHO has entered into the record.

Need for Rule: The rule is necessary to prescribe procedures for the conduct of impartial hearings to comply with the IDEA and its implementing regulations.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1), (2) and (20), 4402(1), 4403(3) and 4404(1).

Section 200.6(g)(4)(i)-(iii) Special Class Size for Students with Disabilities

Description of the Rule: The rule replaced references to the term “paraprofessional” with the term “supplementary school personnel.”

Need for Rule: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner’s Regulations and the provisions of the federal NCLB Act (Public Law 107-110). (The rule was amended in 2007 to re-letter section 200.6(g) to section 200.6(h).)

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Section 200.9(f)(2)(x) Tuition Reimbursement Methodology-Integrated Special Class Programs

Description of the Rule: The rule replaced references to the term “paraprofessional” with the term “supplementary school personnel.”

Need for Rule: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner’s Regulations and the provisions of the federal NCLB Act (Public Law 107-110).

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Section 200.16(h)(3)(iii)(b) Special Education Programs and Services-Special Classes

Description of the Rule: The rule replaced the reference to the term “paraprofessional” with the term “supplementary school personnel.”

Need for Rule: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner’s Regulations and the provisions of the federal NCLB Act (Public Law 107-110). (The rule was amended in 2005 to re-letter section 200.16(h) to section 200.16(i).)

Legal Basis for Rule: Education Law sections 101(not subdivided), 207 (not subdivided), 4403(3) and 4410(13).

Agency Representative:

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OFFICE OF HIGHER EDUCATION

80-3.3, 80-3.7, 80-4.3 and 80-4.4 Individual evaluation and other requirements for teacher certification

Description of Rule: The rule establishes requirements for classroom teaching certification through the individual evaluation of candidates who have not completed registered teacher education programs, streamline examination requirements for candidates who already hold classroom teaching certification, establish coursework requirements for extensions and annotations of certificates, and remove unnecessary certification requirements. These new requirements apply to candidates who apply for certification in a classroom title after February 1, 2004.

Need for Rule: The amendment is needed to streamline the current examination requirements for the issuance of additional certificates to individuals already holding a classroom teaching certification. In such cases, candidates need only pass the content specialty test in the area for which application is made because they have already shown pedagogical competence through meeting requirements for the original certificate. It also is needed to require a candidate for the initial certificate under Option B in a specific career and technical subject to pass the communication and quantitative skills test, which is a necessary assessment for these candidates who do not hold a college degree.

The amendment is needed to remove unnecessary provisions in Commissioner's regulations. It removes requirements applicable to candidates who complete out-of-state teacher education programs that are not registered by the State Education Department and not offered by an institution that is a party to the interstate agreement on the qualifications of educational personnel. It also removes education requirements for candidates who already hold certification in another area. These provisions will not be needed because the new individual evaluation requirements will apply. Finally, the amendment is needed to remove a provision that would establish additional requirements for candidates who have not applied for the initial certificate within two years of completing his or her teacher education program. The Department believes that these additional requirements are unnecessary and removing them will help alleviate the shortage of certified teachers in New York State.

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

Sections 80-1.2, 80-2.12, 80-2.13, 80-3.1, 80-3.5, 80-4.3, 80-5.6 and 80-5.13 – Technical Changes in Requirements for Certification in the Classroom Teaching Service.

Description of Rule: The rule clarifies and corrects omissions in the new requirements for the certification of teachers in the classroom teaching service that became effective on February 2, 2004.

Need for Rule: The rule is needed to clarify the applicability of the new certification requirements for the classroom teaching service, providing that the new certification requirements will apply to candidates who apply for certification on or after February 2, 2004, unless an exception is otherwise specifically set forth in the regulations. This is needed because a number of exceptions are stated in Part 80 that would permit candidates to meet the old requirements. These candidates already hold some type of certification, and are on the path to certification under the old requirements.

The rule is needed to provide that candidates in the alternative certi-

fication programs who applied and qualified for a transitional B certificate on or before February 1, 2004 will be eligible to obtain a provisional certificate, upon meeting the requirements for the provisional certificate. Those applying and qualifying for the transitional B certification after February 1, 2004 will have to apply for the initial certificate and meet the new requirements. This change is necessary as a matter of fairness to permit holders of the transitional B certificate who were already on track for obtaining a provisional certificate under the old requirements to obtain that certificate.

The rule is needed to update the name of the examination for teaching assistants, the "Assessment of Teaching Assistant Skills," and to specify the correct name for the examination required for an extension in bilingual education, the "bilingual extension assessment." In addition it is needed to clarify the language for the general science extension to indicate that study is required in "at least" two additional sciences, rather than in just two additional sciences.

Finally, the rule removes the requirement that a candidate for an extension in career awareness must hold a base teacher certificate in career and technical education. It also removes the requirement that holders of the transitional A certificate must be in a registered teacher education program. The transitional A certificates are in specific career and technical subjects within the field of agriculture, health or a trade (7-12) and are designed to permit career changes who hold an associate degree or high school education to enter the teaching field in these technical areas. The Department does not believe that either of the requirements proposed for removal are necessary.

Legal Basis for Rule: Education Law § § 207, 305(1), (2), and (7), 3001(2), 3004(1), 3006(1)(b), 3009(1) and 3010.

Sections 80-1.3, 80-2.1, 80-3.8, 80-3.9 and 80-5.17 – Pathways to Certification in the Classroom Teaching Service.

Description of Rule: The rule clarifies and supplements the new requirements for the certification of classroom teachers that became effective on February 2, 2004.

Need for Rule: The rule is needed to clarify the citizenship requirement for certification consistent with recent statutory change. The rule implements the provisions of Education Law section 3001, which establishes exceptions to the citizenship requirement for teaching in the public schools of New York State. As permitted in section 3001 of the Education Law, the rule provides that a candidate who is not a citizen of the United States may qualify if the candidate is a lawful permanent resident of the United States. It also establishes a number of exceptions that would allow non-citizens to obtain time-limited teaching certificates.

The rule will permit candidates whose participation in a teacher preparation program was interrupted by active military service to have additional time to complete requirements under the teacher certification requirements in effect prior to February 2, 2004. This change is needed to accommodate such candidates who were on track for meeting the requirements for certification under the requirements that were in place at the time they were called to service for the country. The Department believes that these candidates should not be penalized for such service.

The rule renews two pathways to certification needed to meet teacher shortages. The first would permit licensed and registered speech-language pathologists to qualify for teaching certificates in speech and language disabilities (all grades) under an exception to the regular requirements. The second would permit certified out-of-state teachers to qualify for a "conditional" first level certificate, allowing holders two years to pass the New York State certification examination. Both pathways expired on February 1, 2004, and reinstatement is needed to meet teacher shortages.

The rule also permits individuals who were employed in a public school or other school requiring certification, as theater teachers for a prescribed period prior to February 2, 2004, to continue to teach without additional certification, provided the teacher holds a permanent certificate in the classroom teaching service. The new teacher certification requirements establish the new certificate title, theater (all grades). This title did not exist before February 2, 2004. The rule is needed as a matter of fairness to permit teachers who have recent employment as theater teachers to continue their employment.

Legal Basis for Rule: Education Law § § 207, 305(1), (2), and (7), 3001(2), 3004(1) and (7), 3006(1)(b), 3009(1) and 3010.

Sections 3.47 and 100.10 – Requirements for the Conferral of a College Degree and the Home Instruction of Students of Compulsory Attendance Age and College Study.

Description of Rule: The rule establishes alternatives to the requirement that a candidate for a college degree hold a high school diploma, repeals the requirement that a student must have completed at least a four-year high school course or its equivalent prior to beginning degree study, requires students subject to compulsory education to obtain the approval of an appropriate school administrator prior to enrolling in college credit course work offered when the public school is in session, and establishes requirements relating to the home instruction of students of compulsory attendance age and college study.

Need for Rule: Currently, Regents Rules require candidates for a college degree to demonstrate that they have completed at least a four-year high school course or its equivalent, prior to obtaining the degree. The rule provides a number of alternative requirements that may be met instead of the holding of a high school diploma. Specifically, under the rule, the candidate for a degree who is beyond compulsory school age will be required to: hold a high school diploma, or have completed the equivalent of a four-year high school course as certified by the superintendent of schools or comparable chief school administrator, or hold a high school equivalency diploma, or have completed 24 semester hours of college course work in designated subjects, or have previously earned and been granted a college degree. The increasing variety of high school preparation, including by distance learning or through home instruction, has suggested that providing additional alternatives to the requirement that a candidate for a college degree hold a high school diploma would be helpful to students and colleges and universities in New York State. The requirements provide needed flexibility in the regulation, permitting the candidate for a degree to demonstrate preliminary education through a variety of means. The rule does not extend these alternatives to a candidate for a degree who is of compulsory school age. Such a candidate must demonstrate to the college that he or she holds a high school diploma, or has completed a four-year high school course, as certified by the superintendent of schools or comparable chief school administrator. This requirement is necessary because students of compulsory school age must be in high school or home schooled, unless they have already completed high school study, as signified by holding the high school diploma or the certification by the superintendent of schools of completion of the high school course. The rule removes the requirement that a student must complete at least a four-year high school course, or its equivalent, prior to beginning the course of study for a college degree. The Department does not believe this requirement is necessary because section 52.2(d) of the Commissioner's regulations already requires colleges to take into account the capacity of the student to undertake the program of study in their admission requirements for each degree program. In addition, the change is needed to resolve a conflict in the Rules of the Board of Regents and the Regulations of the Commissioner of Education. Section 100.7 of Commissioner's Regulations permits a student to earn a high school equivalent diploma through college study as a recognized candidate for a degree, but the provision proposed for repeal appears to prohibit that study. The rule also requires students who are subject to compulsory education requirements to present the college with written approval from an appropriate school administrator that enrollment in college credit courses is approved, prior to college enrollment. This requirement does not apply when the college credit course is offered in its entirety outside the normal instructional year or hours of session of the public schools of the district of residence. This change provides a necessary link between the college and the school district for students subject to compulsory education. It helps to safeguard that these students are meeting the requirements for compulsory school attendance. Finally, the rule establishes an additional content requirement for individual home instruction plans (IHIPs) for home-schooled students. It requires the IHIP to include a statement regarding whether or not the child will enroll in college-level course work as part of the child's instruction and the subjects to be covered by such course work. This is needed to enable a home-schooled student subject to compul-

sory education requirements to easily demonstrate to the college that college-level study is authorized by the school district.

Legal Basis for Rule: Education Law § § 207, 210, 218(1), 224(4), 3204(2), 3205(1), (2) and (3), 3210(2)(d), 3212(2)(d) and 3234(1).

Sections 80-3.6, 80-4.1, 80-4.3, 83.1, 83.3, 83.5, 87.5 and 87.6 – Title of the Executive Director of the Office of Teaching Initiatives and the Extension in Gifted Education of a Teaching Certificate.

Description of Rule: The rule updates the title of the head of the State Education Department's Office of Teaching Initiatives in various provisions of the Regulations of the Commissioner of Education and defers implementation of the effective date of the requirement for a gifted education extension of a teaching certificate.

Need for Rule: The rule is needed to conform the Regulations of the Commissioner of Education to changes made in the organization of the Office of Higher Education. Specifically, the former title of Executive Coordinator of the Office of Teaching has been changed to Executive Director of the Office of Teaching Initiatives. The rule updates references to this title in provisions of the Regulations of the Commissioner of Education relating to professional development for teachers holding a professional certificate, teacher moral character proceedings, and proceedings for the denial of clearance for employment or certification based upon a criminal history check. The rule is also needed to delay until September 1, 2005 the requirement that a teacher must hold a gifted education extension of a teaching certificate, or have obtained from the Department a statement of continued eligibility based upon employment in this field, in order to provide education for gifted pupils within a gifted and talented program which is funded pursuant to Education Law and in accordance with Part 142 of the Commissioner's Regulations. At the present time, there are insufficient options available for candidates to take the course work they need to have completed for this extension. Only eight colleges offer registered programs leading to the extension in gifted education. Currently, the Office of Higher Education is encouraging additional colleges across the State to offer the course work for the extension. The delay in the effective date is needed to permit colleges time to develop and offer the course work and candidates additional opportunities to complete it.

Legal Basis for Rule: Education Law § § 207, 305(1), (2), and (7), 3001(2), 3004(1), 3004-c, 3006(1)(b), 3009(1), 3010 and 3035(3).

Sections 80-2.11, 80-5.18 and 80-5.19 – Creation of a supplementary certificate in the classroom teaching service and relocation of the requirements for teachers of adult, community and continuing education.

Description of Rule: The rule establishes a new teaching certificate, the supplementary certificate, to enable a teacher certified in one classroom teaching title, upon meeting prescribed requirements, to provide instruction in a different title in the classroom teaching service for which there is a demonstrated shortage of certified teachers; and to relocate existing requirements for teachers of adult, community and continuing education to another section of Commissioner's regulations.

Need for Rule: The rule is needed to facilitate the State's ability to address persistent shortages of certified teachers in certain subject matter areas, including but not limited to mathematics, the sciences, bilingual education, and special education, and in certain geographic areas of the State. The rule creates a practical mechanism for certified teachers in areas of oversupply to earn additional certificates in areas of need. The rule prescribes clearly defined standards to ensure the quality of the education and experience of teachers certified by this route. The rule is designed to support the Department's continuing efforts to certify a sufficient number of properly qualified candidates to fill vacant teaching positions in the State's public schools. The supplementary certificate will be valid for three years from its effective date and will not be renewable. This certificate will be limited to employment with an employing entity. The option to obtain the supplementary certificate will expire on September 1, 2009. The rule is also needed to relocate the existing requirements for teachers of adult, community and continuing education to a more appropriate section of the Regulations of the Commissioner of Education. The rule moves these requirements from section 80-2.11 to section 80-5.19 in a Subpart that deals with specialized credentials.

Legal Basis for Rule: Education Law § § 207, 305(1), (2), and (7), 3001(2), 3004(1), 3006(1)(b), 3009(1) and 3010.

Section 120.6 – Qualifications for teachers and paraprofessionals under the No Child Left Behind Act of 2001.

Description of Rule: The rule incorporates by reference requirements of the No Child Left Behind Act of 2001 (NCLB) relating to qualifications of teachers and paraprofessionals in order to ensure that local educational agencies are in compliance with this Federal law. The rule will provide an underlying legal basis in State regulation for the State Education Department's guidance to local educational agencies (school districts, boards of cooperative educational services, county vocational education and extension boards, and charter schools) on the NCLB requirements. The State Education Department has issued guidance documents to local educational agencies on this topic, and plans to continue to provide guidance on how local educational agencies may meet the requirements of the NCLB.

The NCLB requires teachers of core academic subjects to be "highly qualified." The NCLB defines what this means, and provides that a teacher of core academic subjects who is not new to the profession may meet the requirement to be highly qualified, in part, through passing a high objective uniform State standard of evaluation (HOUSSE). The State Education Department has prescribed a HOUSSE for New York teachers of core academics who are not new to the profession. The HOUSSE is to be conducted by the local educational agency either during a pre-employment review or at the time of a teacher's annual review.

Need for Rule: The rule is needed to require a local educational agency to provide a teacher of core academic subjects who is not new to the profession the opportunity to meet the NCLB requirement to be highly qualified, in part, through passing the HOUSSE. Without the HOUSSE, New York State could have difficulty complying with NCLB's teacher quality requirements. This rule will ensure that local educational agencies use the HOUSSE when needed so that New York State will be in compliance with this Federal law.

Legal Basis for Rule: Education Law § § 101, 207, 215, 305(1) and (2), and 3713(1) and (2).

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of any of the above rules by contacting:

John D'Agati

Deputy Commissioner for Higher Education

New York State Education Department

Office of Higher Education

Room 978, Education Building Annex

89 Washington Avenue

Albany, New York 12234

(518) 486-3633

sroberson@nysed.mail.gov

OFFICE OF THE PROFESSIONS

Sections 64.7 of the Commissioner's Regulations - Nursing

Description of Rule: This rule establishes requirements governing the execution by registered professional nurses of non-patient specific orders of licensed physicians or certified nurse practitioners to administer purified protein derivative (PPD) mantoux tuberculin skin tests

Need for Rule: The rule is necessary to implement statutory requirements.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6504 (not subdivided), 6506(1), 6507(2)(a), 6527(6)(c), 6909(4)(d) and (5).

Section 73.5 of the Commissioner's Regulations - Chiropractic

Description of Rule: The rule establishes continuing education requirements and standards that licensed chiropractors must meet to be registered to practice in New York State and requirements for the approval of sponsors of such continuing education.

Need for Rule: The rule is necessary to implement statutory requirements.

Legal Basis for the Rule: Education Law sections 207(not subdivided), 212 (3), 6502(1), 6504(not subdivided), 6507(2)(a), 6508(1), and 6554-a.

Sections 52.30, 74.1, 74.2, 74.3, 74.4, 74.5, 74.6, 74.7, and 74.8 of the Commissioner's Regulations – Social Work

Description of Rule: The rule sets forth requirements for licensure in the profession of social work, requirements for an authorization qualifying licensed clinical social workers for insurance reimbursement, and requirements relating to the supervision of licensed master social workers who provide licensed clinical social work services and for baccalaureate social workers who provide licensed master social work services.

Need for Rule: The rule is necessary to implement statutory requirements. Some of the sections have been amended since the 2004 amendment to make necessary adjustments.

Legal Basis for Rule: Education Law sections 207(not subdivided), 210(not subdivided), 6501(not subdivided), 6507(2)(a) and (3)(a), 7701(1)(d), 7704(1)(b) and (d) and (2)(b), (c), and (d), 7705(1), 7706(2) and (3), and 7707(4).

Sections 65.6 and 65.7 of the Commissioner's Regulations - Podiatry

Description of Rule: The rule implements section 7006(4) of the Education Law by establishing the requirements pursuant to which an unlicensed assistant providing supportive services to a licensed podiatrist may x-ray a patient's foot, while under the direct supervision of the licensed podiatrist, provided that the unlicensed assistant has completed an acceptable course of study, the content of which is set forth in the rule.

Need for Rule: The rule is necessary to implement statutory requirements.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), and 7006(4).

Section 61.18 of the Commissioner's Regulations - Dentistry

Description of Rule: The rule adjusts the requirements for the residency option pathway for dental licensure by deleting an unnecessary provision that required the dental residency program to be completed within a time frame of two years prior to application for licensure.

Need for Rule: The rule is needed as it has been determined that the originally imposed two year time frame is unnecessary, as the regulation contains other requirements that adequately verify that the applicant has completed the residency program and other licensed professions do not have similar time frames for completing residency programs.

Legal Basis for Rule: Education Law sections 207 (not subdivided), 6506(1), 6507(2)(a) and (3)(a), and 6604(3).

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of any of the above rules by contacting:

Douglas E. Lentivech

Deputy Commissioner for the Office of the Professions

Office of the Professions

New York State Education Department

West Wing, Second Floor, EB

Albany, NY 12234

(518) 474-3817 ext. 470

OFFICE OF CULTURAL EDUCATION

Sections 185.5 and 185.12 - Local Government Records Management.

Description of Rule: The rule revises Records Retention and Disposition Schedule ED-1 to make needed changes and additions to minimum retention periods for records of school districts, boards of cooperative educational services, county vocational education and extension boards, and teacher resource and computer training centers.

Need for Rule: Section 57.25(2) of Arts and Cultural Affairs Law

requires the commissioner of education to develop, adopt by regulation, issue and distribute to local governments records retention and disposition schedules establishing minimum legal retention periods. The issuance of such schedules constitutes formal consent by the commissioner to the disposition of records that have been maintained in excess of the retention periods set forth in the schedules. The 2004 revisions to the rule make necessary changes and additions to ensure that concerned local governments have up-to-date standards for records retention and disposition.

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

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the continuation or modification of any of the above rules by contacting:

Mark Schaming

Deputy Commissioner for Cultural Education

New York State Education Department

Cultural Education Center

222 Madison Avenue

Albany, NY 12230

(518) 474-5812

museuminfo@nysed.gov

OFFICE OF MANAGEMENT SERVICES

Sections 3.2 and 4-1.5 – Standing Committees of the Board of Regents.

Description of Rule: The rule conforms the Rules of the Board of Regents to a recent reorganization of the committee structure of the Board of Regents, which merged the Committee on Higher and Professional Education and the Committee on Professional Practice, and merged the Committee on Elementary, Middle, Secondary and Continuing Education and the Committee on Vocational and Educational Services for Individuals with Disabilities.

Need for Rule: The rule is needed to ensure that the Board of Regents may more effectively meet its statutory responsibilities. The Committee on Higher and Professional Education and the Committee on Professional Practice have been merged into a Committee on Higher Education and Professional Practice. The Committee on Elementary, Middle, Secondary and Continuing Education and the Committee on Vocational and Educational Services for Individuals with Disabilities have been merged into a Committee on Elementary, Middle, Secondary and Continuing Education and Vocational and Educational Services for Individuals with Disabilities. This will reduce the time spent by members of the Board of Regents in committee meetings, reduce paperwork and multiple review of items, provide for the efficient review of numerous priority issues that otherwise overlap existing committee functions, and thereby permit the Regents to devote more time to full Board discussion of policy issues.

Legal Basis for Rule: Education Law § 207.

Sections 187.1, 187.2 and 187.3 – Inspection and Copying of Department Records.

Description of Rule: The rule conforms the Commissioner's Regulations regarding Freedom of Information Law (FOIL) procedures to a Court decision interpreting Public Officers Law section 89(3); and to update the address of the Department's records access officer and the addresses of several regional offices designated to receive requests for inspection and copies of Department records.

Need for Rule: The rule is needed to conform the Commissioner's Regulations to Public Officers Law section 89(3) and the regulations promulgated by the Committee on Open Government, consistent with the holding in *Lecker v. New York City Board of Education*, 157 AD2d 486 (1st Dept). In that decision, the Court upheld a determination by the Supreme Court, New York County, that denied petitioner's application for an order directing the New York City Board of Education to amend its regulations relating to FOIL to require the Board of Education to either grant or deny access to its records within 10 days after acknowledgment of receipt of the request for records. While noting that this requirement was contained in the regulations promulgated

by the Committee on Open Government (21 NYCRR 1401.5[d]), the Court determined that such regulation was invalid as inconsistent with Public Officers Law section 89(3), which contains no such time limitation but merely requires that the person requesting a record be furnished with a statement of the "approximate date when such request will be granted or denied." The Committee on Open Government subsequently amended section 1401.5 to remove the 10-day requirement. The amendment to section 187.4 of the Commissioner's Regulations removes identical language imposing such 10-day requirement.

In addition, the amendments to sections 187.1 and 187.2 are necessary to update references to the address of the Department's records access officer and the addresses of several regional offices designated to receive requests for inspection and copies of Department records.

Legal Basis for Rule: Education Law sections 207, 305(6) and Public Officers Law sections 87(1)(b) and 89(3).

Part 221 – Education Department Staff

Description of Rule: The rule deletes obsolete provisions relating to leaves of absence for State Education Department employees.

Need for Rule: The rule is needed to delete obsolete provisions that have been superceded by provisions in the Civil Service Law, federal law or collective bargaining agreements.

Legal Basis for Rule: Education Law sections 101, 207, 305(1) and (6).

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of any of the above rules by contacting:

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OFFICE OF STATE REVIEW

Sections 200.5, 200.6 & 200.7 – Judicial Review of the Determination of the State Review Officer

Description of Rule: The rule aligns State regulations with section 4403(3) of the Education Law, as amended by Chapter 492 of the Laws of 2003, to ensure that a judicial appeal of a decision of the State review officer is by means of a proceeding in State Supreme Court pursuant to Article 4 of the Civil Practice Law and Rules.

Need for Rule: The rule is necessary to align the Commissioner's Regulations with Education Law section 4404(3), as amended by Chapter 492 of the Laws of 2003. Chapter 492 amended section 4404(3) to provide that judicial review of the final determination or order of a State Review Officer be conducted in a proceeding pursuant to Article 4 of the Civil Practice Law and Rules (CPLR) rather than pursuant to Article 78 of the CPLR. Judicial review under CPLR Article 4 ensures the State's compliance with the federal Individuals with Disabilities Education Act (IDEA) and its implementing regulations, which require that a review of the final determination or order be made on the entire record, with any additional evidence heard at the request of the party, and be based upon a preponderance of the evidence.

Legal Basis for Rule: Education Law sections 101, 207, 4403(3) and 4404(3), and Chapter 492 of the Laws of 2003.

Part 279.12 – State-Level Review of Impartial Hearing Officer Determinations

Description of Rule: The rule conforms the Regulations to the Federal Individuals with Disabilities Education Act (IDEA) and 34 CFR section 300.511, by deleting a provision authorizing the State Review Officer to extend the timelines for issuing a decision to allow additional time to review an extensive record on appeal.

Need for Rule: The U.S. Department of Education has notified the State Education Department that this provision is out of compliance with CFR section 300.511.

Legal Basis for Rule: Education Law sections 101, 207, 311, 4403(1) and (3), 4404(2) and 4410(13).

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above rules by contacting:

Justyn Bates

Assistant Counsel and State Review Officer

Office of State Review

80 Wolf Road, 2nd Floor

Albany New York 12203

(518) 485-9373

D. CALENDAR YEAR 1999

OFFICE OF P-12 EDUCATION

Section 100.2(m) - Local Assistance Plans

Description of Rule: Section 100.2(m) of the Commissioner's Regulations specifies the requirements for public school reporting, including dissemination of public school report cards to the public and parents. The regulation also requires that school districts develop Local Assistance Plans for those schools that perform below benchmarks established by the Commissioner on selected State assessments.

Need for Rule: The regulation is intended to satisfy the public school reporting requirements of the No Child Left Behind (NCLB) Act, 20 USC section 6311(h)(2), and achieve the Regents goal that all educational institutions will meet Regents high performance standards. The regulations were last amended in August 2003 to bring them into alignment with the requirements of NCLB.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1), (2) and (19) and 309(not subdivided).

Section 100.2(p) - Schools Under Registration Review

Description of Rule: Section 100.2(p) of the Commissioner's Regulations specifies the State's system for registration of public schools and school/district accountability. The regulations delineate the process for registration and revocation of registration of public schools, the criteria used to hold schools and districts accountable for student performance, the actions to be taken when schools or districts fail to meet standards and the process for recognizing high performing or rapidly improving schools and districts.

Need for Rule: The regulation is necessary to meet the requirements of the No Child Left Behind (NCLB) Act, 20 USC section 6316, relating to school and district accountability and achieve the Regents goal that all educational institutions will meet Regents high performance standards. The regulations were last amended in August 2003 to bring them into alignment with the requirements of NCLB.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 215(not subdivided) and 305(1) and (2).

Part 119- Charter schools

Description of Rule: The rule describes the manner in which payments due to charter schools by public school districts are paid, and if necessary, recovered by the State, and the manner in which charter schools may provide retirement benefits for their employees.

Need for Rule: The rule is necessary to implement statutory requirements by establishing standards for the calculation of school district obligations to charter schools and the manner in which unpaid obligations will be recovered by the State for payment to charter schools. The rule also establishes standards for participation in public employee retirement systems by those charter schools electing to do so.

Legal Basis for Rule: Education Law section 207(not subdivided), 2854(c) and 2856(1) and (2), and Chapter 4 of the Laws of 1998.

Sections 155.1-155.21 - Comprehensive Public School Safety Program

Description of Rule: Sections 155.1-155.21 specify requirements for school districts to properly maintain, manage and improve public school facilities in order to provide sound educational environments for New York State's students, including the preparation of a five-year capital facilities plan that is updated annually; structural safety inspections; annual visual inspections; compliance with the Uniform Safety

Standards for School Construction and Maintenance Projects and the Uniform Code of Public School Building Inspections, Safety Rating and Monitoring, and Comprehensive Public School Safety Program.

Need for Rule: The regulations are necessary to comply with Chapters 56 and 58 of the Laws of 1998.

Legal Basis for Rule: Education Law sections 207(not subdivided), 409-d(1) and (2), 409-e(1) through (4), 3602(3)(b) and 3641(4) and section 1 of Part B of Chapter 56 and sections 13 and 48 of Chapter 58 of the Laws of 1998.

Sections 100.1-100.9 - State Learning Standards and Assessments and Graduation and Diploma Requirements

Description of Rule: Sections 100.1-100.9 specify the State learning standards, the program and unit of study requirements and the assessment requirements for students at the elementary, middle and high school levels, including the requirements for high school graduation and earning a diploma.

Need for Rule: These regulations implement policy adopted by the Board of Regents.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 212(3), 215(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided), 911(not subdivided), 3204(2-a) and 4403(3).

Sections 154.2 through 154.5 - Limited English Proficiency

Description of Rule: Sections 154.2-154.5 specify the plan and program requirements for districts claiming State aid for the operation of programs for pupils with limited English proficiency.

Need for Rule: The rule requires school districts that are claiming State aid for the instruction of students with limited English proficiency (LEP) to increase the amount of time for English language instruction to strengthen and improve bilingual education and freestanding English as a second language programs to help LEP students meet Regents standards and pass the new State Assessments. The regulations were amended in April 2003 to conform to the accountability provisions of the federal No Child Left Behind Act and to establish criteria for the identification and assessment of students with limited English proficiency through the use of the Language Assessment Battery-Revised test and the New York State English as a Second Language test.

Legal Basis for Rule: Education Law sections 207(not subdivided), 215(not subdivided), 3204(2), (2-a), (3) and (6), and 3602(10) and (22).

Sections 154.4(a) and 154.5 - Students with Limited English Proficiency

Description of Rule: The Rule allows schools with students with limited English proficiency in grades 7-12 a one year extension to the 2000-2001 school year to implement the additional English language requirements.

Need for Rule: The amendment to section 154.4(a) was necessary to extend until September 1, 1999, the deadline for submission of the plan prescribed in section 154.4(a) that describes how the additional time requirements for English language instruction will be implemented in their free-standing English as a second language and bilingual education programs during the 1999-2000 and 2000-2001 school years. The rule also specified that the additional time requirements for English language instruction set forth in section 154.2(f) and (g) be implemented in 1999-2000 for grades 7-12 and in 2000-2001 for grades K-6. The addition of section 154.5 established a procedure to grant a one-year extension to certain schools with LEP students in grades 7-12 to the 2000-2001 school year, to implement additional time requirements for English language instruction in their bilingual and free-standing English as a second language programs contained in subdivisions 154.2(f) and (g).

Legal Basis for Rule: Education Law sections 207(not subdivided), 215(not subdivided), 2117(1), 3204(2), (2-a), (3) and (6), 3602(10) and (22).

Section 200.1 Definitions

Description of Rule: The rule amended or added the following

definitions relating to special education: adapted physical education, assistive technology device, assistive technology service, change in placement, child's teacher, consent, consultant teacher, days, functional behavioral assessment, general curriculum, individualized education program, mediator, native language, parent, parent counseling and training, preschool student with a disability, prior notice, regular education teacher, related services, school health services, special class, specially designed instruction, special education, special education provider, special education teacher, student with a disability and travel training.

Need for Rule: The rule is needed in order to ensure compliance with federal regulations 34 CFR sections 300.5, 300.6, 300.7, 300.8, 300.9, 300.16, 300.19, 300.20, 300.24, 300.26, 300.15 and 300.571.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1) - (11), 4403(3) and 4410(13).

Section 200.2 Board of Education Child Find Responsibilities

Description of Rule: The rule amended the requirements relating to procedures to locate, identify and evaluate all nonpublic private school students with disabilities.

Need for Rule: The rule is needed in order to ensure compliance with 34 CFR section 300.454.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1) - (11), 4403(3) and 4410(13).

Section 200.2(b) Written Policies of the Board of Education

Description of Rule: The rule added a requirement that the board of education adopt policies to ensure that students with disabilities be involved in and progress in the general education classes; establish a plan and policies for implementing schoolwide approaches and prereferral interventions prior to a referral for special education; and establish plans and policies for the appropriate declassification of students with disabilities.

Need for Rule: The rule is needed to align State regulations to State law which requires that schools provide prereferral supports and services to ensure appropriate referrals of students who need special education.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1) - (11), 4403(3), 4410(13) and 4402(b)(3) as amended by Chapter 405 of the Laws of 1999.

Section 200.2(c) District Plans

Description of Rule: The rule repealed the requirement for district plans for the period September 1, 1996 to September 1, 1998.

Need for Rule: The rule was no longer applicable as those dates had passed.

Legal Basis for Rule: Education Law sections 207(not subdivided), 3602, 4401(1) - (11), 4403(3), 4410(13).

Section 200.2(h) Local Comprehensive System of Personnel Development (CSPD) Plan

Description of Rule: The rule adds the requirement for each board of education to annually submit to the State Education Department a plan that demonstrates that all personnel providing services to students with disabilities are adequately trained.

Need for Rule: The rule is needed to ensure compliance with 34 CFR section 300.135, which requires that the State have in effect a comprehensive system of personnel development.

Legal Basis for Rule: 34 CFR section 300.135 and Education Law sections 207(not subdivided), 4401(1) - (11), 4402, 4403(3) and 4410(13).

Section 200.3 Committees on Special Education

Description of Rule: The rule amends the required membership of the Committee on Special Education (CSE), Committee on Preschool Special Education (CPSE) and the Subcommittee on Special Education to add members required by federal law and to provide that a parent of a student may decline the participation of the additional parent member.

Need for Rule: The rule is necessary to conform to federal regulations and State law relating to membership of the CSE, CPSE and Subcommittees.

Legal Basis for Rule: 34 CFR section 300.344 and Education Law sections 207(not subdivided), 4401(1)-(11), 4402(1)(b), 4403(3) and 4410(3).

Section 200.4(a) Referrals for Special Education Services

Description of Rule: The rule was amended relating to the withdrawal of a referral for special education to add that the building administrator and the parent could meet to determine if additional general education support services, including academic intervention services, could be provided to the student as an alternative to special education.

Need for Rule: The rule is necessary to align State regulations with Education Law section 4402 as amended by Chapter 405 of the Laws of 1999.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1)-(11), 4401-a as amended by Chapter 405 of the Laws of 1999, 4403(3) and 4410(13).

Section 200.4(b) Individual Evaluation

Description of Rule: The rule was amended to add that the individual evaluation include a variety of assessment tools and strategies, including information provided by the parent, to gather relevant functional and developmental information about the student and information related to enabling the student to participate and progress in the general education curriculum; and to add that the evaluation must include a functional behavioral assessment for a student whose behavior impedes his or her learning or that of others.

Need for Rule: The rule is needed to conform State regulations to federal regulations relating to the required components of evaluations.

Legal Basis for Rule: 34 CFR section 300.532 and Education Law sections 207(not subdivided), 4401(1)-(11), 4403(3) and 4410(13).

Section 200.4(b)(4) and (5) Initial and Reevaluations

Description of Rule: The rule amended the requirements relating to the determination of needed evaluation data for initial and reevaluations of students with disabilities.

Need for Rule: The rule is needed to align State regulations to federal regulations in 34 CFR section 300.533.

Legal Basis for Rule: 34 CFR section 300.533 and Education Law sections 201(not subdivided), 4401(1)-(11), 4402, 4403(3) and 4410(13).

Section 200.4(b)(6) Evaluation Procedures

Description of Rule: The rule was amended to add that evaluations be administered by individuals who are knowledgeable about the test or procedures; that assessments not conducted under standard conditions must include a description of how the administration varied from standard administration; that no single procedure be used to determine a student's eligibility for special education; that evaluations must be comprehensive and use technically sound instruments; that assessment tools and strategies are used that provide relevant information to determine a student's educational needs; that a copy of the evaluation report be provided to the student's parent; that the procedures for evaluating students suspected of having a learning disability must be consistent with federal regulations; and that the procedures for conducting expedited evaluations must meet the requirements of section 201.6 of the Regulations of the Commissioner.

Need for Rule: The rule is necessary to conform to federal regulations in 34 CFR sections 300.532, 300.534 and 300.535.

Legal Basis for Rule: 34 CFR sections 300.532, 300.534 and 300.535 and Education Law sections 207(not subdivided), 4401(1)-(11), 4402, 4403(3) and 4410(13) of the Education Law.

Section 200.4(c) Eligibility Determinations

Description of Rule: The rule adds requirements relating to eligibility determinations for a student with a disability that the parent must be given a copy of the evaluation report and the documentation of eligibility; that a student may not be determined eligible for special education if the determinant factor is lack of instruction in reading or math or limited English proficiency; that a school must evaluate a student prior to declassification (which does not include prior to graduation or aging out).

Need for Rule: The rule is necessary to conform State regulations with federal regulations in 34 CFR section 300.534.

Legal Basis for Rule: 34 CFR section 300.534 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.4(d) IEP Recommendations

Description of Rule: The rule adds that, in developing the IEP, the Committee must consider the results of the initial or most recent evaluation, the student's strengths, the concerns of the parents, the student's results on State or districtwide assessments and other special considerations. The rule also adds that the IEP must include program modifications or supports for school personnel; testing accommodations a student needs in the administration of district-wide assessments and, consistent with Department policy, State assessments; and a statement of a particular device or service a student needs to receive a free appropriate public education.

Need for Rule: The rule is necessary to conform State regulations to federal regulations in 34 CFR section 300.346.

Legal Basis for Rule: 34 CFR 300.346 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.4(d)(4) IEP Development

Description of Rule: The rule added a requirement that a school district use other methods to ensure participation by the private school or facility, such as individual or conference telephone calls, to ensure private school participation in an IEP meeting; and repeals the requirement that the Committee ensure the participation of a person knowledgeable about the individual evaluation conducted and the evaluation results for a student with a disability who has been evaluated for the first time.

Need for Rule: The rule regarding participation by private school representatives is necessary to conform to federal regulations in 34 CFR section 300.349. The rule regarding participation of a person knowledgeable about the evaluation is necessary to align State regulations to federal regulations in 34 CFR section 300.344, which requires each Committee meeting to include an individual who can interpret the instructional implications of evaluation results.

Legal Basis for Rule: 34 CFR sections 300.344 and 300.349 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.4(d)(4)(c) Least Restrictive Environment

Description of Rule: The rule added that, in selecting the least restrictive environment, consideration must be given to any potential harmful effect on the student or on the quality of services that he or she needs; and that a student with a disability may not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

Need for Rule: The rule is necessary to align State regulations to federal regulations in 34 CFR section 300.552.

Legal Basis for Rule: 34 CFR section 300.552 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.4(e) IEP Implementation

Description of Rule: The rule was amended to add that there may be no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education to the student is being determined; and that teachers and other providers must have access to a copy of the student's IEP. (This later rule was amended in 2003 consistent with Chapter 408 of the Laws of 2003.)

Need for Rule: The rule is necessary to ensure IEP implementation in a timely manner consistent with the requirements in 34 CFR sections 300.301 and 300.342.

Legal Basis for Rule: 34 CFR sections 300.301 and 300.342 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.4(e) Annual Review and Reevaluations

Description of Rule: The rule was amended to require that a student's placement in the least restrictive environment be a consideration in the annual review and that the results of any reevaluation must be addressed by the CSE or CPSE in a meeting.

Need for Rule: The rule is necessary to align State regulations with federal regulations in 34 CFR sections 300.346, 300.535, 300.536 and 300.552.

Legal Basis for Rule: 34 CFR sections 300.346, 300.535, 300.536 and 300.552 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.4(g) IEP for a Student Placed in a Child Care Institution by other Agency

Description of Rule: This rule amended the requirements for IEP information developed by the school district where the student last attended.

Need for Rule: This rule is necessary to be consistent with amended section 200.4(d) of the Regulations of the Commissioner of Education.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.5 Due Process Procedures

Description of Rule: This rule repealed section 200.5 and replaced it with a new section 200.5 relating to prior notice, consent, notice of meetings, parent participation in CSE meetings, confidentiality of personally identifiable data, procedural safeguards notice, independent educational evaluations, mediation, impartial hearings, appeal to a State review officer of the State Education Department, State complaint procedures and surrogate parents.

Need for Rule: The rule is necessary to align State regulations with federal law and regulations.

Legal Basis for Rule: 34 CFR sections 300.500 through 300.515 and Education Law sections 207(not subdivided), 4401(1)-(11), 4402, 4403(3), 4404, 4404-a and 4410(13).

Section 200.6(a) Continuum of Services

Description of Rule: The rule was amended to add that special education services could be provided in a general education class.

Need for Rule: The rule was necessary to clarify that special education includes services that could be provided in a student's general education classes to ensure a student's placement in the least restrictive environment.

Legal Basis for Rule: 34 CFR sections 300.550 through 300.552 and Education Law sections 207(not subdivided), 4401(1) - (11), 4402, 4403(3) and 4410(13).

Section 200.6(d) Consultant Teacher Services

Description of Rule: The rule was amended to repeal the requirement that a student with a disability be enrolled full-time in general education classes in order to be provided consultant teacher services and to make a technical change to replace the term "occupational education" with "career and technical education."

Need for Rule: The rule was necessary to ensure students with disabilities are able to receive consultant teacher services, as appropriate, in combination with other special education services such as resource room and related services.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.6(e) Related Services

Description of Rule: The rule was amended to add that the location of the related services must be documented on the IEP.

Need for Rule: The rule is necessary to align State regulations with federal regulations at 34 CFR section 300.347.

Legal Basis for Rule: 34 CFR section 300.347 and Education Law sections 207(not subdivided), 4401(1)-(11), 4402, 4403(3) and 4410(13).

Section 200.6(g) Special Classes

Description of Rule: The rule was amended to add that a variance from the special class sizes for middle and secondary students can be implemented to the extent authorized by law, repealing references to the school years 1995-96 and 1996-97. The rule also added that a special class with 15 students in New York City could only be increased by one additional student through this variance process.

Need for Rule: The rule was necessary since the variance is applicable only to the extent that the Legislature extends the sunset provision and to comply with changes to State law. Therefore, any reference to a particular year required an annual amendment to State regulations.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4402(2)(d) and (6), 4403(3) and 4410(13).

Section 200.6(h) Home and Hospital Instruction

Description of Rule: The rule adds that a student with a disability on home and/or hospital instruction must receive instruction and related services as recommended on the IEP and that a student shall only be recommended for home and/or hospital instruction if that is the least restrictive environment for the student.

Need for Rule: The rule is necessary to ensure that the CSE considers the least restrictive environment and the unique needs of a student with a disability when making a home or hospital instruction recommendation.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.7 Approval of Private Schools for Students with Disabilities

Description of Rule: The rule was amended to add that the school conduct and discipline procedures in an approved school, a State-operated school and a State-supported school must be consistent with section 100.2(l) and Part 201 of the Commissioner's Regulations.

Need for Rule: The rule is necessary to conform to federal regulations 34 CFR sections 300.401 and 300.519 through 300.529.

Legal Basis for Rule: 34 CFR sections 300.401 and 300.519 through 300.529 and Education Law sections 207(not subdivided), 3214(3)(c), 4402, 4403(3) and 4410(13).

Section 200.7 State-Operated Schools

Description of Rule: The rule is amended to conform the required members of the multidisciplinary team of a State-operated school to the required members in federal regulations 34 CFR section 300.344 and to add that a parent of a child in a State-operated school may request mediation to resolve a dispute.

Need for Rule: The rule is necessary to ensure compliance with federal regulations 34 CFR sections 300.344 and 300.506.

Legal Basis for Rule: 34 CFR sections 300.344 and 300.506 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.8 State Assistance for Instruction of Students with Disabilities

Description of Rule: The rule was amended to make technical corrections to cross citations; to clarify the term "days" consistent with the amended definition in section 200.1 of the Commissioner's Regulations; and to replace the term "triennial evaluation" with the term "reevaluation."

Need for Rule: The rule is necessary to make technical corrections as a result of amendments to other sections of the regulations.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.16(c) Individual Evaluation - Preschool Students with Disabilities

Description of Rule: The rule was amended to make technical corrections to cross citations and certain terms; to add that the summary report of the evaluation not include a recommendation as to location of services; to repeal the requirement that the parent must request the approved evaluator to provide the parent with a copy of the evaluation summary and to ensure that for purposes of eligibility and continuing eligibility determinations, the CPSE must provide a copy of the evaluation report and the documentation of eligibility to the parent.

Need for Rule: The rule is necessary to conform State regulations to 34 CFR section 300.534.

Legal Basis for Rule: 34 CFR section 300.534 and Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Section 200.16(d) Recommendation – Preschool Student with a Disability

Description of Rule: The rule was amended to make technical corrections to cross citations and certain terms and to add that the board of education must notify the parent if it sends the recommendation back to the CPSE.

Need for Rule: The rule is necessary to correct cross citations and ensure State regulations conform to State law.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Section 200.16(e) Annual Review – Preschool Student with a Disability

Description of Rule: The rule was amended to correct certain cross citations and terms.

Need for Rule: The rule is necessary to align cross citations with amended sections in the Regulations.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1)-(11), 4402, 4403(3) and 4410(13).

Section 200.16(g) Procedural Due Process – Preschool Student with a Disability

Description of Rule: The rule was amended to require that a procedural safeguards notice be provided to a parent upon initial referral, each notification of an IEP meeting, upon reevaluation of the child and upon receipt of a request for an impartial hearing; and to require that the notice upon initial referral must request consent to the proposed evaluation and advise the parent of the right to consent or withhold consent to the evaluation and initial provision of services to a student not previously identified, and indicate that if the parent does not provide such consent, no further action will be taken by the CPSE until consent is obtained.

Need for Rule: The rule is necessary to clarify procedural safeguards and notice requirements as they relate to preschool students with disabilities.

Legal Basis for Rule: 34 CFR sections 300.500 through 300.505 and Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Section 200.16(g)(3) Notice of Meetings – Preschool Student with a Disability

Description of Rule: The rule was amended to require that a notice of a CSE meeting be provided consistent with section 200.5 of the Commissioner's Regulations.

Need for Rule: The rule is necessary to ensure the meeting notice is provided in accordance with section 200.4(c) of the Commissioner's Regulations.

Legal Basis for Rule: 34 CFR section 300.345 and Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Section 200.16(g)(7) Mediation – Preschool Student with a Disability

Description of Rule: The rule is amended to add that the board of education must ensure that mediation sessions are available to the parent of a preschool child.

Need for Rule: The rule is necessary to ensure compliance with 34 CFR section 300.506 and section 4404-a of the Education Law.

Legal Basis for Rule: 34 CFR section 300.506 and Education Law section 207(not subdivided), 4403(3) and 4404-a of the Education Law.

Section 200.16(g)(10) State Complaints – Preschool Student with a Disability

Description of Rule: The rule was amended to add to the procedural safeguards for preschool students that State complaint investigations shall be conducted in accordance with section 200.5(m) of the Commissioner's Regulations.

Need for Rule: The rule is necessary to ensure compliance with federal regulations in 34 CFR sections 300.660 through 300.662.

Legal Basis for Rule: 34 CFR sections 300.660 through 300.662 and Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Section 200.6(h) Continuum of Services – Preschool Student with a Disability

Description of Rule: The rule was amended to correct certain cross citations and terms.

Need for Rule: The rule is necessary to align this section with other amended sections of the Commissioner's Regulations.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1)-(11), 4402, 4403(3) and 4410(13).

Section 200.20 Approval, Operation and Administration of Pre-school Programs

Description of Rule: The rule was amended to correct certain cross citations and the name of the State's special education office.

Need for Rule: The rule is necessary to align this section with other amended sections of Part 200 of the Commissioner's Regulations.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1)-(11), 4202, 4403(3) and 4410(13).

Part 201 – Procedural Safeguards for Students with Disabilities Subject to Discipline

Description of Rule: The rule was added to define terms relating to disciplinary actions of students with disabilities; to establish the requirements for CSEs to conduct functional behavioral assessments and develop and implement behavioral intervention plans for students with disabilities; to establish the requirements for CSEs to conduct manifestation determinations; to establish the protections for students presumed to have a disability for discipline purposes; to establish general procedures for suspensions and removals of students with disabilities, including parental notice, five school day suspensions or removals, 10 school day suspensions or removals, exceptions for patterns of suspensions or removals, and change in placement to an interim alternative educational setting (IAES) for behavior involving weapons, illegal drugs or controlled substances; authority of impartial hearing officers to order a change in placement to an IAES in a dangerous situation; coordination with superintendent's hearing and other due process procedures applicable to all students; provision of services during suspensions; and expedited due process hearings.

Need for Rule: The rule is necessary to align State regulations with federal regulations and State law relating to the discipline of a student with a disability.

Legal Basis for Rule: 34 CFR sections 300.121 and 300.519 through 300.529 and Education Law sections 207(not subdivided), 4403(3) and 3214(3)(c).

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the continuation or modification of any of the above rules by contacting:

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OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES (ACCES)

Part 247 – Vocational Rehabilitation Program

Description of Rule: This rule enacted certain amendments to Part 247 to conform State regulations relating to the vocational rehabilitation program to changes in federal law made in 1998 by the reauthorization of the Rehabilitation Act (Public Law 105-22).

Need for Rule: These regulations are necessary to ensure that the vocational rehabilitation program is conducted according to federal requirements set forth in the 1998 amendments to the Rehabilitation Act.

Legal Basis for Rule: Education Law sections 207(not subdivided) and 1004(1).

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of any of the above rules by contacting:

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OFFICE OF HIGHER EDUCATION

Amendment of Section 145-2.1 of the Regulations of the Commissioner of Education Relating to TAP for Part-Time Students with Disabilities

Description of Rule: Section 145-2.1(a)(4) defines part-time study for State student financial aid purposes (TAP, etc.) for students with disabilities, as defined in the federal Americans with Disabilities Act (42 USC 12102(2)), as enrollment for at least 3 but less than 12 semester hours per semester or the equivalent, or at least 2 but less than 8 semester hours per quarter. The Regents approved the amendment at their July 1999 meeting, to be effective September 1, 1999.

Need for Rule: Chapter 332 of the Laws of 1998 amended subdivision (4) of section 661 of the Education Law to eliminate the full-time attendance requirement for students with disabilities. The law did not specify the minimum course load that students with disabilities must carry. Section 145-2.1(a) defines part-time study as enrollment for at least six semester hours in a semester. However, the sponsors of Chapter 332 advised the State Education Department that the intent was for students with disabilities to be eligible for TAP providing they enroll for at least three semester hours, necessitating the amendment to the regulation. Based on guidance from Office of Counsel, it was also necessary to include the reference to the federal statute contained in Education Law and specify that, to be eligible, students must be determined to be disabled in accordance with the Americans with Disabilities Act.

Legal Basis for Rule: Education Law sections 207(not subdivided) and 661(4)(d).

Section 52.21(b) of the Regulations of the Commissioner of Education - Registration of Programs for Preparing Classroom Teachers

Description of Rule: The addition of Section 52.21(b) provided specific standards for all teacher education programs registered in New York State leading to teacher certification. This regulation implemented the intent of the Regents 1998 policy paper "Teaching to Higher Standards: New York's Commitment." The following is a summary of the major requirements of this rule:

- A general education core in liberal arts and sciences is required for all classroom teachers.
- Preparation for teaching students to meet Regents learning standards is required for all classroom teachers.
- Preparation for teaching students with disabilities and students with limited English proficiency is required of all classroom teachers.
- Academic content preparation is also required for special education, literacy and ESL teachers.
- Ten days of diverse field experience is required prior to 40 school days of student teaching for all classroom teachers.
- All teacher education programs leading to certification in social studies shall include study of economics and government and at least 21 credit hours of history and geography to prepare teachers to teach to the new learning standards.
- Thirty-credit major in content area required for secondary teachers and teachers of special subjects.
- All programs for classroom teachers must be accredited.
- Eighty percent of all program completers of teacher education programs must pass the New York State Teacher Certification Examinations or the program may be subject to de-registration.

Need for Rule: In 1998, the Regents enacted "Teaching to Higher Standards: New York's Commitment." This policy statement provided the framework for sweeping changes to pre-service and in-service teacher education. In enacting these policy changes, the Regents were acknowledging the vital role played by the classroom teacher in improving student learning and achievement. The Regents believed there was a need to create a stronger linkage between the teacher prep-

aration programs and the Regents learning standards for all students. In addition, it was important that all teachers be prepared to teach all students, especially students with disabilities and English language learners. As the State moved to establish rigorous learning standards for all students and increase graduation requirements, the Regents believed that such sweeping reforms can only be successful if all our students had access to highly qualified and certified teachers.

Legal Basis for Rule: Education Law sections 207(not subdivided), 210(not subdivided), 215(not subdivided), 305(1) and 3004(1).

Amendment of Section 100.2(dd) of the Regulations of the Commissioner of Education Relating to Annual Professional Performance Reviews

Description of Rule: The purpose of the addition of Section 100.2(dd) of the Commissioner's Regulations is to require each school district and BOCES to establish a prescribed plan for the annual professional performance review of its teachers providing instructional services or pupil personnel services. The amendment requires the governing body of each school district and BOCES to adopt a plan for the annual professional performance review of its teachers providing instructional service or pupil personnel services by September 1, 2000. The amendment prescribes criteria that school districts or BOCES must use for the evaluation of teachers providing instructional services in the following areas: content knowledge, preparation, instructional delivery, classroom management, student development, student assessment, collaboration, and reflective and responsive practice. Districts may supplement these State criteria with locally developed criteria, and the amendment permits a variance from the State criteria upon a finding by the Commissioner that the school district or BOCES has demonstrated a local model for the evaluation of teachers providing instructional services that has produced successful results. The amendment also requires the plan to describe the methods that the school district or BOCES employs to assess teachers' performance. The amendment requires the plan to describe how the school district or BOCES addresses the performance of teachers whose performance is evaluated as unsatisfactory, and requires the development of a teacher improvement plan for teachers so evaluated, which is to be developed by the district or BOCES in consultation with the teacher. In addition, the plan must describe how the school district or BOCES provides training in good practice for the conducting of performance evaluations to staff who perform them, or alternatively, shall state the fact that the school district or BOCES permits such personnel to participate in training in this subject offered by the State Education Department. Finally, pursuant to the Taylor Law, the amendment states that the procedures for the annual professional performance review are subject to collective bargaining.

Need for Rule: In 1998, the Regents enacted "Teaching to Higher Standards: New York's Commitment," which was the blueprint for the redesign of both pre-service and in-service teacher education in New York State. One of the critical components of this policy statement was to ensure that each teacher received a rigorous annual professional performance review which assessed the teacher's overall performance in the classroom. With the Regents sweeping reforms to K-12 educational system, they acknowledged the need to ensure that all teachers remain current and effective in the classroom to ensure that all students will attain the Regents learning standards and graduation requirements. The requirement for annual professional performance review was strengthened by ensuring that critical components of the teacher's practice in the classroom were assessed, on an annual basis, by the district. The more rigorous annual professional performance review was another component to ensure that teachers remain current and effective in the classroom.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2), and 3604(8).

Section 100.2(o) of the Regulations of the Commissioner of Education - Professional Development Plans

Description of Rule: The rule requires each school district and BOCES to have a professional development plan, which describes how they will provide all of their teachers with substantial professional development opportunities. For plans covering the time period

February 2, 2004 and thereafter, each school district or BOCES is required to describe in its plans how it will provide teachers it employs holding a professional certificate with opportunities to maintain such certificates in good standing based upon successfully completing 175 hours of professional development every five years. The intent is for school districts and BOCES to offer a menu of professional development opportunities to their teachers. Such opportunities may be in a variety of formats and offered by a variety of providers and include course work paid for by the school district or BOCES or the teacher, depending on local arrangements and how professional development offered outside the school day is collectively bargained. The amendment requires the professional development plan to be adopted by September 1, 2000 and annually thereafter. It requires the plan to be developed through collaboration with a professional development team, including the superintendent of schools or district superintendent or their designees, school administrators, teachers, at least one parent and curriculum specialist, a representative of a higher education institution provided that a qualified candidate is available, and others. A majority of the members of the professional development team must be teachers selected by their collective bargaining unit. Among other items, the plan must describe the alignment of professional development with New York standards and assessments, student needs, teacher capacities, and include a needs analysis, goals, objectives, strategies, activities and evaluation standards. It must also describe the manner in which the school district or BOCES will measure the impact of professional development on student achievement and teachers' practices.

Need for Rule: In 1998, the Board of Regents enacted "Teaching to Higher Standards: New York's Commitment," which was the blueprint for the redesign of both teacher pre-service and in-service programs in New York State. The Regents recognized the need to ensure that all teachers remain current with their professions and be given professional development focused on their capacities and the needs of their students. The Regents were guided by research which demonstrated that professional development, when locally developed, and focusing on student learning needs did improve the quality of instruction and student achievement. The enactment of the requirement of professional development plans ensured that local districts would collaborate to develop meaningful professional development to meet the needs of their teachers and students.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2).

Part 86- Albert Shanker National Board for Professional Teacher Standards Certification Grant Programs

Description of Rule: Part 86 of the Regulations of the Commissioner of Education defines the rights, obligations, application procedures, and grant delimitations pertaining to the Albert Shanker Grant, pursuant to Education Law section 3004-a, establishing such grant to support and encourage qualified New York State teachers seeking a National Teaching Certificate from the National Board for Professional Teaching Standards (NBPTS.) The National Board for Professional Teaching Standards (NBPTS) is a nonprofit organization of teachers and other education stakeholders created in 1987 to assist in improving student learning through the establishment of higher, more rigorous standards of knowledge and performance for teachers. By defining and recognizing highly accomplished practice, a certificate awarded by the National Board attests that a teacher has been judged by his or her peers as one who meets meaningfully high and rigorous standards of knowledge and performance. He or she has demonstrated the ability, in a variety of settings, to make sound professional judgments about students' learning needs and to act effectively on those judgments. The NBPTS national teaching certificate has been recognized by many states as valid in lieu of a state teaching certificate and, in some, as worthy of a salary incrementation in recognition of one's status as a "master teacher." The New York State Board of Regents accepts the NBPTS national teaching certificate in reciprocity towards a permanent NYS teaching certificate in a comparable subject title. Eligible teachers receiving the Shanker grant are awarded up to \$2,000 toward the \$2,300 registration fees in support of this effort. All but \$300 of such registration fees are paid directly to the National Board for Professional Teaching Standards by SED. Individual

candidates or their employing school districts also may be reimbursed for prior, authorized fees paid and/or for other approved expenditures in support of this effort, including up to three days for substitute teacher salary reimbursements, to a maximum of an additional \$500 for each candidate.

Need for Rule: The Shanker Grants help support rigorous and meaningful professional development for teachers, whether or not they become Board certified. The National Board process (portfolio and assessment center activities) causes teachers to consider student work as a consequence of their own work according to NBPTS standards, and the reinducted habits of analytical and reflective practice appear to translate reliably into perceptions of changed teaching behaviors stimulating the growth of teachers content knowledge, knowledge of child development, and actual employment of a broader array of more effective strategies to facilitate teaching and learning across diverse student populations. Continued Department support for Part 86 and the Albert Shanker Grant is consistent with current Regents policy initiatives, NCLB, and seemingly omnipresent efforts to raise and maintain standards for teaching and learning with a level of reliability heretofore unattained.

Legal Basis for Rule: Education Law sections 207(not subdivided) and 3004-a(4).

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of any of the above rules by contacting:

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OFFICE OF THE PROFESSIONS

Sections 3.3, 3.9, 17.1, 17.2, 17.4, 17.5, 17.6, 17.7, 17.9, 28.2, 28.3 and 28.6 of the Rules of the Board of Regents - Change in title of Chief Administrator of the Office of Professional Discipline and applicability of consent order and license surrender procedures to physicians, physician assistants and specialist assistants

Description of Rule: changed title of the chief administrator of the Office of Professional Discipline from "Executive Director of the Office of Professional Discipline" to "Director of the Office of Professional Discipline" and clarified the applicability of the consent order and license surrender procedures to physicians, physician assistants and specialist assistants.

Need for Rule: The rule is needed to implement a change in the internal organization of the Office of Professional Discipline. The rule also prescribes that the existing procedures set forth for physicians, physician assistants and specialist assistants are applicable to cases in which charges of professional misconduct were served on or before July 26, 1991, the effective date of Chapter 606 of the Laws of 1991. This is necessary because Chapter 606 provided the Department of Health with the responsibility for administering professional discipline proceedings against such licensees in cases served after that date, so that it is necessary to make clear that disciplinary proceedings for the three professions are not covered by the Education Department disciplinary procedures after that date.

Legal Basis for Rule: Education Law sections 104(not subdivided), 207(not subdivided) and 6506(1) and (8) and Chapter 606 of the Laws of 1991.

Sections 3.47 and 3.50 of the Commissioner's Regulations - Doctor of Audiology

Description of Rule: The rule authorizes the conferral of the Doctor of Audiology (Au.D.) degree, for completion of a professionally oriented doctoral program in audiology.

Need for Rule: The rule is necessary to prescribe requirements for the conferral of the Au.D. degree.

Legal Basis for the Rule: Education Law sections 207(not subdivided), 210(not subdivided), 218(1), 224(4) and 8206(2).

Sections 3.47 and 3.50 of the Rules of the Board of Regents - Doctor of Physical Therapy

Description of Rule: The rule authorizes the conferral of the Doctor of Physical Therapy (D.P.T.) degree, for completion of a professionally oriented doctoral program in physical therapy.

Need for Rule: The rule is necessary to prescribe requirements for the conferral of the D.P.T. degree.

Legal Basis for Rule: Education Law sections 207(not subdivided), 210(not subdivided), 218(1), 224(4) and 6734(b).

Sections 17.5, 17.6, 24.2 and 24.7 of the Rules of the Board of Regents - Professional discipline proceedings

Description of Rule: The rule clarified the role of the Committee on the Professions in consent order and license surrender procedures, which resolve charges of professional misconduct in disciplinary proceedings conducted pursuant to Title VIII of the Education Law.

Need for Rule: The rule codifies the existing procedures for the settling of cases of professional misconduct.

Legal Basis for Rule: Education Law sections 201(not subdivided), 6504(not subdivided), 6506(1), (4) and (10), and 6507(4)(h).

Sections 29.2 and 29.7 of the Rules of the Board of Regents and section 63.6 of the Commissioner's Regulations - Pharmacy

Description of Rule: The rule authorizes the electronic transmission of prescriptions and the transfer of prescriptions between pharmacies for refills; establishes requirements for the use of a common electronic database used to maintain dispensing information; removes outdated references in registration requirements for pharmacies; authorizes the waiver of regulations to permit demonstration projects; authorizes unlicensed persons to enter and retrieve prescription data, under the supervision of a pharmacist, and clarify their permitted duties; increases from one to two the number of unlicensed persons a pharmacist may supervise; amends requirements for the offering of counseling to patients by pharmacists or pharmacy interns; and updates titles of unlicensed health professions in Regents Rule section 29.2.

Need for Rule: The rule is needed to ensure that the public will be protected in its use of pharmaceutical services, while permitting pharmacies to employ recent developments in the electronic technologies. The requirements for the use of a common electronic file or database used to maintain dispensing information are needed to ensure the confidentiality of this information. The rule also frees pharmacists and pharmacy interns from routine tasks so they may have sufficient time to directly interact with patients, assess patient profiles and provide enhanced patient counseling. The rule is also needed to specify additional requirements for the offering of counseling by pharmacists and pharmacist assistants.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6506(1) and (9), 6507(2)(a), 6509(9), 6801(not subdivided), 6803(not subdivided), 6804(a) and (b), 6806(1), 6808(2)(a)(3) and 6810(1).

Section 61.15 of the Commissioner's Regulations - Dentists

Description of Rule: The rule implements the provisions of Chapter 354 of the Laws of 1998, which amended Education Law section 6604-a(4), and clarifies qualifications of acceptable sponsors of continuing education for dentists.

Need for Rule: The rule establishes standards for the approval of sponsors of continuing education relating to facilities, equipment and financial and physical resources, and otherwise implements statutory provisions.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6502(1), 6504(not subdivided), 6507(2)(a), and 6604-a(2) and (4).

Section 66.5 of the Commissioner's Regulations - Optometry

Description of Rule: The rule clarifies and implements the requirements of Education Law section 7101-a and Chapter 517 of the Laws of 1995, relating to the certification of optometrists to use phase two

therapeutic pharmaceutical agents, including clarifying clinical training requirements, examination requirements, reporting requirements and continuing education requirements.

Need for Rule: The rule is necessary to implement statutory requirements.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6502(1), 6504(not subdivided), 6507(2)(a), (3)(a) and (4)(a), 6508(1) and (2), 7101(not subdivided), 7101-a(1)(f), (3)(4), (7), (9), (9-a) and (11), and sections 3 and 4(b) of Chapter 517 of the Laws of 1995.

Section 66.5 of the Commissioner's Regulations - Optometry

Description of Rule: The rule specified two additional classes of drugs that an optometrist who is certified to use phase two therapeutic pharmaceutical agents may use and prescribe to treat patients.

Need for Rule: The rule adds two additional drugs, carbonic anhydrase inhibitors and prostaglandin analogs, that demonstrate equivalence to a class of drugs that appropriately certified optometrists are now authorized to use to treat glaucoma.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6507(2)(a) and 7101-a(1)(f), (10)(c) and (12).

Section 75.1 of the Commissioner's Regulations - Speech Language Pathology and Audiology

Description of Rule: To prescribe the education requirements for licensure in speech-language pathology and/or audiology by adjusting the definition of study that is equivalent to a master's degree program in the field, permitting doctoral level graduates to qualify and redistributing the education practicum hours to be compatible with national standards.

Need for Rule: This rule has been extensively revised, effective October 9, 2008, to further update the requirements for licensure in speech language pathology and in audiology. The new rule aligned New York State licensing requirements with federal Medicaid requirements, expanded opportunities for qualified speech-language pathologists and audiologists in other jurisdiction to become licensed in New York state, and addressed shortages in the number of speech-language pathologists in New York State school districts.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6506(1) and (10), 6507(2)(a) and 8206(2).

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of any of the above rules by contacting:

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OFFICE OF MANAGEMENT SERVICES

Section 3.2 of the Commissioner's Regulations - Standing Committees of the Board of Regents

Description of Rule: to reorganize the committee structure of the Board of Regents to abolish the Committee on Administration, Law and Legislation (ALL) and to establish the Committee on Quality.

Need for Rule: The Board of Regents abolished the ALL Committee and established the Committee on Quality in 1999. The rule merely conforms the Regents Rules to this change in internal organization of the Board of Regents.

Legal Basis for Rule: Education Law section 207(not subdivided).

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of any of the above rules by contacting:

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Sections 187.1 and 187.2 of the Commissioner's Regulations - Freedom of Information Law and Personal Privacy Protection Law

Description of Rule: The rule amends the offices and office addresses within the State Education Department for submissions of requests under the Freedom of Information Law and the Personal Privacy Protection Law.

Need for Rule: The rule updated information relating to the State Education Department employee who is designated as the Department's Records Access Officer, responsible for ensuring compliance with the Freedom of Information Law and the Personal Privacy Protection Law (Articles 6 and 6-A of the Public Officers Law), and to update the addresses of the offices designated to receive requests for the Department's records.

Legal Basis for Rule: Education Law sections 207(not subdivided) and 305(6) and Public Officers Law sections 87(1)(b), 94(1)(j) and 94(2)(c).

Section 187.7 of the Commissioner's Regulations - Freedom of Information Law

Description of Rule: The rule revised the fee charged by the Department to produce computer records requested under the Freedom of Information Law.

Need for Rule: The rule changed the time-charge to reflect the actual cost incurred by the Department.

Legal Basis for Rule: Education Law sections 207(not subdivided) and 305(6) and Public Officers Law sections 87(1)(b).

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of any of the above rules by contacting:

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OFFICE OF CULTURAL EDUCATION

Sections 185.5 and 185.11 - Local Government Records Management.

Description of Rule: The rule revises Records Retention and Disposition Schedule MU-1 to make needed changes and additions to minimum retention periods for records of cities, towns, villages and fire districts.

Need for Rule: Section 57.25(2) of Arts and Cultural Affairs Law requires the commissioner of education to develop, adopt by regulation, issue and distribute to local governments records retention and disposition schedules establishing minimum legal retention periods. The issuance of such schedules constitutes formal consent by the commissioner to the disposition of records that have been maintained in excess of the retention periods set forth in the schedules. The 1999 revisions to the rule make necessary changes and additions to ensure that concerned local governments have up-to-date standards for records retention and disposition.

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

Agency Representative:

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