

# GENERAL EDUCATION AND DIPLOMA REQUIREMENTS

## SECTION 100.1

(1) Definitions.

As used in this Part:

(a) *Unit of study* means at least 180 minutes of instruction per week throughout the school year, or the equivalent.

(b) *Unit of credit* is earned by:

(1) the mastery of the learning outcomes set forth in a New York State-developed or locally developed syllabus for a given high school subject, after a student has had the opportunity to complete a unit of study in the given subject matter area; or

(2) pursuant to section 100.5(d)(1) of this Part, a passing score of at least 85 percent or its equivalent on a department-approved examination in a given high school subject without the completion of a unit of study, and the successful completion of either an oral examination or a special project.

(c) *Syllabus* means a document stating the expected learning outcomes, including the goals, objectives, concepts, skills and understandings in a given subject.

(d) *Pupil evaluation program tests* means State tests in reading, writing or mathematics and administered in grade six or below.

(e) *Regents preliminary competency tests* means State tests of achievement in reading or writing administered in grade eight or nine.

(f) *Regents competency tests* means State tests of achievement in reading, writing, mathematics, American history and government, global studies and science administered in grades 9 through 12.

(g) *Academic intervention services* means additional instruction which supplements the instruction provided in the general curriculum and assists students in meeting the State learning standards as defined in subdivision (t) of this section and/or student support services which may include guidance, counseling, attendance, and study skills which are needed to support improved academic performance; provided that such services shall not include services provided to students with limited English proficiency pursuant to Part 154 of this Title or special education services and programs as defined in Education Law section 4401(1) and (2). Academic intervention services are intended to assist students who are at risk of not achieving the State learning standards in English language arts, mathematics, social studies and/or science, or who are at risk of not gaining the knowledge and skills needed to meet or exceed designated performance levels on State assessments. Academic intervention services shall be made available to students with disabilities on the same basis as nondisabled students, provided, however, that such services shall be provided to the extent consistent with the individualized education program developed for such student pursuant to section 4402 of the Education Law.

(h) *Program evaluation tests* means assessments of the local instructional program by means of written tests administered to students and other measurement techniques.

(i) *Second language* means a language other than English, including American Sign Language.

(j) *Second language proficiency examinations* means State tests of language skills in modern or classical languages other than English or in Native American languages.

(k) *Career and technical education proficiency examinations* means State tests taken by students pursuing approved sequences in career and technical education subjects.

(l) *Career and technical education* means a kindergarten through adult program area of study that includes rigorous academic content closely aligned with career and technical subject matter, using the State learning standards of career development and occupational studies as a framework. In grades nine through twelve, career and technical education includes the specific disciplines of agriculture education, business and marketing education, family and consumer science education, health occupations education, technical education, technology education and trade/industrial education.

(m) *Regents examinations* means State achievement test based upon syllabi prescribed by the department.

(n) *Occupationally related mathematics course* means that course taught in accordance with the State syllabus in occupationally related mathematics.

(o) *Business mathematics course* means that course taught in accordance with the State syllabus in business mathematics.

(p) *Speech and language improvement services* means services provided by certified or licensed teachers of the speech and hearing handicapped to eligible students with speech impairments, such as dysfluency, impaired articulation, language disorders, or voice disorders, of a severity that does not adversely affect the student's educational performance, but does present a barrier to communication.

(q) *Declassification support services* means those services provided by persons appropriately certified pursuant to Part 80 of this Title or holding a valid teaching license in the appropriate area of service, to a student or such student's teacher to aid in such student's move from special education to full-time regular education, including:

- (1) for the student, psychological services, social work services, speech and language improvement services, noncareer counseling, and other appropriate support services; and
- (2) for the student's teacher, the assistance of a teacher aide or a teaching assistant, and consultation with appropriate personnel.

(r) *Educationally related support services* means curriculum and instructional modification services, direct student support team services, assessment and noncareer counseling services, special instruction to eligible students with disabilities as defined in Education Law section 4401, which does not generate excess cost aid including related services but excluding transportation and transition services, and to eligible, qualified persons pursuant to section 504 of the Rehabilitation Act of 1973. These services are provided to eligible students, individually or in groups, and may include those related consultation services provided to their families and related school personnel, in order to enhance the academic achievement and attendance of such students. *Educationally related support services* shall also mean speech and language improvement services as defined in subdivision (p) of this section. Any such services are to be provided by personnel certified pursuant to Part 80 of this Title; except that any audiology, physical therapy, or occupational therapy services, or medical services as defined in section 200.1(y) of this Title, shall be provided by appropriately licensed professionals. Such personnel shall be deemed to be educationally related support service professionals for the purposes of this Part.

(s) *Direct student support team services* means consultation and planning by building-level of professional staff to design and provide an appropriate and coordinated individualized instructional and support service program for eligible students.

(t) *State learning standards* means the knowledge, skills and understandings that individuals can and do habitually demonstrate over time as a consequence of instruction and experience.

- (1) State learning standards are organized into seven general curriculum areas:

- (i) English language arts.
  - (a) Students will listen, speak, read and write for information and understanding. As listeners and readers, students will collect data, facts, and ideas; discover relationships, concepts, and generalizations; and use knowledge generated from oral, written and electronically produced texts. As speakers and writers, they will use oral and written language that follows the accepted conventions of the English language to acquire, interpret, apply and transmit information.
  - (b) Students will read and listen to oral, written and electronically produced texts and performances from American and world literature; relate texts and performances to their own lives; and develop an understanding of the diverse social, historical and cultural dimensions the texts and performances represent. As speakers and writers, students will use oral and written language that follows the accepted conventions of the English language for self-expression and artistic creation.
  - (c) Students will listen, speak, read and write for critical analysis and evaluation. As listeners and readers, students will analyze experiences, ideas, information and issues presented by others using a variety of established criteria. As speakers and writers, they will use oral and written language that follows the accepted conventions of the English language to present, from a variety of perspectives, their opinions and judgments on experiences, ideas, information and issues.
  - (d) Students will listen, speak, read and write for social interaction. Students will use oral and written language that follows the accepted conventions of the English language for effective social communication with a wide variety of people. As readers and listeners, they will use the social communications of others to enrich their understanding of people and their views.
- (ii) Mathematics, science and technology.
  - (a) Students will use mathematical analysis, scientific inquiry and engineering design, as appropriate, to pose questions, seek answers, and develop solutions.
  - (b) Students will access, generate, process and transfer information using appropriate technologies.
  - (c) Students will understand mathematics and become mathematically confident by communicating and reasoning mathematically, by applying mathematics in real-world settings, and by solving problems through the integrated study of number systems, geometry, algebra, data analysis, probability and trigonometry.
  - (d) Students will understand and apply scientific concepts, principles and theories pertaining to the physical setting and living environment and recognize the historical development of ideas in science.
  - (e) Students will apply technological knowledge and skills to design, construct, use and evaluate products and systems to satisfy human and environmental needs.
  - (f) Students will understand the relationships and common themes that connect mathematics, science and technology and apply the

themes to these and other areas of learning.

- (g) Students will apply the knowledge and thinking skills of mathematics, science and technology to address real-life problems and make informed decisions.

(iii) Social studies.

- (a) Students will use a variety of intellectual skills to demonstrate their understanding of major ideas, eras, themes, developments and turning points in the history of the United States and New York.
- (b) Students will use a variety of intellectual skills to demonstrate their understanding of major ideas, eras, themes, developments and turning points in world history and examine the broad sweep of history from a variety of perspectives.
- (c) Students will use a variety of intellectual skills to demonstrate their understanding of the geography of the interdependent world in which we live—local, national and global—including the distribution of people, places and environments over the Earth's surface.
- (d) Students will use a variety of intellectual skills to demonstrate their understanding of how the United States and other societies develop economic systems and associated institutions to allocate scarce resources, how major decision-making units function in the United States and other national economies and how an economy solves the scarcity problem through market and nonmarket mechanisms.
- (e) Students will use a variety of intellectual skills to demonstrate their understanding of the necessity for establishing governments; the governmental system of the United States and other nations; the United States Constitution; the basic civic values of American constitutional democracy; and the roles, rights and responsibilities of citizenship, including avenues of participation.

(iv) Languages other than English.

- (a) Students will be able to use a language other than English for communication.
- (b) Students will develop cross-cultural skills and understandings.

(v) The arts.

- (a) Students will actively engage in the processes that constitute creation and performance in the arts (visual arts, music, dance and theatre) and participate in various roles in the arts.
- (b) Students will be knowledgeable about and make use of the materials and resources available for participation in the arts in various roles.
- (c) Students will respond critically to a variety of works in the arts, connecting the individual work to other works and to other aspects of human endeavor and thought.
- (d) Students will develop an understanding of the personal and cultural forces that shape artistic communication and how the arts in turn shape the diverse cultures of past and present society.

- (vi) Health, physical education and family and consumer sciences.
    - (a) Students will have the necessary knowledge and skills to establish and maintain physical fitness, participate in physical activity and maintain personal health.
    - (b) Students will acquire the knowledge and ability necessary to create and maintain a safe and healthy environment.
    - (c) Students will understand and be able to manage their personal and community resources.
  - (vii) Career development and occupational studies.
    - (a) Students will be knowledgeable about the world of work, explore career options, and relate personal skills, aptitudes, and abilities to future career decisions.
    - (b) Students will demonstrate how academic knowledge and skills are applied in the workplace and other settings.
    - (c) Students will demonstrate mastery of the foundation skills and competencies essential for success in the workplace.
    - (d) Students who choose a career major will acquire the career-specific technical knowledge/skills necessary to progress toward gainful employment, career advancement and success in postsecondary programs.
- (2) The State learning standards in each of the seven general curriculum areas, and the State assessments that measure achievement of the State learning standards, are organized into four levels:
- (i) the elementary or elementary-level State learning standards and State assessments reflect the knowledge, skills, and understandings all students are expected to know and be able to do by the end of grade four;
  - (ii) the intermediate or intermediate-level State learning standards and State assessments reflect the knowledge, skills, and understandings all students are expected to know and be able to do by the end of grade eight;
  - (iii) the commencement or commencement-level State learning standards and State assessments reflect the knowledge, skills, and understandings all students are expected to know and be able to do upon receiving a high school diploma.
  - (iv) the alternate performance level for the State learning standards and the State assessment for students with severe disabilities reflect the knowledge, skills and understandings that such students are expected to know and be able to do as indicated in their individualized education programs. Students with severe disabilities means students who have limited cognitive abilities combined with behavioral and/or physical limitations and who require highly specialized education, social, psychological and medical services in order to maximize their full potential for useful and meaningful participation in society and for self-fulfillment. Students with severe disabilities may experience severe speech, language, and/or perceptual-cognitive impairments, and evidence challenging behaviors that interfere with learning and socialization opportunities. These students may also have extremely fragile physiological conditions and may require personal care, physical/verbal supports and/or prompts and assistive technology devices.

## SECTION 100.2

### 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 did 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, 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 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 students in the eighth 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;
- (3) for all students, health education regarding alcohol, drugs and tobacco abuse, as required by section 804 of the Education Law;
- (4) for all students, instruction in highway safety and traffic regulation, as required by section 804 of the Education Law;
- (5) for all students, instruction in fire drills and in fire and arson prevention, 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;
- (6) for all students in grades one through eight, instruction in New York State history and civics as required by section 3204(3) of the Education Law;
- (7) for public school students, instruction relating to the flag and certain legal holidays, as required by section 802 of Education Law;
- (8) 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
- (9) 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.

(d) *Language other than English requirements.*

- (1) Public school students first entering grade nine in 1988 or 1989 shall have completed at least one unit of study in a language other than English 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 language other than English 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 language other than English 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 language other than English by passing an approved second language proficiency examination when such an examination is available.
- (2) Public school districts may commence language other than English instruction at any grade level prior to grade eight but shall do so no later than the beginning of grade eight 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 pass an approved second language proficiency examination shall be awarded the first unit of credit in a language other than English, 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 language other than English, as defined in section 100.1(b) of this Part, in order to complete the language other than English requirement for a high school diploma. Students may earn one unit of credit by passing the State second language proficiency assessment. In those languages for which no State proficiency assessment is available, a locally developed test, which is determined to be equivalent to the State proficiency assessment pursuant to section 100.2(f) of this Part, may be administered. At least six months prior to the administration of such test, the proposed test booklet, answer sheet, scoring key, directions and all other auxiliary materials shall be provided to the commissioner for approval, and shall be accompanied by such empirical evidence of the reliability of the test scores and of the comparability of the proposed test to corresponding State assessments with respect to content and difficulty, as is available.

(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 eight.

(f) *Use of 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, United States

history and government, comprehensive English, mathematics and the sciences shall meet the following conditions and criteria:

- (1) assessments shall measure the State learning standards for the respective content area;
- (2) alternative assessments shall be at least as rigorous as the corresponding required State assessment;
- (3) alternative assessments shall be consistent with technical criteria for validity, reliability, and freedom from bias;
- (4) alternative assessments shall be developed by an entity other than a local school or school district;
- (5) alternative assessments shall be available for use by any school or school district in New York State; and
- (6) alternative assessments shall be administered under secure conditions approved by the commissioner.

(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 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 eight, 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 orga-

nized 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.*

(1) Public schools. Each school district shall have a guidance program for all students.

(i) 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.

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

(a) 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;

(b) 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;

(c) 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 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

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

(iii) 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 dis-

strict 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.

(k) *Nondiscrimination in curricular and extracurricular activities.* No student shall be denied membership or participation, on the basis of race, 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 extraclass 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 student 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 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 of special education for review and modification if appropriate of the student's individualized education program;

- (e) alternative educational programs appropriate to individual students 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 and 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 section 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 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;

- (b) standards and procedures to assure security and safety of students and school personnel;
- (c) provisions for the removal from the classroom and from school property and school functions of students and other persons who violate the code;
- (d) 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;
- (e) disciplinary measures to be taken in incidents involving the possession or use of illegal substances or weapons, the use of physical force, vandalism, violation of another student's civil rights, harassment and threats of violence;
- (f) 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;
- (g) procedures by which violations are reported, determined, discipline measures imposed and discipline measures carried out;
- (h) provisions ensuring such code and the enforcement thereof are in compliance with State and Federal laws relating to students with disabilities;
- (i) provisions setting forth the procedures by which local law enforcement agencies shall be notified of code violations which constitute a crime;
- (j) provisions setting forth the circumstances under and procedures by which persons in parental relation to the student shall be notified of code violations;
- (k) 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;
- (l) circumstances under and procedures by which referral to appropriate human service agencies shall be made;
- (m) 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 sub-

stantially 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;

- (n) 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;
- (o) 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; and
- (p) 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.

(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 no later than thirty 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) providing copies of a summary of the code of conduct to all students at a general assembly held at the beginning of each school year;
  - (2) mailing a plain language summary of the code of conduct to all persons in parental relation to students before the beginning of the school year and making such summary available thereafter upon request;
  - (3) providing each existing teacher with a copy of the 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 copy of the current code upon their employment; and

- (4) making copies available for review by students, parents or other persons in parental relation to students, non-teaching staff and other community members.

(3) Corporal punishment.

- (i) The term *corporal punishment*, as used in this section, shall mean any act of physical force upon a pupil for the purpose of punishing that pupil. Such term, as used in this section, shall not mean the use of reasonable physical force for any of the following purposes:

- (a) to protect oneself from physical injury;
- (b) to protect another pupil or teacher or any other person from physical injury;
- (c) to protect the property of the school or of others; or
- (d) to restrain or remove a pupil whose behavior is interfering with the orderly exercise and performance of school district functions, powers or duties, if that pupil has refused to comply with a request to refrain from further disruptive acts;

provided that alternative procedures and methods not involving the use of physical force cannot reasonably be employed to achieve the purposes set forth in clauses (a) through (d) of this subparagraph.

- (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 15<sup>th</sup> and July 15<sup>th</sup> of each year commencing July 1, 1985, 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.

- (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) *Comprehensive assessment report for nonpublic schools and public school performance*

*report.* By September 30, 1997 and by September 1 of each year thereafter, the State Education Department will notify each school district and each nonpublic school of the date they shall receive their preliminary State test results and the date by which the superintendent of each public school shall submit a public school performance report on measures of academic performance and attendance, suspension and drop-out rates for each school to the board of education of such district at a public meeting.

- (1) The comprehensive assessment report for each nonpublic school will include the following information, for each school building, for the three school years immediately preceding the school year in which the report is issued:
  - (i) student test data on all elementary and middle level English language arts and mathematics assessments, all Regents competency tests, all program evaluation tests, all Regents examinations, all career education proficiency examinations and all second language proficiency examinations as defined in this Part;
  - (ii) student enrollment by grade;
  - (iii) number of students transferred into the alternative high school and high school equivalency preparation programs as set forth in section 100.7(i) of this Part;
  - (iv) data as required by the commissioner, on diplomas and certificates awarded;
  - (v) any additional information prescribed by the commissioner on educational equity and other issues; and
  - (vi) 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 assessment report accessible to parents.

- (2) The public school performance report submitted by each school superintendent (in New York City, both the chancellor and the community school district superintendent for any schools under the jurisdiction of a community school board) shall include a copy of the New York State school report card for each school building in the school district and any additional information which the superintendent of the school district believes will reflect the relative assessment of a school building or district. The public school performance report shall also contain a district summary and school by school results for:
  - (i) student test data on all elementary and middle level English language arts and mathematics assessments, all Regents competency tests, all program evaluation tests, all Regents examinations, all career education proficiency examinations, and all second language proficiency examinations as defined in this Part that are not presented in the New York State school report card;
  - (ii) number of students transferred into the alternative high school and high school equivalency preparation programs as set forth in section 100.7(i) of this Part;
  - (iii) data, as required by the commissioner, on diplomas and certificates awarded; and
  - (iv) any additional information prescribed by the commissioner on educational

equity and other issues.

- (3) In accordance with the district's plan for school-based management and shared decisionmaking developed pursuant to section 100.11 of this Part, each board of education through the superintendent shall initiate measures designed to improve results related to State performance standards. In any district in which a school performs below the school accountability performance criteria specified in paragraph (8) of subdivision (p) of this section, a local assistance plan shall be developed by the superintendent of the district (in New York City, the community school district superintendent in the case of any school under the jurisdiction of a community school board) that shall specify the actions that will be taken to raise student results above such performance criteria. In lieu of a separate local assistance plan, a district may incorporate the elements of such plan into a comprehensive district education plan. The local assistance plan shall identify:
  - (i) the process by which the local assistance plan was developed pursuant to section 100.11 of this Part;
  - (ii) the resources that will be provided to each school to implement the plan;
  - (iii) the professional development activities that will be taken to support implementation of the plan;
  - (iv) the timeline for implementation of the plan; and
  - (v) Such local assistance 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 a community school board) no later than January 15th of the school year in which such plan is required.
  - (vi) In lieu of a separate local assistance plan, a district may incorporate the elements of such plan into a comprehensive district education plan.
- (4) The public school performance report for districts that are required to develop a local assistance plan shall include a summary of such plan. The public school performance report shall set forth data prescribed by the commissioner pursuant to paragraph (2) of this subdivision. The public school performance report shall also report on the degree to which the previous school year's local assistance plan met the adequate yearly progress targets established pursuant to subdivision (p) of this section. The local assistance plan shall be made public by the Board of Education on an annual basis according to the timeline established by the commissioner pursuant to this subdivision.

(n) *Variations 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 variations 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 the 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 prior to July 1, 2000, each school district and board of cooperative educational services (BOCES) shall be subject to the requirements of this paragraph. For school years commencing on or after July 1, 2000, each school district and BOCES shall be subject to the requirements of paragraph (2) of this subdivision.
    - (i) The governing body of each school district and board of cooperative educational services shall ensure that the performance of all professional personnel, except evening school teachers of nonacademic, vocational subjects, will be reviewed annually.
    - (ii) Each superintendent, in consultation with teachers, administrators and other school service professionals, selected by the superintendent with the advice of their respective peers, shall develop formal procedures for the review of the performance of all such personnel in the district. Such procedures shall be approved by the governing body of the district, filed in the district office, and available for review by any individual no later than August 1st of each year. Formal procedures for the review of the performance of all such personnel shall include:
      - (a) criteria by which all such personnel shall be reviewed, and a description of the review procedures;
      - (b) a description of review activities, including:
        - (1) the minimum number of observations;
        - (2) the frequency of observations; and
        - (3) provisions for a follow-up meeting for the reviewer to commend strengths of performance and discuss the need for improvement, if necessary, with the staff person being reviewed;
      - (c) methods used to record review results; and
      - (d) procedures used to:
        - (1) ensure that all such personnel are acquainted with the performance review procedures; and
        - (2) ensure that each individual who is reviewed in accordance with the provisions of this subdivision has the opportunity to provide written comment on his or her performance review.

- (iii) The board of education shall annually review the performance of the superintendent of schools according to procedures developed by such board in consultation with the superintendent. Such procedures shall be filed in the district office, and available for review by any individual no later than August 1<sup>st</sup> of each year.
- (2) 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(w) of this Title, is reviewed annually, except evening school teachers of adults enrolled in nonacademic, vocational subjects; and supplementary school personnel, as defined in section 80.33 of this Title.
  - (iii) Professional performance review plan.
    - (a) Development and adoption of the plan.
      - (1) By September 1, 2000, 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(w) 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;
  - (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;
  - (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(w) 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 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.
  - (vi) 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.
  - (vii) 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.
    - (b) A variance shall be granted from the criteria for the evaluation of teachers providing instructional services, prescribed in subclause (1) of clause (b) of subparagraph (ii) of this paragraph, upon a finding by the commissioner that the school district or BOCES has demonstrated that a local model for the evaluation of such teachers has produced successful results.

(p) *Registration of schools.* 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. No school district may operate a public school whose registration has been revoked by the Board of Regents pursuant to paragraph (6) 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.

- (1) 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 educational welfare of the students.
- (2) All public elementary, intermediate, middle, junior high schools, and high schools in existence on September 1, 2000 shall be deemed registered by the Board of Regents pursuant to this subdivision as of such date.
- (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.
- (4) System of Accountability for Student Success. Each year, commencing with 1998-99 school year test administration results, the commissioner shall review the performance of all public schools in the State. For each criterion specified in paragraph (8) of this subdivision, the commissioner, commencing with 1999-2000 school year test administration results, shall determine whether each school is farthest from meeting that criterion, below a school accountability criterion, or meeting all criteria. In schools in which fewer than 20 students are subject to the criteria delineated in paragraph (8) of this subdivision, the commissioner may review prior years' performance of the school in order to make a determination regarding such school.
- (5) Identification of Schools for Public School Registration Review. The commissioner shall place under registration review those schools that are determined to be farthest from meeting the school accountability performance criteria specified in paragraph (8) of this subdivision and most in need of improvement. In determining the number of schools to identify as farthest from meeting the school accountability performance criteria, the commissioner shall give primary consideration to the percentages of students meeting performance benchmarks. The commissioner may also consider the sufficiency of State and local resources to effectively implement and monitor school improvement efforts in schools under registration review. In addition, any school that does not meet or exceed each of the school accountability performance criteria and 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 may be 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. 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.
  - (i) For each school identified as farthest from meeting the school accountability performance criteria, 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 who are English language learners 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 meeting minimum and/or higher student performance standards. For each school identified as a poor learning environment, 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.

- (ii) The commissioner shall review the additional information provided by the district and determine which of the schools identified as farthest from meeting the school accountability performance criteria specified in paragraph (8) of this subdivision or identified as poor learning environments are most in need of improvement and shall be placed under registration review. The commissioner may convene an advisory committee to assist in making such determination. Such committee shall include experts in the evaluation of student and school performance, and may also include parents of New York State public school students, teachers, local school administrators, community members, and State Education Department staff.
- (iii) Each year, public schools in which no students participate in the State testing program for English language arts shall conduct a self-assessment of their academic program and the school learning environment. Based on this self-assessment by the school, 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 a community school district) shall make a recommendation to the commissioner concerning whether or not such school should be considered among those schools most in need of improvement. Based upon such recommendation or a finding by the commissioner that the school is a poor learning environment, the commissioner may place such school under registration review.

(6) 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 New York City Board of Education and any community school board having jurisdiction over the school) that the school has been identified for 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 New York City Board of Education) 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. Following the identification of a school for registration review, the commissioner shall appoint a team to undertake a resource, planning, and program audit of the district and the school. The commissioner shall provide to the school district a copy of the audit, which shall include, as appropriate, recommendations for improving instruction; curriculum; assessment; school management and leadership; qualifications and professional development of school staff; parent and community involvement; school discipline, safety, and security; instructional supplies and materials; physical facilities; and district support for the school improvement efforts. Based upon the results of the audit, the commissioner shall require that:

- (a) a correction action plan be developed by the superintendent of the district (in New York City, the Chancellor) in consultation with the school staff, persons in parental relation of children attending the school, and members of the community (and in New York City, the community school district superintendent and staff in the case of any school under the jurisdiction of a community school board) to address the findings of the audit;
  - (b) such corrective action plan be 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 a community school board) and submitted to the commissioner for review and approval;
  - (c) such corrective action plan shall be:
    - (1) in a format prescribed by the commissioner;
    - (2) coordinated with actions planned and taken as part of the district's local assistance plan developed pursuant to subdivision (m) of this section;
    - (3) developed in cooperation with department staff and other persons assigned by the commissioner to assist the district in the development of such plan;
  - (d) any amendment or modification of a corrective action plan by a school district, including a plan to close a school under registration review and/or replace such school with a new or redesigned school, shall require the prior approval of the commissioner.
- (ii) In accordance with the district's plan for school-based management and shared decisionmaking developed pursuant to section 100.11 of this Part, the school shall develop a comprehensive education plan or modify its existing comprehensive education plan so that such plan shall be:
- (a) in a format prescribed by the commissioner;
  - (b) coordinated with actions planned and taken as part of the district's corrective action plan;
  - (c) developed in cooperation with department staff and other persons assigned by the commissioner to assist the school in the development of the education program;

- (d) approved by the board of education of the school district (in New York City, the community school board for schools under its jurisdiction).
- (iii) The corrective action plan and the comprehensive education plan shall be submitted to the commissioner no later than July 31st of the school year next following the school year in which the commissioner placed the school under registration review and implemented not later than one month following the commissioner's review. The corrective action plan and the comprehensive education plan shall be revised annually and resubmitted to the commissioner no later than July 31st of each school year in which a school remains under registration review.
- (iv) The department shall periodically monitor the implementation of the corrective action plan and the comprehensive education 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 corrective action plan and the comprehensive education 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 corrective action plan and a comprehensive education plan.
- (v) Unless it is determined by the commissioner 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 this period of time, the school under registration review 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, both the New York City Board of Education and any community school board having jurisdiction over the school) shall be afforded notice of such recommendation and an opportunity to be heard in accordance with subparagraph (vi) 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 as amended and approved by the commissioner.
- (vi) 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 therefor 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.
- (7) Registered nonpublic high school registration review.
- (i) The registration of a registered nonpublic high school shall be placed 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 (5)(vi) 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.

(8) 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                             |

- (ii) Commencing September 1, 2000, the school accountability performance criteria for public schools shall be as specified below:

| Measure                                      | Criteria   |
|--|--|
| Elementary level English Level 3 as shall be | 90 percent at or above Level 2 and such percentage at or above Language Arts annually established by the commissioner to demonstrate that sufficient progress is being made towards ensuring that all students achieve the State learning standards. |

|   |  |
|---|--|
| Middle level English<br>Level 3 as shall be | 90 percent at or above Level 2 and such percentage at or above Language Arts annually established by the commissioner to demonstrate that sufficient progress is being made towards ensuring that all students achieve the State learning standards.       |
| Elementary level<br>Level 3 as shall be     | 90 percent at or above Level 2 and such percentage at or above Mathematics annually established by the commissioner to students achieve the State learning standards.  |
| Middle level Mathematics                    | 90 percent at or above Level 2 and such percentage at or above Level 3 as shall be annually established by the commissioner to demonstrate that sufficient progress is being made towards ensuring that all students achieve the State learning standards. |
| Regents High School requirement             |  |
| Reading and Writing                         | 90 percent of students in the annual high school cohort or the alternative high school cohort meet the graduation assessment requirements in English language arts.  |
| Mathematics                                 | 90 percent of students in the annual high school cohort or the alternative high school cohort meet the graduation assessment requirements in mathematics.  |
| Dropout rate                                | 5 percent  |

(iii) Annual or alternative high school cohort.

- (a) Except as provided in clauses (b) and (c) of this subparagraph, the annual high school cohort for any given year shall consist of those students who first enrolled in ninth grade three years previously and who were also enrolled in the school on the first Wednesday in October of the previous school year except that for the 1999-2000 school year annual high school cohort, the date of enrollment shall be June 18, 1999. Commencing with the 2000-2001 year cohort, students with disabilities in ungraded programs shall be included in the annual high school cohort in the fourth school year following the one in which they attained the age of 16.
- (b) The following students shall not be included, except pursuant to subparagraph (c), in the annual high school cohort: limited English proficient students who are English language learners and new immigrants who first enter a New York State high school after their seventeenth birthday and are assigned to grade nine or ten, students who transferred to another high school or approved alternative high school equivalency or high school equivalency preparation program, or who are deceased. For the 1999-2000 school year high school cohort, students with disabilities whose Individualized Education Programs (IEPs) do not include assessments required for a high school diploma and therefore are pursuing IEP diplomas may also be excluded from the cohort.
- (c) Commencing with 2000-2001 school year test administration results, the commissioner may use the results from a State English language assessment instrument to determine whether for school accountability purposes limited English proficient students who are English language learners and new immigrants who first enter a New York State high school after their seventeenth birthday and are assigned to grade nine or ten shall be considered to have met the English language arts graduation assessment requirement.

Students with severe disabilities who will be participating in the alternate assessment, as indicated in their Individualized Education Programs, will not be included in the cohort.

- (d) All schools with students who meet the criteria specified in clause (a) are required to report the number and performance of these students in a format specified by the Commissioner.
  - (e) The alternative high school cohort in any given year shall consist of those students enrolled in the high school on the first Wednesday of October of the previous school year who were also enrolled in the school in high school on the first Wednesday of October three 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.
- (iv) Beginning with the 1998-99 school year test administrations, for purposes of the commissioner's annual evaluation of public schools, some categories of limited English proficient students who are English language learners may be considered to be meeting performance criteria in English Language Arts if they demonstrate a specified increment of progress on an English language assessment instrument approved by the commissioner.
  - (v) Beginning with 1996-1997 school year test administrations, the commissioner shall require that districts report by school the results on State tests of students with disabilities receiving resource room, consultant teacher and related services. Beginning with 1997-98 school year test administrations, the commissioner shall require that districts report by school the results of all students with disabilities who participate in the State testing program. The commissioner shall consider these results in determining the registration status of a school. Beginning with 1998-99 school year test administrations the commissioner shall include the performance of all special education students reported at the school in calculating whether a school is farthest from meeting State school performance standards.
  - (vi) For purposes of the Commissioner's annual evaluation of schools, the performance of students whose date of first enrollment in the school occurred after the date on which BEDS forms are completed may be excluded from consideration.
- (9) Schools farthest from meeting a school accountability performance criterion, schools below a school accountability performance criterion and schools meeting all performance criteria. The commissioner shall establish adequate yearly progress targets for each school performing below a school accountability performance criterion. Such targets shall be based upon closing the gap between the school accountability performance criteria specified in paragraph (8)(ii) of this subdivision and the school's performance in the school year in which it initially performs below a criterion. A school improvement plan in such format as may be prescribed by the commissioner shall be developed by each school that fails to achieve its adequate yearly progress targets. Such school improvement plan shall be formally approved by the Board of Education (in New York City, the community school board for schools under the jurisdiction of a community school board) no later than July 31st of each year in which such plan is required; shall be implemented no later than the last day of the first month of regular student attendance of each such school year; and shall be reviewed and updated annually for each school year in which the school does not achieve its adequate yearly progress targets. The commissioner shall designate as rapidly improving those schools that exceed all of their adequate

yearly progress targets by an amount determined by the commissioner and in which all designated disaggregated student populations exceed the school's adequate yearly progress target. A public school that does not meet the adequate yearly progress targets established by the commissioner shall be identified as a school in need of improvement.

- (10) Removal of schools from registration review.
- (i) In the event that a school has demonstrated the progress necessary to be removed from registration, the board of education may petition the commissioner to remove the school from registration review. If such petition is based upon results on student assessments, such petition shall be submitted to the commissioner 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 (4) of this subdivision remain present in the school.
  - (ii) In the event that a board of education, pursuant to a corrective action plan approved by the commissioner in accordance with paragraph (5) of this subdivision, seeks to close a school under registration review and replace the closed school with a redesigned school, the board of education (in New York City, the City Board of Education) shall submit a petition to the commissioner requesting that the redesigned school be provisionally registered. The commissioner may grant such petition, and the redesigned school may be granted provisional registration provided that:
    - (a) official resolutions to open the redesigned school have been adopted by the local board of education (in New York City, both the New York City Board of Education and the community school board);
    - (b) a formal redesign plan has been approved by the district superintendent (in New York City, the chancellor and community school district superintendent working in collaboration);
    - (c) parents, teachers, administrators, and community members have been provided an opportunity to participate in the development of the redesign plan; and
    - (d) upon examination of factors including, but not limited to, the school mission, school climate, school administration and staff, grade configurations and groupings of students, zoning patterns, curricula and instruction, professional development programs, facilities, and parent and community involvement in decision making, the commissioner determines that the redesigned school constitutes a new and satisfactory educational program.
- (11) At the time that a redesigned school is granted provisional registration, the commissioner shall explicitly delineate the student performance results that the school must demonstrate in order to receive full registration. If, after the designated period of time, the school has not demonstrated such results as delineated by the commissioner, the commissioner shall recommend to the Board of Regents that the provisional 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 such results. If, after the designated period of time, the school has demonstrated such results, the commissioner shall recommend to the Board of Regents that full registration be granted to such school.

- (12) Identification of Programs for High School Equivalency Program Review.
- (i) Each year, commencing with 2001-02 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 advance one high school equivalency literacy level in reading or math 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.
    - (c) students under the age of 21 who complete fewer than 150 hours of instruction who receive a high school equivalency diploma or advance one high school equivalency literacy level in reading and math if the student upon entering the program is assessed on an instrument approved by the commissioner to have a reading or mathematics level above grade nine.
    - (d) students under the age of 21 who complete fewer than 150 hours of instruction who advance one high school equivalency literacy level in reading or math 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.
  - (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, which may include supplemental performance program indicators approved by the commissioner.
  - (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 iden-

tified 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.

(vii) High School Equivalency program approval review.

- (a) 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.
- (b) 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.
- (c) 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.

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

(a) 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.

(b) 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:

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

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

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

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

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

(13) As used in this subdivision, the terms:

(i) Board of education shall mean the trustees or board of education of any public school district, a board of cooperative educational services (BOCES) or a county vocational education and extension board that has jurisdiction over a public school.

(ii) School district shall mean a common, union free, central, central high school, city or community school district, a BOCES supervisory district or a county vocational education and extension board.

(iii) Level 2 means a score on the State elementary and middle level assessments that indicates that a student demonstrates some knowledge and skills of the standards assessed at the elementary or middle school level but that it is expected that the student will need extra help to meet the standards and pass the Regents examination.

(iv) Level 3 means a score on the State elementary and middle level assessments that indicates that a student's performance meets the standards assessed at the elementary or middle school level and, with continued steady growth, the student should pass the Regents examination.

- (v) Disaggregated student population means a group of students within a school for which the State Education Department disaggregates results on State assessments. Disaggregated student populations may include groupings based upon gender, race and ethnicity and, English proficiency, disability, migrant, and economic status.
  - (vi) School accountability performance criteria means the State standard for aggregated student performance on required State assessments as specified in paragraph (8) of this subdivision.
  - (vii) 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.
  - (viii) Alternate assessment means the State assessment for students with severe disabilities to enable them to demonstrate the attainment of knowledge, skills, and understandings that such students are expected to know and be able to do, as indicated in their individualized education programs. The alternate assessment measures the progress of students with severe disabilities in the State learning standards and alternative performance indicators. "Students with severe disabilities" are defined in Section 100.1(t)(2)(iv) of this part.
- (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 or 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) *Declassification support services.* When appropriate, the governing body of each school district shall provide declassification support services, as defined in section 100.1(q) of this Part, to students who have moved from special education to a full-time regular educational program in accordance with the recommendation of the committee on special education, pursuant to section 200.4(c)(1) of this Title.

(v) *Educationally related support services.* The purpose of this subdivision is to prescribe requirements for educationally related support services provided by school districts pursuant to Education Law, section 3602(32).

(1) Request for educationally related support services. A parent or person in parental relationship to an eligible student, a school administrator, a member of the instructional staff, or a student in his or her own behalf may make a written request to the building principal for educationally related support services.

(2) Determination of eligibility. To be eligible for educationally related support services a student:

(i) shall be either:

(a) an elementary or secondary student, including but not limited to one who is under suspension for more than one day pursuant to section 3214 of the Education Law or one who is transferring to the school from a Division for Youth facility; or

(b) an elementary or secondary student who is identified as having a disability by a committee on special education and whose attendance does not generate excess cost aid; or

(c) an elementary or secondary student who is qualified as a disabled person as defined in section 504 of the Rehabilitation Act of 1973, as amended; and

(ii) shall be:

(a) determined by the building principal in consultation with the direct student support team, which shall include but not be limited to, the student's classroom teacher(s) and building level educationally related support services professional(s), and in the case of an eligible student as defined in clause (i)(c) of this paragraph shall include a group of persons knowledgeable about the child, and the

meaning of the evaluation data and placement options; or

- (b) where appropriate, shall be recommended by the committee on special education; to:
  - (1) evidence educational, behavioral, personality or social difficulties that are situational and/or amenable to intervention or a speech impairment that does not adversely affect the student's educational performance;
  - (2) be able to receive services in the regular educational setting;
  - (3) be able to benefit from services provided as educationally related support services;
  - (4) be able to maintain his or her placement in regular education if such services are received;
  - (5) not be receiving the same or similar services under his or her regular education program; and
  - (6) not be eligible to receive substantially the same services available through other State, local or federally funded programs.
- (3) Referral for service. After a student has been determined to be eligible for services, such student may be referred for educationally related support services by the building principal in consultation with the referring and/or classroom teacher(s) and the building level educationally related support services professional(s) who are to provide such service. Referrals can also be initiated for a student with a disability upon the recommendation of the committee on special education, or for a qualified disabled person not identified as a student with a disability upon the recommendation of a group of persons knowledgeable about the child and about the meaning of evaluation data and placement options.
- (4) Notification of eligibility. The educationally related support services professional who is to provide service shall notify the parent or person in parental relation to a student of the provision of educationally related support services unless such notification would be detrimental to the health and safety of the student as determined by the building principal in consultation with the educationally related support services provider and the student. Notification shall include the frequency and expected duration of such service.
- (5) Provision of service. Service shall be provided in the most educationally advantageous manner to address student needs. For purposes of this paragraph, in order for services to be provided in the most educationally advantageous manner, such services must be appropriate in length, frequency and duration to the individual needs of each pupil based on diagnostic assessment, and may include individual or group counseling, individual or group speech and language improvement services, small group instruction, modified curricula, individualized tutoring, and other such strategies that have demonstrated success with such pupils. Educationally related support services shall be coordinated with other services and shall include parental involvement, to the greatest extent possible.
- (6) Periodic review. The progress of each student receiving service shall be reviewed periodically by appropriate school staff including the school principal, the classroom or referring teacher(s) and the educationally related support services provider. Such review shall occur at least once in each 10 weeks of service provision.

- (7) Annual program report. The superintendent of schools shall submit an annual program report to the commissioner in a form prescribed by the commissioner by September 1st next following the year in which services are provided. Such reports shall include:
- (i) an assurance that the educationally related support services has been coordinated to the maximum extent feasible with services available pursuant to other State, local and federally funded programs;
  - (ii) a section on the utilization and effectiveness of speech and language improvement services;
  - (iii) the total hours of educationally related support services provided from general fund appropriations during such school year which shall be equal to or in excess of the total hours of such services provided from such appropriations during the preceding school year; and
  - (iv) statistical data indicating referral of students to the committee on special education, and the classification rate for such referrals.
- (8) The annual program report, in a proper format as defined in paragraph (7) of this subdivision, shall be required by the commissioner to calculate the apportionment for educationally related support services payable to a school district during the school year in which the report shall be due.

(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.

(x) *Education of homeless children.*

- (1) As used in this subdivision:
  - (i) *Homeless child* means:
    - (a) a child who lacks a fixed, regular, and adequate nighttime residence; or
    - (b) a child 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;
    - (c) the term homeless child shall not include a child in foster care or

receiving educational services pursuant to Education law section 3202(4), (5), (6), (6a) or (7) or pursuant to article 81, 85, 87 or 88.

- (ii) *Designator* means:
  - (a) the parent or person in parental relation to a homeless child; or
  - (b) the homeless child, if no parent or person in parental relation is available; 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.
- (iii) *School district of origin* means the school district within the State of New York in which the homeless child was attending a public school on a tuition-free basis or was entitled to attend when circumstances arose which caused such child to become homeless, which is different from the school district of current location.
- (iv) *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.
- (v) *Regional placement plan* means a comprehensive regional approach to the provision of educational placements for homeless children which has been approved by the commissioner.

(2) Choice of district.

- (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) Where the school district in which a homeless child is temporarily housed is the same district the child attended on a tuition-free basis or was entitled to attend when circumstances arose which caused the child to become homeless, the child shall be entitled to attend the schools of such district without the payment of tuition. 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 public school building he or she previously attended until the end of the school year and for one additional year if that year constitutes the child's terminal year in such building.
- (iii) 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 maintain the prior designation to continue attendance in the same school building until the end of the school year and for one additional year if the year constitutes the child's terminal year in such building.

- (iv) Where the public school or school district 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 outside the State, the homeless child shall be deemed a resident of the school district in which the child is temporarily located and shall be entitled to attend the schools of such district without payment of tuition. Such district of residence shall not be considered the school district of origin or the school district of current location for purposes of this section.
  - (v) Whenever the school district of origin is designated, the child shall be entitled to return to the school building where previously enrolled. Whenever the school district of current location is designated, the child shall be entitled to attend the school that is zoned for his or her temporary location or any school that nonhomeless students who live in the same attendance zone in which the homeless child or youth is temporarily residing are entitled to attend.
  - (vi) 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) A designation form provided by the commissioner shall be completed by the appropriate designator as defined in subparagraph (l)(ii) 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.
- (i) 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, within two business days of entry into such facilities, assist the designator to ensure that the form is properly completed and assist the child, where necessary, to enroll in the designated school district.
  - (ii) Where a parent or person in parental relation or a child who is neither placed in a temporary housing facility by the local department of social services nor housed in a residential program for runaway homeless youth established pursuant to article 19-H of the Executive Law, designates the school district of current location, the school district shall forward to the department a completed designation form and a statement of the basis for its determination that the child is a homeless child entitled to attend the schools of the district.
- (4) Upon receipt of a designation form, the designated school district shall immediately:
- (i) review the designation form to assure that it has been completed;
  - (ii) admit the homeless child;
  - (iii) provide the child with access to all of its programs, activities and services to the same extent as they are provided to resident students;
  - (iv) make a written request to the school district where the child's records are located for a copy of such records; and

- (v) forward the designation form to the commissioner, and the school district of origin, where applicable.
- (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 records, and guardianship papers, if applicable.
- (6) Any homeless child not entitled to receive transportation pursuant to Education Law, section 3209(4) from the Department of Social Services or from the Division for Youth, to the extent funds are provided for such purpose as determined by the director of the budget, shall be transported by the designated school district.
- (i) The designated school district shall 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.
  - (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.
  - (iii) Where a homeless child designates the school district of current location as the district the child will attend, such district shall provide transportation to such child on the same basis provided to resident students.
  - (iv) If a homeless child chooses to continue attendance in the public school building where he or she previously attended pursuant to subparagraph (2)(ii) or (iii) of this subdivision, the school district shall provide transportation to and from the child's temporary housing location and the school the child legally attends if such temporary housing is located in a different attendance zone or community school district within such district.
  - (v) 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.
  - (vi) 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.

(y) *Determination of student residency.* The board of education or its designee shall determine whether a child is entitled to attend the schools of the district. 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 or such district because such child is neither a resident of such district nor entitled to attend its schools pursuant to subdivision (x) of this section, 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:

- (1) that the child is not entitled to attend the public schools of the district;
- (2) the basis for the determination that the child is neither a resident of the school district nor entitled to attend its schools pursuant to subdivision (x) of this section;
- (3) the date as of which the child will be excluded from the schools of the district; and
- (4) 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 procedure for taking such an appeal may be obtained from the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234 or by calling (518) 474-5807.

(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 trustee 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) *School district report cards.*

- (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) in-service 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 continu-

ing 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 of 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) School district reporting requirements. Each year, beginning with the 1996-97 school year, each board of education and, in New York City, the City Board of Education and each community board of education, shall prepare a school district report card and shall make it 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. Such school district report card shall include:

(i) Measures of academic performance. Each year, the school district report card shall include, on a school-by-school basis, the student academic performance indicators applicable to such school as prescribed by the commissioner for such school year. Such academic performance indicators shall include, but need not be limited to:

(a) the performance of students in such schools on the State performance evaluation tests in reading, writing, mathematics, science and vocational courses; and

(b) the Regents examinations in English and languages other than English, mathematics, science and social studies, as designated by the commissioner. The school district report card shall compare such measures of academic performance to statewide averages for all public schools and statewide averages for public school districts of comparable wealth and need, as developed and distributed by the commissioner.

(ii) Measures of fiscal performance. Each year, the school district report card shall include expenditures per pupil on regular education and expenditures per pupil on special education. The school district report card shall compare such measures of fiscal performance to statewide averages for all public school districts and statewide averages for public school districts of comparable wealth and need, as developed and distributed by the commissioner.

(iii) Special education placements. Each year, the school district report card shall include the number and percentage of students in special education by placement, including both private and public school placements, and a comparison of such percentages to the statewide average.

(iv) Other measures. Each year, the school district report card shall include graduation and college-going rates; and attendance, suspension and dropout rates.

(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 service. 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.
- (dd) *Professional development plan.*
- (1) Requirement.
    - (i) By September 1, 2000, and annually by September 1 of each school year thereafter, each school district and Board of Cooperative Educational Services (BOCES) shall adopt a professional development 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 teachers participate in substantial professional development in order that they remain current with their profession and meet the learning needs of their students.
    - (ii) Such professional development plan may be a part of a comprehensive education plan of the district or BOCES, provided that the professional development plan meets all of the requirements of this subdivision, including the requirements related to collaboration with the professional development 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 may include the local special education com-

prehensive system of personnel development (CSPD) plan, developed pursuant to 34 CFR 300.221, as part of its professional development plan, provided that such professional development plan meets all requirements set forth in this subdivision and provided that such local CSPD plan meets all other requirements of Federal or state statute, regulation or policy.

- (2) Content of the plan. The professional development 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 development in the school district or BOCES;
  - (ii) a description of:
    - (a) how the school districts or BOCES provide all teachers they employ substantial professional development opportunities directly related to student learning needs as identified in the school district or BOCES report card and other sources as determined by the school district or BOCES. For plans covering the time period, February 2, 2004 and thereafter, each school district or BOCES shall describe in its plan how it will provide teachers it employs holding a professional certificate with opportunities to maintain such certificates in good standing based upon successfully completing 175 hours of professional development every five years as prescribed in Part 80 of this Title;
    - (b) teachers' expected participation in professional development, including but not limited to an estimate of the average number of hours each teacher is expected to participate in professional development in the school year covered by the plan;
    - (c) the alignment of professional development with New York standards and assessments, student needs, including but not limited to linguistic, cultural diversity and special needs, and teacher capacities;
    - (d) the articulation of professional development across grade levels;
    - (e) the efforts made to ensure that professional development is continuous and sustained and that the methods and approaches for delivering professional development have been shown to be effective;
    - (f) the manner in which the school district or BOCES will measure the impact of professional development on student achievement and teachers' practices; and
  - (iii) provision for the training of employees holding a teaching certificate or license in the classroom teaching service, school service, or administrative and supervisory service in school violence prevention and intervention. Each such employee shall be required to complete at least one training course in school violence prevention and intervention, which shall consist of at least two clock hours of training that includes but is not limited to, study in the warning signs within a developmental and social context that relate to violence and other troubling behaviors in children; the statutes, regulations, and policies relating to a safe nonviolent school climate; effective classroom management techniques and other academic supports that promote a nonviolent school climate and enhance learning; the integration of social and problem solving skill development for students within the regular curriculum; intervention techniques designed to address a school vio-

lence situation; and how to participate in an effective school/community referral process for students exhibiting violent behavior. Upon request of the employee who successfully completes such training course, the school district or board of cooperative educational services shall provide the employee with a certificate of completion attesting to the completion of the two clock hours of training in school violence prevention and intervention.

- (3) Development and adoption of the plan.
  - (i) The requirement 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 development 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 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; school administrators upon designation by the administrators' collective bargaining organization; teachers upon designation by the teachers' collective bargaining organization; at least one parent upon designation by the established parent groups 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; and one or more curriculum specialists, meaning a teacher or administrator whose primary job responsibility involves the development or evaluation of curricula, upon designation by the district or teachers' collective bargaining organization or both. In addition, the team shall include 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. 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.
    - (b) Notwithstanding the requirements of clause (a) of this subparagraph, members of the professional development team employed in or representing a school under registration review, pursuant to section 100.2(p) of this Title, 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 development team a period of at least 180 days to develop its recommended professional development plan and shall convene such team on or before October 1, except that for the 1999-2000 school year, such team shall be convened by October 8, 1999.

- (d) Such team shall submit to the board of education or to the BOCES a recommended professional development 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 development team's recommendation to the board of education or BOCES shall be presented to the board of education or BOCES on or before June 1, and the board of education or BOCES shall act on the plan by June 30. The final determination on the content of the professional development plan shall be the determination of the board of education or BOCES.
  - (e) The professional development plan shall be 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 development 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.
- (ii) The requirements of this subparagraph shall be applicable to the City School District of the City of New York.
  - (a) Each community school district, high school division, special education division and the Chancellor's district shall have a professional development plan.
  - (b) Each plan shall be developed through collaboration with a professional development team. The team members shall be designated for appointment in the manner prescribed in this clause, except as prescribed in clause (c) of this subparagraph. In the case of a community school district, the board of education of the community school district shall appoint the members of the team for the community school district. In the case of a high school division, special education division, and the Chancellor's district, the Chancellor of the City School District of the City of New York shall appoint the members of the team. The team, a majority of which shall be teachers, shall include the superintendent of the district for which the team was formed or his or her designee; school administrators upon designation by the administrators' collective bargaining organization; teachers upon designation by the teachers' collective bargaining organization; at least one parent upon designation by the established parent groups in the district, or, in their absence, by the Chancellor in the case of a high school division, a special education division or a Chancellor's district, or by the board of education of the community school district in the case of a community school district; one or more curriculum specialists, meaning a teacher or administrator whose primary job responsibility involves the development or evaluation of curricula, upon designation by either or both the teachers' collective bargaining organization, or by the Chancellor in the case of a high school division, a special education division or a Chancellor's district, or by the board of education of the community school district in the case of a community school 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. 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 development team employed in or representing a school under registration review, pursuant to section 100.2(p) of this Title, 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 by the board of education of the community school district in the case of community school districts, and appointed by the Chancellor without being designated by any other party in the case of high school divisions, special education divisions and the Chancellor's district.
- (d) In the case of high school divisions, special education divisions and the Chancellor's district, the Chancellor shall convene the professional development team on or before October 1, except for the 1999-2000 school year when such team shall be convened by October 8, 1999. The Chancellor shall permit the team a period of 180 days to develop its recommended professional development plan. Such team shall submit to the Chancellor a recommended professional development plan by a date specified by the Chancellor. The Chancellor may accept or reject the recommendations of the team in whole or part. Components of the plan not approved by the Chancellor shall be returned to the team for further consideration. Any subsequent modification in the professional development team's recommendation to the Chancellor shall be presented to the Chancellor on or before June 1, and the Chancellor shall act on the plan by June 30. The final determination on the content of the professional development plan shall be the determination of the Chancellor, in accordance with Education Law section 2590-h(14). In the event that the team does not make a recommendation to the Chancellor by the date specified by the Chancellor, the Chancellor may promulgate a professional development plan without such recommendation.
- (e) In the case of community school districts, each board of education of the community school district shall submit to the Chancellor of the City School District of the City of New York a recommended professional development plan by a date specified by the Chancellor. Such professional development plan shall be developed through collaboration with the community school district's professional development team. Each board of education of a community school district shall convene its professional development team on or before October 1, except for the 1999-2000 school year when such team shall be convened by October 8, 1999. The board of education of the community school district shall permit its professional development team a period of at least 180 days to develop its recommendations for the professional development plan. Such team shall submit to the board its recommended professional development plan by a date specified by the board. Components of the plan not accepted by the board of education of the community school district shall be returned to the team for further consideration and submitted to the board by a

date specified by the board. The board of education of the community school district may accept or reject the recommendations in whole or part. The board shall adopt final recommendations for the district's professional development plan for submission to the Chancellor. The Chancellor may accept or reject the recommendations of the board of education of the community school district in whole or part. Components of the plan not approved by the Chancellor shall be returned to the board of education of the community school district for further consideration. Any subsequent modification in the board's recommendation to the Chancellor shall be presented to the Chancellor on or before June 1, and the Chancellor shall act on the plan by June 30. The final determination on the content of the professional development plan shall be the determination of the Chancellor, in accordance with Education Law section 2590-h(14). In the event that the board of education of the community school district does not make a recommendation to the Chancellor by the date specified by the Chancellor, the Chancellor may promulgate a professional development plan without such recommendation.

- (f) 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 high school division, special education division and the Chancellor's district, such district's professional development team shall be required to review the plan on an annual basis; and in the case of a multi-year plan for a community school district, the board of education of the community school district shall be required to review the plan on an annual basis in collaboration with its professional development 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) 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 form and on a timetable prescribed by the commissioner, that:
    - (a) the requirements of this subdivision to have a professional development plan for the succeeding school year have been met; and
    - (b) the school district or BOCES has complied with the professional development plan applicable to the current school year.
  - (ii) The commissioner may request a copy of the professional development plan for review and may recommend changes to the plan to meet the learning needs of the students in the school district or BOCES.
- (5) Notwithstanding the requirements of this subdivision, participation in professional development 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.
- (6) Variance. A variance shall be granted from a requirement of this subdivision, upon a finding by the commissioner that a school district or BOCES has executed prior to

October 7, 1999 an agreement negotiated pursuant to Article 14 of the Civil Service Law, whose terms continue in effect and are inconsistent with such requirement.

(ee) *Academic intervention services.*

- (1) Requirements for providing academic intervention services in kindergarten to grade three. Schools shall provide academic intervention services to students in kindergarten to grade three 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 four to grade eight. Schools shall provide academic intervention services when students:
  - (i) score below the State designated performance level on one or more of the State elementary assessments in English language arts, mathematics, social studies or science;
  - (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 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.
- (3) Requirements for providing academic intervention services in grade nine to grade twelve. Schools shall provide academic intervention services when students:
  - (i) score below the State designated performance level on one or more of the State intermediate assessments in English language arts, mathematics, social studies or science, or score below the State designated performance level on any one of the State examinations required for graduation; or
  - (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 subdivision (ee) of this section. 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 subdivision (ee) of this section;

(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.

(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 subdivision (ee) of this section.
- (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.
- (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 Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities or a local department of social services 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 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 facilitate the prompt enrollment of students who are released or conditionally released and whose duties shall include, but are not limited to, the receipt of student records and serving as a district contact person with residential facilities and State and local agencies.