



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** The Honorable the Members of the Board of Regents  
**FROM:** Alison Bianchi  
**SUBJECT:** 2017 Regulatory Agenda  
**DATE:** December 5, 2016  
**AUTHORIZATION(S):**

### Summary

#### Issue for Decision (Consent Agenda)

Should the Board of Regents approve the 2017 Regulatory Agenda?

#### Reason for Consideration

Required by State statute.

#### Proposed Handling

The 2017 Regulatory Agenda will be presented to the Full Board for approval at the December 2016 Regents meeting.

#### Background Information

Section 202-d of the State Administrative Procedure Act (SAPA) requires that the State Education Department publish, each year, a regulatory agenda in the first January issue, and in the last June issue, of the State Register. The 2017 regulatory agenda is a list and brief description of the subject matter of each rule the Department is considering proposing during 2017, but for which it has not yet submitted a Notice of Proposed Rule Making. SAPA §202-d(2) provides that nothing in the statute requires an agency to adopt a rule appearing in the regulatory agenda or precludes an agency

from adopting a different rule from the one appearing in the regulatory agenda. If we do seek to adopt additional rules that were not included in the 2017 regulatory agenda, the Department must indicate in the Notice of Proposed Rule Making that the rule was not under consideration when the regulatory agenda was submitted for publication.

The 2017 Regulatory Agenda is a planning document required under SAPA §202-d and provides notice to the public on regulations that the agency knows it may propose in 2017. It is non-binding and does not commit the agency to adopting the listed regulations, nor does it preclude the agency from adopting regulations that are not on the list. Accordingly, Board of Regents approval of the Regulatory Agenda does not constitute approval of the listed regulations.

### Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That the 2017 Regulatory Agenda for the State Education Department be approved, as submitted.

### Timetable for Implementation

The 2017 Regulatory Agenda will be published in the State Register on January 4, 2017.

## STATE EDUCATION DEPARTMENT

### 2017 REGULATORY AGENDA

Pursuant to section 202-d of the State Administrative Procedure Act, the State Education Department presents its regulatory agenda for calendar year 2017. All section and part references are to Title 8 of the New York Code of Rules and Regulations. The State Education Department reserves the right to add, delete or modify, without further notice, except as required by the State Administrative Procedure Act, any item or information presented herein as relating to the 2017 Regulatory Agenda.

#### OFFICE OF P-12 EDUCATION

Addition of a new Part of the Commissioner's Regulations pertaining to the requirements for student and teacher data privacy and security pursuant to Education Law section 2-d, as added by Subpart L of Part AA of Chapter 56 of the Laws of 2014. A rural area flexibility analysis and/or a regulatory flexibility analysis may be required.

Amendment of sections 30-2.3, 30-3.3, 30-3.4, 30-3.5, 30-3.11, and 30-3.13 of the Rules of the Board of Regents, relating to annual professional performance reviews of classroom teachers and building principals, to provide greater flexibility to districts and BOCES in implementing the provisions of Education Law §3012-c and §3012-d. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Parts 52 and 80 of the Commissioner's Regulations to require all prospective teachers to complete coursework on English Language Learner instructional needs, co-teaching strategies, and integrating language and content

instruction for English Language Learners. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 80 of the Commissioner's Regulations to create a certification extension for bilingual teaching assistants. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 80-1.9 of the Commissioner's Regulations relating to the filing of district personnel data. A regulatory change may be required to align the requirement for collecting personnel data which has changed from staff filing a paper form to an electronic filing by school districts, BOCES and charter schools. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.1(a) of the Commissioner's Regulations relating to the definition of a unit of study. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.1(b) of the Commissioner's Regulations relating to the definition of a unit of credit. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2 of the Commissioner's Regulations relating to general school requirements. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2(m) of the Commissioner's Regulations relating to the school report card. A regulatory change may be required to allow for the various

data of the school report card to be identified individually. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2(i) of the Commissioner's Regulations to allow the reporting of complaints about the use of corporal punishment by BOCES, district or charter school personnel to be done once a year. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2(x) of the Commissioner's Regulations relating to the education of homeless children to align with the State's Every Student Succeeds Act plan. The amendment includes, but is not limited to, the following: preschool and feeder schools; school selection; children awaiting foster care placement; enrollment deadlines; continued enrollment pending final resolution of dispute; award full or partial credit for completed coursework; access to academic and extra-curricular activities; barriers related to outstanding fees, fines, or absences; transportation; college readiness; student privacy; McKinney-Vento liaison responsibilities; eligibility for HUD homeless assistance; special education services; collection of data; and the identification of children and youth experiencing homelessness. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to Section 100.2(f) and (mm) to provide for assessments in Languages other than English to be approved as pathway assessments to meet diploma requirements. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.3 of the Commissioner's Regulations relating to the PreK-4 Program requirements to reflect the adoption of the Learning Standards. A

regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4 of the Commissioner's Regulations relating to program requirements in grades 5-6 to reflect the adoption of the Learning Standards. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.5 of the Commissioner's Regulations, relating to graduation requirements. A regulatory change may be required to allow for additional options for English language learners. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.5 of the Commissioner's Regulations relating to diploma requirements for students pursuing a career/technical education program. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.7 of the Commissioner's Regulations relating to the State High School Equivalency Program to increase the age of eligibility and minimum number of hours required by the program. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4(b) of the Commissioner's Regulations relating to program requirements in grades five and six. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4(c) of the Commissioner's Regulations relating to unit of study requirements in grades seven and eight. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4(d) of the Commissioner's Regulations relating to grade eight acceleration for diploma credit. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4(h) of the Commissioner's Regulations relating to models for Middle Level Education. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.5(a), (b) and (c) of the Commissioner's Regulations relating to graduation and diploma requirements. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Repeal of sections 100.14 and 100.15 of the Commissioner's Regulations relating to Excelsior Scholars Program and Grants for Summer Institutes for Mathematics and Science Teachers. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.18 of the Commissioner's Regulations to align with the State's Every Student Succeeds Act plan, including but not limited to the identification of Targeted Support Schools and Comprehensive Support Schools. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to various sections of Part 100 to align with Education Law, Article 66, section 3300, on the Interstate Compact for Educational Opportunity for Military

Children. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 114.1(b) of the Commissioner's Regulations relating to nutrition standards. A regulatory change may be required to conform with federal statute and/or regulation. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 117 of the Commissioner's Regulations relating to diagnostic screening for students who are new entrants or who have low test scores in reading or mathematics. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 118 of the Commissioner's Regulations relating to implementation of waivers from specified provisions of the Elementary and Secondary Education Act of 1965, as amended, that have been granted by the Secretary of the U.S. Department of Education pursuant to section 9401 of the ESEA for purposes of ESEA flexibility pertaining to school and district accountability. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 119 of the Commissioner's Regulations to add a section relating to procedures regarding complaints brought pursuant to Education Law section 2855. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 119.1 of Commissioner's Regulations, relating to Charter School Tuition Reimbursement, to conform to section 4 of Part BB of Chapter 56 of the



Laws of 2014. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 119.3 of the Commissioner's Regulations relating to charter school report cards to correct a citation. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 120 of the Commissioner's Regulations to align with the State's Every Student Succeeds Act plan relating to public school choice, supplemental education services (SES), highly qualified teachers and other provisions of the No Child Left Behind Act. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 125 of the Commissioner's Regulations relating to the requirements for the voluntary registration of nonpublic nursery schools and kindergartens. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Subpart 151-1 of the Commissioner's Regulations relating to universal prekindergarten. A regulatory change may be required to implement policy relating to the suspension and expulsion of children in universal prekindergarten classes. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 151-1.3 of the Commissioner's Regulations relating to the Universal Pre-Kindergarten program. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 136 to implement Chapter 373 of the Laws of 2016 and to make technical amendments, relating to school health services. A regulatory flexibility analysis and a rural area flexibility analysis may be required.

Amendment of section 136.3(b) of the Commissioner's Regulations to conform to Education Law section 901, as amended by the Laws of 2006, Ch. 58, pt. A-1, §57, which removed the exemption of the city school districts of Rochester and Buffalo from the requirement to provide school health services. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 144.11 of the Commissioner's Regulations to eliminate the requirement that school districts have an Early Grade Class Size Reduction Plan. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Subpart 151-1 of the Commissioner's Regulations to create identification, placement and program requirements for students who are English language learners in preschool. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.2 of the Regulations of the Commissioner of Education relating to least restrictive environment placements of students with disabilities. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.6 of the Commissioner's Regulations relating to approval of State reimbursement for students with disabilities in approved private school

placements. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.6 of the Commissioner's Regulations relating to the minimum level of service requirements for consultant teacher services and resource room programs, and the maximum instructional group size in a resource room program. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.7 of the Commissioner's Regulations relating to conditions of approval and the program standards for private schools approved to serve students with disabilities. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Section 200.9 of the Commissioner's Regulations relating to tuition rates for approved special class integrated setting programs. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.18 of the Commissioner's Regulations relating to fiscal audits of approved programs. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.20(a) of the Commissioner's Regulations relating to public school districts as preschool evaluators as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 3.16(c)(1)(vi) of the Rules of the Board of Regents to update delegation of authority with respect to charter schools and relocation of a charter school to a different borough within a school district in a city having a population of one million or more. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 3.16(c)(1)(vii) of the Rules of the Board of Regents to update delegation of authority with respect to the approval of changes to charter school maximum enrollment. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 3.17(a)(3) of the Rules of the Board of Regents to update the revocation proceeding and to allow the Board of Regents to appoint a representative to hear oral arguments on behalf of the Board of Regents and to make a determination in regard to such oral argument. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 3.17(a)(3) of the Rules of the Board of Regents to update the revocation proceeding to revoke the certificate of incorporation after the assets of the education corporations have been discharged. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning any of the above proposed amendments by contacting:

Jhone M. Ebert

Senior Deputy Commissioner for Education Policy

New York State Education Department

Room 875, Education Building Annex

89 Washington Avenue

Albany, New York 12234

(518) 474-3862

[nysedp12@nysed.gov](mailto:nysedp12@nysed.gov)

#### OFFICE OF HIGHER EDUCATION

Amendment of section 3.56 of Regents Rules to clarify requirements for out-of-state institutions of higher education that are seeking Regents permission to operate in New York. A rural area flexibility analysis and regulatory flexibility analysis may be required.

Amendment of section 50.1 of the Commissioner's Regulations to include a definition of a remedial course and a compensatory course as needed under sections 6451 and 6452 of the Education Law. A rural area flexibility analysis and regulatory flexibility analysis may be required.

Amendment of section 52.2(f) of the Commissioner's Regulations specifying the academic content of a transcript prepared by an Institution of Higher Education. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 80 of the Commissioner's Regulations relating to the certification requirements for school counselors. A rural area flexibility analysis may be required.

Amendment of section 80-3.4 of the Commissioner's Regulations relating to education requirements for the professional certificate. A rural area flexibility analysis may be required.

Amendment of sections 80-4.3 and 80-5.18 of the Commissioner's Regulations relating to the requirements for a Supplementary Bilingual Education extension and the Supplementary English to Speakers of Other Languages certificate. A rural area flexibility analysis may be required.

Amendment of Part 86 of the Commissioner's Regulations relating to the requirements for the Albert Shanker Grant. A rural area flexibility analysis may be required.

Amendment of Part 135 of the Commissioner's Regulations to clarify the due process procedures relative to coaching licenses. A regulatory flexibility analysis and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations section 145-2.1(a)(iii) to provide a definition of a remedial course(s). A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations section 145-2.2 to provide a definition of the term "the recognized equivalent of such certificate" as found in Education Law section 661(4)(f) for the purposes of determining eligibility for the NYS Tuition Assistance Program. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations section 145-2.15(b)(3) to clarify and establish jurisdiction over a student at the time of the completion of secondary

education. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations section 145-2.15(b)(2) to clarify the federally approved ability to benefit test administration for the purposes of the NYS Tuition Assistance Program. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations section 152-1.2 to insert language concerning remedial, developmental, and compensatory courses. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations Section 152-1.1 to amend applications to clarify that each application shall include the provision of a summer program that shall occur at the beginning of the program year and to update obsolete processes and language. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations Part 50 and Part 54 to amend the definitions and procedures related to off-campus instruction and locations. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations to establish a new part to implement section 6449 of the Education Law as related to aggregate data reporting to the department as required by Chapter 76 of the Laws of 2015, the Sexual Assault, Dating Violence, Domestic Violence and Stalking Prevention and Response Policies and

Procedures. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning any of the above proposed amendments by contacting:

John D'Agati

Deputy Commissioner for the Office of Higher Education

New York State Education Department

Office of Higher Education

Room 975, Education Building Annex

89 Washington Avenue

Albany, New York 12234

(518) 486-3633

[Shannon.Roberson@nysed.gov](mailto:Shannon.Roberson@nysed.gov)

OFFICE OF THE PROFESSIONS

Amendment of Part 29 of the Regents Rules relating to definitions of unprofessional conduct in the public accountancy and certified public accountancy professions. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 29 of the Regents Rules relating to definitions of unprofessional conduct in the pharmacy profession. A regulatory flexibility analysis for small businesses and a rural flexibility analysis may be required.



Amendment of Part 61 of the Commissioner's Regulations relating to licensure by endorsement provisions for dentists. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 62 of the Commissioner's Regulations relating to the continuing education requirements for veterinarians. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 69 of the Commissioner's Regulations relating to licensure by endorsement provisions for architects. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 70 of the Commissioner's Regulations relating to the definitions of public accountancy and the certified public accountancy professions. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment to Subpart 79-7 of the Commissioner's Regulations relating to the education requirements for certified athletic trainers. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning any of the above proposed amendments by contacting:

Douglas E. Lentivech

Deputy Commissioner for the Professions

New York State Education Department

Office of the Professions

89 Washington Avenue  
West Wing, Second Floor - Education Building  
Albany, NY 12234  
(518) 486-1765

[opdepcom@nysed.gov](mailto:opdepcom@nysed.gov)

#### OFFICE OF CULTURAL EDUCATION

Amendment of Part 90 of the Commissioner's Regulations, relating to the library and library system programs and services. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

#### Agency Representative:

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

Bernard A. Margolis  
State Librarian and Assistant Commissioner for Libraries  
New York State Education Department  
New York State Library  
Room 10C34  
Albany, NY 12230  
(518) 474-5930

[Bernard.Margolis@nysed.gov](mailto:Bernard.Margolis@nysed.gov)

Amendment of Part 188 of the Commissioner's Regulations related to state government archives and records management to update the agency fee list to match

the current organizational structure of executive branch agencies. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 188 of the Commissioner's Regulations related to state government archives and records management to update the annual fees for storage of records in a records center facility. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning any of the above proposed amendments by contacting:

Tom Ruller

Assistant Commissioner for the State Archives

9C49 Cultural Education Center

Albany, New York 12230

(518) 474-5561

[Tom.Ruller@nysed.gov](mailto:Tom.Ruller@nysed.gov)

OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES (ACCES)

Amendment of Parts 246, 247 and 248 of the Commissioner's Regulations, regarding conforming and technical amendments pertaining to the vocational rehabilitation and independent living programs. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 246 of the Commissioner's Regulations, relating to sheltered workshop programs and community rehabilitation providers, necessary to conform to federal regulations and to reflect new standards for services established in contracts. A

regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Parts 246 and 247 of the Commissioner's Regulations relating to the State vocational rehabilitation program operated pursuant to Title I of the Rehabilitation Act, as may be appropriate in order to conform to changes resulting from the passage of the Workforce Innovation and Opportunity Act (WIOA) on July 22, 2014, which amended the Rehabilitation Act. The federal regulations were released on August 19, 2016. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Addition of a new section 247.19 of the Commissioner's Regulations as follows:  
Readers Aid for blind or deaf students. Contingent upon the adoption of proposed amendments to §4210 of the New York State Education Law, this section authorizes personnel responsible for the provision of reasonable accommodations at institutions of higher education or proprietary schools to apply for Readers Aid funding. Applications will include documentation that attests to student eligibility and meets additional requirements as established by ACCES-VR. Readers Aid funding will be awarded based on available funding and at ACCES VR's discretion, not to exceed \$4,000 per student per academic year. A regulatory flexibility analysis and/or a rural area flexibility analysis may be required.

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:  
Lisa Van Ryn

Manager, VR Resource Development

Office of Adult Career and Continuing Education Services

Room 580 EBA

89 Washington Avenue

Albany, New York 12234

(518) 473-1626

Lisa.VanRyn@nysed.gov

Amendment of Part 126.4(e)(2)(i) of the Commissioner's Regulations relating to standards and methods of instruction to revise the language to say: except as provided in subparagraph (iii) of this paragraph, and notwithstanding any other provisions of law, any student who is absent more than 15 percent of the total number of instructional hours offered during each marking period of the student's program, excluding approved leaves of absence pursuant to paragraph (6) of this subdivision, or who has not maintained satisfactory academic progress, shall be dismissed or placed on academic probation in accordance with subparagraph (iii) of this paragraph. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 126.4(g) of the Commissioner's Regulations relating to standards and methods of instruction to add the following: All courses or curricula offered at no cost to a student by a school shall comply with all requirements of this Part, except non-occupational courses as defined by section 5002(1)(c) of the Education Law. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 126.4(i) of the Commissioner's Regulations relating to standards and methods of instruction to revise it to say: Notwithstanding any other provisions of this Part, non-occupational courses, as defined by section 5002(1)(c) of the Education Law, shall be subject to the following alternate educational and curriculum standards. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 126.6 of the Commissioner's Regulations relating to qualifications of teaching and management personnel to change the word "mailed" to "provided" and remove the words "and postmarked" as follows:

Each applicant shall submit, in a format specified by the commissioner, such data concerning the education, training, experience and other qualifications, including supporting documentation, of the administrative, supervisory and instructional staff of the school as the commissioner may require. Upon submission of an application for a director, the owner shall attest to the applicant's ability to comply with the provisions of this section. Pursuant to section 5002(6) of the Education Law, all applications for teachers and directors shall be provided to the commissioner four days prior to employment at the school, and must be completed, with all supporting materials and fees required for evaluation of the file, within 20 days thereafter. However, the commissioner, for good cause shown, may extend the time within which to complete the application. When a complete application is made, the commissioner shall act upon such application within 30 days. If no written denial is made within 30 days, the application shall be deemed to be approved until the commissioner acts upon it or until the end of

the term or semester, whichever occurs first. If a written denial is made after the 30-day period, the commissioner may allow the applicant to teach at the school for the remainder of the term or semester if the commissioner determines that the removal of the teacher would not be in the best interest of students. If a teacher or director application, submitted to the department less than four days prior to the employment of such individual, is evaluated and it is subsequently determined that the applicant is not qualified pursuant to the provisions of this section, the school may be subject to disciplinary action pursuant to section 5003 of the Education Law, if such conduct constitutes a pattern of abuse. As used in this subdivision, a pattern of abuse is defined as violations which occur three or more times in a 12-month period.

A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations to add a new section 126.10(k), as per section 5001(4)(f)(3) of the Education Law, which required the Commissioner to issue alternate licensing requirements for non-profit schools exempt from taxation under section 501(c)(3) of the internal revenue code whose programs are funded entirely through donations from individuals or philanthropic organizations, or endowments, and interest accrued thereon as follows:

126.10(k) Alternate licensing procedures for non-profit schools. Pursuant to section 5001(4)(f)(3) of the Education Law, non-profit schools exempt from taxation under section 501(c)(3) of the internal revenue code whose programs, including registration fees, the sale of books, supplies, services, kits, uniforms or equipment are

funded entirely through donations, exclusive of public sources, from individuals or philanthropic organizations, or endowments, and interest accrued thereon, shall be subject to all of the requirements of article 101 of Education Law and this Part, except that:

126.10(k)(1) - such schools shall be exempt from the requirements of Education Law:

126.10(k)(1)(i), § 5002(3) - relating to tuition liability;

126.10(k)(1)(ii), § 5001(4)(e)(i) - relating to the inclusion in financial statements of refunds due and owing to past or presently enrolled students;

126.10(k)(1)(iii), § 5002(2)(b)(5) - relating to the inclusion in any school record of the amount of any refund paid to any student;

126.10(k)(1)(iv), § 5005(a)(4) - relating to disclosure to prospective and enrolled students of any refund policy, § 5005(e), and § 5005(f) relating to a tuition reimbursement fund claim form.

126.10(k)(2) such schools shall be exempt from the requirements of the following provisions of this Part:

126.10(k)(2)(i), § 126.4(c)(6) - relating to data required to be submitted about tuition and other charges and method of payment;

126.10(k)(2)(ii), § 126.7(b)(6) – (9) - relating to the inclusion in enrollment agreements of any tuition charges or fees or method of payment;

126.10(k)(2)(iii), § 126.7(b)(15) - relating to any refund a school will make under certain prescribed circumstances;



126.10(k)(2)(iv), § 126.7(d), except § 126.7(d)(3) thereof - relating to the inclusion in enrollment agreements of a reasonable adjustment of tuition and other fees, and any refund policies;

126.10(k)(2)(v), § 126.7(e) - relating to the option to use the refund policy of a nationally recognized accrediting agency and the use of the refund policy required by federal law;

126.10(k)(2)(vi), § 126.7(g) - relating to the inclusion in the enrollment agreements of any refunds due;

126.10(k)(2)(vii), § 126.9(a)(8) - relating to inclusion in the school catalog of a schedule of fees or charges;

126.10(k)(2)(viii), § 126.9(a)(9) - relating to the inclusion in the school catalog of school policies and regulations governing the refund of any unused portion of tuition, fees and other charges in certain circumstances;

126.10(k)(2)(ix), § 126.9(a)(13) - except that grant, scholarship, or other financial assistance to students which shall not expose the student to any tuition liability, if any, shall be included in such school's catalog;

126.10(k)(2)(x), § 126.9(a)(18) - relating to the inclusion in the school catalog of information about tuition refunds from the Tuition Reimbursement Account (TRA);

126.10(k)(2)(xi), § 126.9(a)(19) - relating to the inclusion in the school catalog of a weekly tuition liability chart;

126.10(k)(2)(xii), § 126.11(a)(10) - relating to the maintenance of records of tuition, fees, public loans and grants, and their disbursement, by a school for seven years.

A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

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:

Dr. Richard A. Rose

Director, Bureau of Proprietary School Supervision

Office of Adult Career and Continuing Education Services

Room 560 EBA

89 Washington Avenue

Albany, New York 12234

(518) 474-3969

[Richard.Rose@nysed.gov](mailto:Richard.Rose@nysed.gov)

OFFICE OF MANAGEMENT SERVICES

Amendment of Parts 187 and 188 to update regulations relating to the inspection and copying of State Education Department records and to State Government Archives and Records Management. A regulatory flexibility analysis and/or a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning any of the above proposed amendments by contacting:

Alison Bianchi

Counsel and Deputy Commissioner for Legal Affairs

State Education Building Room 112  
89 Washington Ave., Albany, NY 12234  
(518) 474-6400  
[legal@nysed.gov](mailto:legal@nysed.gov)

This regulatory agenda for the State Education Department was prepared and submitted by:

Donna M. Kerwin, Senior Attorney  
State Education Department, Office of Counsel  
State Education Building Room 148  
89 Washington Ave., Albany, NY 12234  
December 2, 2016  
(518) 474-6400  
[legal@nysed.gov](mailto:legal@nysed.gov)