

RULE REVIEW

Education Department

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

Section 207 of the State Administrative Procedure Act (SAPA) requires that each State agency review, after five years and thereafter at five-year intervals, each of its rules which is adopted on or after January 1, 1997 to determine whether such rules should be modified or continued without modification.

Pursuant to SAPA section 207, the State Education Department submits the following list of rules that were adopted during calendar year 2004 and 1999 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 2004

OFFICE OF ELEMENTARY, MIDDLE, SECONDARY AND CONTINUING EDUCATION

Section 156.3 – Nonpublic School Bus Drivers

Justification for continuation without modification: The rule implements the statutory requirements of Chapter 270 of the Laws of 2003 by applying school bus safety practices instruction and retraining requirements prescribed pursuant to Education Law section 3624 to drivers who operate transportation which is owned, leased or contracted for by private and parochial schools to the same extent as such requirements apply to drivers who operate transportation which is owned, leased or contracted for by public school districts.

Statutory authority: Education Law §§ 207, 305(34) and 3624 and Chapter 270 of the Laws of 2003.

Assessment of public comment: no comments were received.

Section 155.26 – Qualified Public Educational Facilities Bonds

Justification for continuation without modification: The rule establishes procedures, consistent with State and federal law, for the allocation of the State's Qualified Public Educational Facilities (QPEF) bond limitation amount to local educational agencies within the State.

Statutory authority: Education Law §§ 101, 207, 305(1) and (2) and 3713(1) and (2) and 26 USC 142(a) and 142(k).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule implements policy enacted by the Board of Regents relating to admission to and passing mark for Regents examinations and high school equivalency diploma requirements. The rule requires principals of public schools to admit to Regents examinations a candidate who is a school district resident and who seeks to take such examinations for the purpose of meeting the requirements for an earned degree pursuant to Regents Rule section 3.47(a)(2). This provision is consistent with amendments to Regents Rules that establish an additional pathway for students beyond compulsory school age to earn a college degree by

having passed and successfully completed all requirements for the following Regents examinations or the approved alternative assessments for these examinations: Comprehensive English, mathematics, U.S. history and government, global history and geography, and a science. The rule makes a technical change to add the citation in Regulations of the Commissioner of Education (section 100.5[a][5][i]) where there is an exception to the 65 passing mark on Regents examinations. The rule changes the subject distribution of the 24 college semester hours required for a pathway to earn a high school equivalency diploma to be consistent with amendments to Regents Rules relating to the satisfactory evidence candidates who are beyond compulsory school age must provide to degree-granting institutions to earn a college degree. The rule reduces the semester hour requirement in mathematics from six to three, eliminates the three semester hours in career and technical education and/or foreign languages, and allows a candidate to complete six semester hours in courses within the registered degree program.

Statutory authority: Education Law §§ 101, 207, 208, 209, 305, 308, 309 and 3204. Assessment of public comment: no comments were received.

Section 100.8 – Local High School Equivalency Diploma

Justification for continuation without modification: The rule is needed to allow the continuance of the External Diploma Program (EDP), which is a complete assessment program that allows adults to demonstrate and document the lasting outcomes and transferable skills for which a high school diploma is awarded. EDP is a competency-based, applied performance assessment system that expects adults to demonstrate their ability in a series of simulations that parallel job and life situations.

Statutory authority: Education Law §§ 101, 207, 208, 209, 305(1) and (2), 309, and 3204(3).

Assessment of public comment: no comments were received.

Section 164.2 – Adult Literacy Education Aid

Justification for continuation without modification: The rule amends certain requirements for not-for-profit organizations applying for adult literacy education grants and to deletes references to obsolete provisions. The rule is needed to provide not-for-profit organizations with increased flexibility in offering adult literacy education (ALE) programs, which are designated by the commissioner to serve persons who are receiving public assistance, who are unemployed, or who are economically or educationally disadvantaged, by deleting the 10-pupil minimum class size requirement and the requirement that ALE programs meet certain frequency and duration criteria set forth in section 168.3(b)(5) and (6), relating to Employment Preparation Education programs. This provides for eligibility for State aid to not-for-profit ALE providers serving small populations, such as in situations involving one-on-one tutoring or small groups of no more than 4 students, in which students receive between 1 to 3 hours of instruction per week. The rule also deletes obsolete references to section 167.3(b) and 167.4, which applied to programs funded under the federal Job Training Partnership Training Act, which Act was repealed by the Workforce Investment Act of 1998 (Pub.L. 105-220).

Statutory authority: Education Law § 207 and § 1 of Chapter 53 of the Laws of 2003.

Assessment of public comment: no comments were received.

Agency Representative:

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

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OFFICE OF HIGHER EDUCATION

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

Justification for continuation without modification: The rule establishes requirements for classroom teaching certification through the individual evaluation of candidates who have not completed registered teacher education programs. This has proven to be an important route to certification and accounts for approximately 19% of all first certificates issued. Therefore, this rule continues to be needed. The rule also streamlines examination requirements for candidates who already hold classroom teaching certification, establish coursework requirements for extensions and annotations of certificates. These refinements to certification requirements continue to be effective and necessary. Finally the rule removes unnecessary certification requirements in order to help alleviate the shortage of certified teachers in New York State. This need for additional teachers continues and this provision continues to be needed.

Statutory authority: Education Law sections 207(not subdivided), 305(1), (2) and (7), 3004(1) and 3006(1)(b).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule clarifies and corrects omissions in the new requirements for the certification of teachers in the classroom teaching service that became effective on February 2, 2004. These technical changes and corrections, therefore, should remain.

Statutory authority: Education Law §§ 207, 305(1), (2), and (7), 3001(2), 3004(1), 3006(1)(b), 3009(1) and 3010.

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule clarifies and supplements the new requirements for the certification. It implements requirements of Education Law section 3001 regarding citizenship, and adds provisions addressing interruptions due to military service, already-serving theater teachers, and new pathways to certification for speech-language pathologists and out-of-state teachers. These pathways continue to be needed to help address the continuing shortage of certified teachers in New York State.

Statutory authority: Education Law §§ 207, 305(1), (2), and (7), 3001(2), 3004(1) and (7), 3006(1)(b), 3009(1) and 3010.

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule establishes alternatives to the requirement that a candidate for a col-

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

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

Statutory authority: Education Law §§ 207, 210, 218(1), 224(4), 3204(2), 3205(1), (2) and (3), 3210(2)(d), 3212(2)(d) and 3234(1).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: Amendment to sections 80-3.6, 83.1, 83.3, 83.5 and 87.5 updated the title of the head of the State Education Department's Office of Teaching Initiatives in various provisions. As this title is also now outdated, further amendment of these sections is now necessary and will be presented in future rulemaking. The other sections, 80-4.1 and 80-4.3, deferred implementation of the effective date of the requirements for a gifted education extension of a teaching certificate until September 1, 2005. This date should stand as is.

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

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule establishes the supplementary certificate to enable a teacher certified in one classroom teaching title, upon meeting prescribed requirements, to provide instruction in a different title in the classroom teaching service for which there is a demonstrated shortage of certified teachers while earning certification in the new areas. The rule is still needed to address persistent shortages of certified teachers in certain subject matter areas, including but not limited to mathematics, the sciences, bilingual education, and special education, and in certain geographic areas of the State.

Statutory authority: Education Law §§ 207, 305(1), (2), and (7), 3001(2), 3004(1), 3006(1)(b), 3009(1) and 3010.

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule incorporates by reference requirements of the No Child Left Behind Act of 2001 (NCLB) relating to qualifications of teachers and paraprofessionals in order to ensure that local educational agencies are in compliance with this Federal law.

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

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

Statutory authority: Education Law §§ 101, 207, 215, 305(1) and (2), and 3713(1) and (2).

Assessment of public comment: no comments were received.

OFFICE OF THE PROFESSIONS

Sections 64.7 of the Commissioner's Regulations - Nursing

Justification for continuation without modification: The rule is necessary to implement statutory requirements. This rule establishes requirements governing the execution by registered professional nurses of non-patient specific orders of licensed physicians or certified nurse practitioners to administer purified protein derivative (PPD) mantoux tuberculin skin tests.

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

Assessment of public comment: no comments were received.

Section 73.5 of the Commissioner's Regulations - Chiropractic

Justification for continuation without modification: The rule is necessary to implement statutory requirements. The rule establishes continuing education requirements and standards that licensed chiropractors must meet to be registered to practice in New York State and requirements for the approval of sponsors of such continuing education.

Statutory authority: Education Law sections 207(not subdivided), 212 (3), 6502(1), 6504(not subdivided), 6507(2)(a), 6508(1), and 6554-a.

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule is necessary to implement statutory requirements. The rule sets forth requirements for licensure in the profession of social work, requirements for an authorization qualifying licensed clinical social workers for insurance reimbursement, and requirements relating to the supervision of licensed master social workers who provide licensed clinical social work services and for baccalaureate social workers who provide licensed master social work services. Some of the sections have been amended since the 2004 amendment to make necessary adjustments.

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

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule is necessary to implement statutory requirements. The rule implements Education Law section 7006(4) by establishing the requirements pursuant to which an unlicensed assistant providing supportive services to a licensed podiatrist may x-ray a patient's foot, while under the direct supervision of the licensed podiatrist, provided that the unlicensed assistant has completed an acceptable course of study, the content of which is set forth in the rule.

Statutory authority: Education Law sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), and 7006(4).

Assessment of public comment: no comments were received.

Section 61.18 of the Commissioner's Regulations - Dentistry

Justification for continuation without modification: The rule adjusts the requirements for the residency option pathway for dental licensure by deleting an unnecessary provision that required the dental residency program to be completed within a time frame of two years prior to application for licensure.

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

Statutory authority: Education Law sections 207 (not subdivided), 6506(1), 6507(2)(a) and (3)(a), and 6604(3).

Assessment of public comment: no comments were received.

OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES

Section 200.1(i) and (h) Definitions

Justification for continuation without modification: The rule corrected certain citations and terms and replaced references to the term “paraprofessional” with the term “supplementary school personnel” in the definitions of class size and paraprofessional. The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner's Regulations and the provisions of the federal No Child Left Behind (NCLB) Act (Public Law 107-110).

Statutory authority: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule replaced the reference to the term "paraprofessional" with the term "supplementary school personnel." The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner's Regulations and the provisions of the federal NCLB (Public Law 107-110).

Statutory authority: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule replaced the reference to the term "paraprofessional" with the term "supplementary school personnel." The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner's Regulations and the provisions of the federal NCLB (Public Law 107-110). (The rule was amended in 2005 to repeal requirements for CSPD plans and to require that schools include professional development activities for professional staff and supplementary school personnel staff working with students with disabilities in the professional development plan pursuant to section 100.2 of the Commissioner's Regulations.)

Statutory authority: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule replaced references to the term "paraprofessional" with the term "supplementary school personnel." The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner's Regulations and the provisions of the federal NCLB (Public Law 107-110).

Statutory authority: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

Section 200.5(i)(3) Impartial Hearings

Justification for continuation without modification: The rule is necessary to prescribe procedures for the conduct of impartial hearings to comply with the Individuals with Disabilities Education Act (IDEA) and its implementing regulations.

The rule clarifies that the impartial hearing officer (IHO) may not accept appointment unless he or she is available to initiate the hearing within the first 14 days of being appointed; added that the hearing or a prehearing conference must be scheduled to begin within the first 14 days of the IHO's appointment, unless an extension is granted; added that the IHO may assist an unrepresented party by providing information relating only to the hearing process at all stages of the hearing and that nothing contained in the regulations is to be construed to impair or limit the authority of the IHO to ask questions of counsel or witnesses to clarify or complete the record; added that a prehearing conference with the parties may be scheduled, that such conference may be conducted by telephone, and that a transcript or a written summary of the prehearing conference must be entered into the record by the IHO; delineated the purposes of the prehearing conference; required, except as provided for in section 201.11, that each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing at least five business days prior to a hearing; added that the IHO, wherever practicable, must enter into the record a stipulation of facts and/or joint exhibits agreed to by the parties; added that the IHO may receive any oral, documentary or tangible evidence except that the IHO must exclude evidence that he or she determines to be irrelevant, immaterial, unreliable or unduly repetitious and that the IHO may receive testimony by telephone, provided that such testimony must be made under oath and

must be subject to cross examination; added that the impartial hearing officer may limit examination of a witness by either party whose testimony the IHO determines to be irrelevant, immaterial or unduly repetitious; added that the IHO may limit the number of additional witnesses to avoid unduly repetitious testimony; added that the IHO may take direct testimony by affidavit in lieu of in-hearing testimony, provided that the witness giving such testimony must be made available for cross examination; added that the IHO may receive memoranda of law from the parties not to exceed 30 pages in length, with typed material in minimum 12 point type (footnotes minimum 10 point type) and not exceeding 6 1/2 by 9 1/2 inches on each page, and added that each party will have up to one day to present its case unless the IHO determines that additional time is necessary for a full, fair disclosure of the facts required to arrive at a decision and that additional hearing days, if required, must be scheduled on consecutive days wherever practicable.

Statutory authority: Education Law sections 101(not subdivided), 207(not subdivided), 305(1), (2) and (20), 4402(1), 4403(3) and 4404(1).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule is necessary to prescribe procedures for the conduct of impartial hearings to comply with the IDEA and its implementing regulations.

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

Statutory authority: Education Law sections 101(not subdivided), 207(not subdivided), 305(1), (2) and (20), 4402(1), 4403(3) and 4404(1).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule replaced references to the term "paraprofessional" with the term "supplementary school personnel." The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner's Regulations and the provisions of the federal NCLB (Public Law 107-110). (The rule was amended in 2007 to re-letter section 200.6(g) to section 200.6(h).)

Statutory authority: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule replaced references to the term “paraprofessional” with the term “supplementary school personnel.” The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner’s Regulations and the provisions of the federal NCLB (Public Law 107-110).

Statutory authority: Education Law sections 101(not subdivided), 207 (not subdivided), 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule replaced the reference to the term “paraprofessional” with the term “supplementary school personnel.” The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner’s Regulations and the provisions of the federal NCLB (Public Law 107-110). (The rule was amended in 2005 to re-letter section 200.16(h) to section 200.16(i).)

Statutory authority: Education Law sections 101(not subdivided), 207 (not subdivided), 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule aligns State regulations with section 4403(3) of the Education Law, as amended by Chapter 492 of the Laws of 2003, to ensure that a judicial appeal of a decision of the State review officer is by means of a proceeding in State Supreme Court pursuant to Article 4 of the Civil Practice Law and Rules.

Statutory authority: Education Law sections 101, 207, 4403(3) and 4404(3), and Chapter 492 of the Laws of 2003.

Assessment of public comment: no comments were received.

OFFICE OF CULTURAL EDUCATION

Sections 185.5 and 185.12 - Local Government Records Management.

Justification for continuation without modification: The rule revised Records Retention and Disposition Schedule ED-1 to make needed changes and additions to minimum retention periods for records of school districts, boards of cooperative educational services, county vocational education and extension boards, and teacher resource and computer training centers. The rule is necessary because section 57.25(2) of the Arts and Cultural Affairs Law requires the commissioner of education to develop, adopt by regulation, issue and distribute to local governments records retention and disposition schedules establishing minimum legal retention periods. The 2004 revisions to the rule made necessary changes and additions to ensure that concerned local governments have up-to-date standards for records retention disposition.

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

Assessment of public comment: no comments were received.

OFFICE OF MANAGEMENT SERVICES

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

Justification for continuation without modification: The rule is needed to conform the Commissioner’s Regulations to Public Officers Law section 89(3) and the regulations promulgated by the Committee on Open Government, consistent with the holding in *Lecker v. New York City Board of Education*, 157 AD2d 486 (1st Dept). In that decision, the Court upheld a determination by the Supreme Court, New York County, that denied petitioner’s application for an order directing the New York City Board of Education to amend its regulations

relating to FOIL to require the Board of Education to either grant or deny access to its records within 10 days after acknowledgment of receipt of the request for records. While noting that this requirement was contained in the regulations promulgated by the Committee on Open Government (21 NYCRR 1401.5[d]), the Court determined that such regulation was invalid as inconsistent with Public Officers Law section 89(3), which contains no such time limitation but merely requires that the person requesting a record be furnished with a statement of the “approximate date when such request will be granted or denied.” The Committee on Open Government subsequently amended section 1401.5 to remove the 10-day requirement. The amendment to section 187.4 of the Commissioner’s Regulations removes identical language imposing such 10-day requirement.

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

Statutory authority: Education Law sections 207, 305(6) and Public Officers Law sections 87(1)(b) and 89(3).

Assessment of public comment: no comments were received.

OFFICE OF STATE REVIEW

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

Justification for continuation without modification: The rule continues to conform the Regulations with the Federal Individuals with Disabilities Education Act (IDEA) and 34 CFR section 300.515, by complying with the timelines for issuing a by a State Review Officer.

Statutory authority: Education Law sections 101, 207, 311, 4403(1) and (3), 4404(2) and 4410(13).

Assessment of public comment: no comments were received.

B. CALENDAR YEAR 1999

OFFICE OF ELEMENTARY, MIDDLE, SECONDARY AND CONTINUING EDUCATION

Section 100.2(m) - Local Assistance Plans

Justification for continuation without modification: The regulation is necessary to satisfy the public school reporting requirements of the No Child Left Behind (NCLB) Act, 20 USC section 6311(h)(2), and achieve the Regents goal that all educational institutions will meet Regents high performance standards. The regulations were last amended in August 2003 to bring them into alignment with the requirements of the NCLB.

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

Assessment of public comment: no comments were received.

Section 100.2(p) - Schools Under Registration Review

Justification for continuation without modification: The regulation is necessary to meet the requirements of the No Child Left Behind (NCLB) Act, 20 USC section 6316, relating to school and district accountability and achieve the Regents goal that all educational institutions will meet Regents high performance standards. The regulations were last amended in August 2003 to bring them into alignment with the requirements of NCLB.

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

Assessment of public comment: no comments were received.

Part 119- Charter schools

Justification for continuation without modification: The rule is necessary to implement statutory requirements by establishing standards for the calculation of school district obligations to charter schools and the manner in which unpaid obligations will be recovered by the State for payment to charter schools. The rule also establishes standards for participation in public employee retirement systems by those charter schools electing to do so.

Statutory authority: Education Law section 207(not subdivided), 2854(c) and 2856(1) and (2), and Chapter 4 of the Laws of 1998.

Assessment of public comment: no comments were received.

Sections 155.1-155.21 - Comprehensive Public School Safety Program

Justification for continuation without modification: The regulations are necessary to comply with Chapters 56 and 58 of the Laws of 1998 to specify requirements for school districts to properly maintain, manage and improve public school facilities in order to provide sound educational environments for New York State's students, including the preparation of a five-year capital facilities plan that is updated annually; structural safety inspections; annual visual inspections; compliance with the Uniform Safety Standards for School Construction and Maintenance Projects and the Uniform Code of Public School Building Inspections, Safety Rating and Monitoring, and Comprehensive Public School Safety Program.

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

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: These regulations implement policy adopted by the Board of Regents to specify the State learning standards, the program and unit of study requirements and the assessment requirements for students at the elementary, middle and high school levels, including the requirements for high school graduation and earning a diploma. The regulations were last amended in November 2003 to reflect changes in Regents policy.

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

Assessment of public comment: no comments were received.

Sections 154.2 through 154.5 - Limited English Proficiency

Justification for continuation without modification: The rule requires school districts that are claiming State aid for the instruction of students with limited English proficiency (LEP) to increase the amount of time for English language instruction to strengthen and improve bilingual education and free-standing English as a second language programs to help LEP students meet Regents standards and pass the new State Assessments. The regulations were amended in April 2003 to conform to the accountability provisions of the federal No Child Left Behind Act and to establish criteria for the identification and assessment of students with limited English proficiency through the use of the Language Assessment Battery-Revised test and the New York State English as a Second Language test.

Statutory authority: Education Law sections 207 (not subdivided), 215 (not subdivided), 3204(2), (2-a), (3) and (6), and 3602(10) and (22).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The amendment to section 154.4(a) was necessary to extend until September 1, 1999, the deadline for submission of the plan prescribed in section 154.4(a) that describes how the additional time requirements for English language instruction will be implemented in their free-standing English as a second language and bilingual education programs during the 1999-2000 and 2000-2001 school years. The rule also specified that the additional time requirements for English language instruction set forth in section 154.2(f) and (g) be implemented in 1999-2000 for grades 7-12 and in 2000-2001 for grades K-6. The addition of section 154.5 established a procedure to grant a one-year extension to certain schools with LEP students in grades 7-12 to the 2000-2001 school year, to implement additional time requirements for English language instruction in their bilingual and free-standing English as a second language programs contained in subdivisions 154.2(f) and (g).

Statutory authority: Education Law sections 207(not subdivided),

215(not subdivided), 2117(1), 3204(2), (2-a), (3) and (6), 3602(10) and (22).

Assessment of public comment: no comments were received.

OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES

Section 200.1 Definitions

Justification for continuation without modification: The rule is needed in order to ensure compliance with federal regulations 34 CFR sections 300.5, 300.6, 300.7, 300.8, 300.9, 300.16, 300.19, 300.20, 300.24, 300.26, 300.15 and 300.571. The rule amended or added the following definitions relating to special education: adapted physical education, assistive technology device, assistive technology service, change in placement, child's teacher, consent, consultant teacher, days, functional behavioral assessment, general curriculum, individualized education program, mediator, native language, parent, parent counseling and training, preschool student with a disability, prior notice, regular education teacher, related services, school health services, special class, specially designed instruction, special education, special education provider, special education teacher, student with a disability and travel training.

Statutory authority: Education Law sections 207(not subdivided), 4401(1) - (11), 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

Section 200.2 Board of Education Child Find Responsibilities

Justification for continuation without modification: The rule is needed in order to ensure compliance with 34 CFR section 300.454. The rule amended the requirements relating to procedures to locate, identify and evaluate all nonpublic private school students with disabilities.

Statutory authority: Education Law sections 207(not subdivided), 4401(1) - (11), 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule is needed to align State regulations to State law which requires that schools provide pre-referral supports and services to ensure appropriate referrals of students who need special education. The rule added a requirement that the board of education adopt policies to ensure that students with disabilities be involved in and progress in the general education classes; establish a plan and policies for implementing school-wide approaches and pre-referral interventions prior to a referral for special education; and establish plans and policies for the appropriate declassification of students with disabilities.

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

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule is needed to ensure compliance with 34 CFR section 300.135, which requires that the State have in effect a comprehensive system of personnel development. The rule added the requirement for each board of education to annually submit to the State Education Department a plan that demonstrates that all personnel providing services to students with disabilities are adequately trained.

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

Assessment of public comment: no comments were received.

Section 200.3 Committees on Special Education

Justification for continuation without modification: The rule is necessary to conform to federal regulations and State law relating to membership of the CSE, CPSE and Subcommittees. The rule amends the required membership of the Committee on Special Education (CSE), Committee on Preschool Special Education (CPSE) and the Subcommittee on Special Education to add members required by

federal law and to provide that a parent of a student may decline the participation of the additional parent member.

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

Assessment of public comment: no comments were received.

Section 200.4(a) Referrals for Special Education Services

Justification for continuation without modification: The rule is necessary to align State regulations with Education Law section 4402 as amended by Chapter 405 of the Laws of 1999. The rule was amended relating to the withdrawal of a referral for special education to add that the building administrator and the parent could meet to determine if additional general education support services, including academic intervention services, could be provided to the student as an alternative to special education.

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

Assessment of public comment: no comments were received.

Section 200.4(b) Individual Evaluation

Justification for continuation without modification: The rule is needed to conform State regulations to federal regulations relating to the required components of evaluations. The rule was amended to add that the individual evaluation include a variety of assessment tools and strategies, including information provided by the parent, to gather relevant functional and developmental information about the student and information related to enabling the student to participate and progress in the general education curriculum; and to add that the evaluation must include a functional behavioral assessment for a student whose behavior impedes his or her learning or that of others.

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

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule is needed to align State regulations to federal regulations in 34 CFR section 300.533. The rule amended the requirements relating to the determination of needed evaluation data for initial and reevaluations of students with disabilities.

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

Assessment of public comment: no comments were received.

Section 200.4(b)(6) Evaluation Procedures

Justification for continuation without modification: The rule is necessary to conform to federal regulations in 34 CFR sections 300.532, 300.534 and 300.535. The rule amended requirements to add that evaluations be administered by individuals who are knowledgeable about the test or procedures; that assessments not conducted under standard conditions must include a description of how the administration varied from standard administration; that no single procedure be used to determine a student's eligibility for special education; that evaluations must be comprehensive and use technically sound instruments; that assessment tools and strategies are used that provide relevant information to determine a student's educational needs; that a copy of the evaluation report be provided to the student's parent; that the procedures for evaluating students suspected of having a learning disability must be consistent with federal regulations; and that the procedures for conducting expedited evaluations must meet the requirements of section 201.6 of the Regulations of the Commissioner.

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

Assessment of public comment: no comments were received.

Section 200.4(c) Eligibility Determinations

Justification for continuation without modification: The rule is necessary to conform State regulations with federal regulations in 34 CFR

section 300.534. The rule adds requirements relating to eligibility determinations for a student with a disability that the parent must be given a copy of the evaluation report and the documentation of eligibility; that a student may not be determined eligible for special education if the determinant factor is lack of instruction in reading or math or limited English proficiency; that a school must evaluate a student prior to declassification (which does not include prior to graduation or aging out).

Statutory authority: 34 CFR section 300.534 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

Section 200.4(d) IEP Recommendations

Justification for continuation without modification: The rule is necessary to conform State regulations to federal regulations in 34 CFR section 300.346. The rule adds that, in developing the IEP, the Committee must consider the results of the initial or most recent evaluation, the student's strengths, the concerns of the parents, the student's results on State or district-wide assessments and other special considerations. The rule also adds that the IEP must include program modifications or supports for school personnel; testing accommodations a student needs in the administration of district-wide assessments and, consistent with Department policy, State assessments; and a statement of a particular device or service a student needs to receive a free appropriate public education.

Statutory authority: 34 CFR 300.346 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

Section 200.4(d)(4) IEP Development

Justification for continuation without modification: The rule regarding participation by private school representatives is necessary to conform to federal regulations in 34 CFR section 300.349. The rule regarding participation of a person knowledgeable about the evaluation is necessary to align State regulations to federal regulations in 34 CFR section 300.344, which requires each Committee meeting to include an individual who can interpret the instructional implications of evaluation results. The rule added a requirement that a school district use other methods to ensure participation by the private school or facility, such as individual or conference telephone calls, to ensure private school participation in an IEP meeting; and repeals the requirement that the Committee ensure the participation of a person knowledgeable about the individual evaluation conducted and the evaluation results for a student with a disability who has been evaluated for the first time.

Statutory authority: 34 CFR sections 300.344 and 300.349 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule is necessary to align State regulations to federal regulations in 34 CFR section 300.552. The rule added that, in selecting the least restrictive environment, consideration must be given to any potential harmful effect on the student or on the quality of services that he or she needs; and that a student with a disability may not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

Statutory authority: 34 CFR section 300.552 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

Section 200.4(e) IEP Implementation

Justification for continuation without modification: The rule is necessary to ensure IEP implementation in a timely manner consistent with the requirements in 34 CFR sections 300.301 and 300.342. The rule was amended to add that there may be no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education to the student is being determined; and that teachers and other providers must have access to a copy of the student's IEP. (This later rule was amended in 2003 consistent with Chapter 408 of the Laws of 2003.)

Statutory authority: 34 CFR sections 300.301 and 300.342 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

Section 200.4(e) Annual Review and Reevaluations

Justification for continuation without modification: The rule is necessary to align State regulations with federal regulations in 34 CFR sections 300.346, 300.535, 300.536 and 300.552. The rule was amended to require that a student's placement in the least restrictive environment be a consideration in the annual review and that the results of any reevaluation must be addressed by the CSE or CPSE in a meeting.

Statutory authority: 34 CFR sections 300.346, 300.535, 300.536 and 300.552 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: This rule is necessary to be consistent with amended section 200.4(d) of the Regulations of the Commissioner of Education. This rule amended the requirements for IEP information developed by the school district where the student last attended.

Statutory authority: Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

Section 200.5 Due Process Procedures

Justification for continuation without modification: The rule is necessary to align State regulations with federal law and regulations. This rule repealed section 200.5 and replaced it with a new section 200.5 relating to prior notice, consent, notice of meetings, parent participation in CSE meetings, confidentiality of personally identifiable data, procedural safeguards notice, independent educational evaluations, mediation, impartial hearings, appeal to a State review officer of the State Education Department, State complaint procedures and surrogate parents.

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

Assessment of public comment: no comments were received.

Section 200.6(a) Continuum of Services

Justification for continuation without modification: The rule clarifies that special education includes services that could be provided in a student's general education classes to ensure a student's placement in the least restrictive environment. The rule amends requirements to add that special education services could be provided in a general education class.

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

Assessment of public comment: no comments were received.

Section 200.6(d) Consultant Teacher Services

Justification for continuation without modification: The rule is necessary to ensure students with disabilities are able to receive consultant teacher services, as appropriate, in combination with other special education services such as resource room and related services. The rule repealed the requirement that a student with a disability be enrolled full-time in general education classes in order to be provided consultant teacher services and replaced the term "occupational education" with "career and technical education."

Statutory authority: Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

Section 200.6(e) Related Services

Justification for continuation without modification: The rule is necessary to align State regulations with federal regulations at 34 CFR section 300.347. The rule provides that the location of the related services must be documented in the IEP.

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

Assessment of public comment: no comments were received.

Section 200.6(g) Special Classes

Justification for continuation without modification: The rule is necessary since the variance is applicable only to the extent that the Legislature extends the sunset provision and to comply with changes to State law. Therefore, any reference to a particular year required an annual amendment to State regulations. The rule provides that a variance from the special class sizes for middle and secondary students can be implemented to the extent authorized by law, repealing references to the school years 1995-96 and 1996-97. The rule also provides that a special class with 15 students in New York City could only be increased by one additional student through this variance process.

Statutory authority: Education Law sections 207(not subdivided), 4402(2)(d) and (6), 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

Section 200.6(h) Home and Hospital Instruction

Justification for continuation without modification: The rule is necessary to ensure that the CSE considers the least restrictive environment and the unique needs of a student with a disability when making a home or hospital instruction recommendation. The rule adds that a student with a disability on home and/or hospital instruction must receive instruction and related services as recommended on the IEP and that a student shall only be recommended for home and/or hospital instruction if that is the least restrictive environment for the student.

Statutory authority: Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

Section 200.7 Approval of Private Schools for Students with Disabilities

Justification for continuation without modification: The rule is necessary to conform to federal regulations 34 CFR sections 300.401 and 300.519 through 300.529. The rule requires that the school conduct and discipline procedures in an approved school, a State-operated school and a State-supported school must be consistent with section 100.2(l) and Part 201 of the Commissioner's Regulations.

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

Assessment of public comment: no comments were received.

Section 200.7 State-Operated Schools

Justification for continuation without modification: The rule is necessary to ensure compliance with federal regulations 34 CFR sections 300.344 and 300.506. The rule conforms the required members of the multidisciplinary team of a State-operated school to the required members in federal regulations 34 CFR section 300.344 and provides that a parent of a child in a State-operated school may request mediation to resolve a dispute.

Statutory authority: 34 CFR sections 300.344 and 300.506 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

Section 200.8 State Assistance for Instruction of Students with Disabilities

Justification for continuation without modification: The rule is necessary to make technical corrections to cross citations; to clarify the term "days" consistent with the amended definition in section 200.1 of the Commissioner's Regulations; and to replace the term "triennial evaluation" with the term "reevaluation."

Statutory authority: Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule is nec-

essary to conform State regulations to 34 CFR section 300.534. The rule made technical corrections to cross citations and certain terms; provided that the summary report of the evaluation not include a recommendation as to location of services; repealed the requirement that the parent must request the approved evaluator to provide the parent with a copy of the evaluation summary; and required that the CPSE provide a copy of the evaluation report and the documentation of eligibility to the parent, for purposes of eligibility and continuing eligibility determinations.

Statutory authority: 34 CFR section 300.534 and Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule makes technical corrections to cross citations and certain terms and provides that the board of education must notify the parent if it sends the recommendation back to the CPSE.

Statutory authority: Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule is necessary to align cross citations with amended sections in the Regulations.

Statutory authority: Education Law sections 207(not subdivided), 4401(1)-(11), 4402, 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule is necessary to clarify procedural safeguards and notice requirements as they relate to preschool students with disabilities. The rule requires that a procedural safeguards notice be provided to a parent upon initial referral, each notification of an IEP meeting, upon reevaluation of the child and upon receipt of a request for an impartial hearing; and requires that the notice upon initial referral must request consent to the proposed evaluation and advise the parent of the right to consent or withhold consent to the evaluation and initial provision of services to a student not previously identified, and indicate that if the parent does not provide such consent, no further action will be taken by the CPSE until consent is obtained.

Statutory authority: 34 CFR sections 300.500 through 300.505 and Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule is necessary to ensure the CSE meeting notice is provided in accordance with section 200.4(c) of the Commissioner's Regulations.

Statutory authority: 34 CFR section 300.345 and Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule is necessary to ensure compliance with 34 CFR section 300.506 and section 4404-a of the Education Law. The rule provides that the board of education must ensure that mediation sessions are available to the parent of a preschool child.

Statutory authority: 34 CFR section 300.506 and Education Law section 207(not subdivided), 4403(3) and 4404-a of the Education Law.

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule is necessary to ensure compliance with federal regulations in 34 CFR sections 300.660 through 300.662. The rule provides that State complaint investigations shall be conducted in accordance with section 200.5(m) of the Commissioner's Regulations.

Statutory authority: 34 CFR sections 300.660 through 300.662 and Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule is necessary to align this section with other amended sections of the Commissioner's Regulations by correcting certain cross citations and terms.

Statutory authority: Education Law sections 207(not subdivided), 4401(1)-(11), 4402, 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

Section 200.20 Approval, Operation and Administration of Preschool Programs

Justification for continuation without modification: The rule is necessary to align this section with other amended sections of Part 200 of the Commissioner's Regulations by correcting certain cross citations and the name of the State's special education office.

Statutory authority: Education Law sections 207(not subdivided), 4401(1)-(11), 4202, 4403(3) and 4410(13).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule is necessary to align State regulations with federal regulations and State law relating to the discipline of a student with a disability. The rule was added to define terms relating to disciplinary actions of students with disabilities; to establish the requirements for CSEs to conduct functional behavioral assessments and develop and implement behavioral intervention plans for students with disabilities; to establish the requirements for CSEs to conduct manifestation determinations; to establish the protections for students presumed to have a disability for discipline purposes; to establish general procedures for suspensions and removals of students with disabilities, including parental notice, five school day suspensions or removals, ten school day suspensions or removals, exceptions for patterns of suspensions or removals, and change in placement to an interim alternative educational setting (IAES) for behavior involving weapons, illegal drugs or controlled substances; authority of impartial hearing officers to order a change in placement to an IAES in a dangerous situation; coordination with superintendent's hearing and other due process procedures applicable to all students; provision of services during suspensions; and expedited due process hearings.

Statutory authority: 34 CFR sections 300.121 and 300.519 through 300.529 and Education Law sections 207(not subdivided), 4403(3) and 3214(3)(c).

Assessment of public comment: no comments were received.

Part 247 – Vocational Rehabilitation Program

Justification for continuation without modification: These regulations are necessary to ensure that the vocational rehabilitation program is conducted according to federal requirements set forth in the 1998 amendments to the Rehabilitation Act. This rule enacted certain amendments to Part 247 to conform State regulations relating to the vocational rehabilitation program to changes in federal law made in 1998 by the reauthorization of the Rehabilitation Act (Public Law 105-22).

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

Assessment of public comment: no comments were received.

OFFICE OF HIGHER EDUCATION

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

Justification for continuation without modification: Section 145-2.1(a)(4) defines part-time study for State student financial aid purposes (TAP, etc.) for students with disabilities, as defined in the federal Americans with Disabilities Act (42 USC 12102(2)), as enrollment for at least 3 but less than 12 semester hours per semester or the equivalent, or at least 2 but less than 8 semester hours per quarter. Chapter 332 of the Laws of 1998 amended subdivision (4) of section 661 of the Education Law to eliminate the full-time attendance requirement for students with disabilities. The law did not specify the minimum course load that students with disabilities must carry. Section 145-2.1(a) defines part-time study as enrollment for at least six semester hours in a semester. However, the sponsors of Chapter 332 advised the State Education Department that the intent was for students with disabilities to be eligible for TAP providing they enroll for at least three semester hours, necessitating the amendment to the regulation. Based on guidance from Office of Counsel, it was also necessary to include the reference to the federal statute contained in Education Law and specify that, to be eligible, students must be determined to be disabled in accordance with the Americans with Disabilities Act.

Statutory authority: Education Law sections 207(not subdivided) and 661(4)(d).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: In 1998, the Regents enacted "Teaching to Higher Standards: New York's Commitment." This policy statement provided the framework for sweeping changes to pre-service and in-service teacher education. In enacting these policy changes, the Regents were acknowledging the vital role played by the classroom teacher in improving student learning and achievement. The Regents believed there was a need to create a stronger linkage between the teacher preparation programs and the Regents learning standards for all students. In addition, it was important that all teachers be prepared to teach all students, especially students with disabilities and English language learners. As the State moved to establish rigorous learning standards for all students and increase graduation requirements, the Regents believed that such sweeping reforms can only be successful if all our students had access to highly qualified and certified teachers.

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

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The amendment requires districts and BOCES to adopt plans for the annual professional performance review of their teachers. Ensuring that all teachers remain current and effective in the classroom to help students attain the Regents learning standards and graduation requirements continues as a central feature of the Regents reform agenda for teaching and, therefore, this rule should remain.

Statutory authority: Education Law sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2), and 3604(8).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule requires districts and BOCES to include in their professional development plans provisions for teachers holding Professional certificates to complete 175 hours of professional development every five years to maintain their certificates. This rule is still needed to assist teachers in meeting this certification requirement.

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

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: This rule establishes the provisions of the Albert Shanker Grant program, pursuant to Education Law section 3004-a, for New York State teachers seeking a National Teaching Certificate from the National Board for Professional teaching Standards. The program continues and, therefore, this rule should remain.

Statutory authority: Education Law sections 207(not subdivided) and 3004-a(4).

Assessment of public comment: no comments were received.

OFFICE OF THE PROFESSIONS

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

Justification for continuation without modification: The rule is needed to reflect a change in the internal organization of the Office of Professional Discipline. The rule also prescribes that the existing procedures set forth for physicians, physician assistants and specialist assistants are applicable to cases in which charges of professional misconduct were served on or before July 26, 1991, the effective date of Chapter 606 of the Laws of 1991. This is necessary because Chapter 606 provided the Department of Health with the responsibility for administering professional discipline proceedings against such licensees in cases served after that date.

The rule changes the title of the chief administrator of the Office of Professional Discipline from "Executive Director of the Office of Professional Discipline" to "Director of the Office of Professional Discipline" and clarifies the applicability of the consent order and license surrender procedures to physicians, physician assistants and specialist assistants.

Statutory authority: Education Law sections 104 (not subdivided), 207 (not subdivided) and 6506(1) and (8) and Chapter 606 of the Laws of 1991.

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule is necessary to prescribe requirements for the conferral of the Doctor of Audiology (Au.D.) degree, for completion of a professionally oriented doctoral program in audiology.

Statutory authority: Education Law sections 207 (not subdivided), 210 (not subdivided), 218(1), 224(4) and 8206(2).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule is necessary to prescribe requirements for the conferral of the Doctor of Physical Therapy (D.P.T.) degree, for completion of a professionally oriented doctoral program in physical therapy.

Statutory authority: Education Law sections 207 (not subdivided), 210 (not subdivided), 218(1), 224(4) and 6734(b).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule codifies the existing procedures for the settling of cases of professional misconduct. The rule clarifies the role of the Committee on the Professions in consent order and license surrender procedures, which resolves charges of professional misconduct in disciplinary proceedings conducted pursuant to Title VIII of the Education Law.

Statutory authority: Education Law sections 201(not subdivided), 6504 (not subdivided), 6506(1), (4) and (10), and 6507(4)(h).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule is

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

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

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

Assessment of public comment: no comments were received.

Section 61.15 of the Commissioner's Regulations - Dentists

Justification for continuation without modification: The rule implements the provisions of Chapter 354 of the Laws of 1998, which amended Education Law section 6604-a(4), by establishing standards for the approval of sponsors of continuing education relating to facilities, equipment and financial and physical resources, and otherwise implements statutory provisions.

Statutory authority: 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 comments were received.

Section 66.5 of the Commissioner's Regulations - Optometry

Justification for continuation without modification: The rule clarifies and implements the requirements of Education Law section 7101-a and Chapter 517 of the Laws of 1995, relating to the certification of optometrists to use phase two therapeutic pharmaceutical agents, including clarifying clinical training requirements, examination requirements, reporting requirements and continuing education requirements.

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

Assessment of public comment: no comments were received.

Section 66.5 of the Commissioner's Regulations - Optometry

Justification for continuation without modification: The rule specifies carbonic anhydrase inhibitors and prostaglandin analogs, as two additional classes of drugs that an optometrist who is certified to use phase two therapeutic pharmaceutical agents may use and prescribe to treat patients for glaucoma.

Statutory authority: Education Law sections 207(not subdivided), 6504(not subdivided), 6507(2)(a) and 7101-a(1)(f), (10)(c) and (12).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule is necessary to establish and clarify the necessary educational requirements for licensure in speech-language pathology and/or audiology by defining the amount of study that is equivalent to the completion of a master's degree program. The rule also redistributes the education practicum hours to be compatible with national standards.

Adjusting the definition of study that is equivalent to a master's degree program in the field from a master's to a graduate degree permits candidates for licensure who have graduated from a doctoral program in the field without receiving a master's degree to become licensed under the education equivalency requirements without requiring those individuals to return to school to receive a master's degree.

Redistribution of the education practicum hours to be compatible with national standards allows individuals who have completed education requirements at colleges or universities outside of New York State to be eligible for licensure in New York State without requiring those individuals to complete additional practicum hours.

Statutory authority: Education Law sections 207 (not subdivided), 6504 (not subdivided), 6506(1) and (10), 6507(2)(a) and 8206(2).

Assessment of public comment: no comments were received.

OFFICE OF MANAGEMENT SERVICES

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

Justification for continuation without modification: The rule reorganizes the committee structure of the Board of Regents to abolish the Committee on Administration, Law and Legislation (ALL) and to establish the Committee on Quality. The Board of Regents abolished the ALL Committee and established the Committee on Quality in 1999. The rule merely conforms the Regents Rules to this change in internal organization of the Board of Regents.

Statutory authority: Education Law section 207(not subdivided).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule updates information relating to the State Education Department employee who is designated as the Department's Records Access Officer, responsible for ensuring compliance with the Freedom of Information Law and the Personal Privacy Protection Law (Articles 6 and 6-A of the Public Officers Law), and to update the addresses of the offices designated to receive requests for the Department's records. The rule updated the offices and office addresses within the State Education Department for submissions of requests under the Freedom of Information Law and the Personal Privacy Protection Law. The rule was amended again in May 2004 to further update the offices and addresses.

Statutory authority: Education Law sections 207(not subdivided) and 305(6) and Public Officers Law sections 87(1)(b), 94(1)(j) and 94(2)(c).

Assessment of public comment: no comments were received.

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

Justification for continuation without modification: The rule revised the fee charged by the Department to produce computer records requested under the Freedom of Information Law. The rule changed the time-charge to reflect the actual cost incurred by the Department.

Statutory authority: Education Law sections 207(not subdivided) and 305(6) and Public Officers Law sections 87(1)(b).

Assessment of public comment: no comments were received.

OFFICE OF CULTURAL EDUCATION

Sections 185.5 and 185.11 of the Commissioner's Regulations - Local Government Records Management

Justification for continuation without modification: The rule revised Records Retention and Disposition Schedule MU-1 to make needed changes and additions to minimum retention periods for cities, towns, villages and fire districts. The rule is necessary because section 57.25(2) of the Arts and Cultural Affairs Law requires the commissioner of education to develop, adopt by regulation, issue and distribute to local governments records retention and disposition schedules establishing minimum legal retention periods. The 1999 revisions to the rule, and subsequent revisions made in 2003, made necessary changes and additions to ensure that concerned local governments have up-to-date standards for records retention and disposition.

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

Assessment of public comment: no comments were received.