

8 NYCRR 100.2

Section 100.2. General school requirements

(a) *Administration of elementary and secondary schools.* The board of education of each school district shall employ and assign to each school under its supervision a full-time principal holding the appropriate certification as required pursuant to section 80.4(b) of this Title. Upon the submission of evidence that there are circumstances which do not justify the assignment of a principal to a particular school, or that another mode of building administration would be more effective, the commissioner may approve an alternative mode of building administration. Within the policy guidelines of the board of education of the school district and under the direction of the superintendent, each principal shall provide leadership in the development of the educational program in the school to which he or she is assigned, including the supervision and administration of the school program, involvement with the selection and retention of staff, professional consultation, direction and assistance to the faculty and students of the school, and fostering effective home/school/community partnerships.

(b) *State syllabi.* In grades kindergarten through 12, the use of a State syllabus, where available, is recommended for all subjects. The use of a State syllabus may be required for individual schools identified pursuant to paragraph (m)(3) of this section as being in need of assistance, and shall be used to the extent specified in section 100.5(a)(7)-(8), (b)(6) and (d)(3)(ii) of this Part.

(c) *Instruction in certain subjects.* Pursuant to articles 2, 17 and 65 of the Education Law, instruction in certain subjects in elementary and secondary school shall be provided as follows:

(1) for all students, instruction in patriotism and citizenship, as required by section 801 of the Education Law;

(2) for all public school students, instruction that supports development of a school environment free of harassment, bullying, and/or discrimination as required by the Dignity For All Students Act (article 2 of the Education Law), with an emphasis on discouraging acts of harassment, bullying, and/or discrimination, including but not limited to instruction that raises students' awareness and sensitivity to harassment, bullying and/or discrimination based on a person's actual or perceived race as defined in Education Law section 11(9), color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex, and instruction in the safe, responsible use of the Internet and electronic communications; provided that in public schools other than charter schools, such instruction shall be provided as part of a component on civility, citizenship and character education in accordance with section 801-a of the Education Law;

(3) for all students in the 8th and higher grades, instruction in the history, meaning, significance and effect of the provisions of the Constitution of the United States and the amendments thereto, the Declaration of Independence, the Constitution of the State of New York and the amendments thereto, as required by section 801 of the Education Law;

(4) for all students, health education regarding alcohol, drugs and tobacco abuse, as required by section 804 of the Education Law;

(5) for all students, instruction in highway safety and traffic regulation, as required by section 806 of the Education Law;

(6) for all students, instruction in fire drills and in fire and arson prevention, injury prevention and life safety education, as required by sections 807 and 808 of the Education Law. Such course of instruction shall include materials to educate children on the dangers of falsely reporting a criminal incident or impending explosion or fire emergency involving danger to life or property or impending catastrophe, or a life safety emergency;

(7) for all students in grades 1 through 8, instruction in New York State history and civics as required

by section 3204(3) of the Education Law;

(8) for public school students, instruction relating to the flag and certain legal holidays, as required by section 802 of the Education Law;

(9) for all public elementary school students, instruction in the humane treatment of animals and birds, as required by section 809 of the Education Law; and

(10) for all public school students, instruction relating to the conservation of the natural resources of the State, as required by section 810 of the Education Law.

(11) Students in senior high schools shall be provided instruction in hands-only cardiopulmonary resuscitation and the use of an automated external defibrillator.

(i) Standards for such instruction shall be based on a nationally recognized instructional program that utilizes the most current guidelines for cardiopulmonary resuscitation and emergency cardiovascular care issued by the American Heart Association or a substantially equivalent organization and be consistent with the requirements of the programs adopted by the American Heart Association or the American Red Cross, and shall incorporate instruction designed to:

(a) recognize the signs of a possible cardiac arrest and to call 911;

(b) provide an opportunity to demonstrate the psychomotor skills necessary to perform hands-only compression cardiopulmonary resuscitation; and

(c) provide awareness in the use of an automated external defibrillator.

(ii) Nothing in this paragraph shall prohibit a voluntary course of instruction in comprehensive cardiopulmonary resuscitation provided by a properly certified instructor in cardiopulmonary resuscitation which results in a certificate pursuant to the provisions of Education Law section 804-c. Students who receive such instruction in comprehensive cardiopulmonary resuscitation pursuant to the provisions of Education Law section 804-c shall be deemed to meet the requirements of this paragraph.

(iii) Nothing in this paragraph relating to required instruction in hands-only cardiopulmonary resuscitation and instruction in the use of an automated external defibrillator shall require a licensed teacher to possess certification for such instruction that does not result in certification in cardiopulmonary resuscitation or certification in the operation of an automated external defibrillator and in its instruction.

(iv) A student identified with a disability that precludes his or her ability to participate in hands-only cardiopulmonary resuscitation and the use of an automated external defibrillator may be exempted from the instruction requirement in this paragraph if the student's individualized education program developed in accordance with section 200.4 of this Title or accommodation plan developed pursuant to section 504 of the Rehabilitation Act of 1973 states that the student is physically or cognitively unable to perform the tasks included in the instruction.

(v) Notwithstanding the provisions of this subdivision, senior high schools shall be exempted from providing an opportunity to students to demonstrate the psychomotor skills necessary to perform hands-only compression cardiopulmonary resuscitation required by this paragraph:

(a) for the 2019-2020 school year where such schools were unable to provide such opportunity due to school closures ordered pursuant to an Executive Order of the Governor pursuant to a State of emergency for the COVID-19 crisis; and

(b) for the 2020-2021 school year where such schools were unable to provide such opportunity as a result of providing remote or hybrid instruction during the COVID-19 crisis.

(12) for all public school students in grades kindergarten through 8, instruction designed to educate students, parents, teachers, and other school personnel about the prevention of child sexual exploitation and child sexual abuse in accordance with section 803-b of the Education Law. Such instruction may be included as part of a school's health education program pursuant to section 135.3 of this Title. Curriculum addressing this topic should be developed in consultation with school counselors, school social workers, school psychologists, parents and community members and shall be designed to:

- (i) assist children, parents, teachers, and other school personnel in identifying child sexual abuse and child sexual exploitation;
- (ii) provide awareness, assistance, referral, and resource information for children and families who are victims of child sexual abuse and/or child sexual exploitation; and
- (iii)ⁱ be aligned to grade band objectives prescribed by the commissioner in guidance.

(d) *World language requirements.*

(1) Public school students first entering grade nine in 1988 or 1989 shall have completed at least one unit of study in a world language at some time during grades kindergarten through nine. Public school students first entering grade nine in 1990 and thereafter shall have completed at least two units of study in a world language at some time during grades kindergarten through nine. Such requirements shall be met subject to the following provisions:

- (i) Such unit of study requirements in a world language may be in more than one language, provided that at least one half of the required units of study shall be in a single language.
- (ii) Such unit of study requirements in a language other than English shall be offered in segments of not less than a half unit of study per school year.
- (iii) A student identified as having a disability which adversely affects the ability to learn a language may be exempted from the requirements set forth in this paragraph if the student's individualized education program, developed in accordance with section 200.4 of this Title states that such requirements are not appropriate.
- (iv) A student may be exempted from such unit of study requirements in a world language by passing an approved second language proficiency examination, as defined in section 100.1(j) of this Part.
- (v) For the 2019-20 school year a student may be exempted from such unit of study requirements in a world language where a student is unable to complete such requirements due to a school being closed pursuant to an Executive Order(s) of the Governor pursuant to the State of emergency for the COVID-19 crisis where such student otherwise achieves the learning outcomes for the portion of such unit of study completed.

(2) Public school districts may commence language other than English instruction at any grade level prior to grade 8 but shall do so no later than the beginning of grade 8 so that students are provided the required two units of study by the end of grade nine.

(3) Beginning in May 1989, all students entering grade nine prior to the 2001-2002 school year who passed an approved second language proficiency examination shall be awarded the first unit of credit in a world language, unless the student has already been awarded such first unit of credit in a language other than English, as set forth in section 100.1(b) of this Part.

(4) Public school students first entering grade nine in the 2001-2002 school year and thereafter shall earn at least one unit of credit in a world language, as defined in section 100.1(b) of this Part, in order to complete the world languages requirement for a high school diploma. Students may earn one unit

of credit by having passed the State second language proficiency assessment, when available.

(5) Beginning in the 2010-2011 school year, students enrolled in grades eight or earlier may be granted one unit of credit by successfully completing two units of study in a language other than English and passing a locally developed test, both of which are aligned to the checkpoint A learning standards for languages other than English, which has been approved for high school credit by the public school district superintendent or the chief administrative officer of a registered charter or nonpublic high school provided, however, that for the 2019-2020 school year, the August 2020 summer school session, the 2020-2021 school year and the August 2021 summer school session due to the COVID-19 crisis, where a principal, in consultation with relevant faculty, determines that a student has met the standards assessed in the provided coursework leading to the checkpoint A locally developed test, the district may choose to waive the test requirement and grant such student one unit of credit. Where the test requirement has been waived no score shall be recorded on a student's transcript or permanent record for such test.

(e) *Availability of Regents diploma and courses.* Each public school district shall offer students attending its schools the opportunity to meet all the requirements for and receive a Regents high school diploma. Students shall have the opportunity to take Regents courses in grades 9 through 12 and, when appropriate, in grade 8.

(f) *Use of alternative and pathway assessments.*

(1) Alternative assessments. With the approval of the commissioner, assessments which measure an equivalent level of knowledge and skill may be substituted for the assessments specified in this Part. Alternative assessments for the Regents examinations for global history and geography, global history and geography II (1750 to present), United States history and government, comprehensive English and English Language Arts (Common Core), mathematics, mathematics (Common Core), and the sciences shall meet the following conditions and criteria:

(i) alternative assessments shall measure the State learning standards for the respective content area;

(ii) alternative assessments shall be at least as rigorous as the corresponding required State assessment;

(iii) alternative assessments shall be consistent with technical criteria for validity, reliability, and fairness in testing;

(iv) alternative assessments shall be developed by an entity other than a local school or school district;

(v) alternative assessments shall be available for use by any school or school district in New York State; and

(vi) alternative assessments shall be administered under secure conditions approved by the commissioner.

(2) Pathway assessments. With the approval of the commissioner, pathway assessments which measure an equivalent level of knowledge and skill may be substituted for the assessments specified in this Part. Notwithstanding the requirements of subdivision (d) of this section and section 100.5(b)(7)(v)(c) of this Part any examination that is used to satisfy the pathway assessment graduation requirements in section 100.5(a)(5)(i)(f) of this Part, other than those specifically enumerated in subdivision (mm) of this section relating to pathway assessments in career and technical education, world languages and in the arts. shall meet the conditions and criteria set forth in subparagraphs (1)(i) through (vi) of this subdivision.

(g) *Alternative testing procedures.* The commissioner may approve satisfactory alternative testing

procedures for all tests defined in section 100.1 of this Part under the following conditions:

(1) The use of alternative testing procedures shall be limited to:

(i) students identified by the committee on special education as having a handicapping condition; and

(ii) students whose native language is other than English, except that alternative testing procedures for the Regents competency tests in reading and writing may be used only by students who first enter, after grade 8, schools where the predominant language of instruction is English.

(2) The alternative testing procedures employed shall be based upon a student's individual needs and the type of test administered.

(3) School districts and nonpublic schools shall report the use of alternative testing procedures to the department on a form and at a time prescribed by the commissioner.

(h) *Availability of career and technical education and arts sequences.*

(1) All public school districts shall offer students the opportunity to complete a three- or five-unit sequence in each of the following areas: career and technical education and the arts.

(2) All public school districts shall offer students the opportunity to begin an approved sequence in the arts in grade nine.

(3) All public school districts shall offer students the opportunity to begin an approved career and technical education sequence in grade nine. Only those career and technical education sequences which have been approved by the commissioner may be used to fulfill the requirements for a diploma set forth in section 100.5 of this Part.

(4) For students first entering grade nine in 1985 and thereafter, each approved career and technical education sequence shall include a minimum of one unit of credit in introduction to occupations, to be offered at any point in the sequence.

(5) For students first entering grade nine in 1988 and thereafter, approved sequences of three units of credit in a career and technical education subject shall be so organized that they may be extended into approved sequences of five units of credit or more without loss of credit.

(6) For students first entering grade nine in 1988 and thereafter, approved sequences of five units of credit or more in career and technical education shall prepare students for both employment and postsecondary education and shall be satisfactory to the commissioner.

(7) All public school districts shall offer students the opportunity to meet the learning standards in technology. Districts shall choose one or more options to meet this requirement pursuant to section 100.5 of this Part.

(i) *Teaching staff in public schools.* The number of daily periods of classroom instruction for a teacher should not exceed five. A school requiring of any teacher more than six teaching periods a day, or a daily teaching load of more than 150 pupils, should be able to justify the deviation from this policy.

(j) *Guidance programs and comprehensive developmental school counseling/guidance programs.*

(1) Guidance programs for public schools for school years prior to the 2019-2020 school year and for non-public schools.

(i) Public Schools. Each school district shall have a guidance program for all students.

(a) In grades K-6, the program shall be designed in coordination with the teaching staff to

prepare students to participate effectively in their current and future educational programs, to help students who exhibit any attendance, academic, behavioral or adjustment problems, to educate students concerning avoidance of child sexual abuse, and to encourage parental involvement.

(b) In grades 7-12, the guidance program shall include the following activities or services:

(1) an annual review of each student's educational progress and career plans, with such reviews to be conducted with each student individually or with small groups by personnel certified or licensed as school counselors;

(2) instruction at each grade level to help students learn about various careers and about career planning skills conducted by personnel certified or licensed as school counselors, or by classroom teachers in cooperation with school counselors;

(3) other advisory and individual or group counseling assistance to enable students to benefit from the curriculum, to help students develop and implement postsecondary education and career plans, to help students who exhibit any attendance, academic, behavioral or adjustment problems and to encourage parental involvement, provided that advisory assistance shall be provided by teachers or counselors, or by certified teaching assistants under the supervision of counselors or teachers, and that such individual or group counseling assistance shall be provided by certified or licensed school counselors or by certified or licensed school psychologists or certified or licensed school social workers in cooperation with school counselors; and

(4) the services of personnel certified or licensed as school counselors.

(c) Each school district shall develop a district plan which sets forth the manner in which the district shall comply with the requirements of this subdivision. The City School District of the City of New York shall submit a separate plan for each community school district, for the High School Division and for the Special Education Division. Such plan shall be filed in the district offices and shall be available for review by any individual. The plan shall present program objectives, which describe expectations of what students will learn from the program; activities to accomplish the objectives; specification of staff members and other resources assigned to accomplish the objectives; and provisions for the annual assessment of program results. The plan shall be reviewed annually by the school districts, and revisions shall be made as necessary.

(ii) Nonpublic schools. Each nonpublic secondary school shall provide a guidance and counseling program for students in grades 7-12.

(2) Comprehensive developmental school counseling/guidance programs. Beginning with the 2019-2020 school year, each school district shall have a comprehensive developmental school counseling/guidance program, for all students in kindergarten through grade 12. Each school district shall also ensure that all students in grades kindergarten through twelve have access to a certified school counselor(s), which for the city school district of the City of New York and the city school district of the City of Buffalo shall include a licensed guidance counselor(s) pursuant to Part 80 of the Commissioner's regulations.

(i) For all grades kindergarten through 12, district and building level comprehensive developmental school counseling/guidance programs shall prepare students to participate effectively in their current and future educational programs as age appropriate, and be designed to address multiple student competencies including career/college readiness standards, and academic and social/emotional development standards. The comprehensive developmental school counseling/guidance program ("program" shall include the following activities or services:

(a) In grades kindergarten through five, the program shall be designed by a certified school counselor in coordination with the teaching staff, and any appropriate pupil personnel service providers, for the purpose of preparing students to participate effectively in their current and future educational programs, to provide information related to college and careers, and to assist students who may exhibit challenges to academic success, including but not limited to attendance or behavioral concerns, and where appropriate make a referral to a properly licensed professional and/or certified pupil personnel service provider, as appropriate, for more targeted supports.

(b) For students in grades six through twelve, certified school counselors shall provide an annual individual progress review plan, which shall reflect each student's educational progress and career plans. For a student with disability, the plan shall be consistent with the student's individualized education program;

(c) school counseling/guidance core curriculum instruction for the purpose of addressing student competencies related to career/college readiness, academic skills and social/emotional development by a certified school counselor(s);

(d) other direct student services which may include, but need not be limited to, responsive services, crisis response, group counseling, individual counseling, appraisal, assessment and advisement, for the purpose of enabling students to benefit from the curriculum, assisting students to develop and implement postsecondary education and career plans, assisting students who exhibit attendance, academic, behavioral or adjustment concerns and encouraging parental involvement. Provided that nothing herein shall prohibit certified or licensed school psychologists or certified or licensed school social workers pursuant to Part 80 of the Commissioner's regulations from providing other direct student services within their applicable scope of practice;

(e) indirect student services which may include but need not be limited to, referrals to appropriately licensed or certified individuals, consultation, collaboration, leadership, advocacy, and teaming.

(ii) Each school district shall develop district-wide and building-level comprehensive developmental school counseling/guidance plans which set forth the manner in which the district shall comply with the requirements of this subdivision. In the case of the City School District of the City of New York, the Department of Education shall submit separate plans for each community school district, for the High School Division and for the Special Education Division. Such district and building level plans shall be developed by or under the direction of certified school counselor(s) and be updated annually, available for review at the district offices and each school building, and made available on the district's website.

(a) Each plan shall be developed annually and shall include program objectives, activities, program development and maintenance planning, school counseling curriculum, professional learning planning, evaluation methods based on data analysis of program results and closing the gap analysis reports to inform program improvement, and assessment of the resources necessary to support positive student outcomes.

(b) Each plan shall also include the preparation of a program outcomes report that includes an analysis of all systematic components of a comprehensive developmental school counseling/guidance program as defined by this subdivision. Such report shall be annually presented to the board of education, or in the case of the City School District of the City of New York, the Chancellor of the City School District of the City of New York, or to the extent provided by law, the board of education of the City School District of the City of New York.

(iii) Each school district shall establish a comprehensive developmental school

counseling/guidance program advisory council to be comprised of representative stakeholders (such as parents, members of the board of education, school building and/or district leaders, community-based service providers, teachers, certified school counselors and other pupil personnel service providers in the district including school social workers and/or school psychologists). In the case of the City School District of the City of New York, the Department of Education shall establish a comprehensive developmental school counseling/guidance program advisory council for each community school district. The advisory council shall meet no less than twice a year for the purpose of reviewing the comprehensive developmental school counseling/guidance program plan and advising on the implementation of the school counseling/guidance program. The advisory council shall create and submit an annual report to the board of education, or in the case of the City School District of the City of New York, the Chancellor of the City School District of the City of New York, or to the extent provided by law, the board of education of the City School District of the City of New York.

(3) Nothing in this section shall be construed to authorize any individual to provide professional services where certification is required under Part 80 of the Commissioner's regulations or where licensure is required under Title VIII of the Education Law.

(k) *Nondiscrimination in curricular and extracurricular activities.* No student shall be denied membership or participation, on the basis of race as defined in Education Law section 11(9) and subdivision (kk) of this section, sex, marital status, color, religion, national origin or disability, in any program or activity which is included in a school program of curricular or extracurricular activities, provided that:

(1) in the case of students with disabilities, such activity shall be appropriate to a student's special educational needs as identified by the committee on special education;

(2) male and female participation in extra class athletic activities shall be in accordance with the provisions set forth in section 135.4(c)(7) of this Title;

(3) a nonpublic school may limit admission to such school to students of a single sex and/ or of a single religion or denomination; and

(4) a nonpublic school controlled by or affiliated with a religious organization may separate students on the basis of sex to the extent that such separation is required by the religious tenets of such organization.

(l) *School conduct and discipline.*

(1) Policy on school conduct and discipline.

(i) On or before January 1, 1986 each school district shall adopt and implement a written policy on school conduct and discipline designed to promote responsible behavior, which policy, and any amendments thereto, shall remain in effect until the adoption of a code of conduct pursuant to paragraph (2) of this subdivision, at which time it shall be deemed to be superseded by such code of conduct. The City School District of the City of New York shall adopt and implement a separate written policy for each community school district and for central board-administered programs. Such a policy shall be developed locally in consultation with teachers, administrators, other school service professionals, students and parents and shall include:

(a) a bill of rights and responsibilities of students which focuses upon positive student behavior, and which shall be publicized and explained to all students on an annual basis;

(b) a discipline code for student behavior setting forth prohibited student conduct and the range of penalties which may be imposed for violation of such code, which shall be publicized and explained to all students and provided in writing to all parents on an annual basis. Such code shall describe the roles of teachers, administrators, board of education members, and

parents;

(c) strategies and procedures for the maintenance and enforcement of public order on school property which shall govern the conduct of all persons on school premises, in accordance with section 2801 of the Education Law and accepted principles of due process of law;

(d) procedures within each building to involve pupil service personnel, administrators, teachers, parents and students in the early identification and resolution of discipline problems. For students identified as having a disability, such policy shall include procedures for determining when a student's conduct shall constitute a reason for referral to the committee on special education for review and modification if appropriate of the student's individualized education program;

(e) alternative educational programs appropriate to individual student needs;

(f) disciplinary measures for violation of the school policies developed in accordance with subparagraphs (ii) and (iii) of this paragraph. Such measures shall be appropriate to the seriousness of the offense and where applicable to the previous disciplinary record of the student. Any suspension from attendance upon instruction may be imposed only in accordance with section 3214 of the Education Law; and

(g) guidelines and programs for in-service education programs for all district staff members to ensure effective implementation of school policy on school conduct and discipline.

(ii) The board of education shall adopt such a policy review it on an annual basis and amend it when appropriate. Each school district's policy on school conduct and discipline shall be filed in each school building and shall be available for review by any individual.

(2) Code of Conduct

(i) On or before July 1, 2001, each board of education and board of cooperative educational services shall adopt and provide for the enforcement of a written code of conduct for the maintenance of order on school property and at school functions, as defined in Education Law, sections 11(1) and (2) and 2801(1), which shall govern the conduct of students, teachers and other school personnel and visitors. Such a code shall be developed in collaboration with student, teacher, administrator, and parent organizations, school safety personnel and other school personnel and shall be approved by the board of education, or other governing body, or by the chancellor of the city school district in the case of the City School District of the City of New York. The City School District of the City of New York shall adopt a district-wide code of conduct and each community school district may, upon approval of the chancellor, adopt and implement additional policies, which are consistent with the city school district's district-wide code of conduct, to reflect the individual needs of each community school district. A school district or board of cooperative educational services shall adopt its code of conduct only after at least one public hearing that provides for the participation of school personnel, parents, students, and any other interested parties.

(ii) The code of conduct shall include, but is not limited to:

(a) provisions regarding conduct, dress and language deemed appropriate and acceptable on school property and at school functions, and conduct, dress and language deemed unacceptable and inappropriate on school property and at school functions and provisions regarding acceptable civil and respectful treatment of teachers, school administrators, other school personnel, students and visitors on school property and at school functions, including the appropriate range of disciplinary measures which may be imposed for violation of such code, and the roles of teachers, administrators, other school personnel, the board of education and parents or persons in parental relation;

(b) provisions prohibiting harassment, bullying, and/or discrimination against any student, by employees or students that creates a hostile school environment by conduct or by threats, intimidation or abuse, including cyberbullying as defined in Education Law section 11(8), that either:

(1) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional and/or physical well-being, including conduct, threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause emotional harm; or

(2) reasonably causes or would reasonably be expected to cause physical injury to a student or to cause a student to fear for his or her physical safety,

(3) Such conduct shall include acts of harassment and/or bullying that occur:

(i) on school property, as defined in subparagraph 100.2(kk)(1)(i) of this Part; and/or

(ii) at a school function, as defined in subparagraph 100.2(kk)(1) of this Part; or

(iii) off school property where such acts create or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property.

(4) For purposes of this section, the term "threats, intimidation or abuse" shall include verbal and non-verbal actions.

(5) For purposes of this section, "emotional harm" that takes place in the context of "harassment or bullying" means harm to a student's emotional well-being through creation of a hostile school environment that is so severe or pervasive as to unreasonably and substantially interfere with a student's education.

(6) Such conduct shall include, but is not limited to acts based on a person's actual or perceived race as defined in Education Law section 11(9) and subdivision (kk) of this section, color, weight, national origin, ethnic group, religion, religious practices, disability, sexual orientation, gender as defined in Education Law Section 11(6), or sex; provided that nothing in this subdivision shall be construed to prohibit a denial of admission into, or exclusion from, a course of instruction based on a person's gender that would be permissible under Education Law sections 3201-a or 2854(2)(a) and Title IX of the Education Amendments of 1972 (20 U.S.C. section 1681, et seq.), or to prohibit, as discrimination based on disability, actions that would be permissible under section 504 of the Rehabilitation Act of 1973;

(c) standards and procedures to assure the security and safety of all students and school personnel;

(d) provisions for the removal from the classroom, school property and school functions of students and other persons who violate the code;

(e) provisions prescribing the period for which a disruptive pupil may be removed from the classroom for each incident, provided that no such pupil shall return to the classroom until the principal makes a final determination pursuant to Education Law, section 3214(3-a)(c), or the period of removal expires, whichever is less;

(f) disciplinary measures to be taken in incidents on school property or at school functions involving the possession or use of illegal substances or weapons, the use of physical force, vandalism, violation of another student's civil rights and threats of violence;

(g) disciplinary measures to be taken for incidents on school property or at school functions involving harassment, bullying, and/or discrimination;

(h) provisions for responding to acts of harassment, bullying, and/or discrimination against students by employees or students pursuant to clause (b) of this subparagraph which, with respect to such acts against students by students, incorporate a progressive model of student discipline that includes measured, balanced and age-appropriate remedies and procedures that make appropriate use of prevention, education, intervention and discipline, and considers among other things, the nature and severity of the offending student's behavior(s), the developmental age of the student, the previous disciplinary record of the student and other extenuating circumstances, and the impact the student's behaviors had on the individual(s) who was physically injured and/or emotionally harmed. Responses shall be reasonably calculated to end the harassment, bullying, and/or discrimination, prevent recurrence, and eliminate the hostile environment. This progressive model of student discipline shall be consistent with the other provisions of the code of conduct;

(i) provisions for detention, suspension and removal from the classroom of students, consistent with Education Law, section 3214 and other applicable Federal, State and local laws including provisions for the school authorities to establish policies and procedures to ensure the provision of continued educational programming and activities for students removed from the classroom, placed in detention, or suspended from school, which shall include alternative educational programs appropriate to individual student needs;

(j) procedures by which violations are reported, determined, discipline measures imposed and discipline measures carried out;

(k) provisions ensuring such code and the enforcement thereof are in compliance with State and Federal laws relating to students with disabilities;

(l) provisions setting forth the procedures by which local law enforcement agencies shall be notified promptly of code violations, including but not limited to incidents of harassment, bullying, and/or discrimination, which may constitute a crime;

(m) provisions setting forth the circumstances under and procedures by which persons in parental relation to the student shall be notified of code violations;

(n) provisions setting forth the circumstances under and procedures by which a complaint in criminal court, a juvenile delinquency petition or person in need of supervision petition as defined in articles three and seven of the Family Court Act will be filed;

(o) circumstances under and procedures by which referral to appropriate human service agencies shall be made, as needed;

(p) a minimum suspension period, for any student who repeatedly is substantially disruptive of the educational process or substantially interferes with the teacher's authority over the classroom, provided that the suspending authority may reduce such period on a case-by-case basis to be consistent with any other State and Federal Law. For purposes of this requirement, repeatedly is substantially disruptive of the educational process or substantially interferes with the teacher's authority over the classroom shall mean engaging in conduct which results in the removal of the student from the classroom by teacher(s) pursuant to the provisions of Education Law, section 3214(3-a) and the provisions set forth in the code of conduct on four or more occasions during a semester, or three or more occasions during a trimester, as applicable;

(q) a minimum suspension period for acts that would qualify the pupil to be defined as a violent pupil pursuant to Education Law section 3214(2-a)(a), provided that the suspending

authority may reduce such period on a case-by-case basis to be consistent with any other State and Federal law;

(r) a bill of rights and responsibilities of students which focuses upon positive student behavior and a safe and supportive school climate, which shall be written in plain-language, publicized and explained in an age-appropriate manner to all students on an annual basis;

(s) guidelines and programs for in-service education programs for all district staff members to ensure effective implementation of school policy on school conduct and discipline, including but not limited to, guidelines on promoting a safe and supportive school climate while discouraging, among other things, harassment, bullying and discrimination against students by students and/or school employees; and including safe and supportive school climate concepts in the curriculum and classroom management; and

(t) a provision prohibiting retaliation against any individual who, in good faith, reports or assists in the investigation of harassment, bullying, and/or discrimination.

(iii) Additional responsibilities.

(a) Each board of education and, in the case of the City School District of the City of New York, the chancellor of such city school district, and each board of cooperative educational services shall annually review and update as necessary its code of conduct, taking into consideration the effectiveness of code provisions and the fairness and consistency of its administration. A school district may establish a committee pursuant to Education Law, section 2801(5)(a) to facilitate the review of its code of conduct and the district's response to code of conduct violations. A board of education or board of cooperative educational services may adopt any revision to the code of conduct only after at least one public hearing that provides for the participation of school personnel, parents, students, and any other interested party. Each district shall file a copy of its code of conduct and any amendments with the commissioner, in a manner prescribed by the commissioner, no later than 30 days after their respective adoptions.

(b) Each board of education and board of cooperative educational services shall ensure community awareness of its code of conduct by:

(1) posting the complete code of conduct, respectively, on the internet website, if any, of the school or school district, or of the board of cooperative educational services, including any annual updates to the code made pursuant to clause (a) of this subparagraph and any other amendments to the code;

(2) providing copies of a summary of the code of conduct to all students, in an age-appropriate version, written in plain-language, at a school assembly to be held at the beginning of each school year;

(3) mailing a plain language summary of the code of conduct to all persons in parental relation to students before the beginning of each school year and making such summary available thereafter upon request;

(4) providing each teacher with a copy of the complete code of conduct and a copy of any amendments to the code as soon as practicable following initial adoption or amendment of the code, and providing new teachers with a complete copy of the current code upon their employment; and

(5) making complete copies available for review by students, parents or persons in parental relation to students, other school staff and other community members.

(3) Corporal punishment.

(i) The term corporal punishment, as used in this section, shall have the same meaning as such term is defined in section 19.5(b)(2) of this Title.

(ii) In every school district and supervisory district, the trustee, trustees, board of education or board of cooperative educational services, shall submit a written semiannual report to the Commissioner of Education, by January 15th and July 15th of each year, commencing July 1, 1985 through the 2023-2024 school year, setting forth the substance of each complaint about the use of corporal punishment received by the local school authorities during the reporting period, the results of each investigation, and the action, if any, taken by the school authorities in each case. Beginning with the 2024-2025 school year, the reporting provisions of section 19.5(e) of this Title and paragraph (2) of subdivision (bb) of this section shall apply.

(4) Parental notice concerning student suspensions. When suspension of a student from attendance for a period of five days or less pursuant to section 3214(3) of the Education Law is proposed, school district officials shall immediately notify the parents or the persons in parental relation in writing that the student may be suspended from school. Written notice shall be provided by personal delivery, express mail delivery, or equivalent means reasonably calculated to assure receipt of such notice within 24 hours of the decision to propose suspension at the last known address or addresses of the parents or persons in parental relation. Where possible, notification shall also be provided by telephone if the school has been provided with a telephone number(s) for the purpose of contacting parents or persons in parental relation. Such notice shall provide a description of the incident(s) for which suspension is proposed and shall inform the parents or persons in parental relation of their right to request an immediate informal conference with the principal in accordance with the provisions of Education Law, section 3214(3)(b). Such notice and informal conference shall be in the dominant language or mode of communication used by the parents or persons in parental relation to the pupil. Such notice and opportunity for an informal conference shall take place prior to the suspension of the student unless the student's presence in the school poses a continuing danger to persons or property or an ongoing threat of disruption to the academic process, in which case the notice and opportunity for an informal conference shall take place as soon after the suspension as is reasonably practicable.

(m) *Public reporting requirements.*

(1) The New York State report card for each public school, charter school, and school district, except the New York City school district, shall be prepared by the Education Department. The chancellor of the New York City School District shall produce a New York City report card, as approved by the Commissioner.

(2) The superintendent of each public school district, except the New York City School District, shall present the New York State report card to the board of education of such district at a public meeting within 30 calendar days of the commissioner's release of the report. In New York City, the chancellor shall present, in this same time period, the New York City report card to the New York City Board of Education. In a charter school, the charter school leader shall present, in this same time period, the charter school report card to the charter school board of trustees.

(3) Each board of education shall make its report card available by appending it to copies of the proposed budget made publicly available as required by law, making it available for distribution at the annual meeting, transmitting it to local newspapers of general circulation and making it available to parents.

(4) To satisfy the local report card requirements under section 1111(h)(2) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. section 6311(h)(2), each report card for a local educational agency, as defined in 100.21(b)(1) shall be placed on the website of the local educational agency or, in any case in which a local educational agency does not operate a website, provided to the public in another manner determined

by the local educational agency. Each public school principal and each school leader of a charter school receiving Federal funding under title 1 shall also distribute, within 30 calendar days of the commissioner's release of such reports, copies of the New York State report card for the school and the district, or, in the New York City School District, the New York City report card to the parent of each student. A district or charter school may add any other appropriate information, including but not limited to measures of school climate and safety; access to specific learning opportunities, such as physical education; and teacher turnover and absences. Such additional information also must be distributed to the parent of each student and must be made widely available through public means, such as posting on the Internet, distribution through the media, and distribution through public agencies. To the extent practicable, the district or charter school shall provide the report and additional information in a language that the parents can understand (e.g, in the most frequently used languages in the district).

(5) The comprehensive information report for each nonpublic school will include the following information, for each school building:

- (i) student test data on the New York State elementary and middle-level ELA, mathematics, and science assessments, all Regents examinations, New York State English as a Second Language Achievement test;
- (ii) student enrollment by grade, racial/ethnic group and English language learner status;
- (iii) data, as required by the commissioner, on diplomas and certificates awarded;
- (iv) any additional information prescribed by the commissioner on educational equity and other issues; and
- (v) any additional information which the chief administrative officer of the nonpublic school believes will reflect the relative assessment of a school building or district. The chief administrative officer of each nonpublic school shall initiate measures designed to improve student results wherever it is warranted. The chief administrative officer of each nonpublic school shall be responsible for making the comprehensive information report accessible to parents.

(n) *Variances for programs and special focus schools.* Except as otherwise provided for State test or examination requirements pursuant to subdivision (f) of this section, the commissioner may grant variances from the provisions of this Part upon a finding that a variance will enable a school to implement a program designed to provide excellence in education. A school or school district shall submit an application for a variance in the form prescribed by the commissioner at least six months in advance of the proposed starting date of the program. Such application shall set forth:

- (1) the specific regulation(s) from which a variance is requested;
- (2) the need for such variance;
- (3) a detailed description of the program or activities which will be substituted for the requirement for which the variance is requested;
- (4) the expected time needed to carry out the substitute program or activities;
- (5) a plan for evaluating the substitute program or activities;
- (6) the school or school district's agreement to submit a follow-up report to the commissioner within six months after conclusion of the substitute program or activities, and within one month after the end of each school year in the case of ongoing substitute programs or activities; and
- (7) in lieu of the requirements set forth in paragraphs (2) through (6) of this subdivision, a statement, and supporting evidence, concerning the school's status of accreditation by a statewide or regional

accrediting body recognized by the commissioner.

(o) *Annual professional performance review.*

(1) For school years commencing on or after July 1, 2000, each school district and BOCES shall be subject to the requirements of this paragraph.

(i) For purposes of this paragraph, the *governing body of each school district* shall mean the board of education of each school district, and in the case of the City School District of the City of New York it shall mean the Board of Education of the City School District of the City of New York.

(ii) Annual review. The governing body of each school district and BOCES shall ensure that the performance of all teachers providing instructional services or pupil personnel services, as defined in section 80-1.1 of this Title, is reviewed annually in accordance with this subdivision, except evening school teachers of adults enrolled in nonacademic, vocational subjects; and supplementary school personnel, as defined in section 80-5.6 of this Title, and any classroom teacher subject to the evaluation requirements prescribed in Subparts 30-2 and 30-3 of this Title.

(iii) Professional performance review plan.

(a) Development and adoption of the plan.

(1) Except as otherwise provided in subparagraph (ii) of this paragraph, by September 1, 2011, the governing body of each school district and BOCES shall adopt a plan, which may be an annual or multi-year plan, for the annual professional performance review of its teachers providing instructional services or pupil personnel services, as defined in section 80-1.1 of this Title, that meets the content requirements prescribed in clause (b) of this subparagraph.

(2) Each superintendent and in the case of the City School District of the City of New York, the chancellor, in collaboration with teachers, pupil personnel professionals, administrators and parents selected by the superintendent or in the case of the City School District of New York, the chancellor, with the advice of their respective peers, shall develop the professional performance review plan, which shall be approved by the governing body of each school district or BOCES, filed in the district or BOCES office, as applicable, and available for review by any individual no later than September 10th of each year. The governing body of each school district and BOCES shall provide organizations representing parents and the recognized representative of the teachers' bargaining unit with an opportunity to comment on such plan prior to its adoption.

(b) Content of the plan.

(1) Criteria for evaluation of teachers providing instructional services. The professional performance review plan shall describe the criteria that the school district or BOCES shall use to evaluate its teachers providing instructional services, which shall include but not be limited to an evaluation of the following:

(i) content knowledge, the teacher shall demonstrate a thorough knowledge of the subject matter area and curriculum;

(ii) preparation, the teacher shall demonstrate appropriate preparation employing the necessary pedagogical practices to support instruction;

(iii) instructional delivery, the teacher shall demonstrate that the delivery of instruction results in active student involvement, appropriate teacher/student interaction and meaningful lesson plans resulting in student learning;

(iv) classroom management, the teacher shall demonstrate classroom management skills supportive of diverse student learning needs which create an environment conducive to student learning;

(v) student development, the teacher shall demonstrate knowledge of student development, an understanding and appreciation of diversity and the regular application of developmentally appropriate instructional strategies for the benefit of all students;

(vi) student assessment, the teacher shall demonstrate that he or she implements assessment techniques based on appropriate learning standards designed to measure students' progress in learning and that he or she successfully utilizes analysis of available student performance data (for example: State test results, student work, school-developed assessments, teacher-developed assessments, etc.) and other relevant information (for example: documented health or nutrition needs, or other student characteristics affecting learning) when providing instruction;

(vii) collaboration, the teacher shall demonstrate that he or she develops effective collaborative relationships with students, parents or caregivers, as needed, and appropriate support personnel to meet the learning needs of students; and

(viii) reflective and responsive practice, the teacher shall demonstrate that practice is reviewed, effectively assessed and appropriate adjustments are made on a continuing basis.

(2) Criteria for the evaluation of teachers providing pupil personnel services. The plan shall describe the criteria that the school district or BOCES shall use to evaluate teachers providing pupil personnel services, as defined in section 80-1.1 of this Title.

(3) Assessment approaches. The plan shall describe the methods that the school districts or BOCES shall employ to assess teachers' performance, which may include but is not limited to the following: classroom observation, videotape assessment, self review, peer review and portfolio review. For teachers possessing a transitional or initial certificate, the plan shall require the teacher to be evaluated based on portfolio review, which may include but is not limited to: a video of teaching performance, a sample lesson plan, a sample of student work, student assessment instruments and the teacher's reflection on his or her classroom performance.

(4) Teacher improvement. The plan shall describe how the school district or BOCES addresses the performance of teachers whose performance is evaluated as unsatisfactory, and shall require the development of a teacher improvement plan for teachers so evaluated, which shall be developed by the district or BOCES in consultation with such teacher.

(5) Training in performance evaluation. The plan shall describe how the school district or BOCES provides training in good practice for the conducting of performance evaluations to staff who perform such evaluations, or alternatively, shall state the fact that the school district or BOCES permits such personnel to participate in training in this subject offered by the department.

(iv) Reporting requirement. The department shall require school districts and BOCES to report on an annual basis information related to the school district's efforts to address the performance of teachers whose performance is evaluated as unsatisfactory, including information related to the implementation of teacher improvement plans for teachers so evaluated.

(v) Performance review of principals. The governing body of each school district shall annually review the performance of all building principals, as defined in Subpart 30-2 of this Title, according to procedures developed by such body in consultation with such building principals. Such procedures shall be filed in the district office and available for review by any individual no later than September 10th of each year.

(vi) Performance review of superintendent. The governing body of each school district shall annually review the performance of the superintendent of schools according to procedures developed by such body in consultation with the superintendent. Such procedures shall be filed in the district office and available for review by any individual no later than September 10th of each year.

(vii) Formal procedures for the review of the performance of teachers shall be determined by the school district or BOCES, consistent with the requirements of article 14 of the Civil Service Law.

(viii) Variance.

(a) A variance shall be granted from a requirement of this paragraph, upon a finding by the commissioner that a school district or BOCES has executed prior to September 3, 1999 an agreement negotiated pursuant to article 14 of the Civil Service Law whose terms continue in effect and are inconsistent with such requirement.

(p) *Registration of schools and school/district accountability.* Nonpublic schools may be, and public elementary, intermediate, middle, junior high, and high schools shall be, registered by the Board of Regents pursuant to this subdivision upon recommendation by the commissioner, provided that charter schools shall not be subject to registration pursuant to this subdivision, but shall be held accountable for meeting or exceeding the student performance standards and student assessment requirements applicable to other public schools in accordance with the provisions of article 56 of the Education Law. No school district may operate a public school whose registration has been revoked by the Board of Regents pursuant to paragraph (10) of this subdivision or has lapsed pursuant to paragraph (3) of this subdivision. Only those public and nonpublic high schools which are registered by the Board of Regents upon recommendation of the commissioner, may issue diplomas and administer Regents examinations, except that charter schools may issue diplomas and administer Regents examinations as authorized by article 56 of the Education Law.

(1) Definitions. As used in this subdivision:

(i) *Accountability groups* shall mean, for each public school, school district and charter school, those groups of students for each grade level or annual high school cohort, as described in paragraph (16) of this subdivision comprised of: all students; students from major racial and ethnic groups, as set forth in subparagraph (bb)(2)(v) of this section; students with disabilities, as defined in section 200.1 of this Title, including, beginning with the 2009-2010 school year, students no longer identified as students with disabilities but who had been so identified during the preceding one or two school years; students with limited English proficiency, as defined in Part 154 of this Title, including, beginning with the 2006-2007 school year, a student previously identified as a limited English proficient student during the preceding one or two school years; and economically disadvantaged students, as identified pursuant to section 1113(a)(5) of the NCLB, 20 U.S.C. section 6316(a)(5) (Public Law, section 107-110, section 1113[a][5], 115 STAT. 1469; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2002; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234). The school district accountability groups for each grade level will include all students enrolled in a public school in the district or placed out of the district for educational services by the district committee on special education or a district official.

(ii) *School district* shall mean a common, union free, central, central high school or city school district, provided that, in the case of the city school district of the City of New York, such term shall mean a community school district or New York City superintendency to the extent that such entity is the local educational agency for purposes of title I.

(iii) *Board of education* shall mean the trustees or board of education of a school district; provided that in the case of the city school district of the City of New York, such term shall mean the

chancellor of the city school district acting in lieu of the board of education of such city school district to the extent authorized by article 52-A of the Education Law and, with respect community school districts and New York City superintendencies, such term shall mean the community superintendent or other superintendent of schools acting in lieu of the board of education to the extent authorized by article 52-A of the Education Law.

(iv) *Performance index* shall be calculated based on the four student performance levels defined in this subparagraph. Each student scoring at level 1 will be credited with 0 points, each student scoring at level 2 with 100 points, and each student scoring at level 3 or 4 with 200 points. The performance index for each accountability group will be calculated by summing the points and dividing by the number of students in the group.

(v) *Performance levels* shall mean:

(a) level 1/basic:

(1) for elementary and middle grades:

(i) a score of level 1 on State assessments in English language arts, mathematics and science or a score of level 1 on a State alternate assessment;

(ii) for the 2005-2006 school year and prior school years, a score for certain limited English proficient students pursuant to subparagraph (14)(viii) of this subdivision, in lieu of the State assessment in English language arts, that shows level 1 growth on the New York State English as a Second Language Assessment Test (NYSESLAT);

(iii) for the 2004-2005 and prior school years, the score to be reported for a student with a disability who participates in the local assessment option;

(2) for high school:

(i) a score of less than 55 on the Regents comprehensive examination in English or a Regents mathematics examination or a failing score on a State-approved alternative examination for those Regents examinations;

(ii) a failing score on the Regents competency tests in reading or writing; a failing score on the Regents competency test in mathematics;

(iii) a score of level 1 on a State alternate assessment;

(iv) a cohort member who has not been tested; or

(v) for the 2004-2005 and prior school years, the score of a student with a disability who participates in the local assessment option;

(b) level 2/basic proficient:

(1) for elementary and middle grades:

(i) a score of level 2 on State assessments in English language arts, mathematics and science or a score of level 2 on a State alternate assessment;

(ii) for the 2005-2006 school year and prior school years, a score for certain limited English proficient students pursuant to subparagraph (14)(viii) of this subdivision, in lieu of the State assessment in English language arts, that shows level 2 growth on the NYSESLAT;

(2) for high school:

(i) a score between 55 and 64 on the Regents comprehensive examination in English or a Regents

mathematics examination;

(ii) a passing score on the Regents competency test in reading and writing; a passing score on the Regents competency test in mathematics;

(iii) a score of level 2 on a State alternate assessment;

(c) level 3/proficient:

(1) for elementary and middle grades:

(i) a score of level 3 on State assessments in English language arts, mathematics and science or a score of level 3 on a State alternate assessment;

(ii) for the 2005-2006 school year and prior school years, a score for certain limited English proficient students pursuant to subparagraph (14)(viii) of this subdivision, in lieu of the State assessment in English language arts, that shows level 3 growth on the NYSESLAT;

(2) for high school:

(i) a score between 65 and 84 on the Regents comprehensive examination in English or a Regents mathematics examination;

(ii) a passing score on a State-approved alternative to the Regents examinations set forth in item (i) of this subclause;

(iii) a score of level 3 on a State alternate assessment; and

(d) level 4/advanced:

(1) for elementary and middle grades:

(i) a score of level 4 on required State assessments in English language arts, mathematics and science or a score of level 4 on a State alternate assessment;

(2) for high school:

(i) a score of 85 or higher on the Regents comprehensive examination in English or a Regents mathematics examination;

(ii) a score of level 4 on a State alternate assessment;

(vi) *High school equivalency literacy levels* means the level that a student tested on reading and mathematics assessments approved by the commissioner divided into the following grade levels: 0.0-1.9, 2.0-3.9, 4.0-5.9, 6.0-8.9, 9.0-10.9 and 11.0 and above.

(vii) *Alternate assessment* means a State alternate assessment recommended by the committee on special education, for use by students with disabilities as defined in section 100.1(t)(2)(iv) of this Part in lieu of a required State assessment.

(viii) *Title I* means title I, part A of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. sections 6301 - 6327.

(ix) *Continuously enrolled* means, for grades 3-8, students whose latest date of enrollment occurred after the date prescribed by the commissioner on which BEDS forms are required to be completed and, for grades 9-12, students in the high school cohort, as defined in paragraph (16) of this subdivision.

(x) *Significant medical emergency* means an excused absence from school during both the regular and makeup examination period for which a district has documentation from a medical

practitioner that a student is so incapacitated as to be unable to participate in the State assessment given during that examination period.

(xi) *For elementary and middle-level students, participation rate* means the percentage of students enrolled on all days of test administration who did not have a significant medical emergency who received valid scores on the State assessments for elementary and middle-level grades, as set forth in subparagraph (v) of this paragraph. Beginning with the 2006-2007 school year, a limited English proficient student enrolled in school in the United States (excluding Puerto Rico) for less than one year as of a date determined by the commissioner and who received a valid score on the NYSESLAT may be counted as participating in an elementary or middle level English language arts assessment.

(xii) *For high school students, participation rate* means the percentage of designated students in at least their fourth year of high school, as designated by the commissioner, who received a valid score on the required assessments for high schools, as set forth in subparagraph (v) of this paragraph.

(xiii) *NCLB* means the No Child Left Behind Act of 2001, Public Law, section 107-110.

(2) Procedure for registration of public schools.

(i) All public elementary, intermediate, middle, junior high schools, and high schools, other than charter schools, in existence on September 1, 2002 shall be deemed registered by the Board of Regents pursuant to this subdivision as of such date.

(ii) A school district that seeks to register a public elementary, intermediate, middle, junior high school or high school which is not registered pursuant to subparagraph (i) of this paragraph shall submit a petition for registration to the Board of Regents, in a form prescribed by the commissioner and containing such information as the commissioner may require, no later than June 15th for schools opening in September of the next successive school year or, for those schools opening during a current school year, at least 90 days prior the opening of such school, except that the commissioner may waive this timeline for good cause. The commissioner shall review the petition and shall recommend its approval to the Board of Regents if it is satisfactorily demonstrated that the district has provided an assurance that the school will be operated in an educationally sound manner; is in compliance with applicable statutes, rules and regulations relating to public schools; and will operate in accordance with applicable building codes and pursuant to a certificate of occupancy. No new public school will be recommended for registration by the commissioner if, in the commissioner's judgment, the establishment of such school would conflict with an approved plan for district reorganization, except where it can be established to the satisfaction of the commissioner that such school is essential to the education welfare of the students.

(a) Where a school registered pursuant to this paragraph is in a district in which one or more schools have been designated as a school in Improvement, Corrective Action or Restructuring, the commissioner shall determine the accountability status of the newly registered school based upon his review of the proposed educational program, including but not limited to such factors as: school mission, school administration and staff, grade configurations and groupings of students, zoning patterns, curricula and instruction and facilities.

(b) In the event that a school district merges two or more schools or transfers organizational responsibility for one or more grades from one school to another, the commissioner may adjust the accountability status of the affected schools to reflect such organizational changes.

(3) All registrations approved by the Board of Regents pursuant to this subdivision shall continue in effect unless revoked by the Board of Regents upon recommendation of the commissioner after review of the registration, or the school district closes the school.

(4) System of accountability for student success. Each year, commencing with 2002-2003 school year test administration results, the commissioner shall review the performance of all public schools, charter schools and school districts in the State. For each accountability performance criterion specified in paragraph (14) and each performance indicator specified in paragraph (15) of this subdivision, the commissioner, commencing with 2002-2003 school year test administration results, shall determine whether each public school, charter school and school district has achieved adequate yearly progress as set forth in paragraph (5) of this subdivision.

(5) Adequate yearly progress.

(i) A public school, charter school or school district shall be deemed to have made adequate yearly progress on an accountability performance criterion set forth in paragraph (14) of this subdivision if each accountability group within such school or district achieved adequate yearly progress on that criterion.

(ii) In public schools, charter schools or school districts with fewer than 30 students subject to an accountability performance criterion set forth in paragraphs (14) and (15) of this subdivision, the commissioner shall use the weighted average of the current and prior school year's performance data for that criterion in order to make a determination of adequate yearly progress. No public school, charter school or school district will be held accountable for any other accountability group consisting of fewer than 30 students as long as the "all student" accountability group includes at least 30 students for that school year.

(iii) For purposes of determining adequate yearly progress, only the performance of continuously enrolled students in grades 3-8 shall be included for consideration.

(iv) An accountability group shall be deemed to have made adequate yearly progress on an accountability performance criterion specified in paragraph (14) of this subdivision if:

(a) the superintendent of the school district or the principal of the charter school has submitted the required student data files to the commissioner pursuant to paragraph (bb)(2) of this section or section 119.3(b) of this Title in the timeframe and format specified by the commissioner; and

(b) for accountability groups consisting of 40 or more students, either:

(1) the participation rate for the current year equals or exceeds 95 percent; or

(2) the weighted average of the current year and prior year participation rates equals or exceeds 95 percent;

(c) for accountability groups consisting of 30 or more students:

(1) the accountability group met or exceeded, or did not differ significantly as determined by the commissioner, from the annual measurable objective for that criterion; or

(2) the accountability group met or exceeded, or did not differ significantly as determined by the commissioner, from an annual performance target established by the commissioner and the accountability group met or exceeded the third performance indicator at that grade level, as defined in paragraph (15) of this subdivision.

(v) A public school, charter school or school district shall be deemed to have made adequate yearly progress on a performance indicator specified in paragraph (15) of this subdivision if:

(a) the superintendent of the school district or the principal of the charter school has submitted the required student data files to the commissioner pursuant to paragraph (bb)(2) of this section or section 119.3(b) of this Title in the timeframe and format specified by the commissioner; and

(b) the “all students” accountability group in the school or school district at the applicable grade levels or high school cohort met or exceeded the performance indicator and, for elementary and middle levels, and beginning in 2005-2006 for the elementary- middle level, 80 percent of students enrolled on all days of the science test administration, who did not have a significant medical emergency, received valid scores.

(vi) For each school year, public schools, school districts, and charter schools in which no students or, pursuant to subparagraph (ii) of this paragraph fewer than 30 students, participate in the required State assessments for English language arts or mathematics, or in which the majority of students are not continuously enrolled, shall conduct a self-assessment of their academic program and the school learning environment, in such format and using such criteria as may be prescribed by the commissioner. Such self-assessment shall not be required of those schools and school districts for which the commissioner shall conduct a review of the performance of the school or school district in accordance with subparagraph (viii) of this paragraph. The superintendent of the school district or principal of the charter school shall review the self-assessment(s) and make a recommendation to the commissioner, in such format and according to such timeframe as the commissioner may prescribe, as to whether the school or school district has made adequate yearly progress. The commissioner shall consider the self-assessment, board recommendation and any other relevant information in determining whether the school or school district made adequate yearly progress.

(vii) The school accountability status of public schools, school districts, and charter schools serving grades 1 and/or 2, but not grade 3 or higher, (hereafter referred to as “feeder schools”) will be determined using backmapping. In school districts with such feeder schools and in school districts that accept grade 3 students from feeder schools by contract, the grade three State assessment results for each feeder school student will be attributed to the feeder school as well as to the school or charter school in which the student took the assessment. The student’s results will be attributed to a feeder school only if the student was continuously enrolled in the feeder school from the date prescribed by the commissioner on which the BEDS forms are required to be completed until the end of the school year in the highest grade served by the feeder school. In a district, if all schools serving grade three make adequate yearly progress in a given year, all feeder schools served by the district will be deemed to have made adequate yearly progress. If one or more schools enrolling students from a feeder school fail to make adequate yearly progress on a criterion set forth at subparagraphs (14)(iii) and (vi) of this subdivision, the commissioner will aggregate the district’s grade three results on that criterion by feeder school and determine whether each feeder school made adequate yearly progress on that criterion. If a feeder school fails to make adequate yearly progress on the same criterion for two consecutive years, the school will be designated as a school in Improvement (year 1).

(6) Differentiated Accountability for Schools.

(i) Except as provided in subparagraph (ii) of this paragraph, beginning with the 2009-2010 school year and thereafter, public schools, and charter schools that receive funds under title I, that failed to make adequate yearly progress (AYP) pursuant to this subparagraph shall be designated into accountability phases and phase categories as follows:

(a) Accountability phases.

(1) Improvement phase.

(i) A school that fails to make AYP for two consecutive years on the same accountability performance criterion in paragraph (14) of this subdivision or the same accountability indicator in paragraph (15) of this subdivision shall be designated in the next school year as a school in Improvement (year 1) for that accountability performance criterion/accountability indicator.

(ii) A school that is designated as a school in Improvement (year 1) that fails to make AYP on the same accountability performance criterion or accountability indicator for which it has been identified shall be designated in the next school year as a school in Improvement (year 2) for that accountability performance criterion/accountability indicator.

(2) Corrective action phase.

(i) A school that is designated as a school in Improvement (year 2) that fails to make AYP on the same accountability performance criterion or accountability indicator for which it has been identified as a school in Improvement (year 2) shall be designated in the next school year as a school in Corrective Action (year 1) for that accountability performance criterion/accountability indicator.

(ii) A school that is designated as a school in Corrective Action (year 1) that fails to make AYP on the same accountability performance criterion or accountability indicator for which it has been identified shall be designated in the next school year as a school in Corrective Action (year 2) for that accountability performance criterion/accountability indicator.

(3) Restructuring phase.

(i) A school that is designated as a school in Corrective Action (year 2) that fails to make AYP on the same accountability performance criterion or accountability indicator for which it has been identified shall be designated in the next school year as a school in Restructuring (year 1) for that accountability performance criterion/accountability indicator.

(ii) A school that is designated as a school in Restructuring (year 1) that fails to make AYP on the same accountability performance criterion or accountability indicator for which it has been identified shall be designated in the next school year as a school in Restructuring (year 2) for that accountability performance criterion/accountability indicator.

(iii) A school that is designated as a school in Restructuring (year 2) that fails to make AYP on the same accountability performance criterion or accountability indicator for which it has been identified shall be designated in the next school year as a school in Restructuring (advanced) for that accountability performance criterion/accountability indicator.

(b) Phase categories.

(1) Improvement phase. Schools designated in Improvement shall be assigned to a category upon entry into the phase as follows:

(i) Basic:

(A) schools that fail to make AYP for one accountability group within one accountability performance criterion, but not the all students group; or

(B) schools that fail to make AYP for one of the accountability indicators, but met the accountability performance criterion.

(ii) Focused:

(A) schools that fail to make AYP for more than one accountability performance criterion, but not the all students group; or

(B) schools that fail to make AYP for more than one accountability student group within an accountability

performance criterion, but not the all students group.

(iii) Comprehensive:

(A) schools that fail to make AYP for the all students group on any accountability performance criterion;
or

(B) schools that fail to make AYP for every accountability group, except the all students group, within an accountability criterion for which there are at least two accountability groups other than the all students group; or

(C) schools that fail to make AYP for an accountability performance criterion and for an indicator.

(2) Corrective Action or Restructuring phase. Schools designated in Corrective Action or Restructuring shall be assigned to a category upon entry into the phase as follows:

(i) Focused:

(A) schools that fail to make AYP for one of the accountability indicators, but met the accountability performance criterion; or

(B) schools that fail to make AYP for more than one accountability performance criterion, but not with the all students group; or

(C) schools that fail to make AYP for one or more accountability groups within an accountability performance criterion, but not the all students group.

(ii) Comprehensive:

(A) schools that fail to make AYP for the all students group on any accountability performance criterion;
or

(B) schools that fail to make AYP for every accountability group, except the all students group, within an accountability performance criterion for which there are at least two accountability groups other than the all students group; or

(C) schools that fail to make AYP for an accountability performance criterion and for an accountability indicator.

(c) The commissioner shall designate a school's overall accountability status as the most advanced phase for which it has been identified on an accountability performance criterion/accountability indicator and, within that designated phase, shall assign the highest category, provided that such category may not be reduced in a subsequent year of a phase.

(d) Upon a finding of exceptional or uncontrollable circumstances, the commissioner may delay for a period of one year the designation of a school under this paragraph.

(ii) Special transition provisions for schools in operation during the 2008-2009 school year and for schools under registration review. Notwithstanding the provisions of subparagraph (i) of this paragraph:

(a) for each public school that was in operation during the 2008-2009 school year and for each charter school that was in operation and received funds under title I during the 2008-2009 school year, the commissioner shall designate the school's accountability phase and phase category for the 2009-2010 school year, based upon the school's accountability status for the 2008-2009 school year and the school's adequate yearly progress (AYP) status for the 2007-2008 and 2008-2009 school years;

(b) notwithstanding the provisions of clause (a) of this subparagraph, a school that is

identified for registration review pursuant to paragraph (9) of this subdivision during a school year in which it is designated as a school in Improvement or Corrective Action shall, in the next school year, be designated as a school in Restructuring (year 1)/Comprehensive and shall be subject to the requirements of subclause (iv)(c)(2) of this paragraph.

(iii) Removal from accountability designation. A school that makes adequate yearly progress for two consecutive years on the accountability performance criterion/accountability indicator for which it has been identified shall be removed from accountability designation for that accountability performance criterion and/or accountability indicator.

(iv) Interventions.

(a) Improvement phase schools.

(1) School quality review. Each school upon initial designation for the Improvement phase shall participate in a school quality review, to include at a minimum a self-assessment of the educational program, using quality indicators in a form and content prescribed by the commissioner. The school quality review shall focus on the accountability group(s) for each accountability performance criterion and/or accountability indicator for which the school has been identified.

(2) School improvement plan. A school improvement plan, in such format as may be prescribed by the commissioner, shall be developed based on the school quality review and cover a two year period. The plan shall:

(i) be formally approved by the board of education (in New York City, approved by the chancellor or chancellor's designee) no later than three months following the designation of the school in the Improvement phase and shall be subject to the approval of the commissioner, upon request;

(ii) be implemented no later than the beginning of the next school year after the school year in which the school was identified or immediately upon approval of the board of education if such approval occurs after the first day of regular school attendance;

(iii) be updated annually and, as so updated, approved by the board of education and implemented no later than the first day of regular student attendance of each year that the school remains in improvement. If, in the second year of improvement, the school fails to make AYP with a different accountability group for which the school is subsequently designated for improvement or is subsequently designated for improvement for a different accountability performance criterion or indicator, the school shall modify the plan consistent with the highest accountability category and also address the additional group(s), criterion or indicator;

(iv) for a school designated as Improvement/Basic, the plan shall also include a description of activities and timeline for implementation. The district shall be responsible for oversight and support of the plan;

(v) for a school designated as Improvement/Focused, the plan shall, consistent with State law, also include one or more of the actions set forth in section 6316 (b)(3)(A)(i-x) of the NCLB, 20 U.S.C. section 6316(b)(3)(A)(i-x) (United States Code, 2006 Edition, Volume 13; Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001; 2008; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234), in accordance with a written report by the school quality review team; and

(vi) for a school designated as Improvement/Comprehensive, the plan shall, consistent with State law, also include all of the actions set forth in section 6316 (b)(3)(A)(i-x) of the NCLB, 20 U.S.C. section 6316(b)(3)(A)(i-x) (United States Code, 2006 Edition, Volume 13; Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001; 2008; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234), in accordance with a written report

by the school quality review team. Such report may include a recommendation that the school engage the services of a content area consultant.

(3) On-site review. Except as provided in paragraph (9) of this subdivision, in addition to the school quality review and prior to the development of the school improvement plan required under clause (a) of this subparagraph:

(i) for a school designated as Improvement/Focused, the school shall be required to participate in an on-site review that shall be conducted by a school quality review team, with district representation, appointed by the commissioner. The review shall focus on the accountability group(s), accountability performance criterion and/or indicator for which the school was identified. The district shall be responsible for oversight and support of the plan;

(ii) for a school designated as Improvement/Comprehensive, the school shall be required to participate in an intensive on-site review that shall be conducted by a school quality review team, with district representation, appointed by the commissioner. The review shall focus on the systemic issues at the school that have caused the school to be designated for Improvement. The district shall be responsible for oversight and support of the plan.

(b) Corrective action phase schools.

(1) Curriculum audit. Except as provided in paragraph (9) of this subdivision, each school, upon initial designation for the Corrective Action phase, shall participate in a curriculum audit to assess the school's educational program. The curriculum audit shall be in a form and content prescribed by the commissioner and shall focus on the accountability group(s) for each accountability performance criterion and/or accountability indicator for which the school was identified. The school shall be assisted by a school quality review team, with district representation, appointed by the commissioner.

(2) Corrective action plan. A corrective action plan, in such format as may be prescribed by the commissioner, shall be developed and cover a two-year period. The district and school quality review team shall provide oversight and support for implementation of a corrective action plan. The plan shall:

(i) be formally approved by the board of education (in New York City, approved by the chancellor or chancellor's designee) no later than three months following the designation of the school in the Corrective Action phase and shall be subject to the approval of the commissioner, upon request;

(ii) be implemented no later than the beginning of the next school year after the school year in which the school was identified or immediately upon approval of the board of education if such approval occurs after the first day of regular school attendance;

(iii) be updated annually and incorporate the findings of the audit and any other action required to be taken by the district pursuant to this subclause and, as so updated, approved by the board of education and implemented no later than the first day of regular student attendance of each year that the school remains in corrective action. If, in the second year of corrective action, the school fails to make AYP with a different accountability group for which the school is subsequently designated for corrective action or is subsequently designated for corrective action on a different accountability performance criterion or indicator, the school shall modify the plan consistent with the highest accountability category and also address the additional group(s), criterion or indicator;

(iv) include, to the extent consistent with State law, at least one of the actions set forth at section 6316(b)(7)(C)(iv)(I-VI) of the NCLB, 20 U.S.C. section 6316(b)(7)(C)(iv)(I-VI) (United States Code, 2006 Edition, Volume 13; Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001; 2008; available at the Office of Counsel, State Education Building, Room

148, Albany, NY 12234). The district shall identify and provide the support(s) required to implement any new curriculum, including professional development;

(c) Restructuring phase schools.

(1) Assessment of educational program. Each school shall participate in an assessment of the educational program by a joint intervention team appointed by the commissioner which shall include district representation and may include a distinguished educator. The team shall assess the educational program and make recommendations.

(2) Restructuring plan. A two year restructuring plan shall be developed and implemented by the district, focusing on the subgroup(s) for the accountability performance criterion and/or accountability indicator for which the school was identified. The district shall provide oversight and support for the plan, with the assistance of the Department. Such restructuring plan shall require the school to make fundamental reforms, such as significant changes in the staff, governance, or organization and may include a plan to close or phase out the school, and shall:

(i) be formally approved by the board of education (in New York City, approved by the chancellor or chancellor's designee) no later than three months following the designation of the school in the Restructuring phase and also shall be subject to the approval of the commissioner; and

(ii) be implemented no later than the beginning of the next school year after the school year in which the school was identified or, to the extent practicable, immediately upon approval of the board of education if such approval occurs after the first day of regular school attendance.

(3) Distinguished educator. In addition to, and notwithstanding the provisions of, subclauses (1) and (2) of this clause, a school designated as Restructuring/Comprehensive shall cooperate with a distinguished educator assigned by the commissioner. The distinguished educator shall also provide oversight of the restructuring plan and shall serve as an ex-officio member of the board of education. All plans are subject to review by the distinguished educator who shall make recommendations to the board of education. The board shall implement such recommendations unless it obtains the commissioner's approval otherwise.

(d) Each improvement, corrective action and restructuring plan, and each updated plan, shall be developed, to the extent appropriate, consistent with section 100.11 of this Title.

(e) The commissioner may require that any plan, or subsequent modification of a plan, be submitted for prior approval.

(v) Supplemental education services. Each local educational agency that receives title I funds shall make supplemental education services available to eligible students who attend a school designated in Improvement, Corrective Action or Restructuring pursuant to this paragraph, consistent with section 120.4 of this Title.

(vi) Title I public school choice. Each local educational agency that receives title I funds that has a school designated in Improvement (year 2); Corrective Action; or Restructuring pursuant to this paragraph, shall provide public school choice consistent with section 120.3 of this Title.

(7) Districts requiring academic progress.

(i) Commencing with 2003-2004 school year results, a district that failed to make adequate yearly progress on all applicable criteria in paragraph (14) of this subdivision in a subject area, or all applicable indicators in subparagraphs (15)(i) through (iii) of this subdivision, or the indicator in subparagraph (15)(iv) of this subdivision, for two consecutive years shall be designated as a "district requiring academic progress." A district improvement plan in such format as may be

prescribed by the commissioner shall be developed by each district requiring academic progress. Such district improvement plan shall be formally approved by the board of education (in New York City, both the New York City Board of Education and the community school board for schools under the jurisdiction of the community school district) no later than three months following the identification of the district as requiring academic progress and submitted to the commissioner for approval. The plan shall be implemented no later than beginning of the next school year after the school year in which the school district was identified as requiring academic progress or immediately, to the extent practicable, upon approval of the board, if such identification occurs after the first day of regular student attendance. Such plan shall be developed in consultation with parents, school, staff, and others. The plan shall be revised annually and resubmitted to the commissioner for approval no later than July 31st of each school year in which the district remains identified as requiring academic progress. Any modification of the district's approved improvement plan shall require the prior approval of the commissioner.

(ii) Commencing with 2003-2004 school year results:

(a) a district identified as requiring academic progress for failing to make adequate yearly progress on all applicable criterion in paragraph (14) of this subdivision in a subject area shall be removed from such status if it makes adequate yearly progress for two consecutive years on any criterion in the subject area for which it is identified;

(b) a district identified as requiring academic progress for failing to make adequate yearly progress on every applicable indicator set forth at subparagraphs (15)(i) through (iii) of this subdivision shall be removed from such status if it makes adequate yearly progress for two consecutive years on any applicable indicators; and

(c) a district identified as requiring academic progress for failing to make adequate yearly progress on the indicator set forth at subparagraph (15)(iv) of this subdivision shall be removed from such status if it makes adequate yearly progress for two consecutive years on such indicator; provided that for a district requiring academic progress that is removed from such status based on 2002-2003 and 2003-2004 results, such district shall have made adequate yearly progress in 2002-2003 on each criterion or indicator for which it was identified.

(iii) Except as provided in subparagraph (vi) of this paragraph, a local educational agency (LEA) that received funds under title I for two consecutive years during which the LEA did not make adequate yearly progress on all applicable criteria in paragraph (14) of this subdivision in a subject area, or all applicable indicators in subparagraphs (15)(i) through (iii) of this subdivision, or the indicator in subparagraph (15)(iv) of this subdivision, shall be identified for improvement under section 1116(c) of the NCLB, 20 U.S.C. section 6316(c) and shall be subject to the requirements therein (Public Law, section 107-110, section 1116[c], 115 STAT. 1487-1491; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2002; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234).

(iv) Except as provided in subparagraph (vi) of this paragraph, at any time following the identification of an LEA for improvement, the commissioner may further identify the local educational agency for corrective action under section 1116(c)(10) of the NCLB, 20 U.S.C. section 6316(c)(10). The commissioner shall identify such LEA for corrective action if, by the end of the second full school year the LEA has failed to make adequate yearly progress. The commissioner may delay identification of an LEA for corrective action for a period of one year pursuant to section 1116(c)(10)(F) of the NCLB, 20 U.S.C. section 6316(c)(10)(F) (Public Law, section 107-110, section 1116[c][10], 115 STAT. 1489-1491; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2002; available at the Office of

Counsel, State Education Building, Room 148, Albany, NY 12234).

(v) Commencing with 2003-2004 school year results, an LEA identified for improvement or corrective action that is removed from status as a district requiring academic progress pursuant to subparagraph (ii) of this paragraph shall no longer be subject to the requirements of section 1116(c) of the NCLB, 20 U.S.C. section 6316(c) (Public Law, section 107-110, section 1116[c], 115 STAT. 1487-1491; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2002; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234).

(vi) Notwithstanding any other provision of law, an LEA subject to the provisions of subparagraphs (iii) and (iv) of this paragraph which accountability status is dependent upon the 2005-2006 assessment results for grades 3-8 and which does not receive notice of such status until after the first day of regular attendance for the 2006-2007 school year, shall immediately commence implementation, to the extent practicable, of any plan required to be implemented pursuant to section 1116(c) of the NCLB.

(8) High performing and rapidly improving schools and districts.

(i) Commencing with 2003-2004 school year results, the commissioner shall annually identify as "high performing" public schools, school districts, and charter schools in which:

(a) the school or district meets or exceeds the benchmarks established by the commissioner pursuant to subparagraph (14)(ix) of this subdivision; and

(b) the school or district has made adequate yearly progress on all applicable criteria and indicators in paragraphs (14) and (15) of this subdivision for two consecutive years.

(ii) Commencing with 2004-2005 school year results, the commissioner shall annually identify as "rapidly improving" public schools, school districts, and charter schools in which:

(a) the school or district is below the benchmark established by the commissioner pursuant to subparagraph (14)(ix) of this subdivision;

(b) the school or district has improved its performance by an amount determined by the commissioner during the past three years on each applicable criterion in paragraph (14) of this subdivision in which it is below the benchmark established by the commissioner; and

(c) the school or district has made adequate yearly progress on all applicable criteria and indicators in paragraphs (14) and (15) of this subdivision for three consecutive years.

(iii) The commissioner may elect not to identify a school or district as high performing or rapidly improving if the school or district is held accountable for the performance of three or fewer accountability groups on each applicable criterion.

(9) Identification of schools for public school registration review.

(i) Up through and including the 2009-2010 school year, the commissioner shall place under registration review those schools that are determined to be farthest from meeting the benchmarks established by the commissioner pursuant to subparagraph (14)(ix) of this subdivision and most in need of improvement.

(ii) Beginning with the 2010-2011 school year and thereafter, the commissioner shall place under preliminary registration review a school that is identified as persistently lowest-achieving in such school year. A school identified as persistently lowest-achieving in the 2009-2010 school year, that was not a school under registration review during the 2009-2010 school year, shall not be

placed under registration review but shall follow the intervention and other applicable requirements in subparagraphs (10)(ii) and (iv) of this subdivision.

(a) A school shall be identified as persistently lowest-achieving if, based upon the academic indicators set forth in clause (b) of this subparagraph, it is:

(1) a Title I school in improvement, corrective action, or restructuring that:

(i) is among the lowest-achieving five percent of Title I schools in improvement, corrective action or restructuring, or the lowest achieving five Title I schools in improvement, corrective action or restructuring, whichever number of schools is greater; or

(ii) is a high school that has a graduation rate, as defined in subparagraph (15)(iv) of this subdivision, that is less than 60 percent over the three consecutive year period for which accountability determinations have been made pursuant to this subdivision; or

(2) a secondary school that is eligible for, but does not receive, Title I funds that:

(i) is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or

(ii) is a high school that has a graduation rate, as defined in subparagraph (15)(iv) of this subdivision, that is less than 60 percent over the three consecutive year period for which accountability determinations have been made.

(b) A school shall be identified as persistently lowest-achieving based on the following academic indicators:

(1) the performance of the school's "all students" group on the State assessments in English language arts and mathematics combined, which shall be determined by dividing the sum of the "all students" performance index for each English language arts and mathematics measure for which the school is accountable by the number of measures for which the school is accountable; and

(2) the school's lack of progress on the State assessments in English language arts and mathematics over three years. A school shall be deemed to have demonstrated lack of progress if:

(i) the school is designated as a school in restructuring; and

(ii) the school has failed to demonstrate, over the three consecutive year period for which accountability determinations have been made pursuant to this subdivision, at least a 25 point gain in its performance index for the "all students" group in each English language arts and mathematics measure for which the school is held accountable; and/or

(3) the school has a graduation rate, as defined in subparagraph (15)(iv) of this subdivision, that is less than 60 percent over the three consecutive year period for which accountability determinations have been made pursuant to this subdivision.

(iii) The commissioner shall also place under preliminary registration review a school that is not otherwise eligible to be identified as persistently lowest-achieving that meets the academic indicators in clause (ii)(b) of this paragraph to be identified as a persistently lowest-achieving school:

(a) is a school in which more than 50 percent of the total student enrollment consists of students with disabilities; or

(b) is a non-Title I elementary school or a non-Title I eligible secondary school.

(iv) The commissioner may also place under preliminary registration review any school that has conditions that threaten the health, safety and/or educational welfare of students or has been the subject of persistent complaints to the department by parents or persons in parental relation to the student, and has been identified by the commissioner as a poor learning environment based upon a combination of factors affecting student learning, including but not limited to: high rates of student absenteeism, high levels of school violence, excessive rates of student suspensions, violation of applicable building health and safety standards, high rates of teacher and administrator turnover, excessive rates of referral of students to or participation in special education or excessive rates of participation of students with disabilities in the alternate assessment, excessive transfers of students to alternative high school and high school equivalency programs and excessive use of uncertified teachers or teachers in subject areas other than those for which they possess certification.

(v) The commissioner may also place under registration review any school for which a district fails to provide in a timely manner the student performance data required by the commissioner to conduct the annual assessment of the school's performance or any school in which excessive percentages of students fail to fully participate in the State assessment program.

(vi) Beginning in the 2010-2011 school year, for each school identified for preliminary registration review pursuant to subparagraphs (ii) and (iii) of this paragraph, the local school district shall be given the opportunity to present to the commissioner additional assessment data, which may include, but need not be limited to, valid and reliable measures of: the performance of students in grades other than those in which the State tests are administered; the performance of limited English proficient students and/or other students with special needs; and the progress that specific grades have made or that cohorts of students in the school have made towards demonstrating higher student performance. For each school identified as a poor learning environment and placed under preliminary registration review pursuant to subparagraph (iv) of this paragraph, the district shall be given the opportunity to present evidence to the commissioner that the conditions in the school do not threaten the health or safety or educational welfare of students and do not adversely affect student performance. The district may also provide relevant information concerning extraordinary, temporary circumstances faced by the school that may have affected the performance of students in the school on the State tests.

(vii) The commissioner shall review the additional information provided by the district and determine which of the schools identified for preliminary registration review pursuant to subparagraphs (ii) and (iii) of this paragraph, or identified as poor learning environments pursuant to subparagraph (iv) of this paragraph, shall be placed under registration review.

(viii) In determining the number of schools to place under registration review, other than persistently lowest-achieving schools identified pursuant to subparagraph (ii) of this paragraph, the commissioner may consider the sufficiency of State and local resources to effectively implement and monitor school improvement efforts in schools under registration review.

(ix) For schools required to conduct a self-assessment pursuant to subparagraph (5)(vi) of this subdivision, the commissioner upon review of the self-assessment may make a determination that the school shall be placed under registration review.

(10) Public school registration review.

(i) Upon placing the registration of a school under review, the commissioner shall warn the board of education (in New York City, the chancellor) that the school has been placed under registration review, and that the school is at risk of having its registration revoked. The commissioner shall include in any warning issued pursuant to this subparagraph an explicit delineation of the

progress that must be demonstrated in order for a school to be removed from consideration for revocation of registration. Upon receipt of such warning, the board of education (in New York City, the chancellor or chancellor's designee) shall take appropriate action to notify the general public of the issuance of such warning. Such action shall include, but need not be limited to, direct notification, within 30 days of receipt of the commissioner's warning, in English and translated, when appropriate, into the recipient's native language or mode of communication, to persons in parental relation of children attending the school that it has been placed under registration review and is at risk of having its registration revoked, and disclosure by the district at the next public meeting of the local board of education of such warning. Each school year during which a school remains under registration review, by June 30th or at the time of a student's initial application or admission to the school, whichever is earliest, the board of education shall provide direct notification to parents or other persons in parental relation to children attending the school that the school remains under registration review and is at risk of having its registration revoked. Such notification shall include a summary of the actions that the district and school are taking to improve student results and an explanation of any district programs of choice, magnet programs, transfer policies, or other options that a parent or a person in parental relation may have to place the child in a different public school within the district. Such notification shall include the timelines and process for parents exercising their rights to school choice.

(ii) Following the placement of a school under registration review, or following the identification of a school as persistently lowest-achieving in the 2009-2010 school year, a joint intervention team, as appointed by the commissioner, shall assist the school district in which such school is located in selecting an intervention pursuant to subparagraph (iv) of this paragraph. The district shall develop a new restructuring plan, or update an existing restructuring plan, that shall, in addition to the requirements pursuant to subclause (6)(iv)(c)(2) of this subdivision, describe the implementation of the intervention. Such plan shall be in a format as prescribed by the commissioner. The district shall update the plan annually for implementation no later than the first day of the regular student attendance of each school year that the designation continues. The school shall implement the intervention in accordance with a timeline prescribed by the commissioner, and no later than the beginning of the next school year following the school's identification for registration review, provided that the commissioner may upon a finding of good cause extend the timeline for implementing elements of such plan beyond the date prescribed therein.

(iii) Schools placed under registration review pursuant to subparagraph (9)(i) of this subdivision, but not identified pursuant to subparagraph (9)(ii) of this subdivision as persistently lowest-achieving prior to the 2010-2011 school year, shall continue implementation of the existing restructuring plan.

(iv) Interventions.

(a) A school that is identified pursuant to subparagraph (9)(ii) of this subdivision as persistently lowest-achieving in the 2010-2011 school year or thereafter and placed under registration review, and a school that is identified pursuant to subparagraph (9)(ii) of this subdivision as persistently lowest-achieving in the 2009-2010 school year, shall implement one of the following interventions, in a format and timeline as approved by the commissioner:

(1) Turnaround model. Implementation of the turnaround model may include, but not be limited to, the following actions as approved by the commissioner:

(i) replace the principal and grant the principal sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach in order to substantially improve student achievement outcomes and increase high school graduation rates;

(ii) using locally adopted competencies to measure the effectiveness of staff that shall work within the

turnaround environment to meet the needs of students:

(A) screen all existing staff and rehire no more than 50 percent; and

(B) select new staff;

(iii) implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that shall be designed to recruit, place, and retain staff with the skills necessary to meet the needs of students in the turnaround school;

(iv) provide staff ongoing, high-quality, job-embedded professional learning that is aligned with the school's comprehensive instructional program and designed with school staff to ensure that they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;

(v) adopt a new governance structure, which may include, but is not limited to, requiring the school to report to a new turnaround office in the LEA or SEA, hire a turnaround leader who reports directly to the Superintendent or Chief Academic Officer, or enter into a multi-year contract with the LEA or SEA to obtain added flexibility in exchange for greater accountability;

(vi) use data to identify and implement an instructional program that is research-based and vertically aligned from one grade to the next as well as aligned with State academic standards;

(vii) promote the continuous use of student data (such as from formative, interim, and summative assessments) that shall inform and differentiate instruction in order to meet the academic needs of individual students;

(viii) establish schedules and implement strategies that shall provide increased learning time, as defined by the commissioner; and

(ix) provide appropriate social-emotional and community-oriented services and supports for students.

(2) Restart model. Implementation of the restart model may include, but is not limited to, converting a school or closing and reopening a school under a charter school operator, a charter management organization, or an educational partnership organization that has been selected pursuant to a format approved by the commissioner.

(3) School closure model. Implementation of the school closure model may include, but is not limited to, closing a school and enrolling its students in other schools within the district that are in good standing.

(4) Transformation model. Implementation of the transformation model may include, but is not limited to, the following actions as approved by the commissioner; in addition, the school shall be encouraged to partner with an external intermediary or lead partner that may assist the school with planning and implementation:

(i) develop and increase teacher and school leader effectiveness;

(ii) replace the principal who led the school prior to commencement of the transformation model;

(iii) use rigorous, transparent, and equitable evaluation systems for teachers and principals that:

(A) take into account data on student growth as a significant factor as well as other factors, such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high school graduation rates; and

(B) are designed and developed with teacher and principal involvement;

(iv) identify and reward school leaders, teachers, and other staff who, through implementation of the

transformation model, have increased student achievement and high school graduation rates, per rates defined by the commissioner; and identify and remove those who, after ample opportunities have been provided for them to improve their professional practice, have not done so;

(v) provide staff ongoing, high-quality job-embedded professional learning (e.g., regarding subject-specific pedagogy, instruction that reflects a deeper understanding of the community served by the school or differentiated instruction) that is aligned with the school's comprehensive instructional program and designed with school staff to ensure they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;

(vi) implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that shall be designed to recruit, place and retain staff with the skills necessary to meet the needs of the students in a transformation school;

(vii) use data to identify and implement an instructional program that is research-based and vertically aligned from one grade to the next as well as aligned with State academic standards;

(viii) promote the continuous use of student data (such as from formative, interim and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students;

(ix) establish schedules and strategies that provide increased learning time;

(x) provide ongoing mechanisms for family and community engagement;

(xi) give the school sufficient operational flexibility (such as staffing, calendars/time, and budgeting) to implement fully a comprehensive approach to substantially improve student achievement outcomes and increase high school graduation rates; and

(xii) ensure that the school receives ongoing, intensive technical assistance and related support for the LEA, the SEA or a designated external lead partner organization.

(b) A school as described in subparagraph (9)(iii) of this subdivision that is placed under registration review in the 2010-2011 school year or thereafter, shall implement a plan, in a format and timeline as approved by the commissioner, that shall, at a minimum, meet the requirements of a restructuring plan pursuant to subclause (6)(iv)(c)(2) of this subdivision and include at least one of the actions of a transformation or turnaround model.

(v) The department shall periodically monitor the implementation of the restructuring plan. The commissioner may require a school district to submit such reports and data as the commissioner deems necessary to monitor the implementation of the restructuring plan and to determine the degree to which the school has achieved the progress required by the commissioner. Such reports shall be in a format and in accordance with such timeframe as are prescribed by the commissioner. The commissioner may upon a finding of good cause extend the deadline for submission of a restructuring plan.

(vi) Unless it is determined by the commissioner that a school identified for registration review should be phased out or closed, or that a shorter period of time shall be granted, a school placed under registration review shall be given three full academic years to show progress. If, after three full academic years of implementing a restructuring plan, the school has not demonstrated progress as delineated by the commissioner in the warning pursuant to subparagraph (i) of this paragraph, the commissioner shall recommend to the Board of Regents that the registration be revoked and the school be declared an unsound educational environment, except that the commissioner may upon a finding of extenuating circumstances extend the period during which the school must demonstrate progress. The board of education of the school district which operates the school (in New York City, the chancellor) shall be afforded notice of such

recommendation and an opportunity to be heard in accordance with subparagraph (iv) of this paragraph. Upon approval of revocation of registration by the Board of Regents, the commissioner will develop a plan to ensure that the educational welfare of the pupils of the school is protected. Such plan shall specify the instructional program into which pupils who had attended the school will be placed, how their participation in the specified programs will be funded, and the measures that will be taken to ensure that the selected placements appropriately meet the educational needs of the pupils. The commissioner shall require the board of education to implement such plan.

(vii) Decisions to revoke the registration of a public school shall be made in accordance with the following procedures:

(a) The commissioner shall provide written notice of his recommendation and the reasons therefore to the board of education, which operates the school (in New York City, both the New York City Board of Education and any community school board having jurisdiction over the school). Such notice shall also set forth:

(1) the board of education's right to submit a response to the recommendation and request oral argument pursuant to clause (b) of this subparagraph;

(2) the place, date and time the matter will be reviewed and if requested, argument heard by a three-member panel of the Board of Regents for recommendation to the full Board of Regents; and

(3) notification that failure to submit a response will result in the commissioner's recommendation being submitted to the Board of Regents for determination.

(b) Within 15 days of receiving notice of the recommendation to revoke registration, the board of education may submit a written response to the commissioner's recommendation. The response shall be in the form of a written statement which presents the board of education's position, all evidence and information which the board of education believes is pertinent to the case, and legal argument. If the board of education desires, it may include in its response a request for oral argument. Such response must be filed with the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234.

(c) Within 30 days of the date of notice of the commissioner's recommendation, a panel comprised of three members of the Board of Regents, appointed by the chancellor, shall convene to consider the commissioner's recommendation, review any written response submitted by the board of education and, if timely requested by the board of education, hear oral argument.

(11) Removal of schools from registration review, school phase-out or closure.

(i) In the event that a school has demonstrated the progress necessary to be removed from registration review, the superintendent may petition the commissioner to remove the school from registration review. If such petition is based upon results of the "all student" group on the English language arts and mathematics assessments or graduation rate, such petition shall be submitted pursuant to a date prescribed by the commissioner but no later than December 31st of the calendar year in which such assessments were administered, except that the commissioner may for good cause accept a petition submitted after such date. A school shall not be removed from registration review if, in the commissioner's judgment, conditions that may contribute to a poor learning environment, as identified in paragraph (9) of this subdivision, remain present in the school.

(ii) In the event that a school placed under registration review prior to the 2010-2011 school year demonstrates previously established progress to be removed from registration review, but is

identified in the 2010-2011 school year as persistently lowest-achieving pursuant to subparagraph (9)(ii) of this subdivision, the school shall remain under registration review and shall follow intervention requirements pursuant to subparagraph (10)(iv) of this subdivision.

(iii) In the event that a school placed under registration review prior to the 2010-2011 school year demonstrates previously established progress to be removed from registration review and is not identified in the 2010-2011 school year as persistently lowest-achieving pursuant to subparagraph (9)(ii) of this subdivision, the school shall be removed from registration review.

(iv) In the event that a board of education seeks to phase out or close a school under registration review, the board of education (in New York City, the chancellor or chancellor's designee) shall submit for commissioner's approval, a plan identifying the intervention that will be implemented and will result in phase out or closure. The commissioner may grant approval of such plan provided that:

(a) official resolutions or other approvals to phase out or close the existing school have been adopted by the local board of education (in New York City, the chancellor or chancellor's designee);

(b) a formal phase out or closure plan has been developed and approved in accordance with the requirements of the intervention prescribed by the commissioner pursuant to subparagraph (10)(iv) of this subdivision; and

(c) parents, teachers, administrators, and community members have been provided an opportunity to participate in the development of the phase out or closure plan.

(12) Registered nonpublic high school registration review.

(i) The registration of a registered nonpublic high school shall be placed under review under the following circumstances:

(a) when the school scores below the registration review criterion on one (or more) of the measures adopted by the Board of Regents, and the student achievement on such measures or other appropriate indicators has not shown improvement over the preceding three school years, as determined by the commissioner; or

(b) when sufficient other reason exists, as determined by the commissioner, to warrant a review of the school's registration.

(ii) On an ongoing basis consistent with clauses (i)(a) and (b) of this paragraph, and after consultation with the appropriate nonpublic school officials, the commissioner shall identify the nonpublic high schools whose registration shall be placed under review. When a nonpublic high school is identified for registration review, the commissioner shall offer technical assistance to the school in the development of a school improvement plan. The commissioner shall require that:

(a) the nonpublic school develop a school improvement plan which will address the areas in which the school has been determined to be in need of assistance;

(b) the school improvement plan be submitted to the department no later than June 30th of the school year in which the commissioner required such a plan; and

(c) the school improvement plan be implemented no later than the first week of classes in the September next following the close of the school year in which the plan was approved by the commissioner.

(iii) If, after a time period established by the commissioner in consultation with the appropriate

nonpublic school officials, the nonpublic high school under registration review has not demonstrated progress on the registration criteria in question, the commissioner shall formally notify the appropriate nonpublic school officials that the school is at risk of having its registration revoked. Upon receipt of such warning, the nonpublic school officials shall notify the parents of children attending the school under registration review of the issuance of such warning.

(iv) If, after a further time period established by the commissioner in consultation with the appropriate nonpublic school officials, the nonpublic high school under registration review has not demonstrated progress as determined by the commissioner, the commissioner shall recommend to the Board of Regents that the registration be revoked. The governing body and the chief administrative officer of the nonpublic school shall be afforded notice of such recommendation and an opportunity to be heard in accordance with the procedures set forth in subparagraph (10)(viii) of this subdivision, except that such procedure shall be afforded to the governing body and chief administrative officer of the nonpublic school. Upon approval of revocation of registration by the Board of Regents, the commissioner in consultation with the appropriate nonpublic school officials will develop a plan to ensure that the educational welfare of the pupils of the school is protected.

(13) Nonpublic school accountability performance criteria.

(i) The registration of a registered nonpublic school may be placed under registration review when its students score below the following criteria on the measures of student achievement specified below:

Measure	Criteria
Pupil Evaluation Program (PEP) Tests	
Grade 3 Reading	65 percent above statewide reference point (SRP)
Grade 3 Mathematics	75 percent above statewide reference point (SRP)
Grade 6 Reading	65 percent above statewide reference point (SRP)
Grade 6 Mathematics	70 percent above statewide reference point (SRP)
Preliminary competency testing requirements, grade 8 or 9	
Grade 8 Reading	85 percent above statewide reference point (SRP)
Grade 9 Reading	84 percent above statewide reference point (SRP)
Regents competency testing requirements	
Reading	25 percent Failure rate
Writing	25 percent Failure rate
Mathematics	40 percent Failure rate

Dropout Rate	10 percent or higher
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(14) Public school, school district and charter school accountability performance criteria. Each district and school accountability group, as defined in subparagraph (1)(i) of this subdivision shall be subject to the performance criteria specified below:

(i) Elementary level English language arts. Annual measurable objectives, based on a performance index, set at 123 in 2002-03 and 2003-04 and 131 in 2004-2005.

(ii) Middle level English language arts. Annual measurable objectives, based on a performance index, set at 107 in 2002-03 and 2003-04 and 116 in 2004-2005.

(iii) Elementary-middle level English language arts. Annual measurable objectives, based on a performance index, set by the commissioner in 2005-2006 and, beginning in 2008-2009, increasing annually in equal increments through 2009-2010 and then reset at 122 in 2010-2011 and increasing annually in equal increments so as to reach 200 in 2013-2014.

(iv) Elementary level mathematics. Annual measurable objectives, based on a performance index, set at 136 in 2002-03 and 2003-04 and 142 in 2004-2005.

(v) Middle level mathematics. Annual measurable objectives, based on a performance index, set at 81 in 2002-03 and 2003-04 and 93 in 2004-2005.

(vi) Elementary-middle level mathematics. Annual measurable objectives, based on a performance index, set by the commissioner in 2005-2006 and, beginning in 2008-2009, increasing annually in equal increments through 2009-2010 and then reset at 137 in 2010-2011 and increasing annually in equal increments so as to reach 200 in 2013-2014.

(vii) High school English language arts and mathematics requirements. Annual measurable objectives, based on the performance index of the high school cohort defined in paragraph (16) of this subdivision, set at 142 in English language arts and 132 in mathematics in 2002-03 and 2003-04, and incremented annually thereafter as necessary so that in 2013-2014 the index shall be 200.

(viii) For the 2002-2003 through the 2005-2006 school year test administrations, for purposes of the commissioner's annual evaluation of public schools, public school districts, and charter schools, the following limited English proficient students may be considered to be meeting performance criteria in elementary or middle-level English language arts if they demonstrate a specified increment of progress on the New York State English as a Second Language Achievement Test (NYSESLAT) for their grade level. For limited English proficient students who have attended school in the United States (not including Puerto Rico) for fewer than three consecutive years, districts and charter schools may administer the NYSESLAT to such students in lieu of the required State assessment in English language arts. Districts or charter schools may, on an individual basis, annually determine to administer the NYSESLAT in lieu of the required assessment in English language arts to limited English proficient students who have attended school in the United States (not including Puerto Rico) for four or five consecutive school years. No exemption is available beyond the student's fifth year and the student must take the required English language arts assessment.

(ix) For each criterion (subparagraphs [i] through [vii] of this paragraph), the commissioner shall also establish a benchmark against which the performance of the accountability group, *all students*, defined in subparagraph (1)(i) of this subdivision, will be measured. This benchmark will be used in recognizing high-performing schools and districts, determining which school districts are required to develop local assistance plans as described in paragraph (m)(6) of this

section and for identifying those schools that are subject to registration review pursuant to paragraph (9) of this subdivision.

(15) Additional public school, school district, and charter school accountability indicators.

(i) Elementary science indicator: For the 2002-2003 through 2004-2005 school years:

(a) an index of 100 that may be incremented annually, as the commissioner deems appropriate, or progress in relation to performance in the previous school year; and

(b) beginning in 2004-05, 80 percent of students enrolled on all days of the test administration, who did not have a significant medical emergency, received valid scores.

(ii) Middle-level science indicator: For the 2002-2003 through 2004-2005 school years:

(a) an index of 100 that may be incremented annually, as the commissioner deems appropriate, or progress in relation to performance in the previous year; and

(b) beginning in 2004-05, 80 percent of students enrolled on all days of the test administration, who did not have a significant medical emergency, received valid scores.

(iii) Elementary-middle science combined indicator: For the 2005-2006 school year and thereafter:

(a) an index of 100 that may be incremented annually, as the commissioner deems appropriate, or progress in relation to performance in the previous year; and

(b) 80 percent of students enrolled on all days of the test administration, who did not have a significant medical emergency, received valid scores.

(iv) A high school graduation rate established annually by the commissioner, or progress in relation to the previous school year's graduation rate. The graduation rate is the percentage of the annual graduation rate cohort that earns a local or Regents diploma by August 31st following the third school year after the school year in which the cohort first entered grade 9, except that in a school in which the majority of students participate in a department-approved, five-year program that results in certification in a career or technology field in addition to a high school diploma, the graduation rate shall be the percentage of the annual graduation rate cohort that earns a local diploma by August 31st following the fourth school year after the school year in which the cohort first entered grade 9.

(16) Annual high school or high school alternative cohort.

(i) Beginning in the 2005-2006 school year, except as provided in clauses (a) and (b) of this subparagraph, the annual high school cohort for purposes of determining adequate yearly progress on the criteria set forth at subparagraph (14)(vii) of this subdivision and identifying schools for registration review pursuant to paragraph (9) of this subdivision for any given school year shall consist of those students who first enrolled in ninth grade three school years previously anywhere and who were enrolled in the school on the first Wednesday in October of the current school year. The annual district high school cohort for purposes of determining such adequate yearly progress for any given school year shall consist of those students who first enrolled in ninth grade three school years previously anywhere and who were enrolled in the district or placed by the district committee on special education or by district officials in educational programs outside the district on the first Wednesday in October of the current school year. Students with disabilities in ungraded programs shall be included in the annual district and high school cohort in the third school year following the one in which they attained the age of 17.

(a) The following students shall not be included in the annual high school cohort: students

who transferred to another high school or approved alternative high school equivalency preparation program or high school equivalency preparation program approved pursuant to section 100.7 of this Part, or criminal justice facility, who left the United States or its territories, or who are deceased; except that, beginning with students who first entered grade 9 in the 2002-03 school year, the following students will be included in the high school cohort of the school they attended before transferring:

(1) students who transfer to an approved alternative high school equivalency preparation program or high school equivalency preparation program approved pursuant to section 100.7 of this Part, but leave that program before the end of the third school year after the school year in which they first entered grade 9 without having earned a high school equivalency diploma or without entering a program leading to a high school diploma; and

(2) students who transfer to any high school equivalency preparation program other than those approved pursuant to section 100.7 of this Part.

(b) The following students shall not be included in the annual district high school cohort: student who transferred to a high school that is not a component of the district or to an approved alternative high school equivalency preparation program or high school equivalency preparation program approved pursuant to section 100.7 of this Part, or criminal justice facility, who left the United States or its territories, or who are deceased; except that, beginning with students who first entered grade 9 in the 2002-03 school year, the following students will be included in the high school cohort of the district they attended before transferring:

(1) students who transfer to an approved alternative high school equivalency preparation program or high school equivalency preparation program approved pursuant to section 100.7 of this Part, but leave that program before the end of the third school year after the school year in which they first entered grade 9 without having earned a high school equivalency diploma or without entering a program leading to a high school diploma; and

(2) students who transfer to any high school equivalency preparation program other than those approved pursuant to section 100.7 of this Part.

(ii)

(a) For purposes of determining adequate yearly progress on the indicator set forth at subparagraph (15)(iv) of this subdivision, the graduation rate cohort for each public school, school district, and charter school for each school year from 2002-03 through 2006-2007 shall consist of all members of the school or district high school cohort, as defined in subparagraph (i) of this paragraph, for the previous school year plus any students excluded from that cohort solely because they transferred to an approved alternative high school equivalency or high school equivalency preparation program.

(b) Commencing with the 2007-08 school year, for purposes of determining adequate yearly progress on the indicator set forth at subparagraph (15)(iv) of this subdivision:

(1) the graduation rate cohort for each public school and charter school shall consist of those students who first enrolled in grade 9 anywhere three school years previously or, if an ungraded student with a disability, first attained the age of 17 three school years previously, and who have spent at least five consecutive months, not including July and August, in the school since first entering grade 9 and whose last enrollment in the school did not end because of transfer to another school, death, court-ordered transfer, or leaving the United States.

(2) the graduation rate cohort for each public school district shall consist of those

students who first enrolled in grade 9 anywhere three school years previously or, if an ungraded student with a disability, first attained the age of 17 three school years previously, and who have spent at least five consecutive months, not including July and August, in the district since first entering grade 9 and whose last enrollment in the district did not end because of transfer to another district, death, court-ordered transfer, or leaving the United States.

(iii) The high school alternative cohort in any given year shall consist of those students enrolled in the high school on the first Wednesday of October three years previously who were still enrolled in the school on the first Wednesday of October two years previously. Schools in which more than half the students enrolled have previously been enrolled in another high school or in which more than half the enrollment is receiving special education services may voluntarily submit to the commissioner information on the performance of an alternative high school cohort.

(17) Identification of programs for high school equivalency program review.

(i) Each year, commencing with 2002-03 school year test administration results, the commissioner shall review the performance of all alternative high school equivalency programs and high school equivalency programs for high school equivalency program review.

(ii) The commissioner shall identify those programs that have the lowest percentage of students meeting the following criteria:

(a) students under the age of 21 who complete 150 hours of instruction who receive a high school equivalency diploma if the student upon entering the program is assessed on an instrument approved by the commissioner to have a reading and mathematics level at or above grade nine;

(b) students under the age of 21 who complete 150 hours of instruction who receive a high school equivalency diploma or advance one high school equivalency literacy level in reading or mathematics if the student upon entering the program is assessed on an instrument approved by the commissioner to have a reading or mathematics level below grade nine; and

(c) students under the age of 21 who complete fewer than 150 hours of instruction who receive a high school equivalency diploma or continue in the program during the subsequent school year.

(iii) In programs in which fewer than 20 students are subject to the criteria in subparagraph (ii) of this paragraph, the commissioner may review prior years' performance of the program in order to make a determination whether the program shall be considered farthest from meeting the criteria. In calculating the performance of a program, the commissioner may exclude from consideration students who complete fewer than 12 hours of instruction.

(iv) The commissioner may also place under high school equivalency program review any program for which a district or board of cooperative educational services fails to provide in a timely manner the student's performance data required by the commissioner to conduct the annual assessment of the high school equivalency program.

(v) For each high school equivalency program identified as having the lowest percentage of students meeting the high school equivalency performance criteria, the local school district or board of cooperative educational services shall be given the opportunity to present to the commissioner additional information.

(vi) The commissioner shall review the available data, including additional information provided by the district or board of cooperative educational services and determine which of the high

school equivalency programs identified as having the lowest percentage of students meeting the criteria of high school equivalency performance established by the commissioner, are most in need of improvement and shall be placed under high school equivalency program review.

(18) High school equivalency program approval review.

(i) Upon placing a high school equivalency program under high school equivalency program review, the commissioner shall notify the district or board of cooperative educational services that the high school equivalency program has been identified for high school equivalency program review, and that the program may not receive approval for continued operation. The commissioner shall include in any notification issued pursuant to this subparagraph an explicit delineation of the progress that must be demonstrated in order for the high school equivalency program to be removed from program review status. Upon receipt of such notification, the district or board of cooperative educational services shall take appropriate action to notify the general public of the issuance of such warning. Such action shall include, but need not be limited to, direct notification, within 30 days of receipt of the commissioner's warning, in English and translated, when appropriate, into the recipient's native language or mode of communication, to persons in parental relation of children attending the program that it has been placed under high school equivalency program review and is at risk of not receiving an approval for program continuance, and disclosure of such warning by the district, or board of cooperative educational services at its next public meeting. By June 30th of each school year during which a program remains under high school equivalency program review, or at the time of a student's initial application or admission to the program, whichever is earliest, the district or board of cooperative educational services shall provide direct notification to parents or other persons in parental relation to children attending the high school equivalency program that the program remains under high school equivalency program review and is at risk of not receiving continuance approval. Such notification shall include a summary of the actions that the district or board of cooperative educational services are taking to improve student results.

(ii) Following the identification of a high school equivalency program for high school equivalency program review the commissioner shall require that a corrective action plan be developed by the district superintendent of the board of cooperative educational services or superintendent of the district and submitted to the commissioner for review and approval; such corrective action plan shall be in a format prescribed by the commissioner and shall be submitted to the commissioner according to the timeframes established by the commissioner. The department shall periodically monitor the implementation of the corrective action plan. The commissioner may require a school district or board of cooperative educational services to submit such reports and data as the commissioner deems necessary to monitor the implementation of the corrective action plan.

(iii) Unless it is determined by the commissioner that a shorter period of time shall be granted, a high school equivalency program placed under high school equivalency program review shall be given two full academic years to show progress. If, after this period of time, the high school equivalency program under high school equivalency program review has not demonstrated progress as delineated by the commissioner in the notification pursuant to subparagraph (i) of this paragraph, the commissioner shall render a decision not to approve subsequent applications from the district or board of cooperative educational services for the operation of the high school equivalency program, except that the commissioner may upon a finding of extenuating circumstances extend the period during which the high school equivalency program must demonstrate progress.

(19) Removal of high school equivalency programs from high school equivalency program review.

(i) In the event that a high school equivalency program has demonstrated the progress necessary to be removed from high school equivalency program review, the commissioner shall make such

determination and notify the school district or board of cooperative educational services of the decision.

(ii) A district or board of cooperative educational services that has been denied approval to operate a high school equivalency program may after a period of one year submit a new application. The application shall be in a format approved by the commissioner and must ensure that:

(a) the school's chief administrative officer has designated a staff member to provide leadership to the program;

(b) the class size does not exceed 15 students for the first year of program;

(c) quarterly progress reports will be submitted for the first year;

(d) a minimum of 20 hours of staff development will be offered to all teachers and administrators involved with the program; and

(e) such other information as required by the commissioner.

(q) *High school program offerings.*

(1) School districts shall make available to their students all the options for earning a diploma, which are specified in section 100.5 of this Part. Sufficient instruction shall be provided to meet all the State learning standards.

(2) Advanced courses which convey credit toward a high school diploma and also convey higher education credit may be made available through arrangements with higher education institutions.

(3) A public school district shall not impose any charge or fee on students for any instruction or program required by this Part and leading to a high school diploma.

(r) *Transfer students screening.* In addition to the diagnostic screening required pursuant to section 117.3 of this Title, students entering the New York State school system for the first time, or reentering the New York State school system with no available records, shall be screened to determine the need for academic intervention services. The principal shall determine each such student's need for academic intervention services by administering a State-developed or State-approved assessment or by reviewing such student's transcript, where available, or by use of a district-wide screening procedure applied uniformly across each grade.

(s) *Students with disabilities.*

(1) Each student with a disability, as such term is defined in section 200.1(cc) of this Title, shall have access to the full range of programs and services set forth in this Part to the extent that such programs and services are appropriate to such student's special educational needs.

(2) Instructional techniques and materials used by schools shall be modified to the extent appropriate to provide the opportunity for students with disabilities to meet diploma requirements. At each annual review of a student's individualized education program, the committee on special education shall consider the appropriateness of such modifications.

(t) *Availability of speech and language improvement services.*

(1) School districts that provide speech and language improvement services as defined in section 100.1(p) of this Part shall provide such services to any student determined to be in need of such by the building administrator.

(i) The board of education or trustees of each school district shall develop, in consultation with

appropriate school personnel, procedures for the recommendation, approval, provision, periodic review, and termination of such services.

(ii) The parent or other person in parental relationship to a student who is to be provided speech and language improvement services shall be notified in writing, in the dominant language of such person, of the initiation and termination of such services. The person who made the recommendation for such services, if an employee of the school district, shall also receive written notice.

(2) A student whose speech impairment adversely affects the student's educational performance shall be referred to the committee on special education for further evaluation and review of the need for special services and programs, pursuant to article 89 of the Education Law.

(u) Repealed.

(v) Repealed.

(w) *Credit for BOCES programs.*

(1) Each board of cooperative educational services (BOCES) shall determine the number of units of credit that will be earned by students successfully completing units of study in each of the instructional programs of the BOCES. The number of units of credit that may be earned for each program shall be determined after consultation with boards of education of the component school districts.

(2) In awarding credit toward a Regents or a local high school diploma, boards of education shall award to students who have successfully completed a BOCES program the number of units of credit determined by the BOCES pursuant to paragraph (1) of this subdivision.

(3) Where a student successfully completes the requirements for a technical endorsement to a diploma as part of an approved career and technical education program offered by a board of cooperative educational services pursuant to section 100.5(d)(6)(v) of this Part, a board of education shall affix such endorsement to the diploma awarded to such student.

(x) *Education of homeless children.*

(1) Definitions. For purposes of this subdivision:

(i) *Designator* means:

(a) the parent or person in parental relation to a homeless child; or

(b) the homeless child, together with the McKinney-Vento liaison designated under subparagraph (iii) of paragraph (7) of this subdivision, where applicable, in the case of an unaccompanied youth; or

(c) the director of a residential program for runaway and homeless youth established pursuant to Article 19-H of the Executive Law, in consultation with the homeless child, where such homeless child is living in such program.

(ii) *Feeder school* means:

(a) a preschool whose students are entitled to attend a specified elementary school or group of elementary schools upon completion of that preschool;

(b) a school whose students are entitled to attend a specified elementary, middle, intermediate, or high school or group of specified elementary, middle, or high schools upon completion of the terminal grade of such school; or

(c) a school that sends its students to a receiving school in a neighboring school district

pursuant to Education Law section 2040.

(iii) *Homeless child* means:

(a) a child or youth who lacks a fixed, regular, and adequate nighttime residence, including a child who is:

(1) sharing the housing of other persons due to a loss of housing, economic hardship or a similar reason;

(2) living in motels, hotels, trailer parks or camping grounds due to the lack of alternative adequate accommodations;

(3) living in emergency or transitional shelters;

(4) abandoned in hospitals;

(5) a migratory child, as defined in section 1309(2) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, 20 U.S.C. section 6399(2), (Public Law 114-95, title ix, section 9302, 129 STAT. 1802; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2015; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234), who qualifies as homeless under any of the provisions of subclauses (1) through (4) of this clause or clause (b) of this subparagraph;

(6) an unaccompanied youth, as defined in section 725 of subtitle B of Title VII of the McKinney-Vento Homeless Act, which includes a homeless child or youth not in the physical custody of a parent or guardian. The term "unaccompanied youth" shall not include a child or youth who is residing with someone other than a parent or legal guardian for the sole reason of taking advantage of the schools of the district; or

(b) a child or youth who has a primary nighttime location that is:

(1) a supervised, publicly or privately operated shelter designed to provide temporary living accommodations including, but not limited to, shelters operated or approved by the State or local department of social services, and residential programs for runaway and homeless youth established pursuant to Article 19-H of the Executive Law; or

(2) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings, including a child or youth who is living in a car, park, public space, abandoned building, substandard housing, bus or train stations or similar setting;

(c) the term **homeless child** shall not include a child in foster care, including a child awaiting foster care on or after December 10, 2016, or receiving educational services pursuant to Education Law section 3202 (4), (5), (6), (6-a) or (7) or pursuant to Articles 81, 85, 87 or 88.

(iv) *Preschool* means publicly funded:

(a) pre-kindergarten programs administered by the Department or a local educational agency;

(b) Head Start programs administered by a local educational agency; and/or

(c) preschool services under the Individuals with Disabilities Education Act administered by a local educational agency.

(v) *Receiving school* means:

(a) a school that enrolls students from a specified or group of preschools, elementary schools, middle schools, intermediate schools, or high schools; or

(b) a school that enrolls students from a feeder school in a neighboring local educational agency pursuant to Education Law section 2040.

(vi) *Regional placement plan* means a comprehensive regional approach to the provision of educational placements for homeless children that has been approved by the commissioner.

(vii) *School district of current location* means the public school district within the State of New York in which the hotel, motel, shelter or other temporary housing arrangement of a homeless child, or the residential program for runaway and homeless youth, is located, which is different from the school district of origin.

(viii) *School district of origin* means the school district within the State of New York in which the homeless child was attending a public school or preschool on a tuition-free basis or was entitled to attend when circumstances arose that caused such child to become homeless, which is different from the school district of current location. School district of origin shall also mean the school district in the state of New York in which the child was residing when circumstances arose that caused such child to become homeless if such child was eligible to apply, register, or enroll in public preschool or kindergarten at the time such child became homeless, or the homeless child has a sibling who attends a school in the school district in which the child was residing when circumstances arose that caused such child to become homeless.

(ix) *School of origin* means the public school that a child or youth attended when permanently housed, or the school in which the child or youth was last enrolled, including a preschool or charter school. Provided that, for a homeless child or youth who completes the final grade level served by the school of origin, the term "school of origin" shall include the designated receiving school at the next grade level for all feeder schools. Where the child is eligible to attend school in the school district of origin because the child becomes homeless after such child is eligible to apply, register, or enroll in the public preschool or kindergarten or the child is living with a school-age sibling who attends school in the school district of origin, the school of origin shall include any public school or preschool in which such child would have been entitled or eligible to attend based on such child's last residence before the circumstances arose that caused such child to become homeless.

(2) Choice of district and school.

(i) The designator shall have the right to designate one of the following as the school district within which a homeless child shall be entitled to attend upon instruction:

(a) the school district of current location;

(b) the school district of origin; or

(c) a school district participating in a regional placement plan.

(ii) The designator shall also have the right designate one of the following as the school where a homeless child seeks to attend for instruction:

(a) the school of origin; or

(b) any school that nonhomeless children and youth who live in the attendance area in which the child or youth is actually living are eligible to attend, including a preschool.

(iii) Where the school district in which a homeless child is temporarily housed is the school district of origin, the child shall be entitled to attend the schools of such district without the payment of

tuition for the duration of homelessness and until the end of the school year in which such child becomes permanently housed and for one additional year if that year constitutes the child's terminal year in such building, subject to a best interest determination in accordance with subparagraph (iii) of paragraph (4) of this subdivision. In lieu of attending the school serving the attendance zone in which the child is temporarily relocated, such child may choose to remain in the school building he or she previously attended for the duration of homeless and until the end of the school year in which such child becomes permanently housed and for one additional year if that year constitutes the child's terminal year in such building.

(iv) A homeless child who designates the school district of current location as the district of attendance and who relocates to another temporary housing arrangement outside of such district, or to a different attendance zone or community school district within such district, shall be entitled to continue attendance in the same school building or designate any school that nonhomeless children and youth who live in the attendance area in which the child or youth is actually living are eligible to attend, including a preschool, subject to a best interest determination in accordance with subparagraph (iii) of paragraph (4) of this subdivision, for the duration of homeless and until the end of the school year in which such child becomes permanently housed and for one additional year if that year constitutes the child's terminal year in such building.

(v) Where the school district of origin that a homeless child was attending on a tuition-free basis or was entitled to attend when circumstances arose which caused the child to become homeless is located in the State, and the homeless child's temporary housing arrangement is located in a contiguous state, the homeless child shall be entitled to attend the school of origin or any school that nonhomeless children and youth who live in the attendance area in which the child or youth is actually living are eligible to attend, including a preschool, subject to a best interest determination in accordance with subparagraph (iii) of paragraph (4) of this subdivision, for the duration of the homelessness and until the end of the school year in which such child becomes permanently housed and for one additional year if that year constitutes the child's terminal year in such building.

(vi) Where the child's temporary housing arrangement is located in New York State, the homeless child shall be entitled to attend the school of origin or any school that nonhomeless children and youth who live in the attendance area in which the child or youth is actually living are eligible to attend, including preschool, subject to a best interest determination in accordance with subparagraph (iii) of paragraph (4) of this subdivision, for the duration of the homelessness and until the end of the school year in which such child becomes permanently housed and for one additional year if that year constitutes the child's terminal year in such building.

(vii) Prior to the end of the first semester of attendance or within 60 days of commencing attendance at a school pursuant to the designation made in accordance with this subdivision whichever occurs later, the designator may change the designation if the designator finds the original designation to be educationally unsound.

(3)

(i) A designation form provided by the commissioner shall be completed by the designator as defined in subparagraph (i) of paragraph (1) of this subdivision. Such form shall be completed in full. All school districts, temporary housing facilities operated or approved by a local social services district, and residential facilities for runaway and homeless youth shall make such forms available to a homeless child who seeks admission to school or to the parent or person in parental relation who seeks to enroll such child in school and shall ensure that the completed designation forms are given to the local educational agency McKinney-Vento liaison for the local educational agency in which the designated school is located immediately, but no later than two business days from the earlier of the date on which the child or youth either:

(a) sought enrollment in school; or

(b) was placed in a temporary housing facility or residential facility for runaway and homeless youth.

(ii) Where the homeless child is located in a temporary housing facility operated or approved by a local social services district or a residential facility for runaway and homeless youth, the director of the facility or a person designated by the social services districts, shall assist the designator to ensure that the form is properly completed and assist the child, where necessary, to enroll in the designated school and shall forward the completed designation form to the local educational agency McKinney-Vento liaison for the local educational agency in which the designated school is located immediately, but no later than two business days of entry into such facilities.

(4) Upon receipt of a designation form, the designated local educational agency shall immediately:

(i) review the designation form to assure that it has been completed;

(ii) admit the homeless child even if the child or youth is unable to produce records normally required for enrollment, such as previous academic records, records of immunization and/or other required health records, proof of residency or other documentation and/or even if the child has missed application or enrollment deadlines during any period of homelessness, if applicable. Provided that if a child or youth seeks enrollment in a charter school or preschool and the lottery application deadline for seats in such school or program has passed but the lottery has not yet been held, such child or youth should be entered into the lottery. If the lottery has been held, such child or youth should be placed on the school's waitlist, if one exists, comparable to other students in the district and consistent with any applicable laws, regulations or policies. Provided further that nothing herein shall be construed to require the immediate attendance of an enrolled student lawfully excluded from school temporarily pursuant to Education Law section 906 because of a communicable or infectious disease that imposes a significant risk of infection of others;

(iii) determine whether the designation made by the designator is consistent with the best interests of the homeless child or youth. In determining a homeless child's best interest, a local educational agency shall:

(a) presume that keeping the homeless child or youth in the school of origin is in the child's or youth's best interest, except when doing so is contrary to the request of the child's parent or guardian, or in the case of an unaccompanied youth, the youth;

(b) consider student-centered factors, including but not limited to factors related to the impact of mobility on achievement, education, the health and safety of the homeless child, giving priority to the request of the child's or youth's parent or guardian or the youth in the case of an unaccompanied youth;

(c) if after considering student-centered factors and conducting a best interest school placement determination, the local educational agency determines that it is not in the homeless child's best interest to attend the school of origin or the school designated by the designator, the local educational agency must provide a written explanation of the reasons for its determination, in a manner and form understandable to such parent, guardian, or unaccompanied youth. The information must also include information regarding the right to a timely appeal in accordance with clause (b) of subparagraph (ii) of paragraph (7) of this subdivision. The homeless child or youth must be enrolled in the school in which enrollment

is sought by the designator during the pendency of all available appeals.

(iv) provide the child with access to all of its programs, activities and services to the same extent as they are provided to resident students;

(v) immediately contact the school district where the child's records are located for a copy of such records and coordinate the transmittal of records for students with disabilities consistent with section 200.4(e)(8)(iii) of this Title;

(vi) if the child or youth needs to obtain immunizations or immunization or medical records, the school admitting such child or youth shall immediately refer the parent or guardian of the homeless child or youth to the local educational agency McKinney-Vento liaison designated under subparagraph (iii) of paragraph (7) of this subdivision who shall assist in obtaining necessary immunizations, screenings, or immunization or medical records in accordance with section 42 U.S.C. section 11432(g)(3)(C) and (D) (Every Student Succeeds Act of 2015, 20 U.S.C. section 6399(2), (Public Law 114-95, title ix, section 9302, 129 STAT. 1802; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2015; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234); and

(vii) forward a copy of the designation form to the school district of origin, where applicable.

(viii) arrange for transportation pursuant to Education Law section 3209(4) and paragraph 6 of this subdivision; provided, however, that where the school of origin is a charter school, the school district designated pursuant to this section shall be deemed to be the school district of residence of such child for purposes of fiscal and programmatic responsibility under Article 56 of the Education Law and shall be responsible for transportation of the homeless child if a social services district is not otherwise responsible; and

(ix) arrange for free school meals pursuant to the Richard B. Russell National School Lunch Act, 42 U.S.C. section 1758(b).

(5) Within five days of the receipt of a request for school records, the school district shall forward a complete copy of the homeless child's records including, but not limited to, proof of age, academic records, evaluations, immunization or medical records, and guardianship papers, if applicable.

(6) Transportation for any homeless child or youth shall be provided in accordance with this paragraph. Any homeless child not entitled to receive transportation pursuant to Education Law, section 3209(4) from a social services district shall be transported by the designated school district of attendance consistent with this paragraph.

(i) The designated school district of attendance shall immediately provide or arrange in the most cost-effective manner for transportation to and from the child's temporary housing location and the school the child legally attends consistent with subparagraphs (ii) through (vi) below.

(ii) Where such transportation is in excess of 50 miles one way, such transportation shall only be provided where the commissioner certifies that such transportation is in the best interest of the child in accordance with subparagraph (iii) of paragraph (4) of this subdivision to the extent applicable, on a form and timeline prescribed by the commissioner.

(iii) Where a homeless child designates the school district of current location as the district the child will attend and such child does not attend the school of origin, such district shall provide transportation to such child on the same basis provided to resident students.

(iv) Where a homeless child attends the school of origin, the designated school district of attendance shall provide transportation to and from the child's temporary housing location and the school the child legally attends for the duration of homelessness and through the end of the

school year in which the child becomes permanently housed and one additional year if that year constitutes the child's terminal year in the designated school.

(v) Where the designated school district of attendance has recommended that the homeless child attend a summer educational program and the lack of transportation poses a barrier to such child's participation in the summer educational program, the designated school district of attendance shall provide transportation.

(vi) The designated school district of attendance, or the social services district if such child is eligible for transportation from the social services district pursuant to Education Law, section 3209(4), shall provide or arrange for transportation to extracurricular or academic activities where:

(a) the homeless child participates or would like to participate in an extracurricular or academic activity, including an after-school activity at the school;

(b) the homeless child meets the relevant eligibility criteria for the activity; and

(c) the lack of transportation poses a barrier to such child's participation in the activity.

(vii) Expenditures for the transportation of a parent accompanying a transported homeless child shall be eligible for transportation aid pursuant to section 3602(7) of the Education Law under the following circumstances:

(a) where the homeless child is being transported using public transportation, transportation of the child with an accompanying parent has been determined by the school district responsible for transporting the child to be the most cost-effective means of transportation, and the school district has determined that public transportation unaccompanied by the parent is inappropriate because of the child's age, the distance to be traveled, the complexity of the transportation arrangement, the need to transport the child through a high crime area, or a combination of such factors; or

(b) where the homeless child is a student with a disability whose individualized education program (IEP) includes the services of a transportation aide or attendant, and providing transportation with the parent serving as the transportation aide or attendant for the child is the most cost-effective means of transportation; or

(c) where transportation by the parent in the parent's vehicle is the most cost-effective means of transportation.

(viii) For purposes of determining the maximum amount of aidable transportation expense of regular transportation for a homeless child pursuant to section 3209(4)(c) of the Education Law, the transportation service provider or school district shall demonstrate that the costs of such transportation are based on an appropriate unit cost determined by dividing the grand total of transportation expenditures for the preceding school year of all regular transportation services provided to students of the district by the service provider or school district by the number of vehicles, passengers, miles traveled or other appropriate transportation service units represented by all such transportation services. For purposes of determining the maximum amount of aidable transportation expense of transportation pursuant to section 3209(4)(c) of the Education Law for a homeless child who attends a preschool as defined under subparagraph (iv) of paragraph (1) of this subdivision that is the school of origin, the transportation service provider or school district shall demonstrate that the costs of such transportation are based on an appropriate unit cost not otherwise reimbursed under federal programs.

(7) School district responsibilities.

(i) Enrollment. Each school district shall:

(a) ensure that homeless children and youth are not segregated in a separate school, or in a separate program within a school, based on their status as homeless;

(b) designate and train an employee, who may also be the local educational agency McKinney-Vento liaison, who will be responsible for making best interest determinations in accordance with the requirements of subparagraph (iii) of paragraph (4) of this subdivision;

(c) ensure that a student with a disability as defined in section 200.1(zz) of this Title, who transfers school districts within the same academic year, is provided with a free appropriate public education, including services comparable to those described in the previously held individualized education program (IEP) pursuant to section 200.4(e)(8) of this Title;

(d) ensure that homeless children are provided with services comparable to services offered to other students in the district of attendance designated pursuant to this subdivision including preschool and other educational programs or services for which a homeless student meets the eligibility criteria, such as programs for students with disabilities, English language learner services, after-school programs, school nutrition programs and transportation, career and technical education, and programs for gifted and talented students, and to the extent such child or youth is eligible, services provided under Title I of the Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act of 2015, (20 U.S.C 6301 et seq.; Public Law 114-95, title ix, section 9302, 129 STAT. 1802.);

(e) immediately contact the school last attended by the homeless child or youth to obtain relevant academic and other records.

(ii) Dispute resolution. Each school district shall:

(a) establish procedures, in accordance with 42 U.S.C. section 11432(g)(3)(E), for the prompt resolution of disputes regarding school selection or enrollment of a homeless child or youth (Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq.; Public Law 114-95, title ix, section 9302, 129 STAT. 1802; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2015; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234), including, but not limited to, disputes regarding transportation and/or a child's or youth's status as a homeless child or unaccompanied youth;

(b) provide a written explanation, including a statement regarding the right to appeal pursuant to 42 U.S.C. section 11432(g)(3)(E)(ii), the name, post office address and telephone number of the local educational agency McKinney-Vento liaison and the form petition for commencing an appeal to the commissioner pursuant to Education Law section 310 of a final determination regarding enrollment, school selection and/or transportation, to the homeless child's or youth's parent or guardian, if the school district declines to either enroll and/or transport such child or youth to the school of origin or a school requested by the parent or guardian (Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq.; Public Law 114-95, title ix, section 9302, 129 STAT. 1802; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2015; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234); and

(c) immediately enroll the child or youth in the school in which enrollment is sought and/or provide transportation pending final resolution of the dispute over the school district's final determination of the child's or youth's homeless status and all available appeals, including appeals within the local educational agency and the commissioner pursuant to the provisions of Education Law section 310.

(iii) Local educational agency McKinney-Vento liaison. Each school district shall:

(a) designate an appropriate staff person, who may also be a coordinator for other Federal programs, as a local educational agency McKinney-Vento liaison for homeless children and youth to carry out the duties described in 42 U.S.C. section 11432(g)(6) (Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq.; Public Law 114-95, title ix, section 9302, 129 STAT. 1802; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2015; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234). Such duties shall include but not be limited to:

(1) ensuring that school personnel providing services under the McKinney-Vento Act receive professional learning and other support;

(2) ensuring that homeless children and youths are identified by school personnel through outreach and coordination activities and that homeless families;

(3) ensuring that homeless children and youths and their families receive referrals for health care services, dental services, mental health and substance abuse services, housing services, and other appropriate services;

(4) ensuring that homeless children and youth are enrolled in, and have full and equal opportunity to succeed in, the school or schools of the local educational agency;

(5) ensuring that homeless families and homeless children and youths have access to and receive educational services for which such families, children and youths are eligible, including services through Head Start programs (including Early Head Start programs), early intervention services under Part C of the IDEA, and other preschool programs administered by the local educational agency;

(6) ensuring that enrollment disputes are mediated in accordance with the requirements of the McKinney-Vento Act, including where if a dispute arises over eligibility, school selection, or enrollment in a school, the child shall be enrolled;

(7) ensuring that parents and guardians and unaccompanied youths are fully informed of all transportation services, including transportation to and from the school of origin and are assisted in assessing transportation services;

(8) ensuring that public notice of the educational rights of homeless children and youths is disseminated in locations frequented by parents or guardians of such youth, and unaccompanied homeless youths, including schools, shelters, public libraries, and soup kitchens, in a manner and form that is understandable;

(9) assisting the parent or guardian of the child or youth (or in the case of an unaccompanied youth) the youth with obtaining any necessary immunizations or screenings, or immunization or other required health records; and

(10) in the case of unaccompanied youth, ensuring that such youths are enrolled, have opportunities to meet the same challenging State academic standards as the State establishes for other children and youths and are informed of their status as independent students under section 480 of the Higher Education Act of 1965 (20 U.S.C. section 1087(vv)) and their right to receive verification of this status from the local educational agency McKinney-Vento liaison.

(b) in the case of an unaccompanied youth, ensure that the local educational agency McKinney-Vento liaison assists in placement or enrollment decisions under this paragraph, including coordination with the committee on special education for students with disabilities pursuant to section 200.4 of this Title, considers the views of such unaccompanied youth,

and provides notice to such youth of the right to appeal pursuant to 42 U.S.C. section 11432(g)(3)(E)(ii) (Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq.; Public Law 114-95, title ix, section 9302, 129 STAT. 1802; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2015; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234) and provides the form petition for commencing an appeal to the commissioner pursuant to Education Law, section 310 of a final determination regarding enrollment, school selection and/or transportation;

(c) require the local educational agency McKinney-Vento liaison to assist the homeless child's or youth's parent or guardian or the unaccompanied youth in commencing an appeal to the commissioner pursuant to Education Law, section 310 of a final determination regarding eligibility, enrollment, school selection and/or transportation by:

- (1) providing the parent or guardian or unaccompanied youth with the form petition;
- (2) assisting the parent or guardian or unaccompanied youth in completing the form petition;
- (3) arranging for the copying of the form petition and supporting documents for the parent or guardian or unaccompanied youth, without cost to the parent or guardian or unaccompanied youth;
- (4) accepting service of the form petition and supporting papers on behalf of any school district employee or officer named as a party or the school district if it is named as a party or arranging for service by mail by mailing the form petition and supporting documents to any school district employee or officer named as a party and, if the school district is named as a party, to a person in the office of superintendent who has been designated by the board of education to accept service on behalf the school district;
- (5) providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgment verifying that the local educational agency liaison has received the form petition and supporting documents and will either accept service of these documents on behalf of the school district employee or officer or school district or effect service by mail by mailing the form petition and supporting documents to any school district employee or officer named as a party and, if the school district is named as a party, to a person in the office of superintendent who has been designated by the board of education to accept service on behalf of the school district;
- (6) transmitting on behalf of the parent or guardian or unaccompanied youth, within five days after the service of, the form petition or any pleading or paper to the Office of Counsel, Education Department, State Education Building, Albany, NY 12234;
- (7) providing the parent or guardian or unaccompanied youth with a signed and dated acknowledgement verifying that the local educational agency liaison has received the form petition and supporting documents and will transmit these documents on behalf of the parent, guardian or unaccompanied youth to the Office of Counsel, Education Department, State Education Building, Albany, NY 12234; and
- (8) accepting service of any subsequent pleadings or papers, including any correspondence related to the appeal, if the parent or guardian or unaccompanied youth so elects related to the appeal on behalf of the parent or guardian or unaccompanied youth and making such correspondence available to the parent or guardian or unaccompanied youth;

(d) ensure that the local educational agency liaison maintains a record of all appeals of enrollment, school selection and transportation determinations; and

(e) inform school personnel, service providers, advocates working with homeless families, parents and guardians of homeless children and youths, and homeless children and youths of the duties of the local educational agency McKinney-Vento liaison.

(iv) Coordination. Each school district shall coordinate:

(a) the provision of services provided pursuant to subtitle B of title VII of the McKinney-Vento Homeless Education Assistance Improvement Act, as amended, (42 U.S.C. sections 11431 et seq.) with local social services agencies and other agencies or programs providing services to homeless children and youths and their families, including services and programs funded under the Runaway and Homeless Youth Act (42 U.S.C. sections 5701 et seq.);

(b) with other school districts on interdistrict issues, such as transportation or transfer of school records; and

(c) implementation of this subdivision with the requirements of the individuals with Disabilities Education Act (20 U.S.C. sections 1400 et seq.).

(v) Reporting. Each school district shall collect and transmit to the commissioner, at such time and in such manner as the commissioner may require, a report containing such information as the commissioner determines is necessary to assess the educational needs of homeless children and youths within the State.

(vi) Privacy. Information about a homeless child's or youth's living situation shall be treated as a student education record, and shall not be deemed to be directory information, under section 444 of the General Education Provisions Act (20 U.S.C. section 1232g; Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq.; Public Law 114-95, title ix, section 9302, 129 STAT. 1802).

(y) *Determination of student residency and age.*

(1) The purpose of this subdivision is to establish requirements for determinations by a board of education or its designee of student residency and age, for purposes of eligibility to attend the public schools in the school district without the payment of tuition pursuant to Education Law section 3202, in order to ensure that all eligible students are admitted to such schools without undue delay; provided that nothing in this subdivision shall be construed to change or shift the burden of proof of the parent(s), the person(s) in parental relation or the child, as appropriate, to establish residency through physical presence as an inhabitant of the school district and intent to reside in the district.

(2) Each school district shall make publicly available its enrollment forms, procedures, instructions and requirements for determinations of student residency and age in accordance with this subdivision. Such publicly available information shall include a non-exhaustive list of the forms of documentation that may be submitted to the district by parents, persons in parental relation or children, as appropriate, in accordance with the provisions of this subdivision. Such list shall include, but not be limited to, all examples of documentation listed in this subdivision. No later than January 31, 2015, such information shall be included in the school district's existing enrollment/registration materials and shall be provided to all parents, persons in parental relation or children, as appropriate, who request enrollment in the district, and shall be posted on the district's website, if one exists. As soon as practicable but no later than July 1, 2015, the school district shall update such information and the district's existing enrollment/registration materials as necessary to come into compliance with the provisions of this subdivision; and provide such updated information and materials to all parents, persons in parental relation or children, as appropriate, who request enrollment in the district; and post such updated information and materials on the district's website, if one exists.

(3) When a child's parent(s), the person(s) in parental relation to the child or the child, as appropriate, requests enrollment of the child in the school district, such child shall be enrolled and shall begin

attendance on the next school day, or as soon as practicable, provided that nothing herein shall require the district to enroll such child if a determination of non-residency is made, in accordance with this subdivision, on the date of such request for enrollment. As soon as practicable but no later than three business days after such initial enrollment, the parent(s), the person(s) in parental relation to the child or the child, as appropriate, shall submit documentation and/or information in support of the child's residency in the district and the board of education or its designee shall review all such documentation and/or information and make a residency determination in accordance with subparagraphs (i) and (ii) of this paragraph; provided that if such documentation and/or information is submitted on the third business day after initial enrollment, the board of education or its designee in its discretion may make the residency determination no later than the fourth business day after initial enrollment.

(i) Documentation Regarding Enrollment and/or Residency.

(a) The school district shall not request on any enrollment/registration form(s) or in any meeting or other form of communication any of the following documentation and/or information at the time of and/or as a condition of enrollment:

(1) Social Security card or number; or

(2) any information regarding or which would tend to reveal the immigration status of the child, the child's parent(s) or the person(s) in parental relation, including but not limited to copies of or information concerning visas or other documentation indicating immigration status.

(b) The board of education or its designee may require that the parent(s) or person(s) in parental relation submit documentation and/or information as evidence of the physical presence of the parent(s) or person(s) in parental relation and the child in the district. Such documentation may include:

(1) a copy of a residential lease or proof of ownership of a house or condominium, such as a deed or mortgage statement;

(2) a statement by a third-party landlord, owner or tenant from whom the parent(s) or person(s) in parental relation leases or with whom they share property within the district, which may be either sworn or unsworn;

(3) such other statement by a third party relating to the parent(s)' or person(s) in parental relation's physical presence in the district; and/or

(4) other forms of documentation and/or information establishing physical presence in the district, which may include but not be limited to those listed in clause (d) of this subparagraph.

(c) For purposes of proof of parental relationship or proof that the child resides with the parent(s) or person(s) in parental relation, the board of education or its designee may accept an affidavit of the parent(s) or person(s) in parental relation indicating either:

(1) that they are the parent(s) with whom the child lawfully resides; or

(2) that they are the person(s) in parental relation to the child, over whom they have total and permanent custody and control, and describing how they obtained total and permanent custody and control, whether through guardianship or otherwise. The board of education or its designee may also accept other proof, such as documentation indicating that the child resides with a sponsor with whom the child has been placed by a federal agency. The board of education or its designee may not require submission of a judicial custody order or an order of guardianship as a condition of enrollment.

(d) The board of education or its designee shall consider other forms of documentation produced by the child, the child's parent(s) or person(s) in parental relation, including but not limited to the following:

- (1) pay stub;
- (2) income tax form;
- (3) utility or other bills;
- (4) membership documents (e.g., library cards) based upon residency;
- (5) voter registration document(s);
- (6) official driver's license, learner's permit or non-driver identification;
- (7) state or other government issued identification;
- (8) documents issued by federal, state or local agencies (e.g., local social service agency, federal Office of Refugee Resettlement); or
- (9) evidence of custody of the child, including but not limited to judicial custody orders or guardianship papers.

(ii) Documentation of Age. In accordance with Education Law, section 3218:

(a) where a certified transcript of a birth certificate or record of baptism (including a certified transcript of a foreign birth certificate or record of baptism) giving the date of birth is available, no other form of evidence may be used to determine a child's age;

(b) where the documentation listed in clause (a) of this subparagraph is not available, a passport (including a foreign passport) may be used to determine a child's age; and

(c) where the documentation listed in both clauses (a) and (b) of this subparagraph are not available, the board of education or its designee may consider certain other documentary or recorded evidence in existence two years or more, except an affidavit of age, to determine a child's age. Such other evidence may include but not be limited to the following:

- (1) official driver's license;
- (2) state or other government issued identification;
- (3) school photo identification with date of birth;
- (4) consulate identification card;
- (5) hospital or health records;
- (6) military dependent identification card;
- (7) documents issued by federal, state or local agencies (e.g., local social service agency, federal Office of Refugee Resettlement);
- (8) court orders or other court-issued documents;
- (9) Native American tribal document; or
- (10) records from non-profit international aid agencies and voluntary agencies.

(d) With respect to the documentation listed in clause (c) of this subparagraph, if the documentary evidence presented originates from a foreign country, the board of education

or its designee may request verification of such documentary evidence from the appropriate foreign government or agency, consistent with the requirements of the federal Family Educational Rights and Privacy Act (20 USC §1232g), provided that the student must be enrolled in accordance with paragraph (2) of this subdivision and such enrollment cannot be delayed beyond the period specified in paragraph (2) of this subdivision while the the board of education or its designee attempts to obtain such verification.

(iii)

(a) School districts are required to comply with Public Health Law §2164(7) and all other applicable provisions of the Public Health Law and its implementing regulations, including orders issued by a state or local health department pursuant to such laws or regulations, that impact a student's admission to or attendance in school. Nothing in this subdivision shall be construed to require the immediate attendance of an enrolled student lawfully excluded from school temporarily pursuant to Education Law §906 because of a communicable or infectious disease that imposes a significant risk of infection of others, or an enrolled student whose parent(s) or person(s) in parental relation have not submitted proof of immunization within the periods prescribed in Public Health Law §2164(7)(a).

(b) Nothing in this subdivision shall be construed to require the immediate attendance of an enrolled student who is suspended from instruction for disciplinary reasons pursuant to Education Law §3214.

(c) Nothing in this subdivision shall be construed to interfere with the recordkeeping and reporting requirements imposed on school districts participating in the federal Student and Exchange Visitor Program (SEVP) in grades 9-12 pursuant to applicable federal laws and regulations concerning nonimmigrant alien students who identify themselves as having or seeking nonimmigrant student visa status (F-1 or M-1), and nothing herein shall be construed to conflict with such requirements or to relieve such nonimmigrant alien students who have or seek an F-1 or M-1 visa from fulfilling their obligations under federal law and regulations related to enrolling in grades 9-12 in SEVP schools.

(4) At any time during the school year and notwithstanding any prior determination to the contrary at the time of the child's initial enrollment or re-entry into the public schools of the district, the board of education or its designee may determine, in accordance with paragraph (6) of this subdivision, that a child is not a district resident entitled to attend the schools of the district.

(5) Determinations regarding whether a child is entitled to attend a district's schools as a homeless child or youth must be made in accordance with subdivision (x) of this section.

(6) Any decision by a school official, other than the board or its designee, that a child is not entitled to attend the schools of the district shall include notification of the procedures to obtain review of the decision within the school district. Prior to making a determination of entitlement to attend the schools of the district, the board or its designee shall afford the child's parent, the person in parental relation to the child or the child, as appropriate, the opportunity to submit information concerning the child's right to attend school in the district. When the board of education or its designee determines that a child is not entitled to attend the schools of such district because such child is not a resident of such district, such board or its designee shall, within two business days, provide written notice of its determination to the child's parent, to the person in parental relation to the child, or to the child, as appropriate. Such written notice shall state:

(i) that the child is not entitled to attend the public schools of the district;

(ii) the specific basis for the determination that the child is not a resident of the school district, including but not limited to a description of the documentary or other evidence upon which such

determination is based;

(iii) the date as of which the child will be excluded from the schools of the district; and

(iv) that the determination of the board may be appealed to the Commissioner of Education, in accordance with Education Law, section 310, within 30 days of the date of the determination, and that the instructions, forms and procedures for taking such an appeal, including translated versions of such instructions, forms and procedures, may be obtained from the Office of Counsel at www.counsel.nysed.gov, or by mail addressed to the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234 or by calling the Appeals Coordinator at (518) 474-8927.

(7) Notwithstanding any provision of this subdivision to the contrary, in the case of a student placed, committed, supervised, detained, or confined in a residential facility located in a school district pursuant to subdivision (pp) of this section, such residential facility shall request enrollment of a child who has completed an educational program provided by employees of such facility leading to a Regents (with or without an advanced designation diploma) or local diploma in the diploma issuing district as defined in subparagraph (pp)(1)(iv) of this section. Such child shall be entitled to enroll in such school district solely for purposes of obtaining a Regents (with or without an advanced designation diploma) or local diploma, provided that the residential facility shall provide documentation of age in accordance with subparagraph (ii) of paragraph (9) of this subdivision and documentation of such child's placement, commitment, supervision, detainment, or confinement in/to such residential facility.

(z) Department review of unregistered nonpublic schools.

(1) A nonpublic school, other than a registered high school, shall be placed under department review when the school scores below one (or more) of the review criteria on indicators of student achievement specified in paragraph (7) of subdivision (p) of this section, has not shown improvement on such indicators over the preceding three school years, and has not otherwise demonstrated satisfactory performance on other student achievement indicators determined by the commissioner in consultation with the appropriate nonpublic school officials. The department shall notify each nonpublic school placed under department review and inform such school of the student achievement data upon which the determination was made.

(2) When a nonpublic school is notified by the department that it has been placed under department review, it shall so notify the parents of students attending the school and provide them with the student achievement data upon which that determination was made.

(3) The school shall be required to develop a school improvement plan and submit it to the department. Upon identification of a nonpublic school for department review, the commissioner shall offer technical assistance to the school in the development of a school improvement plan.

(4) If, after a time period established by the commissioner in consultation with the appropriate nonpublic school officials, the school under department review has not demonstrated progress on the criteria in question, the commissioner shall formally notify the appropriate nonpublic school officials that the school is at risk of being determined to be an unsound educational environment.

(5) If, after a further time period established by the commissioner in consultation with appropriate nonpublic school officials, the school under department review has not demonstrated progress as determined by the commissioner, the commissioner shall determine that the school is an unsound educational environment. The commissioner, in consultation with the appropriate officials of the nonpublic school, shall develop a plan to ensure that the educational welfare of the students is protected.

(aa) Interpretation services for parents and persons in parental relationship who are hearing impaired.

(1) Definitions. For purposes of this subdivision:

(i) *Hearing impaired* shall include any hearing impairment, whether permanent or fluctuating, the result of which prevents a meaningful participation in school district meetings or activities.

(ii) *Meeting or activity* shall mean those school-initiated meetings or activities attended by parents or persons in parental relationship who are hearing impaired, which are specific to the academic and/or disciplinary aspects of their child's educational program, including, but not limited to, parent-teacher conferences; child study or building level team meetings; planning meetings with school counselors regarding educational progress and career planning; suspension hearings or any conference with school officials relating to disciplinary actions.

(2) School district meetings and activities. At any meeting or activity which is conducted by the board of education, trustees, school district or a district school and attended by parents or persons in parental relationship who are hearing impaired, such board of education or trustees shall provide interpreter services at no charge to such parents or persons in parental relationship, provided that a written request therefore is made to the school district within the time limitation established by such board of education or trustees pursuant to paragraph (3) of this subdivision.

(i) In the event interpreter services are requested, the school district shall appoint an interpreter of the deaf to interpret during the meeting or activity.

(ii) In the event that an interpreter of the deaf is unavailable, the school district shall make other reasonable accommodations which are satisfactory to the parents or guardians.

(3) Each board of education or trustees shall adopt a policy which shall establish a reasonable time limitation for requesting interpreter services, examples of what constitutes reasonable accommodations pursuant to subparagraph (2)(ii) of this subdivision and how the provisions of this subdivision shall be implemented by such board of education or trustees.

(bb) *Data reporting requirements.*

(1) Definitions. For purposes of this subdivision:

(i) *Expenditures for administration and improvement* shall mean the sum of expenditures from the general fund, special aid fund and risk retention fund as reported in the annual financial report of the school district for the following purposes:

(a) curriculum development and supervision;

(b) supervision-regular school;

(c) supervision-special schools;

(d) research, planning and evaluation;

(e) inservice training-instruction; and

(f) employee benefits for administration and improvement calculated by multiplying the ratio of total expenditures for employee benefits to total expenditures for salaries by total salaries related to administration and improvement for those purposes listed in clauses (a)-(e) of this subparagraph. Such ratio shall be expressed as a decimal carried to three decimal places without rounding.

(ii) *Expenditures for instructional support* shall mean the sum of expenditures from the general fund, special aid fund and risk retention fund as reported in the annual financial report of the school district for the following purposes:

- (a) school library and audiovisual;
- (b) educational television;
- (c) computer assisted instruction;
- (d) attendance-regular school;
- (e) guidance-regular school;
- (f) health services-regular school;
- (g) psychological services-regular school;
- (h) social work services-regular school;
- (i) pupil personnel services-special schools;
- (j) co-curricular activities-regular school;
- (k) interscholastic athletics-regular school; and

(l) employee benefits for instructional support expenses calculated by multiplying the ratio of total expenditures for employee benefits to total expenditures for salaries by total salaries related to instructional support for those purposes listed in clauses (a)-(k) of this subparagraph. Such ratio shall be expressed as a decimal carried three decimal places without rounding.

(iii) *Expenditures per pupil on regular education* shall mean the sum of all expenditures on regular education divided by a pupil measure based on average daily membership and the number of students educated in other districts for which the district pays tuition. The sum of regular education expenditures shall include general fund, special aid fund and risk retention expenses reported in the annual financial report of the school district for the following purposes:

- (a) teaching-regular school (excluding tuition for Special Act school districts);
- (b) occupational education (excluding tuition for Special Act school districts);
- (c) teaching-special schools (defined as summer school and continuing education [excluding tuition for Special Act school districts]);
- (d) employee benefits for regular education calculated by multiplying the ratio of total expenditures for employee benefits to total expenditures for salaries, by total salaries related to regular education for those purposes listed in clauses (a), (b) and (c) of this subparagraph. Such ratio shall be expressed as a decimal carried to three decimal places without rounding;
- (e) the portion of administration and improvement expenses, as defined in subparagraph (i) of this paragraph, attributable to regular education, as determined by multiplying total expenditures for administration and improvement by the ratio of regular education expenditures for those purposes listed in clauses (a), (b), (c) and (d) of this subparagraph to the sum of such regular education expenditures and special education expenditures for those purposes listed in clauses (iv)(a)-(e) of this paragraph. Such ratio shall be expressed as a decimal carried to three decimal places without rounding; and
- (f) the portion of instructional support expenses, as defined in subparagraph (ii) of this paragraph, attributable to regular education, as determined by multiplying total expenditures for instructional support by the ratio of regular education expenditures for those purposes listed in clauses (a), (b), (c) and (d) of this subparagraph to the sum of such regular education expenditures and special education expenditures for those purposes listed in clauses (iv)(a)-

(e) of this paragraph. Such ratio shall be expressed as a decimal carried to three decimal places without rounding.

(iv) *Expenditures per pupil on special education* shall mean the sum of expenditures on special education divided by a pupil measure based on the number of special education resident and nonresident pupils in district operated programs, BOCES programs, children attending other districts, Rome or Batavia and approved private school programs. The sum of expenditures for special education shall include general fund, special aid fund and risk retention fund expenses reported in the annual financial report of the school district for the following purposes:

(a) program for students with disabilities-school age-school year-Medicaid eligible;

(b) program for students with disabilities-school age-school year-all other;

(c) program for students with disabilities-school age-July/August;

(d) tuition paid to Special Act school districts;

(e) employee benefits for special education calculated by multiplying the ratio of total expenditures for employee benefits to total expenditures for salaries, by total salaries related to special education for those purposes listed in clauses (a)-(d) of this subparagraph. Such ratio shall be expressed as a decimal carried to three places without rounding;

(f) the portion of administrative and improvement expenses, as defined in subparagraph (i) of this paragraph, attributable to special education as determined by multiplying total expenditures for administration and improvement by the ratio of special education expenditures for those purposes listed in clauses (a)-(e) of this subparagraph to the sum of such special education expenditures and regular education expenditures for those purposes listed in clauses (iii)(a)-(d) of this paragraph. Such ratio shall be expressed as a decimal carried to three places without rounding; and

(g) the portion of instructional support expenses as defined in subparagraph (ii) of this paragraph, attributable to special education as determined by multiplying total expenditures for instructional support by the ratio of special education expenditures for those purposes listed in clauses (a)-(e) of this subparagraph to the sum of such special education expenditures and regular education expenditures for those purposes listed in clauses (iii)(a)-(d) of this paragraph.

(2) Each school district shall submit, at a time and in a format specified by the commissioner, electronic records for each student who was enrolled in a public school in the district or placed out of the district for educational services by the district committee on special education, committee on preschool special education or a district official and who meets one or more of the criteria listed in subparagraph (ii), (iii) or (iv) of this paragraph.

(i) The student records shall contain such information, including student demographic data, services provided, performance on State assessments, credentials awarded, and documentation of transfers and dropouts for secondary level students, as the commissioner may require.

(ii) The annual file for elementary- and middle-level students shall contain records for the following students who were enrolled at any time from July 1st through June 30th of the school year for which data are reported:

(a) each student in a grade in which the administration of a State assessment was required;

(b) each ungraded student of equivalent age, as prescribed by the commissioner; and

(c) each limited English proficient student in kindergarten through grade 8.

(iii) The annual file for secondary-level students shall contain a record for each student enrolled any time from July 1st through June 30th of the school year for which data are reported who meets one of the following criteria:

(a) each student in grades 9 through 12;

(b) each ungraded student of equivalent age, as prescribed by the commissioner; and

(c) each student below grade 9 who dropped out of school, as prescribed by the commissioner, or who was administered one of the following assessments: a Regents examination, Regents competency test, second language proficiency test, or introduction to occupations examination.

(iv) The annual file for secondary-level students shall contain a record for each student who has been reported as a dropout or a transfer to a high school equivalency preparation program in a previous school year. These students must be reported on each annual file through the fifth school year after the student first entered grade 9 or until the district or school has documentation that the student has entered another school program leading to a high school diploma.

(v) Identification of race/ethnicity. Each student record submitted for the 2002-03 and 2003-04 school years must indicate to which of the following racial/ethnic groups the student belongs: American Indian or Alaskan Native, Black (not Hispanic origin), Asian or Pacific Islander, Hispanic, or White (not Hispanic origin). Beginning with the 2004-05 school year, each student record must contain information in the format required by the commissioner and indicating whether the student is Hispanic and indicating to which of the following racial groups the student belongs: White, Black or African American, Asian, American Indian or Alaskan Native, Native Hawaiian or other Pacific Islander.

(vi) Before submitting each file, the superintendent of schools shall certify that the file being submitted is complete and accurate and that the principal of each school has had the opportunity to review the summary report for his or her school, based on the file and generated using department-approved software.

(vii) The district files on record in the department on the dates specified by the commissioner shall be used for all public reporting, including that pursuant to subdivision (m) of this section and for determining school/district accountability pursuant to subdivision (p) of this section.

(viii) The student record files shall include any additional information that the commissioner may deem necessary.

(3) Each school district shall submit the following data at a time and in a format prescribed by the commissioner:

(i) student enrollment, by grade, gender, and race/ethnicity for each school;

(ii) number of students identified as limited English proficient for each school;

(iii) number of students identified as eligible for free- and reduced-price lunches for each school;

(iv) professional qualifications of each teacher for each school;

(v) classes taught by each teacher for each school;

(vi) violent and disruptive incidents for each school;

(vii) student attendance for each school;

(viii) student out-of-school suspensions for each school;

- (ix) data on technological and media resources for each school;
- (x) data required by the commissioner to calculate expenditures per pupil on regular education;
- (xi) data required by the commissioner to calculate expenditures per pupil on special education;
- (xii) number of students in special education by placement, including both private and public school placements; and
- (xiii) such further data as may be required by the commissioner.

(4) Each school district seeking funding pursuant to title I, part A of the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. sections 6301 - 6327 shall, no later than August 1st of each school year, submit to the commissioner a list of all schools supported by such funds in the current school year. Such data submitted in the format prescribed by the commissioner shall be used to determine school district accountability pursuant to subdivision (p) of this section.

(cc) *Boards of cooperative educational services (BOCES) report cards.* BOCES reporting requirements. Each year, beginning with the 1997-98 school year, each BOCES shall prepare a BOCES report card and shall make it available by appending it to copies of the proposed administrative budget made publicly available as required by law, making it available for distribution at the annual meeting, transmitting it to local newspapers of general circulation and making it available to parents. Such BOCES report card shall include:

(1) Measures of the academic performance of the BOCES educational services. Each year, the BOCES report card shall include, on a school-by-school or program-by-program basis, the academic performance indicators applicable for BOCES services. Such academic performance indicators shall include a program evaluation based on academic performance for services provided by BOCES centers to component school districts. The program evaluation shall include:

- (i) measures of program participation, completion and placement, as applicable, in areas including, but not limited to, occupational education, special education, alternative education, and adult education and continuing education;
- (ii) the aggregated performance of students of component school districts on State performance evaluation tests in reading, mathematics, science and vocational courses, and Regents examinations in English, mathematics, science and social studies;
- (iii) the percentage of students in the BOCES region who graduate with Regents and other diplomas; and
- (iv) the comparison of such measures of academic performance to statewide averages for all boards of cooperative educational services.

(2) Measures of the fiscal performance of the supervisory district. Each year, the BOCES report card shall include the expenditures per pupil required in the annual report by the Regents to the Governor and the Legislature, pursuant to Education Law, section 215-a, including a summary of BOCES expenditures for administration, program and capital. The BOCES report card shall compare such measures of the fiscal performance to statewide averages for all boards of cooperative educational services.

(3) Other measures that support the achievement of higher standards, such as curriculum and staff development activities. The BOCES report card shall compare such measures to statewide averages for all BOCES.

(4) Violent or disruptive incident report. Commencing with the 2002-2003 school year, the BOCES report card shall include a summary of the BOCES' annual violent or disruptive incident report, also

known as the “school safety and educational climate report” as required pursuant to subdivision (gg) of this section in a format containing such information as the commissioner shall prescribe.

(dd) *Professional learning.* For purposes of this subdivision, professional learning includes, but is not limited to, any continuing education required under Subpart 80-6 of this Title and any other professional learning required pursuant to the Education Law.

(1) Requirement.

(i) By September 1st of each school year, each school district and board of cooperative educational services (BOCES) shall adopt or, in the case of multi-year plans, readopt a professional learning plan that meets the content requirements prescribed in paragraph (2) of this subdivision. The purpose of the plan shall be to improve the quality of teaching and learning by ensuring that when teachers and leaders (holders of school building leader, school district leader, and school district business leader certificates) participate in professional learning, they have opportunities for professional growth, remain current with their profession, and meet the learning needs of their students. The plan shall also ensure that holders of level III teaching assistant certificates and that substitute teachers who work on a long-term basis, as defined in section 80-5.4 of this Title, are provided the opportunity to participate in the professional learning program of the district or BOCES.

(ii) Such professional learning plan may be a part of a comprehensive education plan of the district or BOCES, provided that the professional learning plan meets all of the requirements of this subdivision, including the requirements related to collaboration with the professional learning team in the development of the plan as prescribed in paragraph (3) of this subdivision, or may be a free-standing plan of the district or BOCES.

(iii) A school district or BOCES shall include as part of its professional learning plan a description of the professional learning activities provided to all professional staff and supplementary school personnel who work with students with exceptional learning needs, particularly students with disabilities, English language learners, students who are gifted and talented, and students with low literacy levels, to enable them to identify such students and provide instruction based on the needs of such students.

(2) Content of the plan. The professional learning plan shall be structured in a format consistent with Commissioner’s guidelines and shall include:

(i) a needs analysis, and goals, objectives, strategies, activities and evaluation standards for professional learning. Such needs analysis should include quantitative and qualitative information regarding teacher and leader practice and student outcomes and may be conducted at the building, district, and/or BOCES level;

(ii) a description of:

(a) how the school district or BOCES provides all teachers and leaders it employs substantial professional learning opportunities tailored to the needs of educators that are directly related to student learning outcomes as identified in the school district or BOCES report card and other sources as determined by the school district or BOCES. The plan shall also describe how professional learning related to educator practice and curriculum development are culturally responsive and reflect the needs of the community that the school district or BOCES serves. Additionally, each school district or BOCES shall also describe in its plan how it will provide teachers and leaders it employs holding a professional certificate and/or level III teaching assistant certificate with opportunities to complete 100 hours of continuing teacher and leader education (CTLE), as required every five years under Part 80 of this Title;

(b) teachers’, leaders’, and other school personnel’s expected participation in professional

learning, including but not limited to an estimate of the average number of hours each teacher and leader is expected to participate in professional learning in the school year(s) covered by the plan. Such description should include expected participation in CTLE as well as other professional learning opportunities provided by the school district or BOCES;

(c) the alignment of professional learning with New York teaching, leadership, and learning standards, assessments, student needs, adult learning theory, and current research in education including but not limited to linguistic, cultural diversity, and special needs, and culturally appropriate and responsive practice;

(d) the articulation of professional learning across grade levels;

(e) the efforts made to ensure that professional learning is continuous and sustained and that the methods and approaches for delivering professional learning have been shown to be effective and appropriate for adult learners;

(f) the manner in which the school district or BOCES will measure the impact of professional learning on student achievement and teachers' and leaders' practices; and

(g) a description of any other opportunities the school district or BOCES provides to its educators to support their professional growth (e.g., coaching, induction, professional learning communities); and

(iii) provision for the training, where applicable, in school violence prevention and intervention, child abuse recognition, the needs of children with autism, and the Dignity for All Students Act (DASA) of employees holding a teaching certificate or license in the classroom teaching service, pupil personnel service, or educational leadership service; and

(iv) provision for a mentoring program consistent with the following requirements:

(a) The purpose of the mentoring program shall be to provide support for educators who hold an initial certificate in the classroom teaching service or as a school building leader in order to ease the transition from teacher and school building leader preparation to practice, thereby increasing retention of teachers and school building leaders in the public schools, and to increase the skills of new teachers and school building leaders in order to improve student achievement in accordance with the State learning standards. Districts/BOCES should consider evidence-based mentoring practices and standards that have been shown to improve the retention and early career effectiveness of educators, as well as the role of first-year mentoring as one component of a more comprehensive induction model that provides differentiated supports to educators during their early careers.

(b) The professional learning plan shall describe how the school district or BOCES will provide a mentoring program for teachers in the classroom teaching service and school building leaders who must participate in a mentoring program to meet the requirement for the professional certificate, as prescribed in sections 80-3.4 and 80-3.10 of this Title.

(c) The mentoring program shall be developed and implemented consistent with any collective bargaining obligation required by article 14 of the Civil Service Law, provided that nothing herein shall be construed to impose a collective bargaining obligation that is not required by article 14 of the Civil Service Law.

(d) The information obtained by a mentor through interaction with the new teacher or school building leader while engaged in the mentoring activities of the program shall not be used for evaluating or disciplining the new teacher or school building leader, unless withholding such information poses a danger to the life, health, or safety of an individual, including but not limited to students and staff of the school; or unless such information indicates that the new

teacher or school building leader has been convicted of a crime, or has committed an act which raises a reasonable question as to the new teacher's or school building leader's moral character; or unless the school district or BOCES has entered into an agreement, negotiated pursuant to article 14 of the Civil Service Law whose terms are in effect, that provides that the information obtained by the mentor through intervention with the new teacher or school building leader while engaged in the mentoring activities of the program may be used for evaluating or disciplining the new teacher or school building leader.

(e) The professional learning plan shall describe the following elements of the mentoring program:

- (1) the procedure for selecting mentors, which shall be published and made available to staff of the school district or BOCES and upon request to members of the public;
- (2) the role of the school building leader and/or district administrator(s) in supporting effective mentoring practices;
- (3) the role of mentors, which shall include but not be limited to providing guidance and support to the new teacher or school building leader;
- (4) the preparation of mentors, which may include but shall not be limited to the study of the theory of adult learning, the theory of teacher or school building leader development, the elements of a mentoring relationship, peer coaching techniques, and time management methodology;
- (5) types of mentoring activities, which may include but shall not be limited to modeling instruction for the new teacher, observing instruction, instructional planning with the new teacher or school building leader, peer coaching, team coaching, culturally appropriate and responsive practices, and orienting the new teacher to the school culture;
- (6) time allotted for mentoring, which may include but shall not be limited to scheduling common planning sessions, releasing the mentor and the new teacher or school building leader from a portion of their instructional and/or noninstructional duties, and providing time for mentoring during superintendent conference days, before and after the school day, and during summer orientation sessions; and
- (7) the actions that the school district or BOCES will take to assess the effectiveness of its mentoring program for teachers and school building leaders and make revisions to its program, where necessary.

(v) Each school district or BOCES shall describe in its plan how it will provide:

(a) a holder of a professional certificate in the certificate title of English to speakers of other languages (all grades) and a holder of a bilingual extension under section 80-4.3 of this Title with a minimum of 50 percent of the required professional learning clock hours for such certificate title in language acquisition aligned with the core content area of instruction taught, including a focus on best practices for co-teaching strategies, and integrating language and content instruction for English language learners; and

(b) all other holders of professional certificates in the classroom teaching service, a minimum of 15 percent of the required professional learning clock hours in language acquisition addressing the needs of English language learners, including a focus on best practices for co-teaching strategies, and integrating language and content instruction for such English language learners; and

(c) a holder of a level III teaching assistant certificate, a minimum of 15 percent of the required professional learning clock hours in language acquisition addressing the needs of

English language learners and integrating language and content instruction for such English language learners;

(d) a school district or BOCES may seek permission on an annual basis from the Commissioner for an exemption from the professional learning requirements in this subparagraph where there are fewer than 30 English language learner students enrolled or English language learners make up less than five percent of the district's or BOCES' total student population as of such date as established by the Commissioner. The process for such exemption can be found in section 154-2.3(k) of this Title.

(3) Development and adoption of the plan.

(i) The requirements in this subparagraph shall be applicable to all BOCES and school districts, except the City School District of the City of New York. The requirements of subparagraph (ii) of this paragraph shall be applicable to the City School District of the City of New York.

(a) The plan shall be developed through collaboration with a professional learning team. The team members shall be designated for appointment in the manner prescribed in this clause, except as prescribed in clause (b) of this subparagraph. The board of education or BOCES shall appoint the members of the team, a majority of which shall be teachers, which shall include:

(1) the superintendent of schools or his or her designee in the case of school districts or the district superintendent or his or her designee in the case of BOCES;

(2) school administrators upon designation by the administrators' collective bargaining organization;

(3) teachers upon designation by the teachers' collective bargaining organization;

(4) at least one parent upon designation by the established parent group(s) in the district or in their absence, by the superintendent in the case of a school district or district superintendent in the case of a BOCES;

(5) one or more curriculum specialist(s), meaning a teacher or administrator whose primary job responsibility involves the development or evaluation of curricula, upon designation by the district and/or the teachers' collective bargaining organization; and

(6) at least one representative of a higher education institution, provided that the board of education or BOCES determines that a qualified candidate is available to serve after conducting a reasonable search. If a qualified candidate is not available, the plan should describe the efforts made to include a representative of a higher education institution.

(7) The team may include other individuals, such as representatives of professional development organizations or the community at large. In school districts or BOCES in which teachers or administrators are not represented by a collective bargaining organization, teachers or administrators shall be designated by their peers in a manner prescribed by the Board of Education or BOCES.

(8) Members of the professional learning team not employed by the school district or BOCES need not attend all meetings, so long as their involvement is sufficient to ensure ongoing collaboration among group members that will result in high quality professional learning opportunities for all educators.

(b) Notwithstanding the requirements of clause (a) of this subparagraph, members of the professional learning team employed in or representing a school under registration review, pursuant to subdivision (p) of this section, including but not limited to teachers,

administrators, curriculum specialists and parents, shall not be designated for appointment as prescribed in clause (a) of this subparagraph, but shall instead be recommended by the superintendent of the school district for appointment by the board of education.

(c) The board of education or BOCES shall permit the professional learning team a period of at least 180 days to develop its recommended professional learning plan and shall convene such team on or before October 1st of the year preceding the school year for which the plan will be adopted.

(d) Such team shall submit to the board of education or to the BOCES a recommended professional learning plan by a date specified by the board of education or BOCES. The board of education or BOCES may accept or reject the recommendations of the team in whole or part. Components of the plan not approved by the board of education or BOCES shall be returned to the team for further consideration. Any subsequent modification in the professional learning team's recommendation to the board of education or BOCES shall be presented to the board of education or BOCES on or before June 1st, and the board of education or BOCES shall act on the plan by June 30th. The final determination on the content of the professional learning plan shall be the determination of the board of education or BOCES.

(e) The professional learning plan shall be adopted or, in the case of multi-year plans, re-adopted by the board of education or BOCES at a public meeting. Each year, the board of education or BOCES shall evaluate the effectiveness of the plan. The board of education or BOCES may adopt a multi-year plan or an annual plan, provided that in the case of a multi-year plan the professional learning team shall be required to review the plan on an annual basis and submit to the board of education or BOCES recommended revisions, if necessary. The board of education or BOCES shall determine whether to approve the recommended revisions according to the process and timeline described in clause (d) of this subparagraph.

(ii) The requirements of this subparagraph shall be applicable to the City School District of the City of New York.

(a) The central office of the City School District of New York City as well as each community school district, District 75, District 79, and the high school districts shall have a professional learning plan.

(b) Each plan shall be developed through collaboration with a professional learning team. The professional learning team members for the central office of the City School District of New York City shall be designated for appointment by the Chancellor or his/her designee. The team shall include members of each division of the City School District of New York City. The central team of the City School District of New York City team shall also include a majority of teachers upon designation by the teachers' collective bargaining organization. In the case of each community school district, the superintendent of the community school district shall appoint the members of the team for the community school district. In the case of District 75, District 79, and the high school districts, the respective superintendent shall appoint the members of the team. The team shall include the superintendent of the district for which the team was formed or his or her designee; members of the District Leadership Team (DLT); school administrators upon designation by the administrators' collective bargaining organization; a majority of teachers upon designation by the teachers' collective bargaining organization; and at least one parent upon designation by the established parent groups in the district. In addition, the team shall include at least one representative of a higher education institution, provided a qualified candidate is available to serve after conducting a reasonable search. If a qualified candidate is not available, the plan should describe the efforts made to include a representative of a higher education institution. The team may

include other individuals, such as representatives of professional development organizations or the community at large.

(c) Notwithstanding the requirements of clause (b) of this subparagraph, members of the professional learning team employed in or representing a school under registration review, pursuant to subdivision (p) of this section, including but not limited to teachers, administrators, curriculum specialists and parents, shall not be designated for appointment as prescribed in clause (b) of this subparagraph but shall instead be recommended by the chancellor for appointment in the case of community school districts, and appointed by the chancellor without being designated by any other party in the case of District 75, District 79, and the high school districts.

(d) In the case of community school districts, District 75, District 79, and high school districts, each DLT of the district shall submit to the Chancellor of the City School District of the City of New York a recommended professional learning plan by a date specified by the chancellor. Such professional learning plan shall be developed through collaboration with the district's professional learning team. Each district shall convene its professional learning team on or before October 1st of the year preceding the school year for which the plan will be adopted. The DLT of the district shall permit its professional learning team a period of at least 180 days to develop its recommendations for the professional learning plan. Such team shall submit to the DLT its recommended professional learning plan by a date specified by the DLT. Components of the plan not accepted by the DLT of the district shall be returned to the team for further consideration and submitted to the board by a date specified by the DLT. The DLT of the district may accept or reject the recommendations in whole or in part. The DLT shall adopt final recommendations for the district's professional learning plan for submission to the chancellor. The chancellor may accept or reject the recommendations of the DLT of the district in whole or part. Components of the plan not approved by the chancellor shall be returned to the DLT of the district for further consideration. Any subsequent modification in the DLT's recommendation to the chancellor shall be presented to the chancellor on or before June 1st, and the chancellor shall act on the plan by June 30th. The final determination on the content of the professional learning plan shall be the determination of the chancellor, in accordance with Education Law, section 2590-h(14). In the event that the DLT of the district does not make a recommendation to the chancellor by the date specified by the chancellor, the chancellor may promulgate a professional learning plan without such recommendation.

(e) Each year, the chancellor shall evaluate the effectiveness of the plan for each district. The chancellor shall promulgate a multi-year or an annual plan for each district, provided that in the case of a multi-year plan for a district, the DLT of the district shall be required to review the plan on an annual basis in collaboration with its professional learning team. Such districts shall submit to the chancellor recommended revisions, if necessary. The chancellor shall determine whether to approve the recommended revisions.

(4) Reporting requirement.

(i) Professional learning plan.

(a) Each year, the superintendent of a school district, the district superintendent of a BOCES, and in the case of the City School District of the City of New York, the Chancellor, shall be required to certify to the Commissioner, in a format and on a timetable prescribed by the Commissioner, that:

- (1) the requirements of this subdivision to have a professional learning plan for the succeeding school year have been met; and

(2) the school district or BOCES has complied with the professional learning plan applicable to the current school year.

(b) The Commissioner may request a copy of the professional learning plan for review and may recommend changes to the plan to meet the learning needs of the students and educators in the school district or BOCES. Such review may be conducted by the Commissioner or his/her designee.

(5) Recordkeeping requirements.

(i) School districts and BOCES shall be required to maintain a record of professional learning successfully completed by educators through the school district or BOCES or by entities on behalf of the school district or BOCES. Such record shall include: the name of the educator and identifying information, the title of the program, the number of hours completed, and the date and location of the program. Such record shall be retained by the school district or BOCES for at least seven years from the date of completion of the professional learning by the certificate holder and shall be available for review by the department.

(ii) School districts and BOCES shall maintain documentation of the implementation of the mentoring program described in the professional learning plan. Such documentation shall include for each individual receiving mentoring pursuant to the mentoring program: the name of that individual and identifying information, their certificate, the type of mentoring activity, the number of clock hours successfully completed in the mentoring activity, and the name and identifying information of the individual who provided the mentoring. Such record shall be maintained by the school district or BOCES for at least seven years from the date of completion of the mentoring activity and shall be available for review by the department.

(6) School districts and BOCES shall either be an approved sponsor to provide CTLE under Subpart 80-6 or shall notify the Office of Teaching Initiatives how it will provide each CLTE certificate holder as defined in section 80-6.1 of this Title with the required amount of CTLE under Subpart 80-6 of this Title.

(7) Notwithstanding the requirements of this subdivision, participation in professional learning outside the regular school day or regularly scheduled working days of the school year shall be volitional for teachers, unless otherwise agreed upon as a term or condition of employment pursuant to collective bargaining under article 14 of the Civil Service Law.

(ee) *Academic intervention services.*

(1) Requirements for providing academic intervention services (AIS) in kindergarten to grade two. Schools shall provide academic intervention services to students in kindergarten to grade two when such students:

(i) are determined, through a district-developed or district-adopted procedure that meets State criteria and is applied uniformly at each grade level, to lack reading readiness based on an appraisal of the student, including his/her knowledge of sounds and letters; or

(ii) are determined, through a district-developed or district-adopted procedure applied uniformly at each grade level, to be at risk of not achieving the State designated performance level in English language arts and/or mathematics. This district procedure may also include diagnostic screening for vision, hearing and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible limited English proficiency or possible disability pursuant to Part 117 of this Title.

(2) Requirements for providing academic intervention services in grade three to grade eight.

(i) For the 2016-17, 2017-18, and 2018-2019 school years, schools shall provide academic

intervention services following a two-step identification process:

(a) First, students who score below a median scale score between a level 2/partially proficient and a level 3/proficient on a grade 3-8 English language arts or mathematics State assessment as determined by the Commissioner, shall be considered for academic intervention services. Students scoring at or above the median scale score determined by the Commissioner but below a level 3/proficient score shall not be required to receive academic intervention services unless the school district, in its discretion, determines that such services are needed.

(b) Districts shall then use a district-developed procedure, to be applied uniformly at each grade level, for determining which students identified in clause (a) shall receive academic intervention services after it considers a student's scores on multiple measures of student performance, which may include, but need not be limited to, one or more of the following measures, as determined by the district:

- (1) developmental reading assessments for grades kindergarten through grade 6;
- (2) New York State English as a Second Language Achievement Test (NYSESLAT);
- (3) benchmark and lesson-embedded assessments for reading and mathematics in grades kindergarten through grade 6 based on teacher designed and selected assessments;
- (4) common formative assessments that provide information about students' skills;
- (5) unit and lesson assessments for English language arts, mathematics, science, social studies and languages other than English for grades 7 through 8; and/or
- (6) results of psychoeducational evaluations based on a variety of assessments and inventories.

(c) Each school district shall develop and maintain its policies for providing academic intervention services no later than September 1 of each school year and shall either post its policies to its website or distribute to parents in writing a description of such process, including a description of which student performance measures and scores on such measures will be utilized to determine eligibility for academic intervention services.

(d) Schools shall also provide academic intervention services to students who are English Language Learners and are determined, through a district-developed or district-adopted procedure uniformly applied to English Language Learner students, to be at risk of not achieving State learning standards in English language arts, mathematics, social studies and/or science, through English or the student's native language. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible disability pursuant to Part 117 of this Title.

(e) Schools shall also provide academic intervention services to students who are determined, through a district-developed or district-adopted procedure uniformly applied, to be at risk of not achieving State standards in English language arts, mathematics, social studies and/or science. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible identification as an English Language Learner or for possible disability pursuant to Part 117 of this Title.

(ii) Commencing with the 2019-20 school year and each school year thereafter, schools shall provide academic intervention services following a two-step identification process:

(a) First, all students performing at or below a certain scale score, established through a standard setting process conducted by the Department, on one or more of the State elementary assessments in English language arts or mathematics shall be considered for academic intervention services. The standard setting process shall include a panel of educators, including teachers, principals and other school personnel. Students scoring at or above the scale score established by the standard setting panel and approved by the Commissioner shall not be required to receive academic intervention services unless the school district, in its discretion, determines that such services are needed.

(b) Districts shall then use a district-developed procedure, to be applied uniformly at each grade level, for determining which students identified in clause (a) of this subparagraph shall receive academic intervention services after it considers a student's scores on multiple measures of student performance, which may include, but need not be limited to, one or more of the following measures, as determined by the district:

(1) developmental reading assessments for grades kindergarten through grade 6;

(2) New York State English as a Second Language Achievement Test (NYSESLAT);

(3) benchmark and lesson-embedded assessments for reading and mathematics in grades kindergarten through grade 6 based on teacher designed and selected assessments;

(4) common formative assessments that provide information about students' skills;

(5) unit and lesson assessments for ELA, mathematics, science, social studies and world languages for grades 7 through 8; and/or

(6) results of psychoeducational evaluations based on a variety of assessments and inventories.

(c) Each school district shall develop and maintain its policies for providing academic services during the 2019-2020 school year and each school year thereafter no later than September 1, 2019 and each September thereafter and shall either post its policies to its website or distribute to parents in writing a description of such process, including a description of which student performance measures and scores on such measures will be utilized to determine eligibility for academic intervention services.

(d) Schools shall also provide academic intervention services to students who are English Language Learners and are determined, through a district-developed or district-adopted procedure uniformly applied to English Language Learner students, to be at risk of not achieving State learning standards in English language arts, mathematics, social studies and/or science, through English or the student's native language. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible disabilities pursuant to Part 117 of this Title; or

(e) Schools shall also provide academic intervention services to students who are determined, through a district-developed or district-adopted procedure uniformly applied, to be at risk of not achieving State standards in English language arts, mathematics, social studies and/or science. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible identification as an English Language Learner or for possible disability pursuant to Part 117 of this Title.

(f) Notwithstanding any other provision of this subparagraph :

(i) Schools shall not be required to conduct the two-step identification process prescribed in clauses (a) and (b) of this subparagraph for school years in which the results of the grades 3-8 assessments are not provided to schools prior to the beginning of such school year. In such school years, schools may, but are not required to, conduct the two-step identification process prescribed in clauses (a) and (b) of this subparagraph.

(ii) For all students who will be enrolled in grades 3 through 8 during a school year where the two-step identification process is not required pursuant to subclause (i) of this clause, schools which opt not to conduct the two-step identification process prescribed in clauses (a) and (b) of this subparagraph shall make such identification based solely on the district-developed procedures prescribed in clauses (b), (d) and (e) of this subparagraph..

(3) Requirements for providing academic intervention services in grade 9 to grade 12. Schools shall provide academic intervention services when students:

(i) score below:

(a) the State designated performance level on one or more of the State intermediate assessments in English language arts, mathematics or science; and/or

(b) the State designated performance level on a State intermediate assessment in social studies administered prior to the 2010-2011 school year; provided that beginning in the 2010-2011 school year, at which time a State intermediate assessment in social studies shall no longer be administered, a school shall provide academic intervention services when students are determined to be at risk of not achieving State learning standards in social studies pursuant to subparagraph (iii) of this paragraph; and/or

(c) the State designated performance level on any one of the State examinations in English language arts, mathematics, social studies or science that are required for graduation;

(ii) are limited English proficient (LEP) and are determined, through a district-developed or district-adopted procedure uniformly applied to LEP students, to be at risk of not achieving State learning standards in English language arts, mathematics, social studies and/or science, through English or the student's native language. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible disability pursuant to Part 117 of this Title; or

(iii) are determined, through a district-developed or district-adopted procedure uniformly applied, to be at risk of not achieving State learning standards in English language arts, mathematics, social studies and/or science. This district procedure may also include diagnostic screening for vision, hearing, and physical disabilities pursuant to article 19 of the Education Law, as well as screening for possible limited English proficiency or possible disability pursuant to Part 117 of this Title.

(4) Description of academic intervention services.

(i) By July 1, 2000, a school district shall develop a description of academic intervention instructional and/or student support services to be provided in schools to students in need of such services pursuant to paragraphs (1), (2) and (3) of this subdivision. The description shall include any variations in services in schools within the district, and shall specifically describe:

(a) the district-wide procedure(s) used to determine the need for academic intervention services;

(b) academic intervention instructional and/or student support services to be provided pursuant to paragraph (5) of this subdivision;

(c) whether instructional services and/or student support services are offered during the regular school day or during an extended school day or year; and

(d) the criteria for ending services, including, if appropriate, performance levels that students must obtain on district-selected assessments.

(ii) The description of academic intervention services shall be approved by each local board of education by July 1, 2000. In the New York City School District, the New York City Board of Education may designate that the plans be approved by the chancellor or his designee or by community school boards for those schools under their jurisdiction. Beginning July 1, 2002 and every two years thereafter, each school district shall review and revise its description of academic intervention services based on student performance results; except that this requirement shall not apply to student performance results for the 2010-2011 school year, which shall be excluded from such review.

(iii) In lieu of a separate description of academic intervention services, the district may incorporate the description of academic intervention services into a comprehensive district education plan. In this instance, the preparation date for the description of academic intervention services shall conform to the date of the preparation of the comprehensive district education plan.

(iv) Based on performance criteria established by the commissioner, certain school districts may be required to submit their description of academic intervention services for specific schools to the department for review and approval.

(5) Provision of academic intervention services.

(i) School districts may use time available for academic intervention instructional and/or student support services during the regular school day.

(ii) School districts may provide students with extended academic time beyond the regular school day and school year.

(iii) In public schools, academic intervention instructional and/or support services shall be provided by qualified staff who are appropriately certified pursuant to Part 80 of this Title.

(iv) Beginning September 1, 2000, academic intervention instructional and/or student support services shall commence no later than the beginning of the semester following a determination that a student needs such services. Services shall continue until a student's performance:

(a) meets or exceeds the State designated performance level on the next State assessment;
or

(b) is shown to be likely to meet or exceed the State designated performance level on the next State assessment through achievement on the district-selected assessments of the levels specified in the district description of academic intervention services pursuant to paragraph (4) of this subdivision.

(6) Parental notification and involvement.

(i) Notification of commencement of services. The parent or person in parental relation to a student who has been determined to need academic intervention services shall be notified in writing by the principal. Such notice shall be provided in English and translated, when appropriate, into the native language or mode of communication of the parent. The notice shall include a summary of the academic intervention services to be provided to the student, the reason the student needs such services and the consequences of not achieving expected performance levels.

(ii) Notification of the ending of academic intervention services. Parents or persons in parental relation shall be notified in writing when academic intervention services are no longer needed. Such notice shall be provided in English and translated, when appropriate, into the native language or mode of communication of the parent.

(iii) Ongoing communication with parents or persons in parental relation. Parents or persons in parental relation to students receiving academic intervention services shall be provided with:

(a) an opportunity to consult with the student's regular classroom teacher(s), and other professional staff providing academic intervention services, at least once per semester during the regular school year;

(b) reports on the student's progress at least once each quarter during the regular school year by mail, telephone, telecommunications or other means, in a language or mode of communication understood by the parents or person in parental relation; and

(c) information on ways to work with their child to improve achievement; monitor their child's progress; and work with educators to improve their child's achievement.

(7) Notwithstanding the provisions of this subdivision, a school district may provide a Response to Intervention (RTI) program in lieu of providing academic intervention services (AIS) to eligible students, provided that:

(i) the RTI program is provided in a manner consistent with subdivision (ii) of this section;

(ii) the RTI program is made available at the grade levels and subject areas (reading/math) for which students are identified as eligible for AIS;

(iii) all students who are otherwise eligible for AIS shall be provided such AIS services if they are not enrolled in the RTI program; and

(iv) for the 2010-2011 school year, the school district shall submit to the Department, no later than December 15, 2010, a signed statement of assurance that the services provided in the RTI program meet the requirements of this paragraph; and for each school year thereafter, the school district shall submit to the Department no later than September 1st of such school year, a signed statement of assurance that the services provided under the district's RTI program meet the requirements of this paragraph.

(ff) *Enrollment of youth released or conditionally released from residential facilities.*

(1) It shall be the duty of the board of education and the superintendent of schools of each school district to ensure:

(i) that any youth presented for enrollment who is entitled to attend the schools of such district pursuant to Education Law, section 3202 and who is released or conditionally released from a residential facility operated by or under contract with the Office of Children and Family Services, the Department of Corrections and Community Supervision, the Office of Alcoholism and Substance Abuse Services, the Office of Mental Health, the Office for People with Developmental Disabilities, a local department of social services, a local county correctional facility, or a juvenile detention facility as authorized by Executive Law section 503 is promptly enrolled and admitted to attendance in such district, and that school district personnel cooperate with such facilities and agencies in facilitating such prompt enrollment;

(ii) that the youth's educational records are requested from the school or educational program such student attended while in the residential facility; and

(iii) where applicable, that the educational plan for such student's release or conditional release,

as submitted to the family court pursuant to Family Court Act section 353.3(7)(c), is implemented.

(2) Each school district shall designate one or more employees or representatives to serve as a transition liaison(s) with residential facility personnel as such facility is defined in subparagraph (i) of paragraph (1) of this subdivision, parents, students, and State and other local agencies for the purpose of facilitating a student's effective educational transition into, between, and out of such facilities to ensure that each student receives appropriate supports, services, and opportunities. The transition liaison's duties shall include, but are not limited to:

(i) ensuring that the district has complied with the requirements of this subdivision, Parts 116 and 118 of the Commissioner's regulations and Education Law §112, as applicable;

(ii) coordinating the timely transmission, receipt, and review of a student's educational records (including but not limited to, report cards, transcripts, progress notes and Individualized Educational Plans) from the previous school and/or any educational program placements;

(iii) collaborating with staff in such facilities to ensure a student is appropriately enrolled in required educational and support services; and

(iv) ensuring that parents or guardians of students are informed of educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children.

(gg) *Uniform violent or disruptive incident reporting system also known as the "School safety and educational climate reporting system"*. School districts, boards of cooperative educational services, charter schools and county vocational education and extension boards shall submit to the commissioner annual reports of violent or disruptive incidents that occurred in the prior school year, commencing with the 2001-2002 school year, in accordance with sections 15 and 2802 of the Education Law and this subdivision.

(1) Definitions. For the purposes of this subdivision:

(i) *School function* means a school-sponsored or school-authorized extracurricular event or activity, regardless of where such event or activity takes place, including any event or activity that may take place in another state.

(ii) *School property* shall mean in or within any building, structure, athletic playing field, playground, parking lot or land contained within the real property boundary line of a public elementary or secondary school; or in or on a school bus, as defined in section 142 of the Vehicle and Traffic Law; or at a school function.

(iii) *Weapon* shall mean any weapon defined in Article 265 of the Penal Law.

(iv) *Violent or disruptive incident* shall mean one of the following categories of incidents that occurs on school property of the school district, board of cooperative educational services, charter school or county vocational education and extension board, committed with or without a weapon (except in the case of weapons possession):

(a) *Homicide*. Any intentional violent conduct which results in the death of another person.

(b) *Sexual offense*. An act committed by a person 10 years of age or older which would constitute a felony under Article 130 of the Penal Law, taking into consideration the developmental capacity of the person to form the intent to commit such act, and where the school has referred the person to the police for the act.

(c) *Assault*. An act committed by a person 10 years of age or older which would constitute a felony under Article 120 of the Penal Law, taking into consideration the developmental

capacity of the person to form the intent to commit such act, and where the school has referred the person to the police for the act.

(d) Material incident of harassment, bullying, and/or discrimination. A single verified incident or a series of related verified incidents where a student is subjected to harassment, bullying and/or discrimination by a student and/or employee on school property or at a school function. In addition, such term shall include a verified incident or series of related incidents of harassment or bullying that occur off school property, as defined in subparagraph (kk)(1)(viii) of this section, such conduct shall include, but is not limited to, threats, intimidation or abuse based on a person's actual or perceived race as defined in Education Law section 11(9) and subdivision (kk) of this section, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex; provided that nothing in this subdivision shall be construed to prohibit a denial of admission into, or exclusion from, a course of instruction based on a person's gender that would be permissible under Education Law sections 3201-aor 2854(2)(a) and title IX of the Education Amendments of 1972 (20 U.S.C. section 1681, et seq.), or to prohibit, as discrimination based on disability, actions that would be permissible under section 504 of the Rehabilitation Act of 1973.

(e) Threat (other than bomb threat or false alarm). A verbal, telephoned, written or electronic message of a threat of violence on school property or at a school related function.

(f) Bomb threat. A telephoned, written or electronic message that a bomb, explosive, chemical or biological weapon has been or will be placed on school property.

(g) False alarm. Causing a fire alarm or other disaster alarm to be activated knowing there is no danger, or through false reporting of a fire or disaster.

(h) Weapons possession. An act committed by a person 10 years of age or older which would constitute a felony under Article 265 of the Penal Law, taking into consideration the developmental capacity of the person to form the intent to commit such act, and where the school has referred the person to the police for the act.

(i) Use, possession or sale of drugs. Illegally using, possessing, or being under the influence of a controlled substance or marijuana, on school property or at a school function, including having such substance on a person in a locker, vehicle, or other personal space; selling or distributing a controlled substance or marijuana, on school property; finding a controlled substance or marijuana, on school property that is not in the possession of any person; provided that nothing herein shall be construed to apply to the lawful administration of a prescription drug on school property.

(j) Use, possession or sale of alcohol. Illegally using, possessing, or being under the influence of alcohol on school property or at a school function, including having such substance on a person or in a locker, vehicle, or other personal space; illegally selling or distributing alcohol on school property or at a school function; finding alcohol on school property that is not in the possession of any person.

(2) Recording of offenses.

(i) For purposes of reporting pursuant to this subdivision, each incident shall be reported once in the highest ranking category of offense that applies, except that incidents involving a weapon and one of the offenses listed in clauses (1)(iv)(a) through (g) of this subdivision shall be reported in the highest ranking category of offense that applies as an offense committed with a weapon, and not in weapons possession; and incidents involving drug use, possession or sale and/or alcohol use, possession or sale and another offense shall be reported in the highest ranking

category in clauses (1)(iv)(a) through (h) of this subdivision that applies. If the offense involves only the use, possession or sale of drugs or alcohol, it shall be recorded in the applicable category of drug or alcohol use, possession or sale as an incident involving drug or alcohol use, possession or sale only. For purposes of determining the highest ranking offense pursuant to this subparagraph, offenses shall be ranked in the order that they appear in clauses (1)(iv)(a) through (g) of this subdivision, followed by weapons possession, drug use, possession or sale and alcohol use, possession or sale.

(ii) All incidents involving threats (other than bomb threats), bomb threats or false alarms as defined in clauses (1)(iv)(e) through (g) of this subdivision shall be reported. All incidents involving material incidents of harassment, bullying, and/or discrimination as defined in clause (1)(iv)(d) of this subdivision shall be reported.

(3) Submission of report. Each annual school safety and educational climate incident report shall be in a form prescribed by the commissioner and shall contain such information as the commissioner shall prescribe, including but not limited to information on the frequency and types of incidents, offenders, victims and student discipline or referral actions taken, as is available on the date the annual report is submitted. Each school district, board of cooperative educational services, charter school and county vocational education and extension board shall annually submit its report on violent or disruptive incidents, in the manner prescribed by the commissioner, on or before the basic educational data system (BEDS) reporting deadline or such other date as determined by the commissioner.

(4) Content of report. Each individual violent or disruptive incident report shall be in a form prescribed by the commissioner and shall contain the following information concerning each violent or disruptive incident that occurred in the prior school year:

(i) the number and types of offenders, identified as student, teacher, school safety officer, other school staff, student intruder, visitor, unknown or other;

(ii) if any offender is a student, the age and grade of the student;

(iii) the location at which the incident occurred, including:

(a) the school building in which the incident occurred or whose real property boundary line includes the athletic playing field, playground, parking lot or land on which the incident occurred, and whether the incident occurred in a classroom, laboratory, hall, staircase, gymnasium, locker room or pool, cafeteria, bathroom, auditorium, playground or athletic field or otherwise on school grounds; or

(b) where applicable, that the incident occurred on a school bus; or

(c) where applicable, that the incident occurred at a school function conducted off school grounds.

(iv) the types of incident, identified by category listed in clauses (1)(vi)(a) through (i) of this subdivision;

(v) whether the incident occurred during or outside of regular school hours;

(vi) where the incident involves a weapon, whether the weapon was a firearm, knife or other weapon;

(vii) whether the incident was bias-related, drug-related, or gang or group-related;

(viii) the actions taken by the school in response to the incident, including when the incident was reported to police or other law enforcement officials and whether disciplinary action was taken

against the offenders;

(ix) any student discipline or referral action taken against a student/offender, including but not limited to an out-of-school suspension, a teacher removal, an involuntary transfer to an alternative placement, an in-school suspension, a referral for community service, a referral for counseling, or a referral to the juvenile justice system or the criminal justice system, and the duration of such action; and

(x) the number and nature of the victims, identified as a student, teacher, school safety officer, other school staff or other and the victim's age and grade where the victim is a student.

(5) Local procedures. The governing body of each school district, board of cooperative educational services, charter school and county vocational education and extension board shall establish local procedures for the reporting of violent or disruptive incidents by each building and/or program under its jurisdiction. Such procedures shall assure that copies of each violent or disruptive incident report at the building or program level are retained for period prescribed by the commissioner in the applicable records retention schedule, and are available for inspection by the department upon request; provided that a district or board that adopts an electronic reporting system may fulfill such requirement by retaining an electronic record of the information reported at the building or program level.

(6) Confidentiality. Pursuant to subdivision 6 of section 2802 of the Education Law, all personally identifiable information included in a violent or disruptive incident report shall be confidential, and shall not be disclosed to any person for use by any person for purposes other than the purposes of section 2802 of the Education Law, except as otherwise authorized by law.

(7) School violence index. Each school year, commencing with the 2005-2006 school year, the department shall establish a school violence index as a comparative measure of the level of school violence in a school. The school violence index will be computed in accordance with a formula established by the commissioner that takes into account the enrollment of the school and is weighted to reflect the most serious violent incidents, which shall include only the following categories of incidents: homicide, sexual offense, assault, and incidents involving the possession or use of a weapon.

(8) Persistently dangerous schools. For purposes of determining persistently dangerous schools pursuant to section 120.3 of this Subchapter, only the most serious violent incidents, which shall include only the following categories of incidents: assault, homicide, sexual offense, and incidents involving the possession or use of a weapon, as defined in this subdivision, shall be used in making such determination.

(hh) *Reporting of child abuse in an educational setting.*

(1) Written statement of parental rights. The written statement to be provided pursuant to Education Law, section 1128 to the parent of a child who is the subject of an allegation of child abuse in an educational setting shall set forth parental rights, responsibilities and procedures under article 23-B of the Education Law including, but not limited to:

(i) the duties of employees upon receipt of an allegation of child abuse in an educational setting pursuant to Education Law, section 1126;

(ii) the duties of school administrators and superintendents upon receipt of a written report alleging child abuse in an educational setting pursuant to Education Law, section 1128;

(iii) additional duties of school administrators and superintendents pursuant to Education Law section 1128-a;

(iv) notification by district attorney pursuant to Education Law, section 1130 and actions to be

taken upon criminal conviction of a licensed or certified school employee pursuant to Education Law, section 1131;

(v) duties of the commissioner relating to child abuse in an educational setting pursuant to Education Law, section 1132;

(vi) confidentiality of records pursuant to Education Law, section 1127;

(vii) penalties for failure to comply pursuant to Education Law, section 1129; and

(viii) prohibition and penalty against agreements relating to the unreported resignation of an employee or volunteer pursuant to Education Law, section 1133.

(2) Training in reporting of child abuse in an educational setting.

(i) For purposes of this paragraph, school shall include a school district, public school, charter school, nonpublic school, board of cooperative educational services, special act school district as defined in Education Law section 4001, approved preschool special education programs pursuant to Education Law section 4410, approved private residential or non-residential schools for the education of students with disabilities including private schools established under Chapter 853 of the Laws of 1976 or State operated or State supported schools in accordance with Articles 85, 87 or 88 of the Education Law.

(ii) Each school shall establish, and implement on an ongoing basis, a training program regarding the procedures set forth in article 23-B of the Education Law for all current and new teachers, school nurses, school counselors, school psychologists, school social workers, school administrators, other personnel required to hold a teaching or administrative certificate or license, and all persons employed in equivalent titles in a nonpublic school, special act school district as defined in Education Law § 4100, approved preschool special education program pursuant to Education Law § 4410, approved private residential or non-residential school for the education of students with disabilities including private schools established under chapter 853 of the laws of 1976, or state-operated or state-supported schools in accordance with Education Law articles 85, 87 or 88, and any school bus driver or supervisor employed by any person or entity that contracts with such school to provide transportation services to children, school board members, licensed and registered physical therapists, licensed and registered occupational therapists, licensed and registered speech-language pathologists, teacher aides, and school resource officers.

(iii) Such program shall include, but is not limited to, training regarding:

(a) the duties of employees specifically enumerated in Education Law, section 1126 upon receipt of an allegation of child abuse in an educational setting, including when and how a report must be made, and what other actions the employee is mandated or authorized to take;

(b) confidentiality of records pursuant to Education Law, section 1127;

(c) duties of school administrators and superintendents upon receipt of a report pursuant to Education Law, section 1128, and the additional duties of superintendents pursuant to Education Law, section 1128-a;

(d) penalties for failure to report and comply pursuant to Education Law, section 1129;

(e) notification by a district attorney pursuant to Education Law, section 1130, and actions taken upon criminal conviction of a licensed or certified school employee pursuant to Education Law, section 1131; and

(f) the prohibition set forth in Education Law, section 1133 with respect to an unreported resignation or voluntary suspension of an employee or volunteer against whom an allegation of child abuse in an educational setting is made;

(g) information regarding the physical and behavioral indicators of child abuse and maltreatment;

(h) the statutory requirements for reporting child abuse and maltreatment as set forth in Social Services Law sections 413 through 420, including when and how a report must be made, what other actions the reporter is mandated or authorized to take, the legal protections afforded reporters, and the consequences for failure to report.

(3) Each school shall annually provide to each teacher and all other school officials a written explanation pursuant to section 3028-b of the Education Law concerning the reporting of child abuse in an educational setting, including the immunity provisions of Education Law, section 1126.

(4) For all persons employed on or after July 1, 2019 by a school other than a school district or public school, in titles equivalent to a teacher (e.g., as enumerated in section 80-3.2 of this Title) or in a title equivalent to an administrator (e.g., the educational leadership service titles as defined in section 80-3.10 of this Title), and any school bus driver employed by any person or entity that contracts with a school to provide transportation services to children shall be required to complete two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment.

(i) Such program shall be obtained from an institution or provider that has been approved by the Department in accordance with the provisions of Part 57 of this Title to provide such coursework or training and shall include, but not be limited to, training regarding:

(a) the physical and behavioral indicators of child abuse and maltreatment; and

(b) the statutory reporting requirements set forth in Social Services Law sections 413 through 420, including, but not limited to:

(1) when and how a report must be made;

(2) what other actions the reporter is mandated or authorized to take;

(3) the legal protections afforded reporters; and

(4) the consequences for failing to report.

(ii) Proof of completion of training. Each employee required to complete such training shall provide the school administrator of the school with documentation showing that he or she completed the required training by the later of September 30, 2020 or within 30 days of employment. In addition, each school bus driver shall provide such contracting person or entity with documentation showing that he or she completed the required training. The Department is authorized to request such records on a periodic basis and may publish a list of any persons or schools who are not in compliance with this subdivision on its website.

(iii) The coursework or training required by this paragraph shall not apply to those persons already required to undergo coursework or training regarding the identification and reporting of child abuse and maltreatment pursuant to sections three thousand three and three thousand four of the Education Law.

(ii) *Response to intervention programs.*

(1) A school district's process to determine if a student responds to scientific, research-based instruction shall include the following minimum requirements:

(i) appropriate instruction delivered to all students in the general education class by qualified personnel;

(a) appropriate instruction in reading shall mean scientific research-based reading programs that include explicit and systematic instruction in phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills) and reading comprehensive strategies;

(ii) screenings applied to all students in the class to identify those students who are not making academic progress at expected rates;

(iii) instruction matched to student need with increasingly intensive levels of targeted intervention and instruction for students who do not make satisfactory progress in their levels of performance and/or in their rate of learning to meet age or grade level standards;

(iv) repeated assessments of student achievement which should include curriculum measures to determine if interventions are resulting in student progress toward age or grade level standards;

(v) the application of information about the student's response to intervention to make educational decisions about changes in goals, instruction and/or services and the decision to make a referral for special education programs and/or services; and

(vi) written notification to the parents when the student requires an intervention beyond that provided to all students in the general education classroom that provides information about:

(a) the amount and nature of student performance data that will be collected and the general education services that will be provided pursuant to paragraph (2) of this subdivision;

(b) strategies for increasing the student's rate of learning; and

(c) the parents' right to request an evaluation for special education programs and/or services.

(2) A school district shall select and define the specific structure and components of the response to intervention program, including, but not limited to, the criteria for determining the levels of intervention to be provided to students, the types of interventions, the amount and nature of student performance data to be collected and the manner and frequency for progress monitoring.

(3) A school district shall take appropriate steps to ensure that staff have the knowledge and skills necessary to implement a response to intervention program and that such program is implemented consistent with paragraph (2) of this subdivision.

(jj) *Dignity Act Coordinator and School Employee Training Program.*

(1) Definitions. As used in this subdivision:

(i) *School property* means in or within any building, structure, athletic playing field, playground, parking lot or land contained within the real property boundary line of a public elementary or secondary school, including a charter school; or in or on a school bus, as defined in Vehicle and Traffic Law section 142.

(ii) *School function* means a school-sponsored extracurricular event or activity.

(iii) *Disability* means disability as defined in Executive Law section 292(21).

(iv) *Employee* means employee as defined in Education Law section 1125(3), including an employee of a charter school.

(v) *Sexual orientation* means actual or perceived heterosexuality, homosexuality or bisexuality.

(vi) *Gender* means actual or perceived sex and shall include a person's gender identity or expression.

(vii)ⁱⁱ *Discrimination* means discrimination against any student by a student or students and/or an employee or employees on school property or at a school function including, but not limited to, discrimination based on a person's actual or perceived race as defined in Education Law section 11(9) and subdivision (kk) of this section, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.

(viii) *Harassment or bullying* means the creation of a hostile environment by conduct or by threats, intimidation or abuse, including cyberbullying as defined in Education Law section 11(8), that either:

(a) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional and/or physical well-being; including conduct, threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause emotional harm; or

(b) reasonably causes or would reasonably be expected to cause physical injury to a student or to cause a student to fear for his or her physical safety;

(c) Such definition shall include acts of harassment or bullying that occur:

(1) on school property, as defined in subparagraph (kk)(1)(i) of this section; and/or

(2) at a school function, as defined in subparagraph (kk)(1)(ii) of this section; or

(3) off school property where such acts create or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property;

(d)ⁱⁱⁱ For purposes of this subdivision, the term *threats, intimidation or abuse* shall include verbal and non-verbal actions. Acts of harassment or bullying shall include, but not be limited to, acts based on a person's actual or perceived race as defined in Education Law section 11(9) and subdivision (kk) of this section, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex.

(e) *Emotional harm* that takes place in the context of *harassment or bullying* means harm to a student's emotional well-being through creation of a hostile school environment that is so severe or pervasive as to unreasonably and substantially interfere with a student's education.

(2) On or before July 1, 2013, each school district and each charter school shall establish policies, procedures and guidelines for its school or schools to implement, commencing with the 2013-2014 school year and continuing in each school year thereafter, Dignity Act school employee training programs to promote a positive school environment that is free from harassment, bullying and/or discrimination; and to discourage and respond to incidents of harassment, bullying, and/or discrimination on school property or at a school function, or off school property pursuant to subclause (1)(viii)(c)(3) of this subdivision. Such policies, procedures and guidelines shall be approved by the board of education, trustees or sole trustee of the school district (or by the chancellor of the city school district, in the case of the City School District of the City of New York) or by the board of trustees of the charter school.

(3) The policies, procedures and guidelines shall include, but not be limited to, guidelines relating to the development of nondiscriminatory instructional and counseling methods, and providing employees, including school and district administrators and instructional and non-instructional staff, with training to:

(i) ^{iv} raise awareness and sensitivity to potential acts of harassment, bullying, and/or discrimination directed at students that are committed by students and/or school employees on school property or at a school function, or off school property pursuant to subclause (1)(viii)(c)(3) of this subdivision; including, but not limited to, harassment, bullying and/or discrimination based on a person's actual or perceived race as defined in Education Law section 11(9) and subdivision (kk) of this section, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex. Such training shall address the social patterns of harassment, bullying and/or discrimination, the identification and mitigation of such acts, and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings;

(ii) enable employees to prevent and respond to incidents of harassment, bullying and/or discrimination, consistent with Education Law section 13(4);

(iii) make school employees aware of the effects of harassment, bullying, cyberbullying, and/or discrimination on students;

(iv) ensure the effective implementation of school policy on school conduct and discipline, including but not limited to, guidelines on promoting a safe and supportive school climate while discouraging harassment, bullying, and/or discrimination against students by students and/or school employees; and

(v) include safe and supportive school climate concepts in curriculum and classroom management;

(vi) such training may be implemented and conducted in conjunction with existing professional learning training pursuant to subparagraph (dd)(2)(ii) of this section and/or with any other training for school employees.

(4) At least one employee in every school shall be designated as a Dignity Act Coordinator who shall be:

(i) instructed in the provisions of this subdivision;

(ii) thoroughly trained to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, and sex;

(iii) provided with training which addresses the social patterns of harassment, bullying and discrimination, including but not limited to those acts based on a person's actual or perceived race as defined in Education Law section 11(9) and subdivision (kk) of this section, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, and sex;

(iv) provided with training in the identification and mitigation of harassment, bullying and discrimination; and

(v) provided with training in strategies for effectively addressing problems of exclusion, bias, and aggression in educational settings;

(vi) The designation of each Dignity Act Coordinator shall be approved by the board of education, trustees or sole trustee of the school district (or in the case of the City School District of the City of New York, by the principal of the school in which the designated employee is employed) or, in the case of a charter school, by the board of trustees. Each Coordinator shall be employed by such school district, BOCES or charter school, as applicable, and be licensed and/or certified by the Commissioner as a classroom teacher, school counselor, school psychologist, school nurse, school social worker, school administrator or supervisor, or superintendent of schools;

(vii) The name(s) and contact information for the Dignity Act Coordinator(s) shall be shared with all school personnel, students, and persons in parental relation, which shall include, but is not limited to, providing the name, designated school, and contact information of each Dignity Act Coordinator by:

(a) listing such information in the code of conduct and updates posted on the Internet website, if available, of the school or school district, or of the board of cooperative educational services, pursuant to subclause (l)(2)(iii)(b)(1) of this section; provided that, notwithstanding the provisions of clause (l)(2)(iii)(a) of this section, a change in the name and/or contact information of a Dignity Act Coordinator shall not be deemed to constitute a revision to the code of conduct so as to require a public hearing be held pursuant to such clause, and nothing herein shall be deemed to require such public hearing in such instance; and

(b) posting such information in highly-visible areas of school buildings; and

(c) making such information available at the district and school-level administrative offices; and either;

(d) including such information in the plain language summary of the code of conduct provided to all persons in parental relation to students before the beginning of each school year, pursuant to subclause (l)(2)(iii)(b)(3) of this section; or

(e) providing such information to parents and persons in parental relation at least once per school year in a manner as determined by the school, including, but not limited to, through electronic communication and/or sending such information home with students;

(viii) In the event a Dignity Act Coordinator vacates his or her position, another eligible employee shall be immediately designated for an interim appointment as Coordinator, pending approval of a successor Coordinator by the applicable governing body as set forth in subparagraph (vi) of this paragraph within 30 days of the date the position was vacated. In the event a Coordinator is unable to perform the duties of his or her position for an extended period of time, another eligible employee shall be immediately designated for an interim appointment as Coordinator, pending return of the previous Coordinator to his or her duties as Coordinator.

(5) Nothing in this subdivision shall be construed to prohibit a denial of admission into, or exclusion from, a course of instruction based on a person's gender that would be permissible under Education Law section 3201-a or 2854(2)(a) and Title IX of the Education Amendments of 1972 (20 U.S.C. section 1681, et seq.), or to prohibit, as discrimination based on disability, actions that would be permissible under section 504 of the Rehabilitation Act of 1973.

(kk) *Dignity Act reporting requirements.*

(1) Definitions. For purposes of this subdivision:

(i) *School property* means in or within any building, structure, athletic playing field, playground, parking lot, or land contained within the real property boundary line of a public elementary or secondary school, including a charter school; or in or on a school bus, as defined in Vehicle and Traffic Law section 142.

(ii) *School function* means a school-sponsored extracurricular event or activity.

(iii) *Disability* means disability as defined in Executive Law section 292(21).

(iv) *Employee* means employee as defined in Education Law section 1125(3), including an employee of a charter school.

- (v) *Sexual orientation* means actual or perceived heterosexuality, homosexuality or bisexuality.
- (vi) *Gender* means actual or perceived sex and shall include a person's gender identity or expression.
- (vii) *Discrimination* means discrimination against any student by a student or students and/or an employee or employees on school property or at a school function including, but not limited to, discrimination based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.
- (viii) *Harassment or bullying* means the creation of a hostile environment by conduct or by threats, intimidation or abuse, including cyberbullying as defined in Education Law section 11(8), that either:
- (a) has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional and/or physical well-being, including conduct, threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause emotional harm; or
 - (b) reasonably causes or would reasonably be expected to cause physical injury to a student or to cause a student to fear for his or her physical safety.
 - (c) Such definition shall include acts of harassment or bullying that occur:
 - (1) on school property, as defined in subparagraph (i) of this paragraph; and/or
 - (2) at a school function, as defined in this paragraph; or
 - (3) off school property where such acts create or would foreseeably create a risk of substantial disruption within the school environment, where it is foreseeable that the conduct, threats, intimidation or abuse might reach school property.
 - (d) For purposes of this subdivision, the term "threats, intimidation or abuse" shall include verbal and non-verbal actions. Acts of harassment and bullying shall include, but not be limited to, acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex.
 - (e) *Emotional harm* that takes place in the context of *harassment or bullying* means harm to a student's emotional well-being through creation of a hostile school environment that is so severe or pervasive as to unreasonably and substantially interfere with a student's education.
- (ix) *Material Incident of Harassment, Bullying, and/or Discrimination* means a single verified incident or a series of related verified incidents where a student is subjected to harassment, bullying and/or discrimination by a student and/or employee on school property or at a school function. In addition, such term shall include a verified incident or series of related incidents of harassment or bullying that occur off school property, meets the definition in subclause (viii)(c)(iii) of this paragraph, and is the subject of a written or oral complaint to the superintendent, principal, or their designee, or other school employee. Such conduct shall include, but is not limited to, threats, intimidation or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex; provided that nothing in this subdivision shall be construed to prohibit a denial of admission into, or exclusion from, a course of instruction based on a person's gender that would be permissible under Education Law sections 3201-a or 2854(2)(a) and Title IX of the Education Amendments of 1972 (20 U.S.C. section 1681, et seq.), or to prohibit, as discrimination based on disability, actions that would be permissible under section 504 of the Rehabilitation Act of 1973.

(x) *Race* shall include traits historically associated with race, including, but not limited to, hair texture and protective hairstyles.

(xi) *Protective hairstyles* shall include, but not be limited to, such hairstyles as braids, locks, and twists.

(xi) [FN1] For purposes of this section, *a report of harassment, bullying, and/or discrimination* means a written or oral report of harassment, bullying, and/or discrimination that could constitute a violation of the Dignity for All Students Act (article 2 of the Education Law). Such a report may include, but is not limited to, the following examples:

(a) a report regarding the denial of access to school facilities, functions, opportunities or programs including, but not limited to, restrooms, changing rooms, locker rooms, and/or field trips, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or

(b) a report regarding application of a dress code, specific grooming or appearance standards that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or

(c) a report regarding the use of name(s) and pronoun(s) or the pronunciation of name(s) that is based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex; or

(d) a report regarding the punishment, differential treatment or humiliation of a student, or exclusion of a student from a school function, athletic team or school yearbook, based on hair texture or protective hairstyle, or the request to alter or actual alteration of a protective hairstyle; or

(e) a report regarding any other form of harassment, bullying and/or discrimination, based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (which includes gender identity and/or expression), or sex.

(2) Reporting of incidents to the superintendent, principal, or designee.

(i) School employees who witness harassment, bullying, and/or discrimination or receive an oral or written report of harassment, bullying, and/or discrimination shall promptly orally notify the principal, superintendent, or their designee not later than one school day after such employee witnesses or receives a report of harassment, bullying, and/or discrimination; and

(ii) such school employee shall also file a written report in a manner prescribed by, as applicable, the school district, board of cooperative educational services (BOCES) or charter school with the principal, superintendent, or their designee no later than two school days after making an oral report;

(iii) the principal, superintendent or the principal's or superintendent's designee shall lead or supervise the thorough investigation of all reports of harassment, bullying and/or discrimination, and ensure that such investigation is completed promptly after receipt of any written reports made under Education Law section 13;

(iv) when an investigation verifies a material incident of harassment, bullying, and/or discrimination, the superintendent, principal, or designee shall take prompt action, consistent with the district's code of conduct including but not limited to the provisions of clause (1)(2)(ii)(h)

of this section, reasonably calculated to end the harassment, bullying, and/or discrimination, eliminate any hostile environment, create a more positive school culture and climate, prevent recurrence of the behavior, and ensure the safety of the student or students against whom such behavior was directed;

(v) the principal, superintendent, or their designee shall notify promptly the appropriate local law enforcement agency when it is believed that any harassment, bullying or discrimination constitutes criminal conduct;

(vi) the principal shall provide a regular report on data and trends related to harassment, bullying, and/or discrimination to the superintendent. For the purpose of this subdivision, the term "regular report" shall mean at least once during each school year, and in a manner prescribed by, as applicable, the school district, BOCES or charter school.

(3) Reporting of material incidents to the commissioner.

(i) For the 2013-2014 school year and for each succeeding school year thereafter, each school district, board of cooperative educational services (BOCES) and charter school shall submit to the commissioner an annual report of material incidents of harassment, bullying, and/or discrimination that occurred in such school year, in accordance with Education Law section 15 and this subdivision. Such report shall be submitted in a manner prescribed by the commissioner, on or before the basic educational data system (BEDS) reporting deadline or such other date as determined by the commissioner.

(ii) For purposes of reporting pursuant to this subdivision, a school district, BOCES or charter school shall include in its annual report all material incidents of harassment, bullying, and/or discrimination that:

(a) are the result of the investigation of a written or oral complaint made to the superintendent, principal or their designee, or to any other employee; or

(b) are otherwise directly observed by such superintendent, principal or their designee, or by any other employee regardless of whether a complaint is made.

(iii) Such report shall include information describing the specific nature of the incident, including, but not limited to:

(a) the type(s) of bias involved (actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, sex, or other). Where multiple types of bias are involved, they shall all be reported;

(b) whether the incident resulted from student and/or employee conduct;

(c) whether the incident involved physical contact and/or threats, intimidation or abuse, including cyberbullying as defined in Education Law section 11(8);

(d) the location where the incident occurred (on school property or at a school function, or off school property, where applicable).

(4) Protection of people who report discrimination and/or harassment.

(i) Pursuant to Education Law section 16, any person having reasonable cause to suspect that a student has been subjected to harassment, bullying, and/or discrimination by an employee or student, on school grounds or at a school function, who acting reasonably and in good faith, either reports such information to school officials, to the commissioner, or to law enforcement authorities or otherwise initiates, testifies, participates or assists in any formal or informal proceedings under this subdivision, shall have immunity from any civil liability that may arise from

the making of such report or from initiating, testifying, participating or assisting in such formal or informal proceedings.

(ii) No school district, BOCES or charter school, or an employee thereof, shall take, request or cause a retaliatory action against any such person who, acting reasonably and in good faith, either makes such a report or initiates, testifies, participates or assists in such formal or informal proceedings.

(iii) Pursuant to Education Law section 13, retaliation by any school employee or student shall be prohibited against any individual who, in good faith, reports or assists in the investigation of harassment, bullying, and/or discrimination.

(ll) *Grade promotion and placement policy.* Each school district shall adopt a grade promotion and placement policy that is consistent with sections 100.3(b)(2)(iv), 100.4(b)(2)(v) and (e)(6) of this Part, and annually notify the parents and persons in parental relation to the students attending such district of such policy along with an explanation of how the policy was developed. Such notification may be provided on the school district's website, if one exists, or as part of an existing informational document that is provided to parents and persons in parental relation.

(mm) *Pathway assessments in career and technical education, world languages, and the arts.* Except as provided in subdivision (f) of this section, students who have passed four required Regents examinations or department-approved alternative assessments in each of the areas of English Language Arts, mathematics, science, and social studies pursuant to section 100.5 of this Part and who are otherwise eligible to receive a high school diploma in June 2015 and thereafter may meet the fifth assessment requirement for graduation pursuant to section 100.5 of this Part by passing a fifth pathway assessment in career and technical education (CTE), world languages, or the arts, that is approved by the commissioner pursuant to the following conditions and criteria:

(1) pathway assessments shall measure student progress on the State learning standards for their respective content area(s) at a level of rigor equivalent to a Regents examination or alternative assessment approved pursuant to subdivision (f) of this section;

(2) pathway assessments shall be recognized or accepted by postsecondary institutions, experts in the field, and/or employers in areas related to the assessment;

(3) pathway assessments shall be aligned with existing knowledge and practice in the field(s) related to their respective content area(s) and shall be reviewed at least every five years and updated as necessary;

(4) pathway assessments shall be consistent with technical criteria for validity, reliability, and fairness in testing;

(5) pathway assessments shall be developed by an entity other than a local school or school district;

(6) pathway assessments shall be available for use by any school or school district in New York State; and

(7) pathway assessments shall be administered under secure conditions approved by the commissioner.

(nn) *Posting of child abuse telephone hotline number and directions for accessing the New York State Office of Children and Family Services website.* Each public school and charter school shall post in English and in Spanish the toll-free telephone number (1-800-342-3720) operated by the New York State Office of Children and Family Services (OCFS) to receive reports of child abuse or neglect and directions for accessing the OCFS website at <http://ocfs.ny.gov/main/cps/>. The school must post such information in clearly visible locations so that it is readily accessible for students and employees by:

- (1) posting such information on the district and/or school's website(s), if such a website exists;
- (2) posting such information in highly-visible areas of school buildings;
- (3) making such information available at the district and school building-level administrative offices, where applicable;
- (4) providing such information to parents and persons in parental relation at least once per school year in a manner as determined by the school, including, but not limited to, through electronic communication and/or sending such information home with students; and
- (5) providing each teacher and administrator in the school with such information.

(oo) *Graduation ceremony participation policy.* The board of education or the board of trustees of each school district shall establish a policy and adopt procedures to allow any student who has been awarded a Skills and Achievement Commencement Credential, or a Career Development and Occupational Studies Commencement Credential, as defined in section 100.6 of this Part, but has not otherwise qualified for a Regents or local high school diploma, to participate in the graduation ceremony of the student's high school graduating class and all related activities. For purposes of this subdivision, a student's high school graduating class shall be the twelfth-grade class with which such student entered into ninth grade.

- (1) Such policy and procedures shall provide for annual written notice to be provided to all students and their parents or guardians about the policy and procedures adopted by the school district in accordance with this subdivision.
- (2) Nothing in this subdivision shall compel a student to participate in the high school graduation ceremony and activities.
- (3) Such policy and procedures shall be consistent with other school district policies and procedures relating to participation in graduation applicable to all students, including policies and procedures which prohibit participation in the graduation ceremony and related activities as a consequence of violating the school district's code of conduct.

(pp) District Responsibility for the Issuance of Diplomas.

(1) Definitions. For the purposes of this subdivision:

- (i) "*Residential facility*" means a facility operated or administered by a state department or agency or political subdivision of the state pursuant to Education Law § 112 or a correctional facility as defined in Correction Law § 2(4) which provides educational programming to youth age 21 or younger who have not received a high school diploma and who are placed, committed, supervised, detained or confined at the facility.
- (ii) "*District of location*" means the school district in which the facility where a youth is placed, committed, supervised, detained, or confined is located.
- (iii) "*Credit granting school district*" means the school district or local education agency providing an educational program and granting diploma credits to students placed in a facility.
- (iv) "*Diploma issuing district*" means the school district that is determined to be responsible for the issuance of the diploma pursuant to this subdivision.

(2) Determination of diploma issuing district. If a student placed, committed, supervised, detained, or confined in a residential facility completes an educational program provided by employees of such facility leading to a Regents (with or without an advanced designation diploma) or local diploma, the district in which the residential facility is located shall be the diploma issuing district. If a student placed, committed, supervised, detained, or confined in/to a residential facility receives credit-bearing

educational programming from a school or district other than the district of location of the residential facility, such credit-granting school district providing the educational programming shall be the diploma issuing district.

(3) Residential facility responsibility. When a student who has been placed, committed, supervised, detained, or confined in/to a residential facility completes all diploma requirements in accordance with section 100.5 of this Part, such residential facility shall notify the diploma issuing district to confer such student's diploma. Such notification shall be in writing and shall include the following documentation:

(i) All student records indicating the credits such student has attained at previous New York State schools and schools located in other states.

(ii) Documentation of transfer credits attested to by current or previous residential facilities pursuant to section 100.5(d)(b)(5)(i)(b)(2) of this Part and a summary of all academic credits earned and assessment requirements met which shall be attested to by the chief educational officer at such residential facility

(4) Diploma issuing district responsibility. Upon receipt of written notification and student records from a residential facility located within the district boundary, the diploma issuing district shall:

(i) Conduct a review of the documentation provided and make a determination of such student's eligibility to receive a diploma.

(ii) Notify the residential facility within 10 business days of receipt of such documentation of its findings and determination as to whether such student has met the requirements for a diploma; provided, however, that the findings and determination may be submitted after 10 business days where the facility and diploma issuing district mutually agree to extend such timeline.

(a) A notification that the student has not met the requirements of a diploma shall detail the deficiencies in the student records, clearly listing any requirements that have not been met. Such students are not required to meet local diploma requirements that exceed those indicated in section 100.5 of this Part. Facilities shall be given the opportunity to provide additional records, if available, to address any deficiencies noted by the diploma issuing district.

(b) A notification that the student has met the requirements for a diploma shall indicate when such diploma shall be conferred. Diplomas shall be conferred in January, June, or August, whichever is soonest.

(iii) Enroll such student prior to issuing the diploma, create a student transcript, and assume responsibility to retain all such student records in the district's student management system consistent with section 104.2 of this Chapter.

(iv) Forward such diploma and a copy of the district developed student transcript by registered mail to the facility that made the request on behalf of the student.

(v) Include such student in the district's accountability measures for the purposes of calculating graduation rate, as a graduate from the district of location in the school year in which the diploma is issued.

Credits

Sec. amd. filed Sept. 25, 1973; repealed, new filed Dec. 12, 1984; amds. filed: Dec. 21, 1984; April 30, 1985; July 26, 1985; Sept. 24, 1985; June 25, 1986; Jan. 22, 1987; June 25, 1987; Nov. 2, 1987 as emergency measure; Dec. 15, 1987; May 24, 1988; Aug. 2, 1988; Sept. 23, 1988 as emergency measure; Nov. 22, 1988; May 23, 1989 as emergency measure; Aug. 1, 1989; Sept. 19, 1989 as emergency

measure; Nov. 21, 1989; Sept. 18, 1990 as emergency measure; Nov. 20, 1990; Nov. 20, 1990 as emergency measure; Jan. 24, 1991; July 30, 1991 as emergency measure; Sept. 17, 1991; May 1, 1992; Dec. 22, 1992 as emergency measure; Feb. 23, 1993; Sept. 28, 1993; Aug. 30, 1994 as emergency measure; Sept. 27, 1994 as emergency measure; Nov. 8, 1994; Nov. 8, 1994 as emergency measure; July 25, 1995 as emergency measure; Sept. 19, 1995 as emergency measure; Nov. 7, 1995 as emergency measure; Nov. 7, 1995; July 23, 1996; Sept. 24, 1996 as emergency measure; Nov. 12, 1996; March 11, 1997 as emergency measure; May 6, 1997; May 6, 1997 as emergency measure; June 16, 1997; Sept. 23, 1997 as emergency measure; Nov. 18, 1997; Dec. 23, 1997; July 20, 1999; July 20, 1999; Sept. 21, 1999; Oct. 12, 1999 as emergency measure; Nov. 9, 1999; Dec. 20, 1999 as emergency measure; Jan. 18, 2000; March 8, 2000 as emergency measure; March 8, 2000; April 7, 2000; May 9, 2000; June 15, 2000; Nov. 14, 2000 as emergency measure; Dec. 19, 2000 as emergency measure; Feb. 9, 2001 as emergency measure; Feb. 9, 2001; April 27, 2001 as emergency measure; June 15, 2001; June 15, 2001 as emergency measure; June 15, 2001; July 24, 2001; Nov. 13, 2001; July 23, 2002; Feb. 18, 2003; July 22, 2003; Nov. 18, 2003; Jan. 18, 2005 as emergency measure; April 12, 2005 as emergency measure; May 24, 2005 as emergency measure; June 28, 2005; Sept. 13, 2005 as emergency measure; Dec. 9, 2005 as emergency measure; Dec. 9, 2005; May 25, 2006; June 23, 2006; Sept. 19, 2006 as emergency measure; Dec. 12, 2006 as emergency measure eff. Dec. 12, 2006; Dec. 12, 2006 eff. Dec. 28, 2006. Amended (p); June 29, 2007 eff. July 1, 2007; amended Sept. 27, 2007; filed May 23, 2008 eff. June 12, 2008; emergency rulemaking eff. July 1, 2008 expired Sept. 28, 2008; amd. filed July 1, 2008 eff. July 17, 2008; filed Aug. 4, 2008 eff. Aug. 21, 2008; filed Nov. 24, 2008 eff. Dec. 11, 2008; emergency rulemaking eff. July 1, 2009 expired Sept. 22, 2009; emergency rulemaking eff. Sept. 29, 2009 expired Nov. 27, 2009; emergency rulemaking eff. Nov. 28, 2009, adptd. eff. Dec. 10, 2009; emergency rulemaking eff. April 30, 2010, expired; emergency rulemaking eff. June 29, 2010, expired; amds. filed June 29, 2010 eff. July 14, 2010; emergency rulemaking eff. July 27, 2010, expired; emergency rulemaking eff. July 29, 2010, expired Sept. 26, 2010; emergency rulemaking eff. Sept. 21, 2010, expired; emergency rulemaking eff. Sept. 26, 2010, expired; amds. filed Sept. 21, 2010 eff. Oct. 6, 2010; emergency rulemaking eff. Oct. 22, 2010, expired; amds. filed Oct. 26, 2010 eff. Nov. 10, 2010; emergency rulemaking eff. Nov. 23, 2010, expired; amds. filed Dec. 21, 2010 eff. Jan. 5, 2011; emergency rulemaking eff. Feb. 15, 2011, expired; emergency rulemaking eff. March 11, 2011, expired May 9, 2011; emergency rulemaking eff. May 6, 2011, expired; emergency rulemaking eff. May 17, 2011, expired; amd. filed May 17, 2011 eff. June 1, 2011; emergency rulemaking eff. July 1, 2011, expired; amd. filed June 28, 2011 eff. July 13, 2011; emergency rulemaking eff. Aug. 11, 2011, expired Oct. 9, 2011; emergency rulemaking eff. Oct. 7, 2011, expired Dec. 5, 2011; emergency rulemaking eff. Dec. 6, 2011, expired Feb. 3, 2012; emergency rulemaking eff. Feb. 4, 2012, expired April 2, 2012; amd. filed March 23, 2012 eff. April 11, 2012; emergency rulemaking eff. April 4, 2012, expired; emergency rulemaking eff. April 24, 2012, expired; emergency rulemaking eff. May 22, 2012, expired; emergency rulemaking eff. July 1, 2012, expired; amd. filed May 29, 2012 eff. June 13, 2012; emergency rulemaking eff. July 1, 2012, expired Sept. 16, 2012;

emergency rulemaking eff. July 1, 2012, expired Sept. 26, 2012; emergency rulemaking eff. July 17, 2012, expired Aug. 16, 2012; emergency rulemaking eff. Aug. 21, 2012, expired Oct. 19, 2012; emergency rulemaking eff. Sept. 11, 2012, expired Nov. 9, 2012; amd. filed Sept. 11, 2012 eff. Sept. 26, 2012; emergency rulemaking eff. Sept. 15, 2012, expired Nov. 12, 2012; emergency rulemaking eff. Nov. 10, 2012, expired; amd. filed Nov. 6, 2012 eff. Nov. 28, 2012; amd. filed Apr. 23, 2013 eff. July 1, 2013; amd. filed May 21, 2013 eff. June 5, 2013; emergency rulemaking eff. Sept. 17, 2013, expired Dec. 15, 2013; emergency rulemaking eff. Dec. 16, 2013, expired; amd. filed Dec. 17, 2013 eff. Dec. 31, 2013; emergency rulemaking eff. Apr. 29, 2014, expired July 27, 2014; emergency rulemaking eff. July 9, 2014, expired; amd. filed July 9, 2014 eff. July 30, 2014; emergency rulemaking eff. Sept. 16, 2014, expired Dec. 14, 2014; emergency rulemaking eff. Dec. 15, 2014, expired; emergency rulemaking eff. Dec. 16, 2014, expired Mar. 15, 2015; amd. filed Dec. 16, 2014 eff. Dec. 31, 2014; amd. filed Jan. 13, 2015 eff. Jan. 28, 2015; amd. filed Feb. 10, 2015 eff. Feb. 25, 2015; emergency rulemaking eff. Mar. 16, 2015, expired May 14, 2015; emergency rulemaking eff. May 14, 2015, expired June 12, 2015; emergency

rulemaking eff. June 13, 2015, expired; amd. filed June 16, 2015 eff. July 1, 2015; emergency rulemaking eff. Sept. 17, 2015, expired Dec. 15, 2015; amd. filed Sept. 21, 2015 eff. Sept. 21, 2015; emergency rulemaking eff. Sept. 28, 2015, expired Nov. 26, 2015; emergency rulemaking eff. Nov. 17, 2015, expired Feb. 14, 2016; emergency rulemaking eff. Nov. 27, 2015, expired Jan. 22, 2016; emergency rulemaking eff. Dec. 15, 2015, expired; amd. filed Dec. 15, 2015 eff. Dec. 30, 2015; emergency rulemaking eff. Jan. 23, 2016, expired; amd. filed Jan. 12, 2016 eff. Jan. 27, 2016; emergency rulemaking eff. Feb. 23, 2016, expired; amd. filed Feb. 23, 2016 eff. Mar. 9, 2016; emergency rulemaking eff. Mar. 22, 2016, expired June 19, 2016; emergency rulemaking eff. June 20, 2016, expired; amd. filed June 14, 2016 eff. June 29, 2016; amd. filed July 11, 2016 eff. July 27, 2016; amd. filed Dec. 13, 2016 eff. July 1, 2017; emergency rulemaking eff. Jan. 17, 2017, expired; amd. filed Jan. 10, 2017 eff. Jan. 25, 2017; emergency rulemaking eff. March 13, 2017, expired; emergency rulemaking eff. June 11, 2017, expired; amd. filed May 9, 2017 eff. July 1, 2017; amd. filed June 13, 2017 eff. June 28, 2017; emergency rulemaking eff. June 20, 2017, expired; emergency rulemaking eff. July 1, 2017, expires Sept. 27, 2017 (erratum in August 2, 2017 New York Register); emergency rulemaking eff. Sept. 18, 2017, expired Sept. 27, 2017; amd. filed Sept. 12, 2017 eff. Sept. 27, 2017; emergency rulemaking eff. Sept. 19, 2017, expired Nov. 17, 2017; emergency rulemaking eff. Nov. 14, 2017, expired; amd. filed Nov. 14, 2017 eff. Nov. 29, 2017; emergency rulemaking eff. May 8, 2018, expired; emergency rulemaking eff. July 1, 2018, expired; emergency rulemaking eff. Aug. 6, 2018, expired Oct. 1, 2018; amd. filed Sept. 18, 2018 eff. Oct. 3, 2018; emergency rulemaking eff. July 1, 2018, expired Nov. 16, 2018; emergency rulemaking eff. Nov. 6, 2018, expired Jan. 4, 2019; emergency rulemaking eff. Dec. 18, 2018, expired Feb. 15, 2019; emergency rulemaking eff. Feb. 12, 2019, expired April 12, 2019; emergency rulemaking eff. April 13, 2019, expired; amd. filed April 9, 2019 eff. April 24, 2019; amd. filed Oct. 8, 2019 eff. Oct. 23, 2019; amd. filed Dec. 10, 2019 eff. Dec. 24, 2019; emergency rulemaking eff. April 7, 2020, expires July 5, 2020; emergency rulemaking eff. May 5, 2020 expires Aug. 2, 2020; emergency rulemaking eff. May 5, 2020, expires July 3, 2020; emergency rulemaking eff. June 9, 2020, expires Sept. 6, 2020; emergency rulemaking eff. June 9, 2020, expires Aug. 7, 2020; emergency rulemaking eff. July 14, 2020, expires Oct. 11, 2020; emergency rulemaking eff. July 17, 2020, expires Sept. 14, 2020; emergency rulemaking eff. July 17, 2020, expires Sept. 17, 2020; emergency rulemaking eff. Sept. 7, 2020, expires Nov. 1, 2020;

emergency rulemaking eff. Sept. 15, 2020, expires Nov. 13, 2020; amd. filed Sept. 15, 2020 eff. Sept. 30, 2020; emergency rulemaking eff. Nov. 14, 2020, expires Jan. 11, 2021; emergency rulemaking eff. Nov. 17, 2020, expires Jan. 15, 2021; emergency rulemaking eff. Dec. 15, 2020, expires Feb. 12, 2021; emergency rulemaking eff. Dec. 15, 2020, expires March 14, 2021; amd. filed Dec. 15, 2020 eff. Dec. 30, 2020; emergency rulemaking eff. Jan. 12, 2021, expires March 12, 2021; amd. filed Feb. 9, 2021 eff. Feb. 24, 2021; emergency rulemaking eff. Feb. 16, 2021, expires April 16, 2021; emergency rulemaking eff. March 15, 2021, expires May 13, 2021; emergency rulemaking eff. March 16, 2021, expires May 14, 2021; amd. filed April 13, 2021 eff. April 28, 2021; amd. filed April 13, 2021 eff. July 1, 2021; emergency rulemaking eff. May 11, 2021, expires July 9, 2021; emergency rulemaking eff. May 11, 2021, expires Aug. 8, 2021; emergency rulemaking eff. June 8, 2021, expires Sept. 5, 2021; emergency rulemaking eff. June 8, 2021, expires Aug. 6, 2021; emergency rulemaking eff. July 13, 2021, expires Sept. 10, 2021; amd. filed July 13, 2021 eff. July 28, 2021; emergency rulemaking eff. Aug. 6, 2021, expires Oct. 4, 2021; emergency rulemaking eff. Aug. 9, 2021, expires Oct. 7, 2021; emergency rulemaking eff. Sept. 6, 2021, expires Nov. 1, 2021; emergency rulemaking eff. Sept. 8, 2021, expires Dec. 6, 2021; emergency rulemaking eff. Sept. 14, 2021, expires Nov. 12, 2021; amd. filed Sept. 14, 2021 eff. Sept. 29, 2021; emergency rulemaking eff. Nov. 12, 2021, expires Jan. 10, 2022 (Register dated Dec. 1, 2021); emergency rulemaking eff. Dec. 7, 2021, expires Feb. 4, 2022 (Register dated Dec. 22, 2021); amd. filed Dec. 14, 2021 eff. Dec. 29, 2021 (Register dated Dec. 29, 2021); amd. filed Jan. 11, 2022 eff. Jan. 26, 2022 (Register dated Jan. 26, 2022); emergency rulemaking eff. June 14, 2022, expires Sept. 11, 2022 (Register dated June 29, 2022); emergency rulemaking eff. Sept. 12, 2022, expires Nov. 10, 2022 (Register dated September 28, 2022); amd. filed Oct. 4, 2022 eff. Oct. 19, 2022 (Register dated Oct. 19, 2022); emergency rulemaking eff. July 18, 2023, expires Oct. 15, 2023 (Register dated Aug. 2, 2023); amd. filed July 18, 2023 eff. Aug. 2, 2023 (Register dated Aug. 2, 2023).

Current with amendments included in the New York State Register, Volume XLV, Issue 32 dated August 9, 2023. Some sections may be more current, see credits for details.

ⁱ So in original.

ⁱⁱ Amendment appears as (j)(1)(vii) in April 28, 2021 register.

ⁱⁱⁱ Amendment appears as (j)(1)(viii)(d) in April 28, 2021 register.

^{iv} Amendment appears as (j)(3)(i) in April 28, 2021 register.