

**DESIGNATION BY OFFICE OF PARKS, RECREATION
AND HISTORIC PRESERVATION UNDER 9 NYCRR PART
428.12 OF EXEMPTIONS FROM OPRHP REVIEW FOR CERTAIN STATE
AGENCY ACTIVITIES RELATING TO NEW YORK STATE PUBLIC SCHOOLS CAPITAL
CONSTRUCTION PROJECTS AND PUBLIC LIBRARY CONSTRUCTION GRANT
PROGRAM ACTIVITIES AFFECTING HISTORIC OR
CULTURAL PROPERTIES**

The New York State Education Department ("Department" or "SED"), having offices at 89 Washington Avenue, Albany, NY 12234 is seeking exemptions from review under Parks, Recreation and Historic Preservation Law ("PRHPL") Section 14.09 for specific building construction and rehabilitation activities associated with New York State Public Schools Capital Construction and Public Library Construction Grant programs (together hereinafter "Programs").

The Commissioner of the Office of Parks, Recreation and Historic Preservation ("OPRHP"), Albany, New York 12238 with an office at 625 Broadway, Albany, New York 12207 or her designee determines whether a state agency's undertaking will cause a change, beneficial or adverse, in the quality of any historical, architectural or archaeological/ cultural property listed on the National or State registers of historic places, or property determined to be eligible for listing, and consults with the state agency on measures to avoid or mitigate impacts to these historic resources (*PRHPL § 14.09; 9 NYCRR Part 428*). The state agency, however, has an independent duty to comply with PRHPL § 14.09.

Section 428.12 of 9 NYCRR allows the Commissioner to designate as exempt from review certain categories of projects funded, undertaken or permitted by the Department under specific programs provided the projects do not change the quality of historic resources.

The Department has provided the following information to OPRHP as required by 9 NYCRR §428.12(a)(1) for these Programs:

1. The Department provides financial aid and assistance to more than 720 New York State School systems through the Capital Construction Program for a variety of building rehabilitation, new construction, facility upgrades and maintenance projects.
2. The Department manages a competitive Library Grant in Aid program for a variety of library construction and rehabilitation activities that is accessible by the more than 750 public library systems throughout New York State.
3. These programs provide important services and financial assistance to New York's school districts and public library systems. It is of paramount importance to the Department that PRHPL 14.09 be undertaken in a consistent and timely manner to ensure safe and modern educational facilities and public libraries for the State's population.
4. The funding programs supported by the Department have the potential to directly impact historic school and library buildings as well as archaeological sites.¹ Historic school buildings and libraries often present challenges when being rehabilitated or upgraded to meet the demands of efficient and modern environmental and academic requirements.

¹ Historic resources are those properties that have been identified as being listed or determined eligible for listing in the New York State and/or National Registers of Historic Places or areas determined to have high potential for archaeological resources.

5. It is in the best interest of the people of the State of New York and the state's cultural and historic resources to ensure that routine daily operations and maintenance in these public facilities progress unimpeded while allowing for more thoughtful and comprehensive assessments through the PRHPL 14.09 process for activities that fall outside the categories defined by this agreement.

The Department has provided the information to OPRHP as required by 9 NYCRR §428.12(a)(1&2) for the New York State School Capital Construction Program and Public Library Grant Programs:

1. Understanding the potential issues associated with historic/archaeological resources the Department seeks to harmonize the requirements and mission of PRHPL 14.09 with its practical concerns and the need to provide funding to the state's public schools and libraries to ensure safe and modern facilities for the benefit of the people of the state of New York.
2. Certain categories of work have been determined to have little or no potential to impact the character of historic resources. The potential changes in the character and quality of a historic resources are generally considered those activities that would destroy or alter all or any part of the property; any action that would isolate the historic site or building separating it from its historic setting or environment; the introduction of visual, audible or atmospheric elements which are out of character with the historic building or site or that might alter its setting and any activity that would lead to the deterioration or destruction of a historic property through neglect.
3. Categories of work, which have been mutually agreed upon by the agencies to not have the potential to directly or indirectly affect the character or qualities of a historic building, site or district are included in Attachment 1. This list includes activities that are classified as routine or general maintenance as well as health and safety related improvements to a public building. Other activities on the list include minor changes, repairs or additions to the building or its grounds that if performed within the parameters defined in this agreement will not alter the historic resource or adjacent resources. These activities because of their scope and nature would be classified as having No Adverse Impact on the historic or archaeological resources as defined under 9 NYCRR Part 428.7(d).

Attachment 1 must be used in conjunction with all applicable local and State building codes and federal laws and regulations.

OPRHP, therefore, designates the following New York State Public Schools Capital Construction Program and New York State Public Library Construction Grant Program activities within the Programs as categories exempt from review pursuant to 9 NYCRR 428.12(c) for the following reasons and subject to the following conditions:

1. Buildings or structures that are 50 years old or less at the time of the scope start of the Department's project shall be exempt from review by OPRHP. Determination of building or structure age shall either be by the certificate of occupancy date or by date on building dedication plaque, whichever is earlier. Where the construction date of a resource cannot be established through primary records, a reasonable effort to determine such date through secondary sources (e.g., newspaper accounts, building department records) shall be made by the Department. Where the project involves site work or any other activity that will lead to ground disturbance, that portion of the project shall be submitted for OPRHP's review of possible impacts to archeological resources.

- a. *Exception:* proposed work at buildings or structures that are known to be the work of a recognized master architect, designer or builder, or are associated with persons or events significant in the history of the State of New York shall be submitted to OPRHP for review and comment.
2. Buildings or structures over 50 years of age that have been previously evaluated by OPRHP and found to not meet the criteria for inclusion in the State and National Register (S/NR) are exempt from further review. However, where the project involves site work or any other activity that will lead to ground disturbance, those portions of the project shall be submitted for OPRHP's review of possible impacts to archeological resources.
 - a. *Exception:* if OPRHP receives information subsequent to the initial S/NR review that demonstrates the building is eligible for the State Register, OPRHP shall notify the Department promptly and the Department shall review all work taking into consideration that the structure is historic.
 - b. *Exception:* information received by OPRHP after initial review (e.g., evidence of pioneering or innovative school design) may demonstrate the State and National Register eligibility of buildings or structures previously determined not to be State and National Register eligible. Where such change of status is warranted, OPRHP will notify the Department of the revised determination by mail or electronically at the earliest opportunity.
 3. Attachment 2 (Human Remains Discovery Protocol) is incorporated as a condition of this exemption when dealing with ground disturbing activities (Attachment 1, Section I).
 4. For each request to review and comment by OPRHP the Applicant will submit their project information utilizing OPRHP's CRIS project submission portal. The system will guide the applicant through uploading project specific information.
 5. All work funded, undertaken or approved by the Department on historic structures should follow the Secretary of the Interior Standards for Rehabilitation² and NPS Preservation Briefs 1³ and 2⁴.
 6. OPRHP may monitor activities carried out pursuant to this Designation at their discretion. The Department shall cooperate with OPRHP with respect to such monitoring activities.
 7. This Designation shall remain in force for five (5) years from date of signature. Signatories may extend this Designation upon mutual agreement.

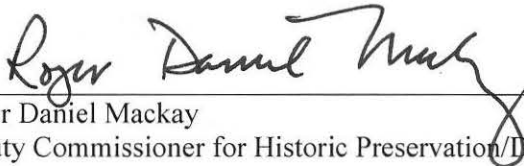
² Washington, D.C., National Park Service, *Secretary of the Interior Standards for Rehabilitation*, which can be found at: http://www.nps.gov/history/hps/tps/standguide/rehab/rehab_standards.htm.

³ Mack, Robert C. and Grimmer, Anne. *Preservation Brief 1: Assessing Cleaning and Water-Repellent Treatments for Historic Masonry Buildings*, which can be found at: <http://www.nps.gov/history/hps/tps/briefs/brief01.htm>. Washington, D.C.: Technical Preservation Services, National Park Service, 2000.

⁴ Mack, Robert C. and Speweik, John. *Preservation Brief 2: Repainting Mortar Joints in Historic Masonry Buildings*, which can be found at: <http://www.nps.gov/history/hps/tps/briefs/brief02.htm>. Washington, D.C.: Technical Preservation Services, National Park Service, 1998.

8. Notwithstanding any other provisions of this Designation a signatory may request that it be amended, whereupon the signatories will consult to consider such amendment. Any amendment must be in writing and signed by the Department and OPRHP.
9. This Designation may be terminated at the request of any of the signatories within 30 calendar days of written notification to the other signatories. In the event the Designation is terminated, the Department shall consult with OPRHP regarding its responsibilities under PRHPL § 14.09 for each proposed individual project.

NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION



Roger Daniel Mackay
Deputy Commissioner for Historic Preservation/Deputy SHPO

Date: 11/13/17

NEW YORK STATE DEPARTMENT OF EDUCATION



Elizabeth R. Berlin
Executive Deputy Commissioner

Date: 11-16-17

Attachment 1

The following work items are *exempt* from OPRHP review:

I. Site Work

1. Repaving/resurfacing of existing paved areas, e.g., school yards, parking areas, sidewalks, tennis courts, outdoor basketball courts where the proposed work does not exceed the depth of previous undisturbed soil.
2. Repair or replacement of curbing.
3. Installation of lighting (including new underground conduit and conductors) and minor drainage work at athletic fields where no other new excavation work is needed.
4. Installation of open bleachers at athletic fields.
5. Repair of field houses and bleachers at athletic field excluding foundation work
6. New installation of school yard fencing on the condition that it is behind the building or not visible from the street.
7. Repair/Replacement of chain-link fencing.
8. Repair/ replacement-in-kind of exterior steps, platforms, stairs, ramps, and area ways.
9. Repair/ replacement-in-kind of flag poles
10. Installation of exterior freestanding signage and kiosks.
11. Repair and replacement of site installed mechanical, electrical, and plumbing equipment (eg., an emergency generator or air-cooled condenser) on the condition that no trim or architectural features are altered and that no ground disturbing work is proposed that will exceed the depth of previous undisturbed soil.
12. Installation of site mechanical, electrical, and plumbing equipment (eg., an emergency generator or air-cooled condenser) on the conditions that no trim or architectural features are altered and that it is behind the building or not visible from the street and that no ground disturbing work is proposed that will exceed the depth of previous undisturbed soil.
13. Repair and replacement of in-ground utilities in existing utility trenches.
14. Excavation or other ground disturbance impacting areas only within a distance of 10 feet or less of the existing structure.
15. Repair and replacement of play equipment and safety surfacing.

II. Exterior

1. Repair/ replacement of flat roofs, roof hatches, roof drains, and rooftop mechanical, electrical, and plumbing equipment.
2. Repair/ replacement-in-kind of the surface materials on pitched roofs.
3. Masonry cleaning and restoration work will be appropriate on the condition that it follows the guidelines in the National Park Service publications in Appendix B and that drawings are submitted to OPRHP for review and approval.
4. Masonry repair and repointing on up to 50% of a building on the condition that it follows the guidelines in the National Park Service publications in Appendix B.
5. Replacement of non-original windows that were installed in the 1960s or later with windows that either match the configuration and proportions of historic windows, the current configuration, or have one-over-one sash. If the replacement windows have muntins, they should ideally be either true divided lights or a three-part grid system which includes an interior, exterior, and a spacer bar. If this cannot be done, an exterior applied muntin is acceptable. However, muntins applied only to the interior or placed only between the double insulated glass panels are not acceptable.

6. Repair/ replacement-in-kind of window guards.
7. Repair/ replacement-in-kind of speakers and public-address systems on the condition that no trim or architectural features are altered.
8. Installation or replacement of video surveillance cameras, fire alarm systems, and security systems on the condition that no trim or architectural features are altered.
9. Installation or replacement of exterior/security lighting on the condition that no trim or architectural features are altered and that the fixtures are not mounted directly to masonry.
10. Installation or replacement of lightning protection on the condition that no architectural features are altered.
11. Repair/ replacement of exterior door hardware.
12. Repair/ replacement-in-kind of non-decorative exterior hollow metal doors.
13. Repainting of exterior masonry.
14. Recaulking of exterior coping stones.
15. Repair/ replacement-in-kind of exterior coping stones.
16. Installation of new roof top mechanical, electrical, and plumbing equipment to support interior curriculum revisions listed below, where not visible from the street at the primary facade
17. Installation or replacement of exterior connections for sprinkler and standpipe systems on the condition that no trim or architectural features are altered.

III. Interior

1. Repair and replacement-in-kind of ceilings.
2. Replacement of auditorium seating, curtains, draperies, stage rigging, and stage lighting on the condition that no trim or architectural features are altered.
3. Replacement of corridor lockers.
4. Installation or replacement of video surveillance cameras, fire alarm systems, and security systems on the condition that no trim or architectural features are altered.
5. Installation or replacement of public address systems, auditorium/gym sound systems, assistive listening equipment, area of refuge communication equipment, and telephone (intercom) systems on the condition that no trim or architectural features are altered.
6. Installation or replacement of data (computer network, power) systems on the condition that no trim or architectural features are altered. Note that surface raceways may be included in this installation.
7. Installation or replacement of switchboards, motor control centers, panel boards, conductors and conduit, transformers, generators, and power receptacles with the condition that no trim or architectural features are altered or obscured.
8. Installation or replacement of sprinkler and standpipe systems on the condition that no trim or architectural features are altered. Note that exterior fire department connections must be visible and accessible to fire department personnel.
9. Repair of wood flooring in gymnasiums.
10. Repair of classroom and office wood floors.
11. Repair of classroom and office base moldings.
12. Replacement in kind of up to 40% of classroom and office base moldings per room.
13. Ordinary repair of classrooms.
14. Replacement in kind of up to 40% of interior classroom molding.
15. Replacement of toilet room fixtures; partitions; floor; wall or ceiling surfaces.
16. Replacement of plumbing fixtures, building wide.
17. Installation of moveable partition control systems.
18. Installation or replacement of lighting fixtures and their controls such as switching and/or occupancy sensors, except for one in lobbies, auditoriums, and libraries on the condition that no trim or architectural features are altered.
19. Installation or replacement of kitchen equipment on the condition that no trim or architectural features or trim are altered.

20. Elevator retrofits.
21. Interior repainting.
22. In order to meet the curriculum of a school it may be necessary to renovate interior spaces by either enlarging, reducing, or combining rooms to create new spaces such as libraries, shop classrooms, science labs, art rooms or offices. Projects of this type, including interior mechanical, electric, and plumbing revisions to support the program shall be exempt from review if the existing spaces do not contain wood molding, hardwood flooring, plaster walls or other historic finishes. Work removing non-original asbestos tile, vinyl floor tile, concrete floor, vinyl base molding, gypsum partitions, hollow metal doors and frames, lay in acoustic tile ceilings, or sheetrock ceilings are exempt from review. Please note that there may be schools that were constructed in twentieth century containing these materials originally.
23. Up to three rooms can be combined in a school building without review. Rooms that have existing wood molding (baseboards, window and door trim, and crown molding) shall be patched in kind with wood matching the existing profiles, materials and dimensions. Existing wood floors will be salvaged only if they can be sanded, refinished and match in elevations with surrounding surfaces. Should water damage be present, wood floors will be replaced with vinyl tile surface (carpeting in libraries). Should rooms be converted into a shop or science lab, wood floor shall be replaced with either ceramic tile, epoxy or vinyl tile. Doors, jambs, and trim facing a corridor must be retained and have the same appearance on the corridor side of the wall. If a door is no longer in use, it should be locked and retained. Ceiling height changes that do not block existing window openings will be appropriate. Drapery pockets are appropriate in cases where a window opening would otherwise be blocked by a dropped ceiling.

IV. Mechanical Systems, Electrical Systems, and Plumbing Systems

1. Installation and replacement of heating ventilation and cooling systems other than in original libraries, auditoriums and lobbies, on the condition that no trim or architectural features are altered. Note that ductwork visible in areas other than utilitarian basement areas should be reviewed by OPRHP.
2. Installation of backflow preventers, water mains, switch gear upgrades, new gas services, and other main utility upgrades. This includes gas pipe runs within the building and exterior runs where not visible from the street.
3. Installation, repair, and replacement of automatic HVAC control systems on the condition that no trim or architectural features are altered.
4. All other mechanical, electrical & plumbing work in boiler rooms, fan rooms, utility rooms, storage rooms and custodial spaces on the condition that no trim or architectural features are altered.
5. Installation or replacement of mechanical, plumbing, and electrical distribution equipment on the condition that no trim or architectural features are altered.

Note that penetrations greater than 6" in diameter through walls or floors or wall removal for pipe or duct removal/installation should be reviewed by OPRHP.

V. Health & Safety Hazards

1. Removal of asbestos containing materials (ACM), e.g., floor tile, insulation, glazing putty, lead based paint material, or PCB containing materials, e.g., PCB containing caulk.
2. Installation or replacement of emergency egress lighting systems and exiting signage with the condition that no trim or architectural features are altered.
3. Emergency removal or repair in kind of masonry cracks and/or falling masonry elements.
4. Removal of falling plaster walls and ceilings and replacement-in-kind or with gypsum board on the condition that no trim or architectural features are altered.

Attachment 2

HUMAN REMAINS DISCOVERY PROTOCOL (11-2008)

In the event that human remains are encountered during construction or archaeological investigations, the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) recommends that the following protocol is implemented:

- At all times human remains must be treated with the utmost dignity and respect. Should human remains be encountered work in the general area of the discovery will stop immediately and the location will be immediately secured and protected from damage and disturbance.
- Human remains or associated artifacts will be left in place and not disturbed. No skeletal remains or materials associated with the remains will be collected or removed until appropriate consultation has taken place and a plan of action has been developed.
- The county coroner/medical examiner, local law enforcement, the OPRHP, the appropriate Indian Nations, and the involved agency will be notified immediately. The coroner and local law enforcement will make the official ruling on the nature of the remains, being either forensic or archaeological.
- If human remains are determined to be Native American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated. Please note that avoidance is the preferred choice of the OPRHP and the Indian Nations. The involved agency will consult OPRHP and appropriate Indian Nations to develop a plan of action that is consistent with the Native American Graves Protection and Repatriation Act (NAGPRA) guidance.
- If human remains are determined to be non-Native American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated. Please note that avoidance is the preferred choice of the OPRHP.
- Consultation with the OPRHP and other appropriate parties will be required to determine a plan of action.

Attachment 3

DEFINITIONS

- a. "State and National Register" shall mean the New York State and National Register of Historic Places.
- b. "State and National Register" and "Historic Resources" shall mean any building, structure, object, site or landscape feature that meets the criteria for inclusion in the State and National Registers of Historic Places.
- c. "Undertaking" shall mean a project involving work on a building or site funded in whole or in part under the direct or indirect jurisdiction of the Department, including those carried out with SED financial assistance; and those requiring a SED permit, license or approval.
- d. "Repair" shall mean an action to restore the mechanical, structural or aesthetic function of any element of an historic resource using materials and methods compatible with the original function of that element.
- e. "Replacement-in-kind" shall mean the removal of any element and the insertion of a new element with the same material matching the same design, form, dimension, color and texture as that being replaced.
- f. "Replacement" shall mean the removal of any element and the insertion of a new element with a material that is typically used per current practice in that location. (e.g. replacement of asphalted concrete rolled flooring with vinyl tile)
- g. "Eligible" shall mean a property meets the criteria for listing on the State and National Register of Historic Places.
- h. "Installation" shall mean the installation of any element with a material that is typically used per current practice.
- i. "Agency Preservation Officer" (APO) shall mean the commissioner, director or chairperson of SED, or a representative identified in accordance with the provisions of subdivision 2 of Section 14.05 of the Parks, Recreation and Historic Preservation Law. If the Department chooses to appoint a representative, this representative shall meet the federal qualifications as stated in 36 CFR 61. The qualifications of the appointed person shall be submitted to OPRHP for our review and acceptance prior to appointment.
- j. "Historic Preservation" shall mean the study, designation, protection, restoration, rehabilitation and use of buildings, structures, historic districts, areas and sites significant in the history, architecture, archeology or culture of this State, its communities or the nation.