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## Commissioner's Consents/Regents' Authorization

Education Law §216 gives the Board of Regents broad authority to incorporate educational institutions by issuing them a charter. Institutions issued a Regents charter are incorporated as education corporations. In general, the following institutions must be chartered by the Board of Regents: (1) a college, university or other institution of higher education; (2) a nursery, elementary, secondary or charter school; (3) a library, archives, museum, historical society or other cultural institution; and (4) a public television or public radio station.

Institutions with educational purposes may also be incorporated under the Not-for-Profit Corporation Law (NPCL) or the Business Corporation Law (BCL), or organized under the Limited Liability Company Law (LLCL), by filing with the Department of State. However in some instances, as further discussed below, the consent of the Commissioner of Education or written authorization of the Regents must be obtained before becoming incorporated by the Department of State or before certain documents may be filed with the Department of State.

The provisions of the Non-Profit Revitalization Act of 2013 (L.2013, Ch. 549) generally became effective on July 1, 2014 and, among other things, include amendments to the Not-for-Profit Corporation Law and Education Law that change the process for filing certificates of incorporation and other corporate documents with the Department of State, including requirements for obtaining the consent of the Commissioner of Education or authorization from the Regents for such filings. The following summarizes the Commissioner's consent/Regents authorization requirements under the Education Law (Ed L) and the Not-for-Profit Corporation Law (NPCL), as amended by the Act.

### 1. Corporate purposes requiring Commissioner's consent or Regents' authorization

- Effective July 1, 2014, the consent of the Commissioner of Education is generally required to form a corporation through the Department of State only if the corporate purposes include the operation of a school; college, university or other entity providing postsecondary education; library; or museum or historical society. The Regents' written authorization is required to operate a college or university [Ed L §216; NPCL §404(d)].
- Effective July 1, 2014, organizations with educational purposes that do not include the operation of a school; college, university or other entity providing postsecondary education; library; or museum or historical society generally do not require the Commissioner's consent in order to incorporate through the Department of State. However, such corporation must provide a certified copy of its certificate of incorporation to the Commissioner within 30 business days after the corporation receives confirmation from the Department of State that the certificate has been accepted for filing [NPCL §404(d)].
- **Preschool Special Education approved programs.** In addition to the above, Commissioner's consent is also required to incorporate or form an "approved program", as defined in Ed L §4410(1)(b), under the Not-for-Profit Corporation Law, the Business Corporation Law, the Limited Liability Company Law, or Partnership Law, to provide special services or programs to preschool children with disabilities [Ed L §4410(6)].

### 2. Corporate Names and Assumed Names

**NOTE:** this page printed without the link, which is: <http://www.counsel.nysed.gov/consents>

- The Regents' written authorization is required to confer any degree or use advertise or transact business under the name "university" or "college", or any name or descriptive material indicating or tending to imply operation of a school of law, medicine, dentistry, pharmacy, veterinary medicine, nursing, optometry, podiatry, architecture or engineering [Ed L §§ 216 and 224(1)(a)].
- Commissioner's consent is required when an individual, association, partnership, company or corporation seeks to use, advertise or transact business under the name "museum" or "arboretum", or any name, title or descriptive material indicating or tending to imply a museum or arboretum [Ed L §216].
- Effective July 1, 2014, Commissioner's consent is **not** required for a Not-for-Profit Corporation's use of the following education-related terms, or any abbreviation or derivative, in a corporate name, with the exception of the terms College, University, Museum and Arboretum [Ed L §§ 216 and 224(1)(a)]. However, Commissioner's consent is **still required** for a Business Corporation, a Limited Liability Company or Limited Partnership to use such terms in a corporate, company or partnership name [NPCL §404(w), as amended by §49 of L.2013, Ch.549; BCL §301(a), LLCL §204(i); Partnership Law §121-102(a)(3)]. In addition, Commissioner's consent is required before a corporation, limited partnership or limited liability company may file a certificate under General Business Law (GBL) §130 for the use of an assumed name that includes any of the terms listed below, [GBL §130(2)(c)] .

school

education

elementary

secondary

kindergarten

prekindergarten

preschool

nursery school

museum

history

historical

historical society

arboretum

library

college, university or other term restricted by Education Law §224

conservatory

academy

institute

- Regents consent is required before an education corporation may file an assumed name certificate under General Business Law §130 [GBL §130(11); Ed L §219(5)].

### 3. Certificates of Amendment

- Effective July 1, 2014, Commissioner's consent is required to file a certificate of amendment with the Department of State only if the amendment adds, changes or eliminates a purpose, power or provision which includes the operation of a school; college, university or other entity providing post secondary education; library; or museum or historical society, or if the amendment changes the name of a corporation whose certificate of incorporation required the Commissioner's consent [NPCL §804(a)(i); Ed L §216].
- Effective July 1, 2014, corporations with educational purposes that seek to file a certificate of amendment with the Department of State that does not include the operation of a school; college, university or other entity providing postsecondary education; library; or museum or historical society,

or does not include a change of name of a corporation whose certificate of incorporation required the Commissioner's consent, are not required to obtain the Commissioner's consent in order to file the certificate of amendment with the Department of State. However, such corporation must provide a certified copy of its certificate of amendment to the Commissioner within 30 business days after the corporation receives confirmation from the Department of State that the certificate has been accepted for filing [NPCL §804(a)(i); Ed L §216 ] .

#### 4. Certificates of Merger/Consolidation

- Commissioner's consent is required for the filing of a certificate of merger or consolidation under NPCL Article 9 if the corporate purposes of the surviving or consolidated corporation include the operation of a school; college, university or other entity providing postsecondary education; library; or museum or historical society [NPCL §§404(d) and 909(a); Ed L §216].
- Effective July 1, 2014, if the purposes of any constituent or consolidated corporation having educational purposes do not include the operation of a school; college, university or other entity providing postsecondary education; library; or museum or historical society, the corporation is not required to obtain the Commissioner's consent in order to file a certificate of merger with the Department of State. However, such corporation must provide a certified copy of its certificate of merger to the Commissioner within 30 days after the corporation receives confirmation from the Department of State that the certificate has been accepted for filing [NPCL §§404(d) and 909(b); Ed L §216] .
- Commissioner's consent is required for the filing of a certificate of consolidation or certificate of merger with the Department of State if any constituent corporation to such consolidation or merger, or the consolidated corporation, is or will be an education corporation [Ed L §216-a(4)(d)(10) and (11)].

#### 5. Dissolutions

- In a proceeding for non-judicial dissolution under Article 10 of the Not-for-Profit Corporation Law, the Commissioner's consent is required to be annexed to or endorsed on the certificate of dissolution of a Not-for-Profit corporation whose corporate purposes include the operation of a school; college, university or other entity providing postsecondary education; library; or museum or historical society [NPCL §§404(d) and 1003(b)(1); Ed L §216].
- Regents consent is required before a petition for judicial dissolution of an education corporation under Article 11 of the Not-for-Profit Corporation Law may be presented [Ed L §216(4)(d)(13) and NPCL §1102(a)].

#### 6. Applications for Authority to do business in New York State

- Effective July 1, 2014, Commissioner's consent is required to file an application for authority if the application sets forth a purpose or activity which includes the operation of a school; college, university or other entity providing postsecondary education; library; or museum or historical society, or includes a corporate or company name which requires Commissioner's consent under section 2. Above [NPCL §§404(d) and 1304(c); Ed L §216].
- Effective July 1, 2014, a foreign corporation with educational purposes that seeks to file an application for authority with the Department of State that does not include the operation of a school; college, university or other entity providing postsecondary education; library; or museum or historical society, or include a corporate name which requires Commissioner's consent under section 2. above, is not required to obtain the Commissioner's consent. However, such corporation must send by certified mail, return receipt requested, a certified copy of the application for authority to the Commissioner within 10 business days after the corporation receives confirmation from the Department of State that the application for authority has been accepted for filing [NPCL §404(d) and 1304(d); Ed L §216].

## Consent Process

- [How do I apply for consent?](#)
- [Where do I send my corporate documents?](#)
- [Frequently Asked Questions and Answers](#)
- [Consent Forms](#)



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## ABOUT ED (/ABOUT/LANDING.JHTML?SRC=LN) / INITIATIVES

# New York State Regulations

Updated October 6, 2015

State Regulation of Private and Home Schools — Map (/about/inits/ed/non-public-education/regulation-map/index.html)

## Private Schools

### Accreditation, Registration, Licensing, and Approval

- *Accreditation*: no requirements
- *Registration*: optional
  - The commissioner of education governs the registration of nonpublic high schools. 8 *Codes, Rules and Regulations of the State of New York (CRR-NY)* §13.1.
  - Nonpublic schools are permitted to register. Only registered nonpublic high schools may issue diplomas and administer Regents Examinations. 8 *CCR-NY* 100.2(p).
  - A nonpublic school may be registered as a nursery school and/or kindergarten. Change in ownership nullifies the registration. 8 *CCR-NY* 125.10. Requirements for those schools are found in 8 *CCR-NY* Part 125.
  - Registration may be placed under review when students in a registered nonpublic school scores are below the criteria list in 8 *CCR-NY* 100.2(p)(13).
  - A nonpublic school must submit information and allow an on-site visit to the school by a staff member in the New York State Education Department's Bureau of School Registration in order to register with the Board of Regents per New York State Education Department Manual for New Administrators of Nonpublic Schools, State Requirements and Programs (<http://www.p12.nysed.gov/nonpub/manualfornewadministratorsfnps/statereqs.html>).
- *Licensing*: no requirements
- *Recognition*: optional
  - An entity seeking authorization or approval to operate a nonpublic school in New York State must incorporate in the following manner, depending on school type. A religious nonpublic school that is affiliated with a religious institution is considered incorporated under the auspices of the religious institution; a religious school that wishes to become independent may obtain a charter and have separate incorporation as an educational corporation, but this is not required. An independent school may be either not-for-profit or for-profit. An independent not-for-profit school must obtain a provisional charter from the Board of Regents, which serves as incorporation as an education corporation. An independent for-profit entity must incorporate with the New York State Department of State after being approved by the education department through a commissioner's consent per New York State Education Department's website (<http://www.p12.nysed.gov/nonpub/starting/>).

## Teacher Certification

- Instruction may only be given by a competent teacher. *New York Education Law (N.Y. Edn. Law) §3204.2.*
- All professional instructional and supervisory personnel at private schools providing public placements for children with disabilities must be appropriately certified. 8 *CCR-NY 200.7(b)(6).*
- Coaches of high school extra-class nonpublic school athletic activities must meet and stay current in training requirements in first aid and adult cardiopulmonary resuscitation. *N.Y. Edn. Law §3001-c.*
- The department of education has established a teacher career recruitment clearinghouse, which provides nonpublic schools with (1) an applicant database; (2) information regarding financial assistance for students interested in careers in education or employment opportunities in education; and (3) information about certification and licensure requirements. *N.Y. Edn. Law §3034.*

## Length of School Year and Days

- Unless shorter instruction time has been approved by school authorities as substantially equivalent in amount and quality, students attending nonpublic schools must attend for at least as many hours as required in public schools. In addition, permitted absences must follow the general rules and practices of the public schools. Absence for religious observances and education are permitted under rules established by the commissioner. Holidays and vacations must not exceed the amount allowed by public schools. *N.Y. Edn. Law §3210.2.*
- A full-time day school must be in session for not less than 190 days each year, inclusive of legal holidays during the term and exclusive of Saturdays. Accounting for the 10 state public holidays, schools must be session 180 days. *N.Y. Edn. Law §3204.4.*
- Nonpublic schools receiving state aid must have a minimum of 2 1/2 instructional hours for half-day kindergarten, five instructional hours for full-day kindergarten and grades one through six, and 5 1/2 instructional hours for grades seven through 12. 8 *CCR-NY 175.5.*

## Curriculum

- Instruction given to a minor elsewhere than in a public school must be substantially equivalent to the instruction given at the local public school. *N.Y. Edn. Law §3204.2.*
- The course of study for the first eight years of public school must include arithmetic, reading, spelling, writing, the English language, geography, United States history, civics, hygiene, physical training, the history of New York state, and science. Beyond the first eight years, instruction must include the English language and its use, civics, hygiene, physical training, American history including the Declaration of Independence and the Constitution of the United States, and may include a course in communism and its methods and its destructive effects. *N.Y. Edn. Law §3204.3.*
- English is the language of instruction, and textbooks used must be written in English, except for a limited time (3 to 6 years) for students with limited English proficiency. *N.Y. Edn. Law §3204.2.*
- As part of health education, all schools must provide instruction to discourage the misuse and abuse of alcohol, tobacco, and other drugs; and promote attitudes and behavior that enhance health, well-being, and human dignity. *N.Y. Edn. Law §804.*
- Students may be excused from health and hygiene if it conflicts with their parent or guardian's religion and is certified by a representative of their religion. *N.Y. Edn. Law §3204.5.*
- Private schools offering instruction deemed substantially equivalent to public schools must offer courses of instruction in patriotism, citizenship, and human rights issues (with particular attention to the study of the inhumanity of genocide, slavery, and the Holocaust) for students over 8 years old, and instruction in the Constitution of the United States and New York and the Declaration of Independence for students in grades eight through 12. *N.Y. Edn. Law §801.1, 2.*
- Similar physical education courses to those required of public schools shall be prescribed and maintained in private schools in the state, and all pupils in grades kindergarten through 12 shall attend such courses. 8 *CCR-NY 135.4.*

- Private and parochial schools must provide instruction in fire and arson prevention as prescribed by the commissioner of education. Instruction must be given at least 45 minutes every month while school is in session. *N.Y. Edn. Law §808.*
- Private schools offering instruction deemed substantially equivalent to public schools must offer instruction in highway safety and traffic regulations, including bicycle safety. *N.Y. Edn. Law §806.1.*
- The New York State Theatre Institute offers guidance and consultation on arts and education programs in private elementary and secondary schools. *New York Arts and Cultural Affairs Law (N.Y. Arts & Cult. Aff. Law) §9.07.*
- A registered nonpublic school operating prekindergarten and/or kindergarten programs must adopt and implement curricula aligned with the state learning standards that provides continuity to the instruction of early elementary grades and through grade 12. Information on the standards to be included can be found in *8 CRR-NY 100.3.*

## Recordkeeping and Reports

- The commissioner of education is under a statutory duty to establish procedures for a statewide system of assigning unique student identification numbers for all students in public and nonpublic schools for student tracking and state reporting purposes. *N.Y. Edn. Law §305.22.*
- Teachers are required to keep an accurate record of attendance as prescribed by the commissioner of education. Principals must ensure attendance records are maintained and produced if requested by school authorities. The principal must notify school authorities in writing of any student transfers or discharges. Additionally, the nonpublic school must have a comprehensive attendance policy as elaborated in *8 CCR-NY 104.1 (i)*, *8 CCR-NY §104.1* and *N.Y. Edn. Law §3211.*
- Boards of Cooperative Educational Services of New York State are authorized to enter into contracts with nonpublic schools to provide data processing service for pupil personnel records and other administrative records of the nonpublic schools. *N.Y. Edn. Law §1950.4.h.4.*
- Nonpublic schools that are members of the University of the State of New York must complete verified reports as prescribed by the regents or the commissioner of Education. *N.Y. Edn. Law §215.* In addition, these schools must provide information to the regents for their annual report to the governor and the legislature concerning the schools of the state. *N.Y. Edn. Law §215-a.*
- Nonpublic schools must maintain individual pupil records. If a nonpublic school discontinues operation, it must notify the commissioner and the chief school administrator in the district where the school is located. If the pupil academic records are not transferred to another school or agency, the nonpublic school that has discontinued its operation must transfer the records to the school district in which the school is located, and the chief school administrator will be responsible for permanently maintaining such records. *8 CCR-NY 104.2.*
- Nonpublic schools may make purchases, except of printed material, through the State Division of Standards and Purchase, Office of General Services. Boards of education may permit nonpublic schools to make purchases through the local school district provided administrative costs are paid by the nonpublic schools. *N.Y. Gen. Mun. Law §109-a.*
- The commissioner of education is under a statutory duty to give timely notice to nonpublic schools of alternate sources of funding, including competitive grants. *N.Y. Edn. Law §305.2.*
- Nonpublic schools must provide a comprehensive assessment report for the three school years prior to the reporting school year. The report must include student test data, student enrollment, data on diplomas and certificates, information on the number of students transferred to alternative high schools, high school equivalency preparation programs as described in *8 CCR-NY 100.7*, and additional information the chief administrative office of the nonpublic school finds relevant or the commissioner requests. *8 CCR-NY 100.2 (m)(5).*

## Health and Safety Requirements

- Students attending private schools must have certificates of immunization unless a physician certifies that the immunization is detrimental or if immunization is contrary to the genuine and sincere religious beliefs of the parents or guardians. School principals may not admit students in excess of 14 days who do not have a certificate. (The period may be extended to 30 days if plans for the immunization are in progress.) School principals have a duty to inform parents or guardians of the necessity of immunization and the availability of free immunizations through the local health officer. If students are excluded from school for lack of immunization, principals must notify the local health authority and the parents or guardians and provide an opportunity for immunization through the local health authority if the parent consents. *New York Public Health Law (N.Y. Pub. Health Law) §2164.*
- Smoking is prohibited in all private schools and on school grounds, with an exception for adult faculty and staff members, who may be permitted to smoke in designated areas during non-school hours. (School hours include periods when any student activity or any officially sanctioned school event is supervised by faculty or staff.) *N.Y. Pub. Health Law §1399-o.*
- Private school authorities may ask students to be examined for drug abuse and submit to a urine analysis upon written consent of the parents. *N.Y. Edn. Law §912-a.*
- Private school administrators have a duty to train pupils to exit the building in a sudden emergency. Fire drills must be conducted at least 12 times each school year; eight of the drills must be held between September 1 and December 1; one-third of the drills should use fire escapes on buildings if provided; and at least one drill should instruct students how to leave the building during lunch period. With regard to boarding schools and summer programs, additional drills are prescribed in N.Y. Edn. Law §807. An administrator failing to comply with this provision is guilty of a misdemeanor. *N.Y. Edn. Law §807.*
- Private schools must submit the most current plan and specification of their school building to the local fire and law enforcement officials. *N.Y. Edn. Law §408-b.*
- Administrators of private schools (i.e. those with a kindergarten with six or more pupils and establishments other than public schools with 25 or more pupils) must have the school buildings inspected annually for fire hazards. Inspections must be conducted prior to December 1, and a report must be filed with the state fire administrator on forms provided by the commissioner of education. The provision is inapplicable for school authorities in New York City, Buffalo, Rochester, Syracuse, and Yonkers. *N.Y. Edn. Law §807-a.*
- Private schools located in areas with local fire departments unequipped with electronically operated fire alarm reporting systems may have their internal school fire alarms interconnected with the fire alarm reporting location or system. Installation and maintenance costs must be apportioned to the school authorities. *N.Y. Edn. Law §807-c.* Private schools having a central annunciator panel identifying activated alarms must locate the panel so it can be read without entering the building. *N.Y. Edn. Law §807-d.*
- Private and parochial schools must have a pesticide notification procedure for staff and parents or guardians if pesticide application occurs on school grounds. If parents or guardians wish, they can register with the school to receive notification 48 hours prior to application. The schools must also provide the staff and parents or guardians an accounting of pesticide applications during the year within 10 days of the end of the school year and within two days of the end of winter and spring recess. *N.Y. Edn. Law §409-h.*
- The commissioner of general services in consultation with others must establish and amend guidelines of what environmentally sensitive cleaning and maintenance products should be used in elementary and secondary schools, including private and parochial schools. *N.Y. Edn. Law §409-i.*
- The Division of Criminal Justice Services must disseminate a missing children's bulletin to the state education department for public and private school use. The division will help the private schools develop education and prevention programs concerning child safety. *N.Y. Exc. Law §837-f.*
- New York restricts retail liquor licenses for on-premises consumption within 200 feet of a building used exclusively as a school. *N.Y. Alco. Bev. Cont. Law §64.7.*

- Administrators of private schools must arrange for every participant in shop or laboratory classes involving dangerous activities, as specified, to wear eye safety devices in accordance with state regulations. *N.Y. Edn. Law §409-a.*
- Nonpublic school administrators must require that batboys and bat girls participating in baseball and softball competitions wear protective headgear when on the field and the game is in play. *N.Y. Edn. Law §409-c.*
- New York State has a healthy and safe school environment grant available to nonpublic schools. *N.Y. Edn. Law §549.*
- Nonpublic schools are permitted to have licensed registered professional health care personnel train unlicensed personnel to inject prescribed glucagon or epinephrine auto injectors in emergency situations, where an appropriately licensed health professional is not available, when there is written permission of a physician and written parental consent. *N.Y. Edn. Law §921.*
- In New York City, smoking or using electronic cigarettes is prohibited on school grounds of private schools. *NYC Admin Code §17-503.*
- The commissioner must develop rules and regulations to require fingerprinting of prospective employees of nonpublic schools. The nonpublic schools that elect to fingerprint have the responsibility to inform the prospective employee of requirements for fingerprinting and a background check. *N.Y. Edn. Law §305.30.*

## Transportation

- The New York Constitution allows the state legislature to provide transportation for students to and from private schools. *New York Constitution Art. XI, Sec. 3.*
- Non-city school districts are required to provide transportation for students living up to 15 miles from their school. Transportation is provided for all children residing within the school district who are in need (students in kindergarten through grade eight residing more than 2 miles from school and those in grades nine through 12 residing more than 3 miles from school. City school districts are not generally required to provide transportation; but if provided, transportation must be offered equally to all children in like circumstances. Transportation from centralized pickup points at public schools may be provided to pupils attending nonpublic schools under certain circumstances. Superintendents of cities in excess of 1 million must notify nonpublic school officials who have requested transportation of the school calendar for the following year by June 1. *N.Y. Edn. Law §3635.1.a-c; 2-a.*
- The commissioner of transportation has authority to regulate for safety all motor vehicles transporting passengers to and from schools, for hire, or owned and/or operated by any private school. *N.Y. Transp. Law §140.2.a.(i).*
- Nonpublic school vehicle operators may apply for reimbursement of the motor vehicle tax expended exclusively in education-related activities. *N.Y. Tax Law §289-c.3.e.*

## Textbooks

- Upon request, local school districts have the power and the duty to loan textbooks free of charge to children enrolled in nonpublic schools. Textbooks must be designated for use by public schools or approved by school authorities. School districts must loan textbooks to public and nonpublic schools on an equitable basis. *N.Y. Edn. Law §701.3,4.*
- The loan of free textbooks to parochial schools does not violate the New York Constitution. *Bd. of Education v. Allen, 228 N.E.2d 791 (1967).*
- School districts have the power and duty to loan school library materials to pupils attending private schools. The materials must be designated for use in any public elementary or secondary school of the state or approved by the board of education, trustees, or other school authorities. *N.Y. Edn. Law §712.*

## Testing

- Students at a registered nonpublic high school are eligible to receive a Regents Diploma or a local diploma if they complete the curriculum described in 8 CCR-NY 100.5.
- Alternative testing can be used for students determined by the committee on special education as having a handicapping condition or students whose native language is other than English, with restrictions concerning the Regents Competency Tests in reading and writing. Nonpublic schools must report the use of alternative testing procedures to the New York State Department of Education. 8 CCR-NY 100.2 (g).
- A nonpublic school, not including a registered high school, will be placed under department review when the school scores below one or more of the review criteria discussed in 8 CCR-NY 100.2(p). These criteria include results of assessments. 8 CCR-NY 100.2 (z).

## Special Education

- Upon a parent or guardian's written request, nonpublic schools students may receive services for gifted pupils, occupational and vocational education, and education for students with disabling conditions and related services provided the instruction is given to public school students. Transportation is provided if the distance between the nonpublic school and the public school exceeds one-quarter mile, except students with disabilities receive transportation according to their needs. Students are considered dually enrolled for the purposes of receiving the services. *N.Y. Edn. Law §3602-c.*
- School districts may provide students with disabilities special services or programs through contracts with private residential and nonresidential schools approved by the commissioner. *N.Y. Edn. Law §4401.2 (e), (f), and (g).*
- All professional instructional and supervisory personnel at private schools providing public placements for children with disabilities must be appropriately certified. 8 CCR-NY 200.7(b)(6).
- School boards must provide suitable transportation up to a distance of 50 miles to and from a nonpublic school which a child with disabilities attends to receive special education services. *N.Y. Edn. Law §4402.4 (d).*
- The state department of education has a duty to audit nonpublic schools receiving public money for services to children with disabilities. *N.Y. Edn. Law §4403.5.*
- A nonpublic school may issue a high school individualized diploma to a pupil with a disability as defined in 8 CCR-NY 200.1(mm). 8 CCR-NY 100.9.

## Nursing and Health

- Upon request, local school districts must provide all health and welfare services and facilities that are available to public school students to students attending schools other than public ones. Services may include, but are not limited to, those performed by a physician, dentist, dental hygienist, nurse, school psychologist, social worker, or speech therapist; maintenance of health records; and emergency care programs for ill or injured pupils. *N.Y. Edn. Law §912.*
- Private schools are eligible to apply to the office of mental health for education grants for the identification and treatment of adolescents who are at high risk for suicide. *N.Y. Mental Hyg. Law §41.49.*
- Nonpublic secondary schools must have a guidance and counseling program for students in grades seven through 12. 8 CCR-NY 100.2 (j)(2).
- In New York City, the department of education must provide at least one full-time nurse to a private primary or intermediate school with at least 200 students that submits a written request and has a suitable medical room. *NYC Admin Code §17-187.*

## Technology

- Upon request, local school districts will loan computer software to private school students free of charge. Software programs must be designated for use in any public school or approved by school authorities. 8

### CCR-NY 752.

- Upon request from an individual or group of individual nonpublic school students, local school districts must loan smart schools classroom technology free of charge. *N.Y. Edn. Law §755.*
- Twenty-first century (public) schools cannot be exempted from the part of the state education regulation that requires teacher, staff, and parent participation and involvement; maintenance of effort; or equitable participation of students and staff in nonpublic schools. *N.Y. Edn. Law §309-a.*
- The commissioner of education may approve applications from school districts and boards of cooperative educational services for funding for approved learning technology programs, including services benefiting nonpublic school students pursuant to §550 of Chapter 170 of the *N.Y. Laws of 1994*. 8 *CCR-NY 144.8(a).*

## Professional Development

- No state policy currently exists.

## Reimbursement for Performing State and Local Functions

- The state commissioner of education annually apportions to qualifying schools (nonprofit, nonpublic schools providing instruction in accordance with *N.Y. Edn. Law §3204*) the actual cost incurred by each school for compliance with state requirements of the pupil evaluation program, basic educational data systems, Regents Examinations, the statewide evaluation plan, uniform procedures for pupil attendance reporting, and other similar state-prepared examinations and reporting procedures. 1974 *N.Y. Laws*, chapter 507, as amended by chapter 508. The current list of mandated actions that are eligible for reimbursement is found [here](#).

## Home Schools

### Home Education Programs

- Parents of students of compulsory school attendance age must submit written notice to the superintendent of schools of their school district of residence of their intention to educate their child at home by July 1 of each school year. If parents decide to commence home instruction after the start of the year, they must submit the written notice within 14 days. 8 *CCR-NY 100.10.*

### Initial and Renewal Applications

- Within 10 business days of receiving the parent's notice of intention, the school district must provide parents a copy of 8 *CCR-NY 100.10* and a form to submit an individualized home instruction plan (IHIP). 8 *CCR-NY 100.10.*
- The parent must submit a completed IHIP within four weeks of receiving the materials, or by August 15, whichever is later. If the parent needs assistance in preparing the forms, the district must provide it upon request. 8 *CCR-NY 100.10.*
- The school district must notify the parent within 10 business days, or by August 31, whichever is later, whether or not the IHIP complies with state requirements. If the IHIP is found deficient, the school district must provide written notice of its deficiency. 8 *CCR-NY 100.10.*
- If the IHIP is found deficient, the parent must submit a revised IHIP correcting the deficiency within 15 days of receiving notice of the deficiency or by September 15, whichever is later. 8 *CCR-NY 100.10.*
- The IHIP must include the child's name, age, and grade level; a list of the syllabi, curriculum materials, textbooks or plan of instruction to be used in each of the required subjects; the dates for submission to the school district of the parents' quarterly reports; the names of the individuals providing instruction; and a

statement that the child will be meeting the compulsory educational requirements of Education Law, section 3205 through full-time study at a degree-granting institution. 8 *CCR-NY* 100.10.

## Curriculum and Instruction

- Required courses for grades one through six are arithmetic, reading, spelling, writing, the English language, geography, United States history, science, health education, music, visual arts, physical education, and bilingual education and/or English as a second language where the need is indicated. 8 *CCR-NY* 100.10 (e).
- Required courses for grades seven and eight are English, history, geography, science, mathematics, physical education, health education, art, music, practical arts, and library skills. 8 *CCR-NY* 100.10 (e).
- Required courses for grades nine through 12 are English; social studies, including American history, government, and economics; mathematics; science; art and/or music; health education; physical education; and three electives. 8 *CCR-NY* 100.10 (e).
- All grades must cover the following subjects: patriotism and citizenship; health education regarding alcohol, drug and tobacco misuse; highway safety and traffic regulations, including bicycle safety; and fire and arson prevention and safety. 8 *CCR-NY* 100.10 (e).
- Instruction must be the substantial equivalent of 180 days each school year. Cumulative hours of instruction are mandated as 900 hours for grades one through six and 990 hours for grades seven through 12. 8 *CCR-NY* 100.10 (f).

## Assessment and Diplomas

- Parents must submit a quarterly report for each home-instructed child indicating the number of instructional hours during the quarter, a description of material covered, a grade in each subject or narrative of the child's progress, and an explanation if less than 80 percent of the course materials set forth in the IHIP. 8 *CCR-NY* 100.10 (g).
- With the filing of the fourth quarterly report, the parent must also file an annual assessment, which must include the results of a commercially published norm-reference achievement test or an alternative method listed in regulations of 8 *CRR-NY* 100.10 (h). 8 *CRR-NY* 100.10 (h).
- If a child's annual assessment does not comply with the requirements of 8 *CCR-NY* 100.10 (h), the home instruction program will be put on probation and the parent must submit a remediation plan. If there are reasonable grounds to believe that the home instruction program is not in compliance with these regulations, the superintendent of schools can conduct or send a representative for a home visit after providing three days' written notice. 8 *CRR-NY* 100.10 (i).

## Special Education

- Solely for the purpose of providing services to students with disabilities in a home instruction program, those students are considered nonpublic school students. *N.Y. Edn. Law* §3602-c (2-c).

## Public School Access

- A student is eligible to participate in interschool competition if the student is registered in the equivalent of three regular courses within 15 days of the beginning of the semester, is meeting the physical education requirement, and has been in regular attendance 80 percent of the school time. 8 *CCR-NY* 135.4 (c)(7)(ii)(b) (2).

## Web Resources



## Information and Legislation

- New York State Education Department: Home Instruction (<http://www.p12.nysed.gov/sss/homeinstruction/>)
- New York State Education Department: Nonpublic Schools (<http://www.p12.nysed.gov/nonpub/>)
- New York State Education Department: Manual for New Administrators of Nonpublic Schools (<http://www.p12.nysed.gov/nonpub/manualfornewadministratorsofnps/home.html>)
- New York State Education Department: Policy & Guidance (<http://www.nysed.gov/policy-guidance>)
- Code, Rules and Regulations of the State of New York ([https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Browse/Home/NewYork/NewYorkCodesRulesandRegulations?transitionType=Default&contextData=(sc.Default)))

## Contact Information--State and Federal Departments of Education

- New York State Education Department  
89 Washington Avenue  
Albany, NY 12234  
Phone: 518-474-3852  
Nonpublic and Private Schools: (518) 474-6541  
Website: <http://www.nysed.gov/> (<http://www.nysed.gov/>)
- U.S. Department of Education, New York (</about/contacts/state/ny.html>)

 Printable view

(</print/about/inits/ed/non-public-education/regulation-map/newyork.html>)

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## How Do I Find...

- Student loans, forgiveness (</fund/grants-college.html?src=rn>)
- College accreditation (<https://www.ed.gov/accreditation?src=rn>)
- Every Student Succeeds Act (ESSA) (<https://www.ed.gov/essa?src=rn>)
- FERPA (</policy/gen/guid/fpco/ferpa/index.html?src=rn>)
- FAFSA (<https://fafsa.ed.gov/?src=edgov-rn>)
- 1098, tax forms (<https://www.ed.gov/1098-e?src=rn>)

More > (</about/top-tasks.html?src=rn>)

## Information About...

- Transforming Teaching (<https://www.ed.gov/teaching?src=rn>)
- Family and Community Engagement (<https://www.ed.gov/family-and-community-engagement?src=rn>)
- Early Learning (</about/inits/ed/earlylearning/index.html?src=rn>)

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### Mission

(</about/overview/mission/mission.html?src=rt>)

## Student Loans

[\(/fund/grants-college.html?src=ft\)](#)

Repaying Loans (<https://studentaid.ed.gov/repay-loans?src=ft>)

Defaulted Loans (<https://studentaid.ed.gov/repay-loans/default?src=ft>)

Loan Forgiveness (<https://studentaid.ed.gov/repay-loans/forgiveness-cancellation?src=ft>)

Loan Servicers (<https://studentaid.ed.gov/repay-loans/understand/servicers?src=ft#who-is-my-loan-servicer>)

## Grants & Programs

[\(/fund/grants-apply.html?src=ft\)](#)

Apply for Pell Grants (<https://www.fafsa.ed.gov/?src=ft>)

Grants Forecast ([/fund/grant/find/edlite-forecast.html?src=ft](#))

Apply for a Grant ([/fund/grant/apply/grantapps/index.html?src=ft](#))

Eligibility for Grants ([/programs/find/elig/index.html?src=ft](#))

## Laws & Guidance

[\(/policy/?src=ft\)](#)

Every Student Succeeds Act (ESSA) (<https://www.ed.gov/essa?src=ft>)

FERPA ([/policy/gen/guid/fpco/ferpa/index.html?src=ft](#))

Civil Rights ([/about/offices/list/ocr/know.html?src=ft](#))

New IDEA Website (<https://sites.ed.gov/ideal/?src=ft>)

## Data & Research

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Postsecondary Education Data (<https://nces.ed.gov/ipeds/?src=ft>)

ED Data Express (<https://eddataexpress.ed.gov/?src=ft>)

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## Frequently Asked Questions Concerning Education Corporations

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- [20. What if my provisional charter expires before I can petition for it to be extended or replaced by an absolute charter? Must I reapply for a new charter?](#)
- [21. What if I change my corporate name, or change what my corporation does, or move to a different address than the one specified in my charter?](#)

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1. Q: What is the purpose of a charter or a Regents certificate of incorporation?

A: A charter or a Regents certificate of incorporation is an incorporating document issued by the Board of Regents that forms an education corporation, a non-profit legal corporate entity.

2. Q: What is the difference between a charter and a Regents certificate of incorporation? When should I apply for a charter? When should I apply for a Regents certificate of incorporation?

A: Both a charter and a Regents certificate of incorporation have the same legal effect of forming an education corporation. A charter is granted to institutions that perform certain core educational functions: (1) colleges and universities, and other institution of higher education; (2) nursery schools, kindergartens, elementary schools and secondary schools; (3) libraries, archives, museums and historical societies; and (4) public television and/or public radio stations. A Regents certificate of incorporation is issued to institutions that, although not performing a core educational function listed under (1) through (4) above, nevertheless perform an educational function deemed worthy of recognition by the Board of Regents.

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3. Q: Do I need to file anything with the Secretary of State?

A: No, chartering or incorporation by the Board of Regents as an education corporation is the equivalent of filing a certificate of incorporation with the Secretary of State.

4. Q: Where should I send my petition?

A: With the exception of libraries, you should send it to the New York State Education Department, Office of Counsel, Room 148, State Education Building, 89 Washington Avenue, Albany, New York 12234. Forms for libraries should be sent to the New York State Education Department, Office of Library Development, 10B41 Cultural Education Center, 310 Madison Avenue, Albany, NY 12230.

5. Q: How many copies of the petition should I send? Must I send the original?

A: You must send the original document and two photocopies.

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6. Q: What does it cost? Should I send payment with my petition? Is a money order acceptable?

A: Yes, you should include with your petition a check (with an imprinted name and address) or a money order to cover the review fee. The fees for actions for corporations with charters and Regents certificates of incorporation are listed below:

Provisional charter - \$100

Absolute charter in the first instance - \$100

Regents certificate of incorporation - \$100

Amendment of charter/certificate of incorporation - \$60

Restatement of charter/certificate of incorporation - \$60

Absolute charter (to replace a provisional charter) - \$60

Extension of provisional charter - \$60

Amendment and absolute charter or extension of charter - \$60

Order of consolidation - \$100

Dissolution - \$60

7. Q: What should I do if I can't get everyone who needs to sign the petition together at one time?

A: You can have the petition signed in counterparts, i.e., using separate signature pages. In that case, separate notarizations must be included for each signature or group of signatures.

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8. Q: What must I do to ensure that the notarization is correct?

A: You must include the notary acknowledgment statement that is included in the sample petitions and have your notary public complete the statement and sign and affix his/her stamp to the document.

9. Q: Can anyone other than a notary public witness our signatures?

A: Yes, a commissioner of deeds may do so. Only someone who is qualified to witness signatures may notarize a document.

10. Q: How many trustees can my corporation have?

A: It must have a minimum of five but not more than twenty-five, unless a specific request is made to the Board of Regents during the life of the corporation to increase that number. In no event may a corporation have fewer than five.

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11. Q: How many trustees or officers must sign a petition?

A: A petition for a new charter or Regents certificate of incorporation must be signed by everyone who wants to be named as both an initial trustee and an incorporator in the charter or certificate. At least five trustees must sign the petition. Any trustee who does not must sign a separate, notarized consent to serve as a trustee and will not be named as an incorporator. For an existing corporation, two officers (not trustees) must sign the petition. (With a petition for dissolution, three-fourths of the trustees may instead sign.)

12. Q: For an existing corporation, who may execute the certification of the trustees' vote to take corporate action?

A: Only the secretary or acting secretary may do so. Any officer EXCEPT the president may act as an acting secretary if necessary.

13. Q: For an existing corporation, how many trustees need to vote on a corporate action?

A: Any action involving an amendment, restatement, consolidation or dissolution requires a three-fourths vote of the entire board. To extend a provisional charter, or to replace it with an absolute charter, a simple majority will suffice.

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14. Q: What should I do if I can't call together enough trustees at a meeting?

A: You may obtain the consent of the trustees; however, this must be unanimous – all of your trustees must sign a consent to the resolutions, and your secretary will need to revise the certification accordingly. You will need to submit photocopies of each consent with your petition and certificate.

15. Q: What else should I send to the Education Department?

A: You will also need to send documentation in support of your petition. While you may include this with your petition and check, it is usually best to send this to the office within the Department that will review it. The office that reviews these materials for nonpublic schools, nursery – grade 12, is the Office of Nonpublic School Services, telephone(518)474-6541. For cultural institutions such as museums and historical societies, you may contact the State Museum's Chartering Program, telephone: (518) 474-5976, email:

[Charters@nysed.gov](mailto:Charters@nysed.gov). For postsecondary institutions, including private colleges and universities, please contact the Office of Higher Education, telephone (518) 474-1551.

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16. Q: How long does the process take?

A: This can vary, depending upon what the corporation will be doing, how much documentation the reviewing office needs, how quickly you are able to provide the requested information, and what the Board of Regents' meeting schedule is. Generally, most charter actions require about four months, some longer.

17. Q: What about tax-exempt status?

A: You must separately file for tax-exempt status with the Internal Revenue Service. You will need to send the IRS a copy of your charter or Regents certificate of incorporation. That document will include the type of language that shows the IRS you will be non-profit.

18. Q: What should I provide if someone, such as the Internal Revenue Service or a bank, asks for a copy of my articles of incorporation, or certificate of incorporation?

A: Your charter or Regents certificate of incorporation is equivalent to articles/certificate of incorporation.

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19. Q: What if someone doesn't recognize my charter as my articles/certificate of incorporation?

A: You may request from the Office of Counsel, in writing, a certificate of existence to prove your legal corporate existence.

20. Q: What if my provisional charter expires before I can petition for it to be extended or replaced by an absolute charter? Must I reapply for a new charter?

A: Unless you have received notice from the Regents that your provisional charter will be terminated for good cause, simply submit a petition for extension or an absolute charter as quickly as possible. Your corporation will continue to exist in the interim. You do not need to petition for a new charter.

21. Q: What if I change my corporate name, or change what my corporation does, or move to a different address than the one specified in my charter?

A: You must petition the Regents for an amendment to your charter to reflect the changes.

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New York State Education  
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ACCES-VR: 1-800-222-JOBS (5627)

TASC (formerly GED): (518) 474-5906

New York State Archives: (518) 474-6926

New York State Library: (518) 474-5355

New York State Museum: (518) 474-5877

Office of Higher Education: (518) 486-3633

Office of the Professions: (518) 474-3817

89 Washington Avenue  
Albany, NY 12234

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## Frequently Asked Questions Related to Contracts for Instruction (FAQs)

Q1. What are “core instructional services?”

A1. Generally, core instructional services comprise those instructional programs which are part of the regular curriculum of the school district and to which students are entitled as part of a free public education. This would include both general and special education programs and related services which school districts are required by law to provide as part of a program of public education and for which a certification area exists and to which tenure rights apply pursuant to Education Law and/or Commissioner's regulations.

The Commissioner has found that “establish[ing], conduct[ing], manag[ing] and maintain[ing] a course of instruction in general academic fields” does not involve “peripheral services such as security services or a recreational program, but is the very core function of a school district” (Appeal of McKenna, et al., 42 Ed Dept Rep 54, Decision No. 14,774). Therefore, core instructional services include those in which students are provided classroom instruction to meet State learning standards in the seven general curriculum areas (English language arts; mathematics, science and technology; social studies; languages other than English; the arts; health, physical education and family and consumer sciences; and career development and occupational studies) (see 8 NYCRR §§100.1, 100.2, 100.3, 100.4, 100.5). Instruction in courses for which credit is awarded toward a high school diploma would also constitute “core instructional services.” Core instruction includes special classes for students with disabilities.

Core instruction does not include other supplemental instructional services, such as tutoring and enrichment programs that are not offered for high school credit, advanced courses such as college courses that are beyond the regular high school curriculum and services, such as online instructional services and distance learning, that assist teachers in providing instruction in their classrooms.

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Q2. Can school districts contract with non-profit or other entities to provide distance or online learning opportunities for students?

A2. Yes, provided that the distance or online learning program is used as a supplementary or additional resource to assist a district's certified teachers in delivering instruction. In these situations, the distance or online program itself would not constitute “core instruction” as described in A1 above. The Department continues to examine the use of technology for instructional delivery and anticipates further discussion with the Board of Regents on this subject in the coming months.

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Q3. When can school districts contract with a non-profit or other entity?

A3. School districts may contract with certain entities where specifically authorized by statute or regulation, or where contracting is necessary to carry out duties imposed on the school district by State or federal law. Examples of specific statutes and regulations authorizing contracting with other entities include:

- **Education Law §305(33)** authorizes the Commissioner of Education to approve providers of supplemental educational services (“SES”) pursuant to the federal No Child Left Behind Act. This provision authorizes any local educational agency that receives federal Title I funds to contract with approved SES providers, which shall include, but not be limited to, public schools, BOCES, institutions of higher education and community-based organizations.
- **Education Law §3202(6)** requires that children cared for in a hospital or other institution for the care, custody and treatment of children, other than a school, must be provided with educational services by their school district of residence. This provision authorizes such school districts to provide these services by a tutor employed by the district, by contract with a school connected with such hospital or institution, or by contract with the local public school district in which such hospital or institution is located.
- **Education Law §3602-e** authorizes school districts with approved pre-kindergarten program plans to enter into any contractual or other arrangement necessary to implement such plans. Eligible agencies that may provide pre-kindergarten services pursuant to an approved pre-kindergarten program plan include a provider of child care and early education, a day care provider, early childhood program or center, or certain community-based organizations.
- **Education Law §§4401(2) and 4402(2)(b)** authorize school districts to enter into contracts for special education services or programs, including related services, with other school districts, BOCES, State-operated and State-supported schools, approved private residential and nonresidential schools both inside and outside New York State, and the State University at Binghamton for non-residential special education at the Children’s Unit.
- **Education Law §4401(2)(n)** authorizes school districts to enter into formalized agreements for the provision of transition services (as defined in Education Law §4401[9]) in programs such as vocational training programs approved by the Department or by another State agency.
- **Section 100.2(q)(2) of the Commissioner’s Regulations** authorizes arrangements with institutions of higher education to provide advanced courses which convey high school credit and college credit.

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Q4. Can a school district contract with private entities to provide core instructional services through employees of that private entity?

A4. No, except in the circumstances described in A3, school districts lack the authority to contract with an independent contractor to provide core instructional services (as described in A1) through employees of that independent contractor (Appeal of McKenna, et al., 42 Ed Dept Rep 54, Decision No. 14,774), such as social work services (Appeal of Barker and Pitcher, 45 Ed Dept Rep 430, Decision No. 15,375), psychological services (Appeal of Friedman, 19 Ed Dept Rep 522, Decision No. 10,236), or to hire substitute teachers (Appeal of Woodarek, 46 Ed Dept Rep 1, Decision No. 15,422; pet. to review disms’d Kelly Services, Inc. v. USNY, et al., Sup Ct Albany County, 5/22/07, Index No. 7512-06).

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Q5. Can school districts contract for the provision of special education “related services” for which a certification area exists and to which tenure rights apply pursuant to Education Law and/or Commissioner’s regulations?

A5. Yes, but only in limited circumstances and with qualified individuals over whom the district has supervisory control.

Pursuant to the federal Individuals with Disabilities Education Act (“IDEA”), school districts are required to provide students with disabilities with a free appropriate public education (“FAPE”). A board of education

must provide related services as part of the continuum of special services and programs available to students with disabilities to enable such students to benefit from instruction (see Education Law §4401[2][k]; 8 NYCRR §200.1[qq]). Related services include: audiology, counseling including rehabilitation counseling services, occupational therapy, physical therapy, speech pathology, certain medical services, psychological services, school health services, school nurse services, school social work, assistive technology services, interpreting services, orientation and mobility services, parent counseling and training and other appropriate developmental, corrective or other support services and appropriate access to recreation (20 USC §1401[26]; Education Law §4401[2][k]).

In Appeal of Barker and Pitcher, the Commissioner held that school districts do not have general authority to contract with non-profit entities to provide related services (Appeal of Barker and Pitcher, 45 Ed Dept Rep 430, Decision No. 15,375). However, that case involved a school district that abolished a tenured school social worker position and then contracted with a for-profit corporation to provide similar services (Appeal of Barker and Pitcher, 45 Ed Dept Rep 430, Decision No. 15,375). Thus, the Barker decision was based in part on consideration of the board of education's need to exercise supervisory control over instructional staff and in part on the negative impact that contracting with a private entity to deliver related services would have on the tenure rights of certified school district employees. Contracting out cannot be used as a vehicle for evading the tenure laws or the requirements that teachers be duly certified.

However, school districts also have obligations under the IDEA and Article 89 of the Education Law to deliver the services necessary to ensure that students with disabilities receive FAPE. The Department recognizes that there will be situations in which school districts will not be able to deliver FAPE to students with disabilities without contracting with independent contractors. Where a school district is unable to provide the related services on a student's individualized education program ("IEP") in a timely manner through its employees because of shortages of qualified staff or the need to deliver a related service that requires specialized expertise not available from school district employees, the board of education has authority under Education Law §§1604(30), 1709(33), 2503(3), 2554(15)(a) and 4402(2)(b) to enter into contracts with qualified individuals as employees or independent contractors to provide those related services (see also §§1804[1], 1805, 1903[1], 2503[1], 2554[1]). Section 200.6(b)(3) of the Commissioner's regulations requires that related services be provided by individuals with appropriate certification or license in each area of related service. Consistent with the holding in Appeal of Barker and Pitcher, in order to ensure that such arrangements are not used to circumvent New York State's teacher tenure laws, a school district must document that it would retain supervisory control over the individual and that, despite reasonable efforts, it has been unable to provide such services by hiring new employees or utilizing existing employees, or through any of the contractual arrangements authorized by Education Law §4401(2), including contracts with other school districts, BOCES, approved state or state-supported schools, and approved private residential and nonresidential schools both inside and outside New York State.

Finally, school districts that, after exhausting the steps outlined above, find it necessary to contract with individuals should do so only for a period of one school year at a time. Before any such contract can be extended, or a new contract entered, school districts must again take reasonable efforts to provide such services as described above.

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Q6. Can districts contract for the provision of special education related services, such as occupational therapy and physical therapy ("OT/PT"), for which a certification area does not exist and to which tenure rights do not apply pursuant to Education Law and/or Commissioner's regulations?

A6. Yes. As noted in A1 and A5 above, the restrictions on contracting apply to both general and special education programs and related services which school districts are required by law to provide as part of a program of public education and for which a certification area exists and to which tenure rights apply pursuant to Education Law and/or Commissioner's regulations. The related services of OT/PT, however, are

not provided by certified personnel who have tenure rights under Education Law. Therefore, the considerations underlying the contracting limitations described above do not apply in the context of related services such as OT/PT and other specialized services for which certification is not required and to which the tenure provisions of Education Law do not apply and the board of education would have the authority to contract for such services under Education Law §§1604(30), 1709(33), 2503(3), 2554(15)(a) and 4402(2)(b) (see also §§1804[1], 1805, 1903[1], 2503[1], 2554[1]).

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Q7. Can districts contract for the provision of applied behavior analysis (“ABA”) for special education students?

A7. ABA is an instructional methodology. While a school district may contract for a related service provider (such as a psychologist or speech and language therapist) to oversee an ABA program or to work directly with a student using ABA methodology, ABA is not a “special education program or service” in and of itself. The same circumstances and conditions that apply to the provision of related services also apply to the provision of related services using ABA methodology (see A5).

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Q8. Can districts contract for the provision of transition services for students with disabilities with IEPs?

A8. Yes. Pursuant to Education Law §4401(2)(n), special education includes “formalized agreements” for the provision of transition services in programs such as vocational training programs approved by the Department or by another State agency (see A3). Other transition services might include job coaching.

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Q9. Can districts enter into contracts for the instruction of suspended students?

A9. Yes, but only in limited circumstances and with qualified individuals over whom the district has supervisory control.

Education Law §3214(3)(e) requires school districts to provide alternative instruction to students of compulsory school age who are suspended from school. Alternative instruction must be substantially equivalent to the student’s regular classroom program (Appeal of Deborah F., 42 Ed Dept Rep 178, Decision No. 14,813). The question of whether a program offers substantially equivalent instruction must be decided on a case-by-case basis (Appeal of Deborah F., 42 Ed Dept Rep 178, Decision No. 14,813). For example, Commissioner’s decisions have found two hours of alternative instruction per day sufficient to fulfill a district’s obligation under the Education Law (Appeal of Camille S., 39 Ed Dept Rep 574, Decision No. 14,316).

Because alternative instruction is the only form of classroom instruction that suspended students will receive during the term of the suspension, this constitutes core instruction for which the district cannot contract with a private entity (see A1, A4). Where a school district provides alternative instruction within its school building(s), such instruction must be provided by appropriate, qualified district staff. However, in the limited circumstances in which alternative instruction for suspended students is either not offered within a district’s school building(s) or the district lacks qualified staff or is otherwise unable to assign existing qualified staff to provide such instruction at an alternate location, such as the student’s home, it may be necessary for the district to contract with a qualified individual to provide such instruction. Because districts are required by state law to provide resident students with a free public education, a school district’s authority to enter into contractual arrangements where necessary to deliver such services would be grounded in Education Law §§1604(30), 1709(33) and 2503(3), which authorize boards of education to “have all powers reasonably necessary ... to discharge duties imposed expressly or by implication” by statute (see also §§1804[1], 1805, 1903[1], 2503[1], 2554[1], 2554[15][a]).



Before contracting with qualified individuals to provide alternative instruction to suspended students, a school district must document that it will retain supervisory control over such individuals and that, despite reasonable efforts, it has been unable to provide such services by hiring new employees or utilizing existing employees, or through contracts with other school districts or BOCES. School districts that, after exhausting such reasonable efforts, find it necessary to contract with individuals should do so only for a period of one school year. Before any such contract can be extended, or a new contract entered, school districts must again take reasonable efforts to provide such services as described above.

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Q10. Can districts contract for the provision of instruction for homebound students?

A10. Yes, but only in limited circumstances and with qualified individuals over whom the district has supervisory control.

When students are unable to participate in regular classroom instruction due to illness, injury and/or disability, they may require that instruction be provided at their home or another alternate location. In the limited circumstances in which the district lacks qualified staff or is otherwise unable to assign existing qualified staff to provide such instruction at the student's home or another alternate location, it may be necessary for the district to contract with a qualified individual to provide such instruction. Because districts are required by state law to provide resident students with a free public education, a school district's authority to enter into contractual arrangements where necessary to deliver such services would be grounded in Education Law §§1604(30), 1709(33) and 2503(3), which authorize boards of education to "have all powers reasonably necessary ... to discharge duties imposed expressly or by implication" by statute (see also §§1804[1], 1805, 1903[1], 2503[1], 2554[1], 2554[15][a]).

Before contracting to employ qualified individuals to provide instruction to homebound students, a school district must document that it will retain supervisory control over such individuals and that, despite reasonable efforts, it has been unable to provide such services by hiring new employees or utilizing existing employees, or through contracts with other school districts or BOCES. School districts that, after exhausting such reasonable efforts, find it necessary to contract with individuals should do so only for a period of one school year. Before any such contract can be extended, or a new contract entered, school districts must again take reasonable efforts to provide such services as described above.

Dated: June 2, 2010

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