



**TO:** The Honorable the Members of the Board of Regents

**FROM:** Alison Bianchi

**SUBJECT:** Review of Existing Rules (calendar years 2014, 2013, 2012, 2007, 2002, and 1997) Notice of Continuation Without Modification

**DATE:** September 7, 2017

**AUTHORIZATION(S):**

**SUMMARY**

Item for Information

Review of Existing Rules (calendar years 2014, 2013, 2012, 2007, 2002, and 1997) Notice of Continuation Without modification.

Background Information

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.

A list of rules adopted in calendar years 2014, 2013, 2012, 2007, 2002 and 1997 was published in the January 4, 2017 State Register, and the public was invited to comment on whether any listed rule should be modified or repealed, or continued

without modification. The attached Notice of Continuation Without Modification includes for each rule adopted in 2014, 2013, 2012, 2007, 2002 and 1997: (1) the justification for continuing the rule without modification; (2) the statutory authority for the rule; and (3) an assessment of any public comment received regarding the rule's continuance.

#### Timetable for Implementation

The Review of Existing Rules-Notice of Continuation Without Modification will be published in the State Register on September 27, 2017.

REVIEW OF EXISTING RULES PURSUANT TO STATE ADMINISTRATIVE  
PROCEDURE ACT SECTION 207 – NOTICE OF CONTINUATION WITHOUT  
MODIFICATION

Section 207 of the State Administrative Procedure Act (SAPA) requires that each State agency review, 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 2014, 2013, 2012, 2007, 2002 and 1997 that the Department has reviewed and determined should be continued without modification. All section and part references are to Title 8 of the New York Code of Rules and Regulations.

A. CALENDAR YEAR 2014

OFFICE OF P-12 EDUCATION

Section 100.5(d) of the Commissioner's Regulations regarding State Facility transfer credit

Justification for continuation without modification: The purpose of the rule is to provide transfer credit for students in a State Agency educational program upon attestation of the chief program administrator. Education Law §112 and Part 116 of the Commissioner's Regulations relate to standards for educational programs and services

for students in full-time residential care in homes or facilities operated or supervised by a State department or agency or political subdivision, such as the Office of Children and Family Services (OCFS) and the Office of Mental Health.

Commissioner's Regulation §100.5(d)(5) previously provided that a principal must award transfer credit to students for any coursework they completed at a registered New York State high school, but may award transfer credit for work done at educational institutions other than New York State registered high schools "based on whether the record indicates that the work is consistent with New York State commencement learning standards and is of comparable scope and quality to that which would have been done in the school awarding the credit." Under this provision, students who attend educational programs operated by OCFS and other State agencies pursuant to Education Law §112 and Part 116 of the Commissioner's Regulations were not automatically granted credit for their coursework because such facilities are not registered high schools. Rather, upon a student transferring to a public school, each principal made an individual determination to grant or deny the student credit for such coursework based upon whether the principal deemed the coursework done at a State agency facility to be comparable.

As a result, there was no consistency across the State in how coursework completed at these State agency facilities was credited. Because students were unsure of the degree to which principals would award credit for work done at State agency facilities, some students found this a disincentive to re-enroll in school once released from such facilities. To the extent that principals denied credits for such coursework,

the challenges for students who reenroll and attempt to earn a high school diploma became even greater.

To address this issue, the rule provides that principals of registered public high schools shall grant transfer credit to a student for credit awarded while the student attended an educational program administered by a State agency pursuant to Education Law §112 and Part 116 of the Commissioner's Regulations, upon the attestation of the chief administrator of such program that:

- the student has completed coursework that is aligned with the applicable New York State commencement-level learning standards, including the New York State Common Core Learning Standards, and meets the requirements for the award of units of credit including, but not limited to, the requirement for 180 minutes of instruction per week throughout the school year, or the equivalent; and
- the student was provided instruction by a teacher certified pursuant to Part 80 of this Title.

Furthermore, in order to ensure that students attending these State agency education programs are eligible for transfer credit on the same basis as students in the public schools with respect to the alternative methods for earning credit, the rule also provides that principals of registered public high schools must award transfer credit upon attestation of the chief administrator of the State agency educational program that the student has met the requirements for the award of credit by examination, make up credit, independent study, and/ or online/blended courses.

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) and (2) and 309(not subdivided).

Assessment of public comment: No public comment received.

Section 100.17 of the Commissioner's Regulations regarding Distinguished Educators

Justification for continuation without modification: The purpose of the rule is 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. The rule relates to criteria for appointment, roles, responsibilities, protocols and procedures for distinguished educators to assist low performing school districts and schools pursuant to Education Law sections 211-b and 211-c. The rule ensures the appointment, consistent with statutory requirements, of qualified individuals, who have demonstrated consistent growth in academic performance or educational expertise including superior performance in the classroom, to serve as distinguished educators to assist low performing schools.

At the February 2011 Board of Regents meeting, the Board added section 100.17 of the Commissioner's Regulations to implement the provisions of Education Law sections 211-b and 211-c pertaining to the establishment of a Distinguished Educator Program to assist low performing school districts and schools in improving their academic performance.

The amendment of section 100.17 addresses matters reflected in the State Education Department's experiences and "lessons learned" in implementing the

Distinguished Educator program. Among those experiences and lessons are the following:

- Persons selected for the pool of distinguished educators should be able to remain in the pool and eligible for assignment as a distinguished educator for a period of more than three years so long as these persons demonstrate that they are participating in appropriate professional development.
- The Commissioner should have the flexibility to reappoint a distinguished educator to multiple one-year renewal terms and should be able to appoint more than one distinguished educator to serve a district, if needed.
- Districts benefit from a more explicit delineation of the ways in which districts are expected to fully cooperate with a distinguished educator so as to make the work of the distinguished educator more productive and helpful to the district.
- The action plan that results from the assignment of a distinguished educator should be jointly developed by the district and the distinguished educator.

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

Assessment of public comment: No public comment received.

Sections 200.1(x), 200.5(j)(3), (4), (5), and (6) and 200.16(h)(9) of the Commissioner's Regulations regarding Special Education Impartial Hearings

Justification for continuation with modification: The purpose of the rule is to ensure that impartial due process hearings for special education matters are conducted in a more efficient and expeditious manner in order to meet statutory time lines. Federal

law and regulations require all impartial hearings to be adjudicated within the 45-day timeline, or a timeline that is properly extended by the IHO at the request of either party, or in the case of an expedited or preschool hearing, within the required timelines. In 2011, only 83.26 percent of New York State impartial hearings were adjudicated within the timeline requirements. The rule provides IHOs with more prescriptive authority to properly manage impartial hearing timelines. In addition, the rule further ensures the impartiality and availability of IHOs.

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).

Assessment of public comment: No public comment received.

## OFFICE OF HIGHER EDUCATION

### Section 30-2.1 of the Rules of the Board of Regents regarding APPR Performance

#### Definition

Justification for continuation without modification: The purpose of the rule is to define performance for purposes of termination decisions for probationary teachers related to annual professional performance reviews (APPRs). The rule is necessary to clarify that the references to “performance” of the teacher or principal in the classroom or school for purposes of Education Law §3012-c(1) and (5)(b) and section 30-2.1(d) and 30-2.11(c) of the Rules of the Board of Regents are references to the teacher’s or principal’s performance on the APPR, as measured by the teacher’s or principal’s overall composite rating. Accordingly, where a board of education has not yet completed an APPR for a probationary teacher or principal, it may terminate the

probationary teacher for any statutorily and constitutionally permissible reasons. Those reasons may include the quality of the instruction or services provided by the probationary teacher or principal based on evidence other than the composite APPR rating. Once it has completed an annual professional performance review, the board of education must consider the APPR rating as a significant factor to retain or terminate the employee, unless the employee is being terminated for statutorily and constitutionally permissible reasons other than the teacher's or principal's composite APPR rating, such as misconduct, insubordination, time and attendance issues and the like. While 3012-c and Subpart 30-2 of the Rules of the Board of Regents are no longer applicable to school districts, there are certain BOCES operating under a 3012-c APPR plan making this provision still applicable.

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

Assessment of public comment: No public comment received.

Section 80-1.1(b)(47) of the Commissioner's Regulations regarding the Definition of Part-Time Experience for Permanent or Professional Certification

Justification for continuation without modification: The purpose of the rule is to provide certification candidates serving as substitute teachers with an alternative to meet part-time continuous service experience requirements. The rule is necessary for the following reasons: Section 80-1.1(b)(47) of the Commissioner's Regulations previously defined a year of experience for permanent or professional certification as:

- (i) a minimum of 180 days of full-time continuous school experience in the subject or area of certification completed within a 12-month period; or

(ii) a minimum of 180 days of full-time continuous school experience in the subject or area of certification completed in periods of no less than 90 days each within a 12-month period; or

(iii) a minimum of 360 days of part-time continuous school experience consisting of an average of 2.5 days per week in the subject or area of certification and completed in periods of no less than 90 days each within a 12-year period.

Due to budget constraints and reductions in force, the number of teaching positions in many school districts declined. As a result, it became increasingly difficult for newly certified teachers to meet the experience requirements for permanent or professional certification.

Teachers submitted substitute experience to meet the experience requirements for permanent or professional certification. However, many times the part-time substitute experience did not average 2.5 days per week in the subject or the area of certification. This prevented some teachers from meeting the experience requirement for professional certification. The rule added an option for teachers to obtain their required experience for the permanent certificate.

### **An example**

A teacher holds a Math 7-12 certificate. This teacher cannot find full-time employment in the local school district. The teacher decides to become a substitute teacher, hoping to find a full-time position. This teacher cannot find any position that is 2.5 days per week in the years that he/she is substituting. The substitute teaching is a day here and there in multiple schools. The teacher does have the equivalent of 3

years of experience within the twelve-year period, however has not been able to have periods of at least 90 days or 2.5 days per week.

## **Rule**

In consultation with the Professional Standards and Practices Board, the Department recommended that the definition of part-time experience be expanded to include the following experience:

A minimum of 360 days of part-time school experience, which shall include at least 45 days of part-time continuous school experience in the subject area of the certificate sought, consisting of at least one class period each day with a consistent group of students during such time period.

The experience must include the breadth of activities that a full-time teacher assigned to the class would have following the teaching standards appropriate to the part-time position. The rule allows candidates serving as substitute teachers who are applying for a permanent or professional certificate to have an alternative option to meet the part-time continuous service, while at the same time requiring candidates to have the skills and abilities required of new teachers.

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

Assessment of public comment: No public comment received.

Sections 80-3.3 and 80-3.7 of the Commissioner's Regulations regarding Individual Evaluation

Justification for continuation without modification: The purpose of the rule is to discontinue the individual evaluation pathway for certain certificate titles and continue the individual evaluation pathway for all other certificate titles. In 2003, the Board of Regents revised the certification requirements for teachers by creating a pathway for individual evaluation for candidates who have not completed registered teacher education programs. Under the individual evaluation pathway, candidates are required to submit evidence of coursework and field experience to the State Education Department for evaluation and issuance of the certificate. This pathway was originally established as a means to address teacher shortage areas, recognizing that there are individuals who have acquired the necessary content knowledge and skills needed to become a teacher in New York State.

The provision regarding individual evaluation included a sunset date of February 1, 2007 for certificates in childhood education and February 1, 2009 for all other certificates in the classroom teaching service.

In 2008, the Regents extended the expiration date of the individual evaluation pathway for all classroom titles except childhood education from February 1, 2009 to February 1, 2012. The individual evaluation pathway for childhood education certification was discontinued at that time because there was no shortage of childhood education teachers. The purpose in establishing these sunset dates was to allow the Department time to assess the continued need for the individual evaluation pathway, based on how many candidates use this pathway to become certified, particularly in subject areas where there are teacher shortages.

In June 2011, the Regents extended the expiration date of the individual evaluation pathway for all classroom titles except childhood education from February 1, 2012 to September 1, 2013. The purpose in establishing the extension to September 2013 was to coincide with the implementation of the new certification exams.

In January 2012, the Regents extended the implementation date of the new teacher certification examinations to May 1, 2014.

Thereafter, in January 2013, the Regents extended the expiration date of the individual evaluation pathway for all classroom titles except childhood education from September 1, 2013 to May 1, 2014 to align with the new implementation date for the certification examinations.

### **Amendments**

Based on available data from September 2010 through January 2014, below is a list of the percentages of initial certificates that were issued through individual evaluation in these certificate areas:

6% Early Childhood

7% Generalist in Middle Childhood Education

7% English Language Arts

.2% Literacy

Based on available certification supply and demand data, the Department recommended ending the individual evaluation pathway for the above certificate titles. However, the Department recommended continuing the individual evaluation pathway for all other certificate titles. This individual evaluation pathway is essential for those seeking to obtain a CTE certificate. For the period September 2010 through January

2014, the Department conducted an individual evaluation for 680, or 80% of the CTE applications. In fact, this is the major pathway upon which new CTE teachers become certified.

Legal Basis of 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).

Assessment of public comment: No public comment received.

#### Section 102.4 of the Commissioner's Regulations regarding Test Security

Justification for continuation without modification: The purpose of the rule is to formally implement the recommendations of Special Investigator Hank Greenberg 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. In November 2011, pursuant to Education Law §104 and section 3.9 of the Rules of the Board of Regents, the Commissioner appointed Henry "Hank" Greenberg as a Special Investigator, and tasked him with performing a review of the Department's processes and procedures for handling and responding to reports of allegations of misconduct related to the administration and scoring of New York State assessments. In this capacity, Special Investigator Greenberg performed an exhaustive review of the Department's processes and procedures for the intake, review, referral, investigation, findings, response, follow-up, and records retention policy regarding allegations of educator misconduct during the administration and scoring of State assessments. The review included interviews of Department personnel and others involved in testing investigations, and the review of pending and closed investigative

case files, guidance materials, manuals, statutes, and regulations, among other relevant items.

On March 19, 2012, Special Investigator Greenberg reported his findings and recommendations to the Board. See Greenberg, H., Review of the New York State Education Department's ('NYSED') Processes and Procedures for Handling and Responding to Reports of Alleged Irregularities in the Administration and Scoring of State Assessments. The Board accepted all of the Special Investigator's recommendations, which included the creation of a new Test Security Unit ("TSU") that would focus on the detection and deterrence of security breaches and other testing irregularities.

Another significant recommendation from Special Investigator Greenberg that the Board adopted was that the Department establish a mandatory reporting requirement for school personnel, who learn of any security breach or other testing misconduct, define specific context based examples of prohibited testing misconduct, and sanction those who fail to comply. (Greenberg Report, pgs. 10 and 14, emphasis in original). Pursuant to this recommendation, the TSU incorporated a mandatory reporting requirement in the Department's testing manuals for Regents and Grades 3 through 8 examinations. The TSU recommended that the Board formalize Special Investigator Greenberg's recommendations by amending Section 102.4 of the Commissioner's Regulations to prohibit certain testing misconduct and that the regulation be amended to include specific concrete examples of what constitutes "testing misconduct."

Additionally, Special Investigator Greenberg recommended that NYSED "[p]rotect from retribution persons who report security breaches and other testing

irregularities.” (Greenberg Report, p. 11). Therefore, the TSU recommended that the Board formalize this recommendation for protecting persons who report test security violations to the TSU by amending Section 102.4 of the Commissioner’s Regulations to include such protection. Under Civil Service Law § 75-b, protections exist for public employees who report violations of “a law, rule, or regulation” that the reporting person reasonably believes has occurred. The amendment clarifies that certified individuals who take retaliatory action against a person who makes a test fraud report in compliance with the amendment may be subject to Part 83 sanctions.

The amendments enhanced the security of the State Assessment program in several ways. First, the regulation defines specific types of testing misconduct, prohibits such misconduct and requires that incidents of suspected testing misconduct be reported to the Department so that they can be investigated and addressed. Second, the amendment serves to protect district personnel, educators and others who file reports of suspected cheating from retaliation by prohibiting them from being disciplined and/or from any other adverse action as the result of the filing of a report while at the same time deterring misconduct and encouraging a culture of ethical testing by serving notice that any ethical testing breaches will be reported to the Department if they become known. The mandatory reporting requirements in the amendment are consistent with the requirements of several other states, including but not limited to, Virginia, Illinois, Texas and Nevada.

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

Assessment of public comment: No public comment received.

OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES (ACCES)  
Section 100.7(a)(2) of the Commissioner's Regulations regarding the State High School  
Equivalency Diploma

Justification for continuation without modification: The purpose of the rule is to permit acceptance of partial passing scores on one or more sub-tests of the GED® examination 2002 series for the corresponding sub-test on the State High School Equivalency examination (the Test Assessing Secondary Completion – TASC). The rule was necessary because the GED® examination was the primary method to achieve a New York State High School Equivalency Diploma. However, with the changes in the administration and content of the GED® examination beginning in January 2014, as well as the increased cost of the exam that was announced by GEDTS (the company that owns and administers the GED® examination), the Board of Regents decided at its September 2012 meeting that the State should issue a competitive Request for Proposals (RFP) in order to meet state procurement standards and identify an appropriately rigorous assessment for a High School Equivalency (HSE) Diploma at the most reasonable price. On March 7, 2013, Commissioner King announced that the winning bidder was CTB/McGraw Hill with a new examination called Test Assessing Secondary Completion (TASC).

TASC is similar to the GED® examination. The exam is composed of the same five subtest sections that comprise the current GED® test: English Language Arts - Reading, English Language Arts - Writing, Mathematics, Science and Social Studies. The examination is aligned to the Common Core State Standards (CCSS) over a three year period (2014-2016), which supports a natural, gradual, and fair transition to CCSS.

In 2015 and 2016, CTB introduced more rigorous item types (e.g. constructed-responses). This allowed for a transition from less rigorous CCSS aligned assessment in 2014 to more rigorous and deeply aligned CCSS assessment in 2015-2017. Transitioning to full CCSS alignment is also accomplished by gradually increasing the rigor of the content each year.

Out-of-school youth and adults have a limited time and opportunity to earn a HSE diploma to support their post-secondary and employment goals. Unfortunately, the systems supporting these individuals lack the capacity and resources to effect CCSS level curriculum and instruction at a pace needed to support full transition to the TASC even with a phased-in approach to increased rigor. To better assure a seamless transition, the rule allowed a passing score on up to four sub-tests of the 2002 edition of the GED<sup>®</sup> exam (2003 edition for Spanish language versions) to be accepted as a passing score for the corresponding sub-test on any general comprehensive examination prescribed for the HSE diploma. For example, a passing score on up to four sub-tests earned by taking the 2002 series of the GED<sup>®</sup> exam would be accepted as a passing score on the corresponding sub-tests of the TASC administered on or after January 1, 2014.

Legal Basis of Rule: Education Laws sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1) and (2), 308(not subdivided) and 3204.

Assessment of public comment: No Public Comment Received.

## B. CALENDAR YEAR 2013

OFFICE OF P-12 EDUCATION

Sections 100.5(b)(7)(i), 100.6 and 200.5(a)(5)(iii) of the Commissioner's Regulations regarding career development and occupational studies credentials

Justification for continuation without modification: The purpose of the rule is to establish criteria for award of the New York State Career Development and Occupational Studies (CDOS) Commencement Credential to students with disabilities. In January 2012, the Regulations of the Commissioner were amended to repeal the individualized education program (IEP) diploma, effective July 1, 2013, and replace it with a Skills and Achievement Commencement Credential for students with severe disabilities who are eligible to take the New York State Alternate Assessment. The rule, beginning July 1, 2013 and thereafter, authorized school districts and nonpublic schools to award a CDOS commencement credential to other students with a disability to document high school preparation for entry-level employment. The credential was awarded as a supplement to a Regents or local high school diploma or, for a student with a disability who is unable to earn a Regents or local diploma, as the student's exiting credential. Because the IEP diploma sunset as of June 30, 2013, the rule included exceptions to certain requirements to allow appropriate discretion for school principals to determine whether students exiting high school in the 2013-14 and 2014-15 school years had sufficient knowledge of the CDOS learning standards to qualify for the award of the CDOS commencement credential. Section 100.6 was subsequently amended in 2016 to expand the opportunity to all students to earn the CDOS commencement credential, except for students with severe disabilities who are eligible for the New York State Alternate Assessment who would exit with a Skills and Achievement Commencement Credential. Section 100.6 was further revised in 2016 to

establish criteria for the approval of work-readiness assessments for earning the CDOS Commencement Credential

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).

Assessment of public comment: No public comment received.

Section 119.7 of the Commissioner's Regulations relating to charter school charter renewals

Justification for continuation without modification: The purpose of the rule is to clarify standards for charter renewals of charter schools for which the Board of Regents is the authorizing entity. In November 2012, the Board of Regents approved a Charter School Renewal Policy and endorsed a Performance Framework, which outlined the performance benchmarks by which charter schools are evaluated by Department Staff when they apply for renewal. Taken together, these two documents were intended to provide a roadmap for the renewal process for charter schools authorized by the Regents and ensure that all interested and impacted parties are informed at the outset of the process of the benchmarks by which a renewal application will be judged and the policy underpinnings of charter renewal decisions. Consistent with the terms of the Department's \$113 million federal Charter Schools Program (CSP) multi-year grant, improvement in student academic achievement is the most important factor that is considered by the Regents when determining whether to renew or revoke a school's charter.

The rule applies to applications for the renewal of a charter pursuant to Education Law section 2851(4) that are submitted by charter schools for which the

Board of Regents is the charter entity. The rule, which is consistent with the Performance Framework endorsed by the Regents, made the charter school renewal process more transparent by adopting a comprehensive regulation that embodied the guidelines for the renewal process and policies. In addition to clarifying the Board's previous Charter School Renewal Policy, the rule requires that renewal charters include the performance benchmarks prescribed pursuant to the regulation. The end result is a roadmap for the renewal process for charter schools authorized by the Regents that clearly sets forth the roles, responsibilities and obligations of all the parties in the charter renewal process: the charter school's board of trustees, the Department, and the Board of Regents. The rule also outlines the possible charter renewal outcomes, and specifies that such outcomes are within the sole discretion of the Board of Regents.

Legal Basis of Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1), (2) and (20), 2851(4) and 2852(1), (2), (3), (5), (5-a), (5-b) and (6) and 2857(1).

Assessment of public comment: No public comment received.

#### OFFICE OF THE PROFESSIONS

Sections 63.11 and 63.12 of the Commissioner's Regulations regarding interpretations and translations for prescription drugs, standardized labeling and patient-centered data elements for medications.

Justification for continuation without modification: These regulations were adopted to implement the SafeRx law (L. 2012, c.57, Part V) which has provisions to assist Limited English Proficiency (LEP) individuals who require interpretation and translation services when obtaining prescription medications and required standardized

labeling and patient centered data on prescription drug labels. As the statute remains in effect, the amendments should do so also.

Legal Basis of Rule: Sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6829(1), (6), (7) and 6830 (1) of the Education Law, and Part V of Chapter 57 of the Laws of 2012.

Assessment of public comment: No public comment was received.

OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES (ACCES)  
Part 126 and section 145-2.3 of the Commissioner's Regulations regarding Licensure of non-degree granting private proprietary schools

Justification for continuation without modification: The purpose of the rule to implement the provisions of Chapter 381 of the Laws of 2012 regarding licensure of non-degree granting private proprietary schools. Chapter 381 of the Laws of 2012 amended Article 101 of the Education Law (sections 5001 through 5010).

Legal Basis of Rule: Education law sections 207 (not subdivided), 212(3), 305(1), 5001 through 5010 and Chapter 381 of the Laws of 2012.

Legal Basis of Rule: Education law sections 207 (not subdivided), 212(3), 305(1), 5001 through 5010 and Chapter 381 of the Laws of 2012.

Assessment of public comment: No public comment received.

### C. CALENDAR YEAR 2012

OFFICE OF P-12 EDUCATION

Section 3.16(b) of the Rules of the Board of Regents regarding Charter School Public Hearings

Justification for continuation without modification: The purpose of the rule is to provide for the Commissioner to conduct, on behalf of the Board of Regents, public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters. The rule is necessary to conform section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner, on behalf of the Board of Regents, hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters, such as hearings in connection with the issuance, revision or renewal of a charter pursuant to Education Law section 2857(1-a) and hearings to discuss the location of a charter school pursuant to Education Law section 2853(3)(a). Having the Board of Regents personally conduct and hold such hearings is not practical, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members. It has been determined that having the Commissioner conduct such hearings, on behalf of the Board of Regents, will provide for the most efficient and expeditious means to conduct such hearings.

Legal Basis for Rule: Education Law sections 101(not subdivided), 206(not subdivided), 207(not subdivided), 305(1), (2) and (20), 2853(3)(a) and 2857(1-a).

Assessment of public comment: No public comment received.

Section 100.2(c) of the Commissioner's Regulations regarding Instruction in Civility, Citizenship and Character Education and the Dignity for All Students Act (DASA)

Justification for continuation without modification: The purpose of the rule is to provide for instruction in civility, citizenship and character education in relation to the

Dignity for All Students Act. The rule is necessary to implement provisions of the Dignity for All Students Act ("Dignity Act", Chapter 482 of the Laws of 2010) by including provisions in Commissioner's regulation section 100.2(c), relating to courses of instruction in civility, citizenship and character education, to ensure compliance with Education Law section 801-a, as amended by the Dignity Act, which provides that instruction on "tolerance", "respect for others" and "dignity" shall include awareness and sensitivity to discrimination or harassment and civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes.

Legal Basis for Rule: Education Law sections 101 (not subdivided), 207(not subdivided), 305(1) and (2), and 801-a(1)(not subdivided), and section 3 of Chapter 482 of the Laws of 2010.

Assessment of public comment: No public comment received.

Sections 100.2(l) and 119.6 of the Commissioner's Regulations regarding Codes of Conduct to implement the Dignity for All Students Act (DASA)

Justification for continuation without modification: The purpose of the rule is to conform Commissioner's Regulations on Codes of Conduct to the Dignity for All Students Act. The rule is necessary to implement provisions of the Dignity for All Students Act ("Dignity Act", Chapter 482 of the Laws of 2010) by including provisions in the Commissioner's Regulations to ensure compliance with the new Article 2 of the Education Law, as added by the Dignity Act. Article 2 generally prohibits discrimination and harassment of students by students and school employees on school property or at school functions, on the basis of the student's actual or perceived race, color, weight,

national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex. Education Law section 2801, as amended by the Dignity Act, requires that codes of conduct include provisions to comply with Article 2. Section 12(2) of Article 2 of the Education Law requires that an age appropriate version of the policy prohibiting harassment and discrimination against students in Section 12(1) be included in the code of conduct and any required summaries.

Legal Basis for Rule: Education Law sections 11(1) -(7), 12(1) and (2), 13(1)-(3), 14(1) and (3), 101 (not subdivided), 207(not subdivided), 305(1) and (2), and 2801(1) -(5), and sections 2 and 4 of Chapter 482 of the Laws of 2010.

Assessment of public comment: No public comment received.

Section 100.2(jj) of the Commissioner's Regulations regarding Policy and Guidelines Prohibiting Discrimination and Harassment of Students (Dignity Act Training)

Justification for continuation without modification: The purpose of the rule is to establish standards and criteria for issuance of policy and guidelines relating to the Dignity for All Students Act (Ch.482, L. 2010) prohibiting discrimination and harassment of students. The rule is necessary to implement provisions of the Dignity Act. The statute added a new Article 2 to the Education Law and new section 13 of Article 2 requires school districts to create: (i) policies to create a school environment free from discrimination and harassment; (ii) guidelines to be used in school training programs to discourage the development of discrimination or harassment and that are designed to raise awareness and sensitivity of school employees to potential discrimination or harassment and enable employees to prevent and respond to discrimination or harassment; and (iii) guidelines relating to the development of nondiscriminatory

instructional and counseling methods, and requiring that at least one staff member of every school be thoroughly trained to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.

Legal Basis for Rule: Education Law sections 11(1-7), 12(1) and (2), 13(1-3), 14(1-3), 101(not subdivided), 207(not subdivided), 305(1) and (2) and 2854(1)(b), and Chapter 482 of the Laws of 2010.

Assessment of public comment: No public comment received.

Section 100.2(kk) of the Commissioner's Regulations regarding Dignity for All Students Act Reporting Requirements

Justification for continuation without modification: The purpose of the rule is to establish standards for reporting material incidents of discrimination and harassment under the Dignity for All Students Act (L. 2010, Ch. 482). The rule is necessary to implement provisions of the Dignity Act, by establishing standards for the reporting of material incidents of discrimination and harassment including, but not limited to, threats, intimidation or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender or sex.

Legal Basis for Rule: Education Law sections 11(1-7), 15(not subdivided), 16(not subdivided), 101(not subdivided), 207(not subdivided), 305(1) and (2) and 2854(1)(b), and Chapter 482 of the Laws of 2010.

Assessment of public comment: No public comment received.

Section 100.5 of the Commissioner's Regulations regarding Diploma Requirements for Students with Disabilities

Justification for continuation without modification: The purpose of the rule is to provide a new safety net option for students with disabilities to earn a local diploma through the use of compensatory scoring. Over a decade ago, the Regents Competency Test (RCT) safety net option was adopted as a temporary measure to provide students with disabilities increased opportunities to earn a diploma. Access to the RCTs was meant to terminate once districts revised their instructional programs to provide students with disabilities full access to the general education standards in both elementary and secondary school. To provide adequate time for the transition, the Board of Regents delayed the phase out of the RCT three times and decided to apply the phase-out to the entering cohort of September 2011. As a result, only the 55-64 pass score Safety Net option to earn a local diploma was available to students with disabilities entering ninth grade in September 2011 and thereafter. In January 2012, the Regents discussed the need to consider additional options for students with disabilities to earn a local diploma. Discussions around the Safety Net focused on the group of students with disabilities who, with appropriate accommodations, supports and services, could reach the State's learning standards at the Commencement Level. At the April 2012 Regents Meeting, the Department recommended that the Board expand the safety net options for students with disabilities to earn a local diploma beyond the option of the 55-64 pass score on the five required Regents exams.

The rule established a new safety net local diploma option that provides opportunity for approximately the same number of students with disabilities to earn a

local high school diploma based on performance on Regents examinations or approved alternatives. Specifically, the rule allows students with disabilities, who first enter grade nine in September 2005 or thereafter, to earn a local high school diploma if: (1) the student attains a score of 55-64 on each of the five required Regents exams (English, mathematics, U.S history and government, science, and global history and geography) and/or passes an alternative examination; or (2) the student scores 45-54 on one or more of the five required Regents exams, other than the English or mathematics exam, but scores 65 or higher on one or more of the other required Regents exams, in which case, for purposes of earning a local diploma, the lower score(s) can be compensated by the higher score(s); provided that: (a) each examination for which the student scores 45-54 must be compensated by a score of 65 or higher on a separate examination; (b) the student must have also attained at least a 65 course average in the subject area of the Regents examination in which he/she obtained a score of 45-54; (c) the student has an attendance rate of at least 95 percent for the school year during which the student took the Regents examination in which he or she received a score of 45-54, exclusive of excused absences; and (d) a student cannot use the compensatory score option if the student is using a passing score on one or more Regents competency tests pursuant to section 100.5(b)(7)(vi)(a).

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).

Assessment of public comment: No public comment received.

Sections 100.5, 100.6, 100.9 and 200.5 of the Commissioner's Regulations regarding Skills and Achievement Commencement Credential

Justification for continuation without modification: The purpose of the rule is to replace the Individualized Education Program (IEP) diploma with a Skills and Achievement Commencement Credential. The IEP diploma was established in 1984. Since that time, the State's learning standards and graduation requirements have been substantially revised. Therefore, to ensure that high standards are maintained for students with disabilities and they have the opportunity to exit school with regular high school diplomas or, for students who because of the severity of their disabilities cannot earn a regular diploma, the rule establishes a new credential that is based on a student's achievement relating to the Career Development and Occupational Studies (CDOS) Learning Standards. Section 100.6 was subsequently revised in 2013 to establish requirements relating to the CDOS commencement credential, re-title this section as "High school exiting credentials," and re-letter section "Skills and Achievement Commencement Credential" as section 100.6(a).

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

Assessment of public comment: No public comment received

Sections 136.5 and 135.4 of the Commissioner's Regulations regarding Concussion Management and Awareness

Justification for continuation without modification: The purpose of the rule is to establish criteria relating to mild traumatic brain injury sustained by pupils during instruction or school activities. The rule is necessary to implement and conform the

Commissioner's regulations to Chapter 496 of the Laws of 2011 by establishing standards for the required instruction of key school personnel in the signs and symptoms of mild traumatic brain injuries and monitoring and seeking proper medical treatment for pupils suffering such injuries. The needs and benefits of the rule rest upon the knowledge that inadequate identification and management of a mild traumatic brain injury may result in long term disability or death.

Legal Basis for Rule: Education Law sections 207(not subdivided), 305(1), (2) and (42) and 2854(1)(b) and Chapter 496 of the Laws of 2011.

Assessment of public comment: No public comment received.

Sections 200.2, 200.3, 200.4 and 200.5 of the Commissioner's Regulations regarding Special education services for students with disabilities-additional parent member of CSE and electronic access to IEPs.

Justification for continuation without modification: The purpose of the rule is to conform Commissioner's Regulations to Chapters 276 and 279 of the Laws of 2012 regarding an additional parent member of CSE and electronic access to IEPs. Chapter 276 amends Education Law section 4402 to provide that the additional parent member of a CSE need not be in attendance at any CSE meeting unless specifically requested by the parent, the student or the district in writing at least 72 hours prior to the meeting. The law further requires that parents receive proper written notice of their right to have an additional parent member attend any CSE meeting along with a statement, prepared by the State Education Department, explaining the role of having the additional parent attend the meeting. No changes were made regarding additional parent membership on a Committee for Preschool Special Education. Chapter 279 amends Education Law

section 4402 to allow school districts the option of giving teachers, related service providers and other service providers access to a student's IEP electronically. If the school district's policy provides that a student's IEP is to be accessed electronically, the policy must also ensure that the individuals responsible for the implementation of the IEP are notified and trained on how to access such IEP electronically.

Legal Basis for Rule: Education Laws sections 101(not subdivided), 207(not subdivided), 305(1) and (2) and (20), 4402(1)(b)(1)(b) and (7)(a), 4403(3) and 4410(13) and Chapters 276 and 279 of the Laws of 2012.

Assessment of public comments: No public comment received.

Sections 200.4 and 200.16 of the Commissioner's Regulations regarding Preschool and School-Age Individual Evaluations

Justification for continuation without modification: The purpose of the rule is to change the timeline for the required completion of preschool evaluations; repeal the requirement that a psychologist prepare a written report of his/her determination as to whether each student with a disability needs a psychological assessment as part of his or her reevaluation; and clarifies that the 60-day timeline applies to initial individual evaluations to determine a student's eligibility for special education. The rule provides mandate relief relating to special education requirements.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 4402(1), 4403(3), 4410(13).

Assessment of public comment: No public comment received.

OFFICE OF HIGHER EDUCATION

Subpart 4-1 of the Commissioner's Regulations regarding Institutional Accreditation for Title IV Purposes

Justification for continuation without modification: The purpose of the rule is to conform the Regents Rules to federal regulations relating to voluntary institutional accreditation for Title IV purposes. In June 2001, the Board of Regents adopted Part 4 of the Rules of the Board of Regents, Voluntary Institutional Accreditation for Title IV Purposes (now Subpart 4-1) as part of a process of complying with the requirements in regulations of the U.S. Department of Education (34 CFR Part 602) for continued recognition of the Board of Regents as an institutional accrediting agency. One of the Federal regulations requires each Nationally Recognized Accrediting Agency to have “a systematic program of review that demonstrates that its standards are adequate to evaluate the quality of the education or training provided by the institutions and programs it accredits and relevant to the educational or training needs of students” (34 CFR 602.21[a]). As a result of the review of accreditation standards, including an assessment of their alignment with revised Federal standards for accreditation agencies (34 CFR Part 602), the Department clarified and updated the existing regulation. The rule establishes a definition of “correspondence education”, “distance education” and “teach-out plan.”

The program of study accreditation standard is revised to require processes to verify that students who register for correspondence education or distance education programs or courses are the same as those who complete and are credited with the programs or courses. The provisions also require processes to protect student privacy and to notify students of any projected additional student charges associated with the

verification of student identity at the time of registration or enrollment. Provisions for teach-out agreements were amended to incorporate teach-out plans and to define the events under which institutions must submit such plans to the agency for approval. The consumer information accreditation standard was expanded to specify that institutions must publish the process and criteria for accepting transfer of credit from other institutions. Amendment of provisions addressing procedures for considering an institution's appeal of adverse accreditation actions add detail to allow for the consideration of new financial information and an option for the appeals subcommittee to remand the adverse action to the Board of Regents. Additional changes further specified the types of actions that constitute a substantive change at an institution.

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

Assessment of public comment: No public comment received.

#### Subpart 82-1 of the Commissioner's Regulations regarding Teacher Discipline

Justification for continuation without modification: The purpose of the rule is to implement the provisions of Education Law section 3020-a, as amended by Chapter 57 of the Laws of 2012, relating to procedures for hearings on charges against tenured school employees. As part of its 2011 legislative agenda, the Board of Regents sought a number of modifications to the tenured teacher hearing process set forth in Education Law §3020-a to address spiraling costs and the extraordinary length of time to conduct hearings. This legislation was introduced in the Assembly and Senate. The Governor's proposed 2012-13 State Budget included some of these reforms and the State Budget as adopted by the Legislature included a number of important programmatic and fiscal

reforms. Below is a summary of the major Education Law §3020-a revisions and a description of where changes were made to existing regulations to conform to the new statutory requirements.

### **Prohibition on Introduction of Evidence After 125 days**

A significant change is the prohibition on the introduction of evidence more than 125 days after the filing of charges unless there are extraordinary circumstances beyond the control of the parties. Proceedings under §3020-a have traditionally taken far too long to resolve and this provision is designed to ensure timely resolution by prohibiting the introduction of evidence beyond a certain point in the proceeding. This means that once the charges are filed, all parties should work expeditiously and cooperatively to complete the case in a timely manner. After 125 days, no additional evidence shall be accepted unless there are extraordinary circumstances beyond control of the parties. The “extraordinary circumstances” rule is meant to provide for that rare occasion when evidence truly cannot be introduced within the prescribed time limit.

### **Department Selects Arbitrator When Parties Can Not Agree**

The new amendments also modify the manner in which an arbitrator is selected if the parties fail to agree on an arbitrator selection within 15 days of receipt of the list. Education Law §3020-a(3)(b)(iii) states that “[i]f the employing board and the employee fail to agree on an arbitrator to serve as a hearing officer from the list of potential hearing officers, or fail to notify the Commissioner of a selection within such fifteen day time period, the commissioner shall appoint a hearing officer from the list.” This

provision authorizes the Commissioner to select the arbitrator if the parties fail to agree by the 15<sup>th</sup> day. It does not apply to NYC where there is an alternative procedure.

### **Department Can Establish Maximum Arbitrator Rates and Study Hours**

An amendment to Education Law §3020-a(3)(b)(i)(B) requires the Commissioner to establish a schedule for “maximum rates of compensation of hearing officers based on *customary and reasonable* fees for service as an arbitrator and provide for limitations on the number of study hours that may be claimed” (emphasis added). The purpose of this amendment is to give the Commissioner the authority to control costs.

### **Department Can Exclude Arbitrators For Untimeliness**

Pursuant to Education Law §3020-a(3)(c)(i)(B) the Department is authorized to monitor and investigate a hearing officer’s compliance with the timelines set forth in the statute. The Commissioner may exclude any hearing officer who has a record of continued failure to commence and conclude hearings within the timelines prescribed in the statute.

### **New Technology for Recording Hearings is Allowed**

Education Law §3020-a(3)(c)(i)(D) continues the requirement that an accurate “*record*” of the proceedings be kept at the expense of the Department and furnished upon request to the employee and the board of education. The statutory changes, however, permit the Department to take advantage of any new technology to transcribe or record the hearings in an accurate, reliable, efficient and cost effective manner. The Department will explore other cost-effective alternatives to recording and producing transcripts for these proceedings, however, there will be no immediate change to the manner in which these hearings are recorded.

### **One-Year limitation on Claims**

Education Law §3020-a(3)(d) imposes a one-year limitation, following the final disposition of the hearing, for the submission of claims for reimbursement for services rendered. The purpose of this amendment was to encourage timely submission of claims so that accurate budget assumptions can be made and claims can be paid for in a reasonable time.

### **Other Changes**

A few other technical changes were made to clarify existing regulations, including, but not limited to, the following changes: (1) elimination of the requirement to include a copy of the vote of the board for each charge with the written statement of charges; (2) clarification that the notice of a need for hearing shall be sent to the Commissioner within three working days of the request for a hearing, with a copy to the employee or the employee's attorney; and (3) a provision to authorize the Commissioner to select a replacement hearing officer if the parties fail to notify the Commissioner within two business days of their mutually-agreed-upon replacement. The amendment also provides the hearing officer with the power to regulate the course of the hearing, including scheduling the hearing dates and directing parties to appear, so that no party is unduly prejudiced by the prohibition on the submission of evidence after 125 days and clarifies that that the Commissioner shall reimburse hearing officers and panel members for their necessary travel and other related reasonable expenses in accordance with the rules and limits on travel for State employees.

Legal Basis for Rule: Education Law sections 207(not subdivided), 305(1) and (2), and 3020-a, as amended by Part B of Chapter 57 of the Laws of 2012.

Assessment of public comment: No public comment received.

Section 87.5 of the Commissioner's Regulations regarding Due Process Procedures for Criminal History Record Checks of Prospective School Employees and Applicants for Certification

Justification for continuation without modification: The purpose of the rule is to eliminate oral argument in appeals of State Education Department determinations denying clearance for employment. Previously, pursuant to section 87.5(5) of the Commissioner's Regulations, a prospective school employee who was denied clearance for employment by the State Education Department as a result of a criminal history record check, could appeal that determination to a designee of the Commissioner and request oral argument as part of the appeal. If requested, oral argument was required to be provided by the Department. The rule eliminates the provisions concerning oral argument. There is no legal requirement to conduct oral arguments under either the applicable statute (Education Law §3035) or general due process principles, and elimination of oral arguments would not have a significant impact on the appeals process. A review of Department records of Part 87 decisions during a three-year period (1/1/08 - 12/31/10) shows that oral arguments were requested in a minority of appeals (48 out of 138 appeals), and that the information received, as a result of oral argument, was the determinative factor in only 6 such appeals. Therefore, the considerable amount of Department staff time and resources devoted to conducting oral arguments is not justified by the small impact oral arguments have on the appeals process, particularly in a time of State fiscal constraints.

Legal Basis for Rule: Education Law sections 207(not subdivided), 305(30)(a), 3001-d(1-4) and 3035(3)(a).

Assessment of public comment: No public comment received.

Sections 145-2.1, 145-2.2 and 145-2.4 of the Commissioner's Regulations regarding Tuition Assistance Program

Justification for continuation without modification: The purpose of the rule is to revise and clarify the criteria for determining student eligibility to participate in the Tuition Assistance Program (TAP). The rule is needed in order to update the criteria for determining student eligibility for the Tuition Assistance Program by: (1) specifying that the course enrollments, in order to be eligible for coverage by TAP, must be applicable to the student's declared program; (2) clarifying that 100 calendar days would be used in computing 15 weeks of the academic semester; (3) clarifying the definition of "veteran" for the purposes of the regulation; (4) relating the standards in Section 145-2.2 to those in Section 665 of the Education Law regarding satisfactory academic progress, in an effort to achieve regulatory consistency while still providing institutional flexibility in applying a higher standard; (5) allowing a one-time waiver of subparagraphs (iii) and (v) of subdivision (b) of Section 145-2.2 of the Commissioner's regulations; (6) explaining that a cross-enrolled student must be certified by an eligible degree granting institution participating in TAP, which must be the student's home institution for eligibility of financial aid; (7) clarifying issues related to cross enrollment, the declaration of a major, and eligibility for TAP during the process of changing a major. The rule was developed by a statewide task force of representatives from the State University of New York, The City University of New York, the Commission on Independent Colleges and Universities,

the Association of Proprietary Colleges, the Higher Education Services Corporation, the Division of the Budget, the New York State Financial Aid Administrators Association, and the Office of the State Comptroller. This task force met and reached a consensus on the rule to clarify and simplify their provisions in order to improve institutional compliance with their requirements.

Legal Basis for Rule: Education Law sections 207 and 661 of the Education Law.

Assessment of public comment: No public comment received.

## OFFICE OF THE PROFESSIONS

### Sections 29.7(a) and 63.6(a)(7) of the Commissioner's Regulations regarding Electronic Prescriptions

Justification for continuation without modification: These amendments implement statutory requirements for electronic prescriptions. As the law remains in effect, the amendments should do so also.

Legal Basis for Rule: Education Law sections 207 (not subdivided), 6504 (not subdivided), 6506(1), 6507(2)(a), 6509(9), 6802(23) and 6810(6)(a), and Chapter 590 of the Laws of 2011.

Assessment of public comment: No public comment was received.

### Sections 29.18 and 59.15 of the Commissioner's Regulations regarding Waiver Requirements from Corporate Practice Restrictions for Special Education Schools and Early Intervention Agencies

Justification for continuation without modification: The purpose of the rule is to implement Chapter 581 of the Laws of 2011 by establishing waiver requirements for special education schools and early intervention agencies. Chapter 581 of the Laws of 2011 added, among other things, a new section 6503-b to the Education Law authorizing the Department to issue waivers to schools and agencies to enable them to employ licensed professionals or contract with licensees or professional business entities to provide certain professional services to children in need of their services. Absent such a waiver, employment or contracting for professional services in most licensed professions would conflict with restrictions on corporate practice under Title VIII of the Education Law. The law allows schools approved by the State Education Department and agencies approved by the Department of Health that are providing professional services to continue to do so until July 1, 2013. In order to continue to provide services after that date, schools or agencies must submit a waiver application to the Department within 120 days of the posting of the applications on the Office of the Professions website ([www.op.nysed.gov](http://www.op.nysed.gov)). Once a school or agency applies, it will be able to continue to provide services until the application is approved or denied. These provisions avoid a disruption in professional services provided to children receiving early intervention or preschool services. However, if an application is denied by the Department, the entity must cease providing professional services in New York. The purpose of Chapter 581 of the Laws of 2011 is to reconcile the provisions of Title VIII of the Education Law that prohibit corporate practice of certain licensed professions with the provisions of section 4410 of the Education Law and Title 2-A of Article 25 of the Public Health Law that contemplate that special education schools and early

intervention agencies be able to provide multi-disciplinary evaluations, related services, and early intervention services recommended for a student. Section 6503-b of the Education Law defines eligible entities and the professional services that may be offered by such entities, and provides for oversight by the Board of Regents. This section also requires, as part of the application process, that the entity provide attestations by each officer, director, and trustee of the entity that he or she is of good moral character. The fee for an initial waiver is \$345, although an entity that simultaneously applies for waivers as both a special education school and an early intervention agency only has to pay the \$345 fee once. An entity that receives a waiver under the law must apply for a renewal every three years and pay the triennial registration fee of \$260, or a pro-rated amount as determined by the Department. An approved entity must request a waiver certificate for each site at which professional services are provided and notify the Department in a timely manner if there are changes in the services provided or the location of the administrative office or sites operated by the entity.

The rule implements the provisions of law by setting forth the requirements to be met by a qualified entity in order to receive a waiver. These include, but are not limited to, verification from the appropriate regulatory agency that the entity is a qualified special education school or early intervention provider. Since these entities are already approved by the Education Department or the Department of Health, there is a known population of entities that will apply for, and require, a waiver under 6503-b, which facilitates the implementation of this law. Although the granting of a waiver resolves the issue of the authority of the entity to provide professional services, only licensed or

authorized persons may provide services, and the entity is responsible for verifying the licensure of providers and the appropriate supervision of interns or permit holders who are only authorized to practice under supervision. This ensures that preschool students receive appropriate services from competent and qualified individuals who are accountable under the Education Law. The rule amending section 29.18 of the Rules of the Board of Regents implements the Board of Regents disciplinary authority over entities receiving waivers under Education Law section 6503-b. The rule clarifies that the entity is subject to the same professional misconduct provisions as a licensed professional or professional business entity, including the same due process rights.

Legal Basis for Rule: Education Law 207(not subdivided), 6501(not subdivided), 6503-b, 6504(not subdivided), 6506(2), 6507(2)(a), 6508(1), 6509(9), 6510(1)-(9) and 6511(not subdivided).

Assessment of public comment: No public comment was received.

Sections 52.41, 77.1 and 77.11 of the Commissioner's Regulations regarding Professional Study Requirements for Licensure in Physical Therapy

Justification for continuation without modification: The purpose of the rule is to conform the Regulations of the Commissioner of Education to Chapter 410 of the Laws of 2011, which raised the educational requirements for licensure in the profession of physical therapy from a bachelor's degree to a master's degree in physical therapy. The rule is necessary to conform the Commissioner's regulations to Education Law §6734(b), as amended by Chapter 490 of the Laws of 2011, which increased the educational requirements to practice as a physical therapist in this State to a master's degree or higher. In particular, the rule amends section 77.1 of the Commissioner's

regulations to replace the minimum educational requirements of a bachelor's degree with a master's degree or equivalent and eliminates a certificate in physical therapy, together with a bachelor's degree, as acceptable education. Section 77.1, as amended, allows for the completion of a foreign professional physical therapy program that is substantially equivalent to a master's degree program registered by the Department to satisfy the educational requirements for licensure. The rule adds a new section 52.41 to the Commissioner's regulations to establish the educational program requirements for registration by the Department as a licensure-qualifying program in physical therapy. The rule also adds a new section 77.11 to the Commissioner's regulations to establish requirements for the endorsement of a license issued by another jurisdiction to practice physical therapy in New York State.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6506(1), 6507(2)(a), and 6734(b), and Chapter 410 of the Laws of 2011.

Assessment of public comment: No public comment was received.

Sections 52.42 and 79-4.8 through 79-4.17 of the Commissioner's Regulations regarding Polysomnographic Technologists

Justification for continuation without modification: The purpose of the rule is to establish standards for the provision of polysomnographic technology services. The rule is necessary to implement the provisions of Chapter 262 of the Laws of 2011, which creates an exemption to the Respiratory Therapy Practice Act for the provision of polysomnographic technology services by persons authorized by the Department. Chapter 262 authorizes the Department to define, in regulation, the practice of polysomnographic technology and set forth the standards to be met for authorization.

Legal Basis for Rule: Education Law sections 207(not subdivided), 212(3), 6504(not subdivided), 6506(1), (2), (5), (6), (8), (9) and (10), 6507(2)(a), 6508(1), (2), (3) and (7), and 8505(5) and Chapter 262 of the Laws of 2011.

Assessment of public comment: No public comment was received.

Section 60.10 of the Commissioner's Regulations regarding Approval of International Medical Schools for Long-Term Clinical Clerkship Placements

Justification for continuation without modification: The purpose of the rule is to establish the approval standards and procedures for international medical schools to place students in long term clerkships in New York. Between November 2010 and January 2011, the Professional Practice Committee of the Board of Regents engaged in discussions with Department staff and the Chair of the New York State Board for Medicine regarding the oversight of dual-campus international medical schools that seek authorization to place students in long-term clinical clerkships in NYS hospitals. The discussions with the PPC incorporated input from the Study Group on International Medical Schools which included representation from a broad spectrum of the medical education and hospital services communities, including representatives from the affected schools. After consideration of certain changes that had taken place in the provision of medical education, the Board of Regents concluded that it was time to review the applicable regulations and policies governing the standards for placement of international medical students in long term clerkships in New York State. Accordingly, the Board of Regents established an Advisory Committee to provide advice on matters related to the evaluation and approval of dual-campus international medical schools seeking authorization to place students in long-term clinical clerkships in New York

State. The plan approved by the PPC at its meeting in February 2011 specifically provided for the Advisory Committee to examine the standards and processes for such evaluations and approvals. The addition of section 60.10 reflects the approval standards and procedures recommended by the Committee.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6501 (not subdivided), 6504(not subdivided), 6506(1), 6507(2)(a) and 6508(1).

Assessment of public comment: No public comment was received.

Section 63.9 of the Commissioner's Regulations regarding Administration of acute herpes zoster (shingles) vaccinations by pharmacists

Justification for continuation without modification: These amendments were added to implement statutory provisions for pharmacists to administer acute herpes zoster vaccine. As the statute remains in effect, the amendments should do so also.

Legal Basis for Rule: Education Law sections 207 (not subdivided), 6504 (not subdivided), 6506(1), 6507(2)(a), 6527(7), 6801(5), 6802(23) and 6909(7), and Chapter 116 of the Laws of 2012.

Assessment of public comment: No public comment was received.

Sections 76.4, 76.5, 76.6, 76.7 and 76.9 of the Commissioner's Regulations regarding Occupational Therapy

Justification for continuation without modification: The purpose of the rule is to implement Chapter 460 of the Laws of 2011, relating to the profession of occupational therapy. The changes to the existing law governing the practice of occupational therapy that were enacted by Chapter 460 of the Laws of 2011 authorized the Department to establish, in regulation, several significant components of the practice: the duration of a

limited permit set forth in 76.4(b), the definition of direct supervision of holders of limited permits in 76.4(c), the scope of practice for occupational therapy assistants set forth in 76.7, and the requirements for supervision of occupational therapy assistants set forth in 76.8, and the provisions for occupational therapy assistant students to qualify for an exemption to practice in 76.9.

Legal Basis for Rule: Education Law sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a) and 7906 (4) and (7) and Chapter 460 of the Laws of 2011.

Assessment of public comment: No public comment was received.

Sections 79-1.1 and 79-1.2 of the Commissioner's Regulations regarding Landscape Architecture

Justification for continuation without modification: The purpose of the rule is to align Landscape Architect Registration Examination admission requirements with national standards and clarify professional study and experience requirements for landscape architecture candidates. The purpose of the rule is to align the New York State requirements for admission to the Landscape Architect Registration Examination (LARE) with national standards beginning with the September 2012 administration of the LARE and to clarify the professional study and experience requirements for landscape architecture candidates. The modification regarding the admission to the LARE is consistent with policy of the owners of the national licensing examination, the Council of Landscape Architectural Registration Boards (CLARB). The professional study and experience requirements for licensure candidates are clarified to incorporate long-held policies used by the Department and State Board for Landscape Architecture during education/experience evaluations. The amendment of section 79-1.1 of the

Regulations of the Commissioner clarifies the education and experience requirements in order to be a landscape architect, while recognizing the varying statutory pathways to licensure. The licensure pathways reflected in the rule include those affecting candidates with and without a professional degree. Specifically, the rule offers three routes to licensure. The first route requires a five-year professional degree from an accredited landscape architecture program and three years of acceptable experience satisfactory to the State Board for Landscape Architecture. The second route requires a four-year professional degree from an accredited landscape architecture program and four years of acceptable experience satisfactory to the State Board. The third and final route permits those without the professional degree to attain licensure by compiling up to 12 years of a combination of education and experience acceptable to the Department and State Board for Landscape Architecture.

The amendment of section 79-1.2 of the Regulations of the Commissioner aligns New York's requirements with the national requirements for entry to the licensing examination. Beginning with the September 2012 administration of the LARE, CLARB moved to a fully computerized model for the delivery of exam content to improve relevance and reliability. In order to clarify and streamline the examination process for New York candidates, those candidates who meet CLARB exam eligibility requirements will directly apply to CLARB to take the licensing examination instead of applying to the Department. The rule also removes the ability of candidates to review their graphic solutions and have their exams rescored by CLARB since CLARB will no longer offer candidate those opportunities. Finally, the rule allows those atypical candidates who do

not meet CLARB's exam eligibility standards to apply for exam admission to the Department instead of CLARB.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6506(1), 6507(2)(a) and 7324(1) and (2).

Assessment of public comment: No public comment was received.

OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES (ACCES)  
Section 100.5(b)(7) of the Commissioner's Regulations regarding Veterans Diploma

Justification for continuation without modification: The purpose of the rule is to prescribe requirements for award of high school diplomas to veterans of World War II, the Korean Conflict and the Vietnam War. The rule is necessary to prescribe, in the Commissioner's Regulations, requirements for the award of high school diplomas to certain veterans pursuant to Education Law section 305(29), (29-a) and (29-b). The statute directs the Commissioner to develop a program whereby any honorably discharged veteran of the armed forces who served in World War II, the Korean Conflict, or the Vietnam War, and who was unable, for any reason, to complete a secondary education, may be awarded a high school diploma based on knowledge and experience gained while in service. Such program has been in existence for many years, having been originally established for World War II veterans and expanded over the years to include Korean and Vietnam veterans, and operates under the name "Operation Recognition", whereby a veteran meeting the statutory requirements can be awarded a local high school diploma.

The rule amends section 100.5(b)(7) of the Commissioner's Regulations to provide for issuance of a local high school diploma to such veterans, consistent with the statute's requirements, and adds a new subparagraph (xi) to codify in the Commissioner's Regulations the process for the issuance of such diplomas.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1), (2), (29), (29-a) and (29-b), 309(not subdivided) and 3204(3).

Assessment of public comment: No Public Comment Received.

Part 126 of the Commissioner's Regulations regarding Licensure of non-degree granting private proprietary schools

Justification for continuation without modification: The purpose of the rule is to implement the provisions of Chapter 381 of the Laws of 2012 regarding licensure of non-degree granting private proprietary schools. Chapter 381 of the Laws of 2012 amended Article 101 of the Education Law (sections 5001 through 5010)

Legal Basis of Rule: Education law sections 207 (not subdivided), 212(3), 305(1), 5001 through 5010 and Chapter 381 of the Laws of 2012.

Assessment of public comment: No Public Comment received.

D. CALENDAR YEAR 2007

OFFICE OF P-12 EDUCATION

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

Justification for continuation without modification: To revise and clarify diploma requirements, provide flexibility to schools, and alternatives for students who seek a

Regents Diploma with honors or a Regents Diploma with Advanced Designation with honors. Under prior regulations, a school district could award a student a Regents diploma with honors or a Regents diploma with advanced designation with honors if a student achieves an average of 90 percent in all required Regents examinations. The rule provides an opportunity for students to substitute up to two approved alternative assessments in lieu of required Regents examinations to be awarded the “Honors” designation on their diploma. The student’s score on the alternative assessments will not be considered in the calculation to determine whether the student has achieved an average of 90 percent.

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

Assessment of public comment: No public comment received.

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

Justification for continuation without modification: The rule establishes requirements for Contracts for Excellence, including allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures, and other requirements for purposes of preparation of the Contracts by certain specified school districts. The rule is needed to implement the statutory requirements. The rule establishes systems and processes that provide for transparency, simplicity and accountability in the use of additional aid to districts with the greatest concentrations of students in need who are at the same time, experiencing the greatest obstacles to

improving their students' achievement. Moreover, it ensures that districts and schools use new funding on one or more of the following six programs and activities: class size reduction, increased time on task, middle and high school restructuring, full day prekindergarten and kindergarten, teacher and principal quality initiatives and experimental programs.

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

Assessment of public comment: No public comment received.

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

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

Education Law section 753, as added by Chapter 57 of the Laws of 2007, provides for an apportionment for approved school district expenses for computer

hardware or technology equipment, or for repair of such equipment or staff development for instructional purposes. Such aid shall be provided pursuant to a plan developed by the district that demonstrates, to the satisfaction of the Commissioner, that the instructional computer hardware needs of the district's public and nonpublic school students have been adequately met. Section 100.12, as amended, specifies that each school district's technology plan including an assurance that the school district has provided for the loan of instructional computer hardware to students legally attending nonpublic schools pursuant to Education Law section 754.

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

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

Assessment of public comment: No public comment received.

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

Justification for continuation without modification: Conforms the Commissioner's Regulations to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, by establishing uniform quality standards for prekindergarten programs, criteria relating to program design, procedures for applying for universal prekindergarten grants, procedures by which districts select eligible agency collaborators through a competitive

process, and facility requirements. The rule is necessary to conform Subpart 151-1 to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007.

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

Assessment of public comment: No public comment received.

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

Justification for continuation without modification: Conforms the Commissioner's Regulations to the reauthorization of the Individuals with Disabilities Education Act (IDEA) (20 USC 1400 et seq.), as amended by Public Law 108-446, and the final amendments to 34 CFR Part 300; ensures consistency in procedural safeguards; promotes timely evaluations and services; and facilitates services in the least restrictive environment for students with disabilities. The rule is necessary to conform the Commissioner's Regulations to the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et. seq.), as amended by Public Law 108-446, and recent amendments to 34 CFR Part 300 which became effective on October 13, 2006. The rule is also necessary to ensure consistency in procedural safeguards; promote timely evaluations and services; and facilitate services in the least restrictive environment for students with disabilities. The rule was subsequently revised in 2008 and again in 2009 to conform the Commissioner's Regulations the federal IDEA statutes and regulations and State statute. The rule was also revised in 2009 to extend the date for requiring the State's

forms for IEPs, prior written notice and meeting notice. The rule was further revised in 2010 to authorize school districts to add up to two additional students to integrated co-teaching classes and to make certain technical amendments.

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

Assessment of public comment: No public comment received.

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

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

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

Assessment of public comment: No public comment received.

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

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

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

Assessment of public comment: No public comment received.

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

Justification for modification: Delegates to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter

school's charter pursuant to Education Law section 2857(1-a). Also delegates authority to the Commissioner to approve, on behalf of the Board of Regents, revisions to a public charter school's charter with certain specified exceptions. Having the Board of Regents approve all revisions and personally conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter is not deemed to be the most appropriate and efficacious means to address these matters, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members. It has been determined that delegation of such responsibility to the Commissioner will provide for the most efficient and expeditious means to conduct such hearings and to approve and issue charter revisions.

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

Assessment of public comment: No public comment received.

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

Justification for modification: Establishes procedures for the conduct of public hearings by school districts to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1). It has been determined that the procedures set forth in the rule will provide for the most efficient, thorough and expeditious means to conduct such hearings.

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

Assessment of public comment: No public comment received.

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

Justification for continuation without modification: Defines "city funds" for purposes of determining maintenance of effort in cities having a population of one hundred twenty-five thousand or more inhabitants and less than one million inhabitants pursuant to Education Law section 2576(5-b), including state and private funding sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement. The rule is needed to implement the statutory requirements. The rule establishes a definition of "city funds" for purposes of determining the fiscal maintenance of effort requirement in Education Law section 2576(5-b, thus ensuring that the requirement pertains only to funds over which the cities have control. State Education Department research on the maintenance of local effort in support of schools has documented that school districts tend to reduce local effort when they receive State Aid increases. Without a statutory requirement or formula structure that requires maintenance of local effort there is no way to ensure that State Aid increases provided for the purpose of increasing student achievement will result in additional programs and services for students, rather than tax relief or the funding of other city services.

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

Assessment of public comment: No public comment received.

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

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

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

Assessment of public comment: No public comment received.

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

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

Further, the rule clarifies the existing screening requirements. Section 117.2(d) is amended to clarify that prekindergarten students are included in the definition of "new entrants". A new section 117.2(g) is added to define "health care provider". This

definition in consistent with that found in Part 136 of the Commissioner's Regulations pertaining to school health services and provides districts and parents with greater flexibility regarding the type of health care professional who can provide the required health and immunization certifications. Section 117.3(b) is amended to incorporate the health screening requirements set forth in section 136.3.

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

Assessment of public comment: No public comment received.

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

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

Legal basis for rule: Education Law sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2) and sections 3641-a(1), (2) and (3)

and 3641-b(not subdivided), as added by section 39 of Part B of Chapter 57 of the Laws of 2007.

Assessment of public comment: No public comment received.

#### OFFICE OF HIGHER EDUCATION

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

Justification for continuation without modification: Establishes requirements and procedures for the fingerprinting and criminal history record check of prospective school employees for nonpublic and private elementary or secondary schools in order to implement the requirements of Chapter 630 of the Laws of 2006. The rule is needed to implement the requirements set forth in sections 305, 3001-d and 3035 of the Education Law, as amended by Chapter 630 of the Laws of 2006. Specifically, rule makes the following major changes:

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

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

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

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

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

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

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

Assessment of public comment: No public comment received.

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

Justification for continuation without modification: The rule identifies certain ability-to-benefit tests and the passing scores for such tests that the Board of Regents approves for purposes of eligibility for awards under Section 661 of the Education Law. The rule also establishes criteria that the department will utilize to determine if an approved ability-to-benefit test is independently administered; in order to implement the requirements of Chapter 57 of the Laws of 2007. Education Law section 661 prescribes eligibility requirements and procedures governing awards under the State student financial aid programs established in Education Law Articles 13 and 14. Education Law section 661(4)(d) and (e) establishes new requirements for students who do not hold diplomas from high schools located within the U.S., or its recognized equivalent, seeking State financial aid for the first time in the 2007-2008 academic year.

Currently, under the federal Higher Education Act, students seeking to qualify for Pell grants or other federal Title IV aid who do not have a high school diploma or its

recognized equivalent must demonstrate the ability to benefit from the education or training provided by achieving a score set by the Secretary of the U.S. Department of Education (“Secretary”) on a test approved by the Secretary.

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

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

Each eligible institution must submit for Regents approval, the passing score it proposes to utilize on any approved ability-to-benefit test, which passing score may not

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

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

procedures, it may require the institution to use an assessment center external to the institution.

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

Assessment of public comment: No public comment received.

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

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

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

Assessment of public comment: No public comment received.

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

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

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

Assessment of public comment: No public comment received.

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

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

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

Assessment of public comment: No public comment received.

## OFFICE OF THE PROFESSIONS

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

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

The rule is needed to advise licensed physical therapists of the requirements that they must meet in order to provide treatment without a referral and to provide uniformity and consistency in the information that must be contained in the written notice provided to a patient.

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

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

Assessment of public comment: No public comment was received.

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

Justification for continuation without modification: The rule implements Education Law section 6516, as added by Chapter 615 of the Laws of 2003, by specifying the requirements and procedures for the submission of complaints, investigations, hearing requests, stay requests, the contents of cease and desist orders; the standards for the imposition of civil penalties and restitution and the procedures for hearings and appeals. The rule is needed to implement the requirements of Section 6516 of the Education Law by specifying the requirements for the submission of complaints, investigations, hearing requests and stay requests; the contents of a cease and desist order; the standards for the imposition of civil penalties and restitution and the procedures for hearings and appeals.

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

Assessment of public comment: No public comment was received.

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

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

In order to conform with the new requirements set forth in 6608-b of the Education Law, as amended by chapter 300 of the Laws of 2006, the rule also amends the current curriculum requirements for programs leading to licensure in certified dental assisting. Specifically, the rule provides that an equivalent approved one year course of study by a non-degree granting institution for certified dental assistants shall not be provided by a professional association or organization, and specifies that an alternate course of dental assisting shall be provided by a degree-granting institution or a board

of cooperative educational services. The rule also revises the definition of clinical content area for registration as a program leading to licensure in certified dental assisting to include course work in other clinical procedures, including placing and removing temporary restorations; placing, condensing, and carving amalgam restorations; and placing, condensing and finishing non-metallic restorations due to the expansion of the certified dental assistant's scope of practice.

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

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

Assessment of public comment: No public comment was received.

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

Justification for continuation without modification: Establishes requirements for registered professional nurses to meet when executing non-patient specific orders prescribed or ordered by a licensed physician or certified nurse practitioner for the administration of human immunodeficiency virus tests. Chapter 429 of the Laws of 2005, effective August 2, 2005, added a new paragraph (d) to section 6909 of the

Education Law, permitting registered professional nurses to execute non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner for the administration of HIV tests. The existing list of procedures that registered nurses can currently perform pursuant to a non-patient specific order includes: (1) administration of certain immunizations, (2) anaphylactic treatment medications, (3) tuberculosis tests, (4) opioid overdose treatments, (5) hepatitis C tests and (6) screening for certain sexually transmitted infections.

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

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

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

Assessment of public comment: No public comment was received.

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

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

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

has an approved adjustment to such continuing education requirements from the Department.

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

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

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

Assessment of public comment: No public comment was received.

Sections 74.2, 74.3, 74.4 and 74.6 of the Commissioner's Regulations, regarding requirements relating to licensure as a licensed clinical social worker, limited permits to

practice licensed clinical social work and the supervision of clinical social work services provided by a licensed master social worker

Justification for continuation without modification: The rule revises the requirements for admission to an examination for licensure as a licensed clinical social worker. It also clarifies the supervision requirements for a licensed master social worker practicing licensed clinical social work and the supervised experience requirements for licensure as a licensed clinical social worker and for limited permits to practice licensed clinical social work. The rule is needed to conform to the content of the licensing examination, which is based on the expectation that the applicant will have completed at least two years of post-degree supervised experience. The rule also clarifies the current regulations to require supervision of at least one hour per week of individual or group supervision, with at least two hours of individual supervision each month. The rule is needed to eliminate confusion in the supervised experience requirements in the existing regulations.

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

Assessment of public comment: No public comment was received.

E. CALENDAR YEAR 2002

OFFICE OF P-12 EDUCATION

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

Justification for continuation without modification: The rule establishes a formal process for the registration of new public schools to ensure the fulfillment of Regents

standards relating to the accountability of public schools. The Board of Regents will grant approve if it is satisfactorily demonstrated that a school will be operated in an educationally sound manner; is in compliance with applicable statutes, rules and regulations relating to public schools; and will operate in accordance with applicable building codes and pursuant to a certificate of occupancy. Clarification of policy for the registration of public schools.

Legal basis for rule: Education Law sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 214(not subdivided), 215(not subdivided), 305(1) and (2) and (19) and 309 (not subdivided).

Assessment of public comment: No public comment received.

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

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

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

Assessment of public comment: No public comment received.

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

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

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

Assessment of public comment: No public comment received.

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

Justification for continuation without modification: Establishes minimum standards for the construction, maintenance and operation of electrically operated partitions or room dividers located in classrooms or other facilities used by students in public and nonpublic schools, including charter schools, and BOCES within the State. It also requires appropriate and conspicuous notice regarding the safe and proper operation and supervision of the electrical device operating such partition, training of staff in the safe operation of the partition, and maintenance of all equipment.

Compliance with Chapter 217 of the Laws of 2002 and Chapter 231 of the Laws of 2002.

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

Assessment of public comment: No public comment received.

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

Justification for continuation without modification: The rule requires every school district and BOCES to develop a plan to ensure that all instructional materials to be used in the schools of the district (or in the programs of the BOCES) are available in a usable alternative format for every student with a disability in accordance with his or her individual needs and course selections at the same time that such materials are available to non-disabled students. The rule is necessary to implement Chapter 377 of the Laws of 2001, which requires every school district and BOCES to develop a plan to ensure that all instructional materials to be used in the schools of the district (or in the programs of the BOCES) are available in a usable alternative format for every student with a disability in accordance with his or her educational needs and course selections at the same time that such materials are available to non-disabled students. The rule was revised in 2005 to add the Individuals with Disabilities Education Act (IDEA) requirement that instructional materials meet the National Instructional Materials Accessibility Standard defined in section 1474(e)930(B) of the reauthorized IDEA (Public Law 108-446). The rule was further revised in 2010 to make technical

amendments to update Federal law citations and change the address where a copy of federal regulations may be obtained within the New York State Education Department.

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

Assessment of public comment: No public comment received.

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

Justification for continuation without modification: The rule provides copies of individualized education programs (IEP's) to teachers, related service providers and other providers. The rule is necessary to implement Education Law section 4402(7), as added by Chapter 408 of the Laws of 2002, which requires that school districts establish a policy that: ensures that teachers and other service providers are provided with students' individualized education programs (IEPs) prior to the implementation of such IEPs; ensures the confidentiality of such IEPs; and requires that teachers, assistants, support staff persons and other service providers be informed of their responsibilities in relation to the implementation of students' IEPs prior to the implementation of such IEPs. The rule was subsequently revised in 2003 and 2005 to clarify responsibilities and language and to ensure that amendments to the Individualized Education Plan (IEP) were also required to be provided to certain school personnel to implement the flexibility to provide the amendments to the IEP under the reauthorized IDEA. Section 200.4 was further revised in 2012 to conform the Commissioner's Regulations to Chapter 279 of the Laws of 2012 to allow school districts the option of giving teachers,

related service providers and other service providers access to a student's IEP electronically.

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

Assessment of public comment: No public comment received.

#### OFFICE OF HIGHER EDUCATION

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

Justification for continuation without modification: The rule authorizes the use by New York postsecondary degree-granting institutions authorized to confer the Bachelor of Music degree of the abbreviation "B.M." for that degree as an alternative to the existing abbreviation "Mus.B." The rule is needed to authorize the B.M. as an additional abbreviation for the Bachelor of Music degree in order to be consistent with the abbreviation commonly used by other jurisdictions for this degree.

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

Assessment of public comments: No public comment received.

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

Justification for continuation without modification: The rule establishes standards and procedures that must be met by institutions of higher education seeking accreditation of their teacher education programs by the Board of Regents; aligns

related provisions in the Rules of the Board of Regents and the Regulations of the Commissioner of Education with the new standards and procedures; and renumbers the rule and clarifies language related to voluntary institutional accreditation for Title IV purposes by the Commissioner of Education and the Board of Regents. The rule is needed to improve the quality of teacher education programs to ensure that teachers are well qualified to teach to the State Learning Standards for Students, established by the Board of Regents in Part 100 of the Regulations of the Commissioner of Education. The rule carries out the policy of the Board of Regents as stated in its policy paper, "New York's Commitment: Teaching to Higher Standards," and prescribed in the Regulations of the Commissioner of Education, that each teacher education program must be accredited by the Board of Regents or an acceptable professional education accrediting association. The rule responds to requests from colleges that offer teacher education programs that the Regents offer an alternative means to become accredited.

Section 52.21(b)(2)(iv)(c) of the Commissioner's regulations requires the accreditation of programs that prepare classroom teachers for initial or professional certificates either by an acceptable professional education accrediting association or by the Regents, pursuant to a Regents accreditation process. The rule establishes this process.

The rule also is needed to align existing provisions in the Rules of the Board of Regents and the Regulations of the Commissioner of Education with the new procedures for Regents accreditation of teacher education programs. Specifically, it is needed to include responsibilities related to teacher education program accreditation explicitly among the duties of the State Professional Standards and Practices Board for

Teaching; to retitle and renumber Part 4 of the Rules of the Board of Regents; to clarify language in the standards and procedures for institutional accreditation by the Commissioner of Education and the Regents for purposes of Title IV of the Higher Education Act of 1965; and to prescribe requirements relating to representations by colleges and universities as to accreditation by the Board of Regents and the Commissioner of Education.

In addition, the rule is needed to provide a substitute for existing procedures on denial of program reregistration, as prescribed in subdivision (a) of section 52.23 of the Regulations of the Commissioner of Education, when reregistration of a teacher education program is denied based upon a review conducted for the Regents accreditation of the program.

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

Assessment of public comment: No public comment received.

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

Justification for continuation without modification: The rule sets forth requirements and procedures for the exchange of criminal history records between the State Education Department and City School District of the City of New York for statutorily prescribed individuals, and clarifies both appeal procedures for prospective school employees denied clearance for employment and the scope of the State

Education Department's criminal history record check. The rule is needed to implement Chapter 380 of the Laws of 2001, which authorizes the exchange of criminal history records of certain individuals, upon their authorization, between the State Education Department and the City School District of the City of New York.

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

Assessment of public comment: No public comment received.

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

Justification for continuation without modification: The rule enables licensed and registered speech-language pathologists in New York State to become certified as teachers of the speech and hearing handicapped through an alternative path. The rule enables such licensed individuals to become provisionally certified immediately based upon their preparation for licensure and permanently certified after having completed specified education, experience, and examination requirements. The rule is needed to address personnel shortages faced by New York schools. Teachers of the speech and hearing handicapped provide communication and language acquisition services to students who have Individualized Education Plans (IEPs). These teachers do not provide direct instruction in academic subjects but, rather, provide foundational skills that will impact on the students' current and future educational success. As a part of their clinical training, professionally licensed speech-language pathologists have experience working with children and have already attained a master's degree in speech-language pathology prior to licensure. They have also passed the national

licensing examination in speech-language pathology. The rule will allow these licensed professionals, who have met a high standard of clinical training, to begin working in schools, and require them to meet specific pedagogy-related requirements before receiving the permanent certificate.

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

Assessment of public comment: No public comment received.

Section 27-1.1 of the Regents Rules, relating to student eligibility for the Higher Education Opportunity Program

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

Legal basis for rule: Sections 207(not subdivided) and 6451(1) of the Education Law.

Assessment of public comment: No public comment received.

## OFFICE OF THE PROFESSIONS

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

Justification for continuation without modification: The rule defines unprofessional conduct in the practice of massage therapy. The rule removes an exception in the definition of unprofessional conduct in the practice of massage therapy relating to patient records, which pertains to licensed practitioners who are providing massage therapy services to clients in a health spa or similar setting, when such services are not provided pursuant to a prescription by a health care practitioner. It makes applicable requirements that must be met by licensed massage therapists in all other settings, defining unprofessional conduct as: (1) failing to make available to a patient or client, upon request, copies of documents in the possession or under the control of the licensee which have been prepared for and paid for by the patient or client; and (2) failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. The rule also requires all patient records to be retained for at least six years, unless otherwise provided by law, and that obstetrical records and records of minor patients be retained for six years, and until one year after the minor patient reaches the age of 21 years.

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

Assessment of public comment: No public comment was received.

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

Justification for continuation without modification: The rule revises the list of activities, performed by an unlicensed individual while assisting a licensed pharmacist in the dispensing of a prescription that would invoke the requirement that a licensed pharmacist supervise no more than two unlicensed persons. A licensed pharmacist may receive the assistance of unlicensed individuals to perform certain specified activities relating to the dispensing of drugs. Generally, a licensed pharmacist may not supervise more than two unlicensed individuals in the performance of these activities. An exception exists for unlicensed individuals who simply receive written or electronically transmitted prescriptions. The rule adds another exception for unlicensed individuals who perform the ministerial task of handing or delivering completed prescriptions to the patient or person authorized to act on behalf of the patient.

The rule is needed to enable pharmacists to supervise more than two unlicensed individuals doing the routine ministerial task of handing or delivering a prescription to a patient. Liberalizing the supervision requirement will not adversely affect public health or safety, while enabling licensed pharmacists to better utilize staff resources of the pharmacy.

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

Assessment of public comment: No public comment was received.

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

Justification for continuation without modification: The rule identifies, in regulation, the licensed profession of midwifery as one of the licensed health care professions that is authorized to prescribe medical regimens to be executed by registered professional nurses that may direct the care provided by licensed practical nurses. Subdivisions (1) of section 6902 of the Education Law authorizes licensed physicians and dentists or other licensed health care providers legally authorized under Title VIII of the Education Law and in accordance with Commissioner's regulations to prescribe medical regimens to be executed by registered professional nurses. Subdivision (2) of section 6902(2) of the Education Law authorizes registered professional nurses or licensed physicians, dentists or other licensed health care providers legally authorized under Title VIII of the Education Law and in accordance with Commissioner's regulations to direct care provided by licensed practical nurses.

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

Assessment of public comment: No public comment was received.

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

Justification for continuation without modification: The rule implements Chapter 404 of the Laws of 2002 by establishing requirements for the renewal of a limited permit for a physical therapist assistant and prescribes the examination that must be passed for certification as a physical therapist assistant, and makes nonsubstantial changes in

the requirements for licensure as a physical therapist. Section 6741-a of the Education Law, as added by Chapter 404 of the Laws of 2002, establishes an examination requirement for certification as a physical therapist assistant. This statutory requirement was added to ensure the competency of individuals who are certified in this field. The memorandum in support of Chapter 404 of the Laws of 2002, submitted by the sponsor of this legislation, states: "Passage of an appropriate examination provides a demonstration of a candidate's competency to work. Most states including those bordering New York require passage of an examination in order to work as a physical therapist assistant." The rule is needed to identify the specific examination, the National Physical Therapy Examination for Physical Therapist Assistants, that must be passed.

Section 6741-a of the Education Law, as added by Chapter 404 of the Laws of 2002, also adds provisions for limited permits for physical therapist assistants to practice under the supervision of a licensed physical therapist pending successful completion of the required examination. Subdivision (c) of section 6741-a provides that such permits may be renewed for no more than 6 months for justifiable cause. The rule is needed to establish the conditions upon which a limited permit may be renewed. These conditions are identical to the conditions that are applicable for the renewal of limited permits for physical therapists.

Finally, the rule is needed to make a number of nonsubstantial changes in the provisions relating to requirements for the licensure of physical therapists. Among other changes, citations to Education Law have been changed to be consistent with changes in the numbering of Education Law provisions, as amended by Chapter 404 of the Laws

of 2002; the title of the licensing examination has been corrected; and section headings have been modified to identify provisions concerning physical therapists.

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

Assessment of public comment: No public comment was received.

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

Justification for continuation without modification: The rule implements Chapter 237 of the Laws of 2001 which requires licensed dentists to complete, on a one-time basis, no fewer than two hours of acceptable coursework regarding the recognition, diagnosis, and treatment of the oral health effects of the use of tobacco and tobacco products, as part of the dentist's continuing education requirement. The rule is needed to make regulatory requirements consistent with this statutory change.

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

Assessment of public comment: No public comment was received.

OFFICE OF CULTURAL EDUCATION

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

Justification for continuation without modification: The rule makes necessary changes and additions in order to update Records Retention and Disposition Schedule CO-2 and Records Retention and Disposition Schedule MI-1. The rule is needed to

issue amendments to Records Retention and Disposition Schedule CO-2 and Records Retention and Disposition Schedule MI-1, thus providing counties and miscellaneous local governments with means to dispose of valueless records not listed on the existing schedules, to maintain voluminous records no longer than the records are needed, and to make the schedules easier to understand.

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

Assessment of public comment: No public comment received.

#### OFFICE OF OPERATIONS AND MANAGEMENT SERVICES

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

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

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

Assessment of public comment: No public comment received.

#### F. CALENDAR YEAR 1997

##### OFFICE OF P-12 EDUCATION

##### Section 108.7(b) – Flag

Justification for continuation without modification: The rule requires public schools to provide specific instruction regarding respect for the flag of the United States of America, its display and use, to include, as a minimum, instruction regarding the provisions of Sections 170 through 177 of Title 36 of the United States Code. The rule is needed in order to comply with the requirements of Education Law section 802(1), as amended by Chapter 601 of the Laws of 1996, which requires public schools to provide the specified instruction.

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

Assessment of public comment: No public comment received.

##### Section 135.4(c)(7)(ii)(b)(1) – Athletic Eligibility

Justification for continuation without modification: The rule expands the student eligibility requirements for interschool competition in grades 9, 10, 11 and 12, to provide that a student may participate in interscholastic athletics until the last day of the school year in which the student attains the age of 19. It affixes eligibility to a student's age at the start of the legal school year and, thereby, reduces the number of disqualified students. The rule retains the current safety standard which generally precludes students over the age of 19 from participating in interscholastic athletics. The rule sets forth policy of the Board of Regents to promote safe and equitable competition

particularly in contact sports and eliminates the potential incentive of students staying in school longer in order to compete in athletic programs.

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

Assessment of public comment: No public comment received.

#### 176.1 and 176.2 – Mandated Services Reimbursement

Justification for continuation without modification: The rule authorizes the use of time and effort standards established by the Commissioner to determine the time spent on each required service by nonpublic schools. These standards establish time factors for carrying out mandated activities which are then applied against local salary and benefit costs to calculate reimbursement to nonpublic schools. This approach eliminates the onerous task of maintaining individual time records for each staff person involved in 14 of the 16 mandates. The rule provides relief to nonpublic schools and responds to the recommendations of the State Comptroller's Audit Report on the Mandated Services Program.

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

Assessment of public comment: No public comment received.

#### 100.2(bb) – School District Report Cards

Justification for continuation without modification: The rule establishes criteria for the issuance of school district report cards by all public schools and requires school districts to annually prepare a report card and to make it available by appending it to copies of the proposed budget made publicly available. The report card must include

(a) measures of academic performance; (b) measures of fiscal performance; (c) special education placements; and (d) other measures, such as graduation and college-going rates, and attendance, suspension and dropout rates. The rule is necessary to comply with Chapter 474 of the Laws of 1996, which requires the Commissioner to establish criteria for the issuance and dissemination of school district report cards. It also satisfies federal public reporting requirements under the 1994 reauthorization of ESEA.

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

Assessment of public comment: No public comment received.

#### 156.12 – Contracts for Pupil Transportation Services

Justification for continuation without modification: The rule sets forth the requirements for boards of education that elect to award contracts for pupil transportation services through a request for proposals (RFP) instead of through competitive bidding. It includes the criteria that must be used in evaluating each proposal submitted in response to an RFP, the deadline by which school districts must request proposals, a process for awarding emergency contracts, and the specific documents that school districts must file with the Department. The rule is necessary to comply with Chapter 698 of the Laws of 1996, which requires the Commissioner to establish a process for the approval of contracts awarded in response to a request for proposals for pupil transportation services.

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

Assessment of public comment: No public comment received.

#### 156.3(c) – Qualifications for School Bus Drivers

Justification for continuation without modification: The rule provides for immediate testing of all new school bus drivers hired after September 1, 1997, and for a three-year phase-in of the testing requirement for veteran school bus drivers. The rule clarifies the standards of fitness for school bus drivers consistent with the recommendations of the Commissioner's School Bus Driver Instructor Advisory Committee convened pursuant to section 156.3(c)(2) of the Commissioner's Regulations.

Legal basis for rule: Education Law sections 207 and 3624.

Assessment of public comment: No public comment received.

#### 100.2(cc) – BOCES Report Cards

Justification for continuation without modification: The rule requires each board of cooperative educational services (BOCES) to prepare a BOCES report card and to append it to copies of the proposed administrative budget made publicly available. The report card must include measures of the academic performance of the BOCES educational services; measures of program participation, completion and placement in occupational education, special education, alternative education, and adult and continuing education; the aggregated performance of students of component school districts on State assessments; the percent of students in component school districts who earn Regents diplomas; and a comparison of each BOCES performance to statewide averages. The rule is consistent with the Board of Regents policy to publicly report on school performance and is necessary in order to comply with the provision in

Chapter 436 of the Laws of 1997, which requires that each BOCES issue a report card on an annual basis, pursuant to regulations of the Commissioner, commencing with the 1997-98 school year.

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

Assessment of public comment: No public comment received.

#### 100.12 – Instructional Computer Technology Plans

Justification for continuation without modification: The rule requires each school district to develop and maintain a plan for the use of instructional computer technology equipment in order to be eligible for aid for instructional computer technology expenses and identifies what should be included in the plan. The rule is necessary to comply with the provision in Chapter 436 of the Laws of 1997 which requires, as a condition for eligibility for State aid, that each school district develop and maintain a plan for the use of instructional computer equipment.

Legal basis for rule: Education Law sections 207 and 3602(26-a) and section 53 of Part A of section 1 of Chapter 436 of the Laws of 1997.

Assessment of public comment: No public comment received.

#### 170.8 –Annual School Budgets

Justification for continuation without modification: The rule requires school districts to prepare annual budgets and budget-related materials in plain language and organized in a manner that promotes public understanding of the material. The annual budgets must contain three components: an administrative component; a program component; and a capital component. The regulation is necessary to comply with the

provisions of Chapter 436 of the Laws of 1997 which requires district to prepare annual budgets containing the above-specified components.

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

Assessment of public comment: No public comment received.

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

Justification for continuation without modification: The rule establishes procedures relating to the evaluation of preschool students with disabilities and the recommendation for appropriate special education programs and services in the least restrictive environment. The rule also establishes approved rates for preschool programs and tuition reimbursement. Section 200.16 was subsequently revised in 2000, 2001 and 2005 to conform the Commissioner's Regulations to the federal IDEA statutes and regulations and State statute; to re-order the provisions of this section; and to make certain technical amendments, including correction of cross citations. Sections 200.1 (o) and (q), which were subsequently relettered as (q) and (v), define the terms "full day session" and "half-day session" for preschool students with disabilities. These regulations are necessary to comply with paragraph (b) of subdivision 5 of section 4410 of the Education Law, which compels the Commissioner to promulgate definitions needed to ensure that the individualized education program (IEP) of a preschool child indicates the extent of services to be provided to the child when a half-day or full-day program is recommended.

Sections 200.1(tt) and (uu), which were subsequently relettered (p) and (u), provide definitions of the terms "full-day preschool program" and "half-day preschool program." These regulations are necessary to comply with paragraph (b) of subdivision 5 of section 4410 of the Education Law, which compels the Commissioner to promulgate definitions needed to ensure that the IEP of a preschool child indicates the extent of services to be provided to the child when a half-day or full-day program is recommended.

Section 200.9(f)(2) establishes that the tuition reimbursement methodology for the calculation of tuition rates for programs approved under Articles 81 and 89 of the Education Law may include nondirect care cost parameters and hold harmless percentage, the rate of growth adjustment factor, the annual inflation factor and other factors to be applied in determining the tuition rate for the school year. This regulation is necessary in order to comply with section 4410(10) of the Education Law, which requires the Commissioner to determine annually the tuition rate for approved services or programs provided to preschool children pursuant to this section and in conformance with a methodology established pursuant to section 4405(4) of the Education Law.

Section 200.9(f)(3)(iii) of the Regulations of the Commissioner of Education establishes reconciliation rates for overpayment/underpayment adjustments for preschool programs prior to and including the 1994-95 school year and for the 1995-96 base year and thereafter and for programs no longer in operation. This regulation is necessary to ensure compliance with section 4410(11)(a)(ii) of the Education Law, which authorizes a municipality to recover overpayments made to a preschool provider.

Section 200.16(c) of the Regulations of the Commissioner establishes that: (1) for children in transition from early intervention programs, with the consent of the parents, the most recent evaluation report be provided to approved providers and the committee on preschool special education (CPSE); (2) an approved provider or the CPSE may review other assessments or evaluations to determine if they fulfill the regulations of the Commissioner; (3) the required summary report of a preschool evaluation omit information concerning the general type, duration and frequency of special services and programs needed and may not make reference to any specific provider of special services or program; and (4) prior to making a recommendation that would place a child in an approved program owned or operated by the same agency that conducted the evaluation, a CPSE may obtain an evaluation of the child from another approved evaluator prior to making a recommendation. These regulations are necessary to comply with section 4410.4(c) of the Education Law and to ensure that that a CPSE has appropriate evaluation information to make an objective recommendation on services and placement for the preschool child.

Section 200.16(d)(3) of the Regulations of the Commissioner, which was subsequently relettered section 200.16(e)(3), (1) requires the CPSE to recommend approved appropriate services and/or special programs and the frequency, duration and intensity of such services including, but not limited to, the appropriateness of single services or half-day programs based on the needs of the preschool child; (2) establishes the sequence of considerations for the provision of programs and services; (3) establishes that if a child needs a single related service, such service must be provided as a related service only or, where appropriate, as a special education itinerant

service; (4) establishes the least restrictive environment considerations and IEP documentation requirements for preschool students including a statement of the reasons why a preschool child requires a structured learning environment of 12 months' duration to prevent substantial regression, why less restrictive placements were not recommended when the recommendation is for the provision of special education services in a setting with no regular contact where age-appropriate peers without disabilities can be found, and if the IEP recommendation for a preschool child differs from that preferred by the parent, why the CPSE recommended a different program or service than that preferred by the parent. These regulations are necessary to comply with sections 4410(4)(c), 4410(5)(b)(i) and 4410(5)(h) of the Education Law to ensure that preschool students with disabilities receive needed services only in the least restrictive environment and are not unnecessarily recommended for more extensive services.

Section 200.16(h)(3)(iii) of the Regulations of the Commissioner, which was subsequently relettered 200.16(i)(3)(iii), allows special classes for preschool students to be provided on a half-day or a full-day basis. This regulation is necessary to comply with section 4410(5)(b)(i).

Section 200.16(h)(3)(v) of the Regulations of the Commissioner, which was subsequently relettered 200.16(i)(3)(v), states that (1) 12-month education services to preschool children must be consistent with the students' individual needs, as specified in the IEPs; and (2) nothing would prohibit a CPSE from recommending a special program or service, frequency or duration for a July and August for a preschool child that differs in services, programs, frequency or duration from the child's school year

program. This regulation is necessary to comply with section 4410(5)(h) of the Education Law and to provide flexibility on the part of CPSEs to recommend only those services a preschool child might need during the months of July and August.

Section 200.20(a)(1) and (2) of the Regulations of the Commissioner of Education states that no new or expanded preschool programs shall be given conditional or final approval subject to the moratorium established in section 4410(9)(iii) of the Education Law.

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

Assessment of public comment: No public comment received.

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

Justification for continuation without modification: This rule requires that a district plan be filed consistent with the time intervals required in section 3602(10), and that the district plan include an estimated budget. The rule is necessary to ensure consistency with Education Law section 3602(10), which requires that district plans be revised and made available for public inspection and review by the Commissioner every two years. The rule was subsequently revised in 1999 and 2010 to conform the Commissioner's Regulations to State statute and to correct a cross citation.

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

Assessment of public comment: No public comment received.

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

Justification for continuation without modification: The rule adds specially designed reading instruction, provided by an individual who holds a certificate valid for a reading teacher, to the continuum of services that may be recommended for a student with a disability and authorizes the provision of such instruction. The rule is necessary to ensure that specially designed reading instruction is provided by individuals with certification and expertise in the area of reading. The rule was subsequently revised in 2006 to correct a cross citation.

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

Assessment of public comment: No public comment received.

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

Justification for continuation without modification: The rule establishes a standardized methodology to develop regional maximum per trip rates for the reimbursement of transportation expenses incurred by municipalities providing services to preschool students with disabilities. The rule is necessary to implement section 4410(c)(1) of the Education Law, which requires the Commissioner to establish regional ceilings for each region of the State on the maximum allowable State reimbursement and sets out factors the Commissioner must consider in developing such ceilings, and thus ensure that the transportation rates for preschool children between counties in the same geographic regions of the State are not widely discrepant.

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

Assessment of public comment: No public comment received.

Sections 276.1(c), 276.10 and 279.10(d) - State Level Review of Impartial Hearing Officer Determinations Regarding Services for Students with Disabilities

Justification for continuation without modification: This rule, a portion of which was originally promulgated in Section 279.8 and since renumbered as Section 279.10, continues to be necessary to ensure that impartial hearing officers (IHOs) are aware of their responsibilities to determine disputes over a student's pendency placement pursuant to statute and to otherwise ensure that disagreements regarding a student's status during the due process proceeding are addressed in a timely manner.

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

Assessment of public comment: No public comment received.

OFFICE OF CULTURAL EDUCATION

185.5 and 185.12 - Local Government Records

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

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

Assessment of public comment: No public comment received.

#### 185.10(a) - Local Government Records

Justification for continuation without modification: The rule removed a requirement that each local government develop and approve a records management plan beforehand, in order to be eligible to apply to the Commissioner for a records management improvement grant. The rule was adopted in order to streamline the records management improvement grant application process by removing the burdensome requirement that a records management plan be developed and approved before that local government is eligible to apply for such grant.

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

Assessment of public comment: No public comment received.

#### 185.1, 185.7, 185.8, 188.2 and 188.20 - Local and State Government Records Management

Justification for continuation without modification: The rule was adopted to update language to reflect current technologies; to remove two definitions of “digital images” and “source code” that are no longer necessary (185.1); to add a new and more current definition of “automated information system” (185.1); to add a new definition of “SARA” (185.1); to remove the mandate that duplicate eye-readable copies be retained for certain records maintained as digitized images by local government (185.7); and update the definition of “State Archives and Records Administration”

(188.2). In addition, section 185.8 was repealed and section 188.20 was amended to consolidate in one regulation the provisions concerning the retention and preservation of electronic records of local and state government. The rule was adopted to remove the sometimes burdensome requirement that local government officials must maintain the paper original, or a paper copy, or a microform copy of all electronically imaged records which are scheduled to be retained for ten or more years. The rule reduces paperwork because local governments no longer need to keep or create and file a paper or microform copy of certain electronically imaged records. In addition, the repeal of section 185.8 and amendment of 188.20 consolidated in one regulation the provisions concerning the retention and preservation of electronic records of local and State government.

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

Assessment of public comment: No public comment received.

#### 188.21 - State Government Records Management

Justification for continuation without modification: Section 188.21 of the Regulations of the Commissioner of Education was amended to update the schedule of fees to reflect changes in the organization of State government and to establish a process for the Division of the Budget to reduce or waive fees under certain conditions. The rule is necessary to implement Arts and Cultural Affairs Law section 57.05 (9) and (11)(i) and (j), which authorizes the Commissioner of Education to implement a fee schedule to support records management activities for State government agencies and

to promulgate rules and regulations setting forth fees to be paid for records management services.

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

Assessment of public comment: No public comment received.

## OFFICE OF THE PROFESSIONS

### Section 24.7 (h) - Restoration of License

Justification for continuation without modification: This rule establishes time constraints and fee requirements for the filing of petitions for restoration of professional licenses which have been revoked or surrendered. The Board of Regents is authorized to "...restore a license which has been revoked" (Education Law §6511). This rule is necessary to implement a process for consideration by the Board of Regents of petitions for the restoration of a professional license which was either revoked or surrendered.

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

Assessment of public comment: No public comment was received.

### Part 65 - Licensure in Podiatry

Justification for continuation without modification: Part 65 was amended on August 1, 1997 to require all individuals who apply for licensure in podiatry on or after July 1, 2000 to have completed one year of supervised postgraduate hospital training in podiatry, acceptable to the Department. Pursuant to Education Law §7004 (3) the Commissioner is authorized to establish experience requirements for licensure in

podiatry. In 1992, the Department ceased requiring a practical examination for the licensure of podiatrists. The aforementioned regulation was added to assure that podiatrists have adequate clinical experience, given discontinuance of the practical examinations as an evaluative method of determining minimal competence.

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

Assessment of public comment: No public comment was received.

#### Section 61.15 - Dentistry

Justification for continuation without modification: The subject matter of this rule implements mandatory continuing education requirements for dentists. The regulation includes provisions for exemptions, conditional registrations and other procedures needed to implement the law. The regulation is needed to implement Education Law section 6604-a for dentists, by establishing standards for what constitutes acceptable formal continuing education, education requirements when there is a lapse in practice, requirements for licensees under conditional registration and standards for the approval of sponsors of continuing education to licensed dentists.

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

Assessment of public comment: No public comment was received.

#### Section 61.16 - Dental Hygiene

Justification for continuation without modification: The subject matter of this regulation implements mandatory continuing education requirements for dental hygienists. The regulation includes provisions for exemptions, conditional registrations

and other procedures needed to implement the law. The regulation is needed to implement Education Law section 6609-a, by establishing standards for what constitutes acceptable formal continuing education, educational requirements when there is a lapse in practice, requirements for licensees under conditional registration and standards for the approval of sponsors of continuing education to licensed dental hygienists.

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

Assessment of public comment: No public comment was received.

#### Section 63.7 - Pharmacy

Justification for continuation without modification: The subject matter of the regulation implements mandatory continuing education requirements for pharmacists. The regulation includes provisions for exemptions, conditional registrations and other procedures needed to implement the law. The regulation is needed to implement Education Law section 6827, by establishing standards for what constitutes acceptable formal continuing education, education requirements when there is a lapse in practice, requirements for licensees under conditional registration and standards for the approval of sponsors of continuing education to licensed pharmacists.

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

Assessment of public comment: No public comment was received.

#### Sections 29.13 - Massage Therapy

Justification for continuation without modification: This rule updates and clarifies the special provisions for unprofessional conduct in the profession of massage therapy by: (1) specifying which type of advertising is appropriate, while limiting that which is inappropriate; (2) explaining the employment relationship between a licensed massage therapist and an unlicensed owner of a massage therapy practice; and (3) conforming the regulatory language to the statutory terms of massage therapy and massage therapist. The rule is necessary to clarify and define unprofessional conduct in the practice of massage therapy and to conform regulatory language to statutory terms of massage therapy and massage therapist.

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

Assessment of public comment: No public comment was received.

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

Justification for continuation without modification: The rule: (1) increases, from 500 to 1000 hours, the amount of instruction and specifies minimum hours in certain curricular areas for the registration of professional massage therapy programs; (2) ensures that the massage therapy licensing examination measures candidates' knowledge of both western and oriental massage; (3) conforms the regulatory language to that in statute of the terms massage therapy and massage therapist; and (4) ensures that persons licensed as massage therapists on the basis of endorsement of licensure in other jurisdictions meet acceptable education, examination and practice standards. The rule is needed to ensure the quality of applicants' preparation for entry level licensure in massage therapy by upgrading educational requirements for professional

programs to include subject matter and modalities used in contemporary practice and to ensure the competency of individuals licensed through the endorsement of a license issued by another jurisdiction by establishing education, examination and practice standards.

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

Assessment of public comment: No public comment was received.

#### 78.4 (b) - Massage Therapy

Justification for continuation without modification: The rule amended subdivision (b) of section 78.4 to replace the term "grant" with the term "recommend", concerning State Education Department actions taken with respect to licensure by endorsement. : The rule is necessary to provide clarification that the State Education Department recommends to the Regents the endorsement of a license issued by another jurisdiction and that the Regents make the decision concerning whether to grant licensure by endorsement.

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

Assessment of public comment: No public comment was received.

#### 52.10, 72.1, 72.2 and 72.3 - Psychology

Justification for continuation without modification: The rule: (1) revises the curricular requirements for the registration of professional programs in psychology to conform the education requirements to nationally accepted standards; (2) consolidates and clarifies the experience requirement; (3) admits to the licensing exam, applicants

who have completed the required doctoral education and one year of supervised experience; and (4) corrects the name of the exam provider. The rule is needed to ensure the quality of applicants' preparation for entry-level licensure in psychology by upgrading educational requirements for professional programs. The rule specifies required core education coursework, while permitting a diversity of specializations in educational programs. Entry-level competency is further ensured by requiring that registered doctoral programs leading to licensure include one year of applied training. Since the promulgation of the rule, all doctoral programs in psychology that are registered as licensure qualifying, as well as psychology programs seeking registration as licensure qualifying, have meet these requirements.

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

Assessment of public comment: No public comment was received.

## OFFICE OF HIGHER EDUCATION

### 85.1 and 85.2 - Mentor-Teacher Internship Program

Justification for continuation without modification: The rule: (1) makes the requirements for and limitations on interns and mentors who participate in the Mentor-Teacher Internship Program and allowable costs for that program consistent with changes in statutory requirements; (2) removes an unnecessary reference to licenses issued by the City School District of the City of New York; and (3) clarifies that the budget for the program may include up to 10 percent of the salary of each mentor per mentor-intern relationship. The rule is needed to conform the Commissioner's Regulations with the requirements and limitations for interns and mentors set forth in

Education Law section 3033, as amended by section 117-b of Part A of section 1 of Chapter 436 of the Laws of 1997.

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

Assessment of public comment: No public comment received.

#### 145-9 - Merit Scholarships

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

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

Assessment of public comment: No public comment received.