

Letter of Resolution
between the
New York State Office of Parks, Recreation and Historic Preservation
and the
New York State Education Department

For the purpose of expediting the review of projects in accordance with Article 14;
Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law

WHEREAS, the New York State Education Department (SED) may fund or grant approval for projects with the potential to impact buildings, structures, objects, or sites listed or eligible for listing in the State Register of Historic Places (State Register), and;

WHEREAS, the SED is required under Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law to evaluate in consultation with the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) such Undertakings for potential impacts to resources listed or eligible for listing in the State Register and to avoid, minimize or mitigate adverse impacts to such resources, and;

WHEREAS, the SED and OPRHP find benefit in establishing alternate procedures to implement Section 14.09 in a manner that will expedite the review of projects by identifying categories of resources that do not meet the criteria for inclusion in the State Register and by specifying categories of proposed actions that do not have the potential to adversely Impact Historic Resources:

NOW THEREFORE, the SED and OPRHP agree to implement the following procedures to facilitate review of SED funded projects while providing full consideration of potential impacts of such Undertakings to the Historic Resources of New York State; projects reviewed in accordance with this Letter of Resolution (LOR) will be considered in compliance with Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law.

1. Applicability and Scope of this LOR

- a. This LOR applies only to Undertakings subject to Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law. No project requiring review in accordance with Section 106 of the National Historic Preservation Act of 1966, as implemented by the regulations of the Federal Advisory Council on Historic Preservation, "Protection of Historic and Cultural Properties" (36 CFR 800), shall be reviewed under this LOR.
- b. SED shall designate an additional Agency Preservation Officer (APO) who shall serve as an liaison to OPRHP on matters affecting historic preservation with regard to public school facilities.

1. Definitions.

- (a) "State and National Register" shall mean the New York State and National Register of Historic Places.
- (b) "State and National Register" and "Historic Resources" shall mean any building, structure, object, site or landscape feature that meets the criteria for inclusion in the State and National Registers of Historic Places.

Programmatic Agreement between SED and OPRHP
regarding Review of School Construction Projects

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

2. Resources exempt from OPRHP review and comment.

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

Exception: proposed work at buildings or structures that are known to be the work of a recognized master architect, designer or builder, or are associated with persons or events significant in the history of the State of New York shall be submitted to OPRHP for review and comment.

- (b) Buildings or structures over 50 years of age that have been previously evaluated by OPRHP and found to not meet the criteria for inclusion in the State and National Register are exempt from

Programmatic Agreement between **SED** and OPRHP
regarding Review of School Construction Projects

further review. Where the project involves site work or any other activity that will lead to ground disturbance, those portions of the project shall be submitted for OPRHP's review of possible impacts to archeological resources.

Exception: if OPRHP receives information subsequent to the initial review that demonstrates the building is eligible for the State Register, OPRHP shall notify SED promptly and SED shall review all work taking into consideration that the structure is historic.

Exception: information received by OPRHP after initial review (e.g., evidence of pioneering or innovative school design) may demonstrate the State and National Register eligibility of buildings or structures previously determined not to be State and National Register eligible. Where such change of status is warranted, OPRHP will notify the SED of the revised determination by mail or electronically at the earliest opportunity.

- (c). Certain categories of work have been determined to have little or no potential to impact the character of historic resources and are therefore exempt from review by OPRHP. Such categories of work are included in Appendix A.

Appendix A may be amended from time to time to reflect categories of work not initially anticipated, to reflect new technologies or for any reason deemed appropriate by both OPRHP and the SED. Revisions to Appendix A are effective when initialed by OPRHP and by the SED.

3. Resources submitted for OPRHP review and comment

- (a). For each request to review and comment by OPRHP the following, at a minimum shall be submitted:
- 1) Project description, including proposed interior and exterior work.
 - 2) Applicable photos illustrating the areas to be effected by both interior and exterior work. Digital images are acceptable provided they are printed in color at a high resolution.
 - 3) If ground disturbance is proposed, include a USGS quad map illustrating the general location of the project and a more detailed site map showing the precise area of proposed disturbance.
 - 4) Applicable drawings and specifications.

4. Review Process

All work undertaken by the SED on historic structures should follow the Secretary of the Interior Standards for Rehabilitation¹, and Preservation Briefs 1² and 2³.

5. Reporting

OPRHP may monitor activities carried out pursuant to this LOR at their discretion. SED shall cooperate

¹ Washington, D.C., National Park Service. *Secretary of the Interior Standards for Rehabilitation*. http://www.nps.gov/history/hps/tps/standguide/rehab/rehab_standards.htm.

² Mack, Robert C. and Grimmer, Anne. *Preservation Brief 1: Assessing Cleaning and Water-Repellent Treatments for Historic Buildings*. <http://www.nps.gov/history/hps/tps/briefs/brief01.htm>. Washington, D.C.: Technical Preservation Services, National Park Service, 2000.

³ Mack, Robert C. and Speweik, John. *Preservation Brief 2: Repointing Mortar Joints in Historic Masonry Buildings*. <http://www.nps.gov/history/hps/tps/briefs/brief02.htm>. Washington, D.C.: Technical Preservation Services, National Park Service, 1998.

Programmatic Agreement between **SED** and OPRHP
regarding Review of School Construction Projects

with OPRHP with respect to such monitoring activities. OPRHP and the APO may continue to discuss scope of report during the duration of the Letter of Resolution and changes will be made upon mutual agreement.

6. Term of the Agreement

This LOR shall remain in force for five years from date of signature. Signatories may extend this LOR upon mutual agreement.

7. Amendment

Notwithstanding any other provisions of this LOR, any signatory to this LOR may request that it be amended, whereupon the signatories will consult to consider such amendment. Any amendment must be in writing and signed by OPRHP and SED.

8. Termination of Agreement

This LOR may be terminated at the request of any of the signatories to this LOR, within 30 calendar days of written notification to the other signatories. In the event the LOR is terminated, SED shall consult with OPRHP regarding its responsibilities under Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law for each proposed project.

NEW YORK STATE HISTORIC PRESERVATION OFFICE

BY: Ruth L. Pierpont DATE: 10/29/09
Ruth L. Pierpont
TITLE: Director, Historic Preservation Field Services Bureau
Office of Parks Recreation Historic Preservation

NEW YORK STATE EDUCATION DEPARTMENT

BY: Theresa E. Savo DATE: 5/30/10
Theresa E. Savo
TITLE: Deputy Commissioner for Operations
and Management Services

A Programmatic Agreement
between the
New York State Office of Parks, Recreation and Historic Preservation
and the
New York State Education Department

APPENDIX "A"

The following work items are exempt from OPRHP review:

I. Site work

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

Programmatic Agreement between **SED** and OPRHP
regarding Review of School Construction Projects

II. Exterior

- Repair/ replacement of flat roofs, roof hatches, roof drains, and rooftop mechanical, electrical, and plumbing equipment.
- Repair/ replacement-in-kind of the surface materials on pitched roofs.
- Masonry cleaning and restoration work will be appropriate on the condition that it follows the guidelines in Preservation Briefs 1 and 2,^{1,2} and that drawings are submitted to OPRHP for review and approval.
- Masonry repair and repointing on up to 50% of a building on the condition that it follows the guidelines in Preservation Brief 2.²
- Replacement of non-original windows that were installed in the 1960s or later with windows that either match the configuration and proportions of historic windows, the current configuration, or have one-over-one sash. If the replacement windows have muntins, they should ideally be either true divided lights or a three part grid system which includes an interior, exterior, and a spacer bar. If this can not be done, an exterior applied muntin is acceptable. However, muntins applied only to the interior or placed only between the double insulated glass panels are not acceptable.
- Repair/ replacement-in-kind of window guards.
- Repair/ replacement-in-kind of speakers and public address systems on the condition that no trim or architectural features are altered.
- Installation or replacement of video surveillance cameras, fire alarm systems, and security systems on the condition that no trim or architectural features are altered.
- Installation or replacement of exterior/security lighting on the condition that no trim or architectural features are altered and that the fixtures are not mounted directly to masonry.
- Installation or replacement of lightning protection on the condition that no architectural features are altered.
- Repair/ replacement of exterior door hardware.
- Repair/ replacement-in-kind of non-decorative exterior hollow metal doors.
- Repainting of exterior masonry.
- Recaulking of exterior coping stones.

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

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

Programmatic Agreement between **SED** and OPRHP
regarding Review of School Construction Projects

- Repair/ replacement-in-kind of exterior coping stones.
- Installation of new roof top mechanical, electrical, and plumbing equipment to support interior curriculum revisions listed below, where not visible from the street at the primary facade
- Installation or replacement of exterior connections for sprinkler and standpipe systems on the condition that no trim or architectural features are altered.

III. Interior

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

Programmatic Agreement between **SED** and OPRHP
regarding Review of School Construction Projects

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

- IV. Mechanical Systems, Electrical Systems, and Plumbing Systems

- Installation and replacement of heating ventilation and cooling systems other than in original libraries, auditoriums and lobbies, on the condition that no trim or architectural features are altered. Note that ductwork visible in areas other than utilitarian basement areas should be reviewed by OPRHP.
- Installation of backflow preventers, water mains, switch gear upgrades, new gas services, and other main utility upgrades. This includes gas pipe runs within the building and exterior runs where not visible from the street.
- Installation, repair, and replacement of automatic HVAC control systems on the condition that no trim or architectural features are altered.

Programmatic Agreement between **SED** and OPRHP
regarding Review of School Construction Projects

- All other mechanical, electrical & plumbing work in boiler rooms, fan rooms, utility rooms, storage rooms and custodial spaces on the condition that no trim or architectural features are altered.
- Installation or replacement of mechanical, plumbing, and electrical distribution equipment on the condition that no trim or architectural features are altered.
- Note that penetrations greater than 6" in diameter through walls or floors or wall removal for pipe or duct removal/installation should be reviewed by OPRHP.

V. Health & Safety Hazards

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