

Section 3  
The Union Rep's Resources:  
Helpful Laws & Regulations



# Helpful Laws & Regs

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McKinney's Consolidated Laws of New York Annotated  
Civil Service Law (Refs & Annos)  
Chapter 7. Of the Consolidated Laws (Refs & Annos)  
Article V. Personnel Changes  
Title B. Removal and Other Disciplinary Proceedings

McKinney's Civil Service Law § 75

§ 75. Removal and other disciplinary action

Effective: November 12, 2020

Currentness

1. Removal and other disciplinary action. A person described in paragraph (a) or paragraph (b), or paragraph (c), or paragraph (d), or paragraph (e) of this subdivision shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for incompetency or misconduct shown after a hearing upon stated charges pursuant to this section.

(a) A person holding a position by permanent appointment in the competitive class of the classified civil service, or

(b) [Eff. until April 1, 2023. See, also, par. (b) below.] a person holding a position by permanent appointment or employment in the classified service of the state or in the several cities, counties, towns, or villages thereof, or in any other political or civil division of the state or of a municipality, or in the public school service, or in any public or special district, or in the service of any authority, commission or board, or in any other branch of public service, who was honorably discharged or released under honorable circumstances from the armed forces of the United States including (i) having a qualifying condition as defined in section three hundred fifty of the executive law, and receiving a discharge other than bad conduct or dishonorable from such service, or (ii) being a discharged LGBT veteran, as defined in section three hundred fifty of the executive law, and receiving a discharge other than bad conduct or dishonorable from such service, having served therein as such member in time of war as defined in section eighty-five of this chapter, or who is an exempt volunteer firefighter as defined in the general municipal law, except when a person described in this paragraph holds the position of private secretary, cashier or deputy of any official or department, or

(b) [Eff. April 1, 2023. See, also, par. (b) above.] a person holding a position by permanent appointment or employment in the classified service of the state or in the several cities, counties, towns, or villages thereof, or in any other political or civil division of the state or of a municipality, or in the public school service, or in any public or special district, or in the service of any authority, commission or board, or in any other branch of public service, who was honorably discharged or released under honorable circumstances from the armed forces of the United States including (i) having a qualifying condition as defined in section one of the veterans' services law, and receiving a discharge other than bad conduct or dishonorable from such service, or (ii) being a discharged LGBT veteran, as defined in section one of the veterans' services law, and receiving a discharge other than bad conduct or dishonorable from such service, having served therein as such member in time of war as defined in section eighty-five of this chapter, or who is an exempt volunteer firefighter as defined in the general municipal law, except when a person described in this paragraph holds the position of private secretary, cashier or deputy of any official or department, or

(c) an employee holding a position in the non-competitive or labor class other than a position designated in the rules of the state or municipal civil service commission as confidential or requiring the performance of functions influencing policy, who since

his or her last entry into service has completed at least five years of continuous service in the non-competitive or labor class in a position or positions not so designated in the rules as confidential or requiring the performance of functions influencing policy, or

(d) an employee in the service of the City of New York holding a position as Homemaker or Home Aide in the non-competitive class, who since his last entry into city service has completed at least three years of continuous service in such position in the non-competitive class, or

(e) an employee in the service of a police department within the state of New York holding the position of detective for a period of three continuous years or more; provided, however, that a hearing shall not be required when reduction in rank from said position is based solely on reasons of the economy, consolidation or abolition of functions, curtailment of activities or otherwise.

2. Procedure. An employee who at the time of questioning appears to be a potential subject of disciplinary action shall have a right to representation by his or her certified or recognized employee organization under article fourteen of this chapter and shall be notified in advance, in writing, of such right. A state employee who is designated managerial or confidential under article fourteen of this chapter, shall, at the time of questioning, where it appears that such employee is a potential subject of disciplinary action, have a right to representation and shall be notified in advance, in writing, of such right. If representation is requested a reasonable period of time shall be afforded to obtain such representation. If the employee is unable to obtain representation within a reasonable period of time the employer has the right to then question the employee. A hearing officer under this section shall have the power to find that a reasonable period of time was or was not afforded. In the event the hearing officer finds that a reasonable period of time was not afforded then any and all statements obtained from said questioning as well as any evidence or information obtained as a result of said questioning shall be excluded, provided, however, that this subdivision shall not modify or replace any written collective agreement between a public employer and employee organization negotiated pursuant to article fourteen of this chapter. A person against whom removal or other disciplinary action is proposed shall have written notice thereof and of the reasons therefor, shall be furnished a copy of the charges preferred against him and shall be allowed at least eight days for answering the same in writing. The hearing upon such charges shall be held by the officer or body having the power to remove the person against whom such charges are preferred, or by a deputy or other person designated by such officer or body in writing for that purpose. In case a deputy or other person is so designated, he shall, for the purpose of such hearing, be vested with all the powers of such officer or body and shall make a record of such hearing which shall, with his recommendations, be referred to such officer or body for review and decision. The person or persons holding such hearing shall, upon the request of the person against whom charges are preferred, permit him to be represented by counsel, or by a representative of a recognized or certified employee organization, and shall allow him to summon witnesses in his behalf. The burden of proving incompetency or misconduct shall be upon the person alleging the same. Compliance with technical rules of evidence shall not be required.

3. Suspension pending determination of charges; penalties. Pending the hearing and determination of charges of incompetency or misconduct, the officer or employee against whom such charges have been preferred may be suspended without pay for a period not exceeding thirty days. If such officer or employee is found guilty of the charges, the penalty or punishment may consist of a reprimand, a fine not to exceed one hundred dollars to be deducted from the salary or wages of such officer or employee, suspension without pay for a period not exceeding two months, demotion in grade and title, or dismissal from the service; provided, however, that the time during which an officer or employee is suspended without pay may be considered as part of the penalty. If he is acquitted, he shall be restored to his position with full pay for the period of suspension less the amount of any unemployment insurance benefits he may have received during such period. If such officer or employee is found guilty, a copy of the charges, his written answer thereto, a transcript of the hearing, and the determination shall be filed in the office of the department or agency in which he has been employed, and a copy thereof shall be filed with the civil service commission having jurisdiction over such position. A copy of the transcript of the hearing shall, upon request of the officer or employee affected, be furnished to him without charge.

3-a. Suspension pending determination of charges and penalties relating to police officers of the police department of the city of New York. Pending the hearing and determination of charges of incompetency or misconduct, a police officer employed by the police department of the city of New York may be suspended without pay for a period not exceeding thirty days. If such officer is found guilty of the charges, the police commissioner of such department may punish the police officer pursuant to the provisions of sections 14-115 and 14-123 of the administrative code of the city of New York.

4. Notwithstanding any other provision of law, no removal or disciplinary proceeding shall be commenced more than eighteen months after the occurrence of the alleged incompetency or misconduct complained of and described in the charges or, in the case of a state employee who is designated managerial or confidential under article fourteen of this chapter, more than one year after the occurrence of the alleged incompetency or misconduct complained of and described in the charges, provided, however, that such limitations shall not apply where the incompetency or misconduct complained of and described in the charges would, if proved in a court of appropriate jurisdiction, constitute a crime.

#### Credits

(L.1958, c. 790, § 1. Amended L.1960, c. 312, § 1; L.1962, c. 645, § 1; L.1965, c. 738, § 1; L.1970, c. 942, § 1; L.1978, c. 240, § 1; L.1983, c. 774, § 1; L.1984, c. 710, § 1; L.1985, c. 842, §§ 1, 2; L.1986, c. 439, § 2; L.1989, c. 350, § 1; L.1990, c. 753, § 2; L.1993, c. 279, § 1; L.1994, c. 226, § 1; L.1995, c. 197, § 1; L.2018, c. 271, § 1, eff. Sept. 7, 2018; L.2019, c. 490, § 3, eff. Nov. 12, 2020; L.2022, c. 56, pt. PP, § 36, eff. April 1, 2023.)

McKinney's Civil Service Law § 75, NY CIV SERV § 75

Current through L.2022, chapters 1 to 481. Some statute sections may be more current, see credits for details.

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# 913 Examination

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**A board of education may use the procedures set forth in section 913 of the education law to subject an employee to a medical examination.**

Section 913 allows a board to require an employee to submit to a medical examination to determine the employee's physical and mental fitness to perform his or her duties. (*Seraydan v Three Villages CSD*, 90 AD3d 936, 937 [2d Dept 2011]; Education Law §913). It was designed to enable a board to protect students from teachers and other employees who are medically unable to perform their duties. (Education Law §913; Appeal of Sasso, 14 Ed Dept Rep 130, Decision No. 8,901 [1974]). Accordingly, Section 913 empowers a board to require any employee to submit to a medical examination to determine that the teacher possesses the physical or mental capacity to perform his or her duties. (*Matter of Hirsch*, 126 AD2d 782, 783 [3d Dept 1987]); Appeal of Grossberg, 33 Ed. Dept Rep 5, Dec. No. 12,956 [1993]); Appeal of Almeter, 30 Ed Dept Rep 230, Decision No. 12,444 [1991]).

**Section 913 states as follows:**

In order to safeguard the health of children attending the public schools, the board of education or trustees of any school district or a board of cooperative educational services shall be empowered to require any person employed by the board of education or trustees or board of cooperative educational services to submit to a medical examination by a physician or other health care provider of his or her choice or the director of school health services of the board of education or trustees or board of cooperative educational services, in order to determine the physical or mental capacity of such person to perform his or her duties. The person required to submit to such medical examination shall be entitled to be accompanied by a physician or other person of his or her choice. The determination based upon such examination as to the physical or mental capacity of such person to perform his or her duties shall be reported to the board of education or trustees or board of cooperative educational services and may be referred to and considered for the evaluation of service of the person examined or for disability retirement. (Education Law §913).

**The district may pick the physician to do the examination.**

When a board of education determines that a teacher must undergo a medical examination, it may direct that the examination be performed by the district's physician, rather than by the teacher's personal physician. (*Matter of Hirsch*, 20 Ed Dept Rep 211, Decision No. 10,381(1980), application to reopen denied, 20 Ed Dept Rep 389, Decision No. 10,452 [1981]; *Matter of Gargail*, 15 Ed Dept Rep 360, Decision No. 9,210 [1976], application to reopen denied, 15 Ed Dept Rep 520, Decision No. 9,270 [1976], *affd*, 54 AD2d 1085,1087 [4th Dept 1976], *appl. den.*, 41 NY2d 802 [1977]).

**Follow up or additional examinations are allowed, including mental health examinations.**

Section 913 also allows for follow-up, or additional examinations if necessary to permit the doctor to render a final medical determination. (Appeal of Almeter, 30 Ed Dept Rep 230, Decision No. 12,444 [1991]; Appeal of Grossberg, 33 Ed Dept Rep 5, Decision No. 12,956 [1993]). This may include an examination by a psychiatrist. (Appeal of Hirsch, 126 AD2d 782; Brodsky v Bd. of Educ., Brentwood UFSD, 64 AD2d 611, 611 [2d Dept 1978])

**The employee may be required to produce medical records.**

An employee must submit relevant medical records to the district's chosen physician as part of the examination, upon a reasonable and legitimate request from the district. (Kurzius v Bd. of Educ., Washingtonville CSD, 81 AD2d 827, 827 [2d Dept 1981]); (See also, Strong v Bd. of Educ. of the Uniondale UFSD, 902 F.2d 208, 212 [2d Cir 1990]). This requirement includes, if relevant and material, mental health records needed by a psychiatrist. In some circumstances, however, employees may not be able to access some of their own mental health records. Although HIPAA and its attendant regulations includes an affirmative right of patients to access their own medical records, it exempts "psychotherapy notes" from that right. (45 CFR §164.524[a][1](i)). Therefore, a health care provider may deny access to such records, and that denial would be unreviewable. (45 CFR §164.524[2](i)).

It is important to note that a school district does not have unfettered discretion to compel production of medical records. In *O'Connor v Pierson*, 426 F.3d 187 (2005), the medical records release form from the school district did not have a time limitation or subject matter limitation and required the employee to provide the records to both the school's physician and the board of education. That release was struck down by the court as overly broad and it was further held by the court to be arbitrary for a school board to request/demand that a teacher release his/her medical records to a board of education. The court explained that since the board of education is not qualified to independently evaluate those records, requesting them could serve no legitimate purpose. (*O'Connor v Pierson*, 426 F.3d 187, 202 [2d Cir 2005]).

**Refusing a 913 examination may subject the employee to discipline and removal from payroll.**

The Board can order a 913 examination at any time provided that there is evidence justifying the order. (Matter of Seraydar v Three Village CSD, 90 AD3d 936 (2d Dep't 2011)). A teacher's refusal to submit to an ordered §913 medical examination will constitute insubordination and may form a sufficient basis for the teacher's discipline, up to and including dismissal. (Appeal of Sasso, 14 Ed Dept Rep 130, Decision No. 8,901 [1974]; Appeal of Grasso, 4 Ed Dept Rep 174, Decision No. 7,509 [1965]; Appeal of Yvonne McCall, 33 Ed Dept Rep 148, Decision No. 13,005 [1993]).

In addition, Section 913 has been interpreted by the Commissioner of Education and the courts to allow a school district to suspend a teacher without pay for refusing to submit to an examination ordered by a school district pursuant to the statute. (See Matter of Gargiul v Board of Educ. of Liverpool Cent. Sch. Dist.,

69 AD2d 986 [4th Dep=t 1979]; Matter of Grasso, 4 Educ. Dept Rep. 174 [1965]); Appeal of El-Araby, 28 Ed. Dept Rep. 524 [1989]). In Gargiul, the teacher refused to undergo a physical examination ordered by the school district pursuant to Education Law '913 because she was not provided with a female doctor. Refusal was also the issue in Matter of McNamara, 80 AD2d 660 [3d Dep=t 1981], when the teacher refused to continue a school district ordered psychological exam after the first five hours. In both cases the courts upheld the school districts' decisions to remove the teachers from payroll.

**Court review of a decision to direct an employee to submit to a 913 examination is very limited.**

If a board of education orders a teacher to submit to a section 913 examination, that order can be challenged in an Article 78 proceeding, but only if the board's actions are arbitrary and capricious; an abuse of discretion; or unreasonable. (Brodsky v Bd. of Educ., 64 AD2d 611 [2d Dept 1978]; see, e.g. Seraydar v Three Village Central School District, 90 AD3d 936, 937 [2d Dept 2011], citing Matter of Patchogue Congress of Teachers v Board of Education, 70 NY2d 57, 69 [1987]).

Courts have held that allegations of inappropriate conduct toward district employees, unprofessional behavior, or questionable judgment exhibited by a teacher provide a board of education with reason to suspect that the teacher may be unfit for teaching duties and provide a rational basis for a board of education's decision to direct a teacher to submit to a §913 examination. (Brodsky v Bd. of Educ., Brentwood Union Free School Dist, 64 AD2d 611 [2d Dept 1978]); Matter of Schiffer v Bd. of Educ., Garrison Union Free School Dist., 112 AD2d 372 [2d Dept 1985], appeal dis'd, 66 NY2d 915 [1985]; Matter of Seraydar v Three Vil. Cent. School Dist., 90 AD3d 936 [2d Dept 2011] ("ample evidence in the record of unprofessional behavior and questionable judgment exhibited by the [employee-teacher] which provided the district with reason to suspect that the [employee-teacher] may be unfit for her teaching duties"). Where such evidence or allegations exist, a board of education's directive to require a teacher to submit to a psychiatric or physical examination pursuant to Education Law §913 is not arbitrary, capricious, an abuse of discretion, or unreasonable. (Id.).

**The employee subject to the examination may be accompanied by a physician or other person of their choice.**

Moreover, Education Law §913 specifically states that any employee directed to submit to a medical examination under that section shall be entitled to be accompanied by a physician or other person of his own choice.

**The employee should be able to get a copy of the report of the district's physician.**

While section 913 itself does not address the issue of whether the district must provide a copy of the physician's report to the employee, the employee nonetheless should be entitled to obtain a copy from the district. See, Mantica v. New York State Dept. of Health, 94 N.Y.2d 58 (1999)(patient entitled to his own medical records from the State Department of Health pursuant to FOIL); Lipsman v New York City Bd.

of Educ., 133 A.D.2d 812 (2nd Dept. 1987)(employee was entitled to obtain his own medical records that the City DOE relied upon in denying him a temporary teaching certificate). And, if a disciplinary proceeding results from the 913 examination, under the rules for such proceeding the report likely would be accessible.

# Changes to Annual Professional Performance Review (APPR)



Fact Sheet 22-07 (Replaces 21-11)

MAY 2022

## 2022 APPR Bill

On May 13, the Governor signed Chapter 201 of the laws of 2022. This bill, which passed unanimously in both the senate and assembly, eliminates the requirement for school districts and BOCES to complete an annual professional performance review (APPR) for any classroom teacher or building principal for the 2021-22 school year. The bill also assures that state funding will not be withheld from any school district for not completing the APPR in these school years. This bill acts as an extension of Chapter 112 of the laws of 2021.

## 2021 APPR Bill

On June 7, the Governor signed Chapter 112 of the laws of 2021. This bill, which passed unanimously in both the senate and assembly, eliminates the requirement for school districts and BOCES to complete an annual professional performance review (APPR) for any classroom teacher or building principal for the 2020-21 school year. The bill also assures that state funding will not be withheld from any school district for not completing the APPR in the 2020-21 school year. A chapter amendment requested by the Governor makes it clear that districts do not have to complete an APPR this year.

## Teacher Tenure Eligibility

Classroom teachers or building principals appointed during the 2017-18, 2018-19, 2019-20 or 2020-21 school years, at the expiration of their probationary term, shall be eligible for tenure if he or she received composite APPR ratings pursuant to section 3012-c or 3012-d, of either effective or highly effective in at least one of the four preceding years and did not receive an ineffective rating in the final year of his or her probationary period, or during the most recent school year where a rating was

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received, and would have been in the superintendent's discretion qualified for appointment on tenure based upon performance. In the case of a classroom teacher or building principal appointed during the 2018-19 or 2019-20 school year who has not received composite APPR ratings for 3 consecutive years, no ratings shall be required for the superintendent of schools to recommend for appointment on tenure such teacher or building principal if the teacher or principal would have been, in the superintendent's discretion, qualified for appointment on tenure based upon performance. Classroom teachers or building principals appointed during the 2021-22 school year would be eligible for tenure if they have received composite APPR ratings of either effective or highly effective in at least 2 of the 4 preceding years and did not receive an ineffective rating in the final year of his or her probationary period, or during the most recent school year where a rating was received, and would have been in the superintendent's discretion qualified for appointment on tenure based on performance. These changes ensure teachers hired during these years will not be penalized because of the lack of APPR ratings in the 2019-20, 2020-21 and 2021-22 school years.

### **Shortened Probationary Period**

Any probationary classroom teacher hired in a district during the 2020-21, the 2021-22 or the 2022-23 school year who was appointed on tenure in another school district within the state, the school district where currently employed or a BOCES and who was not dismissed as a result of charges brought pursuant to subdivision one of section 3020-a or 3020-b, shall be appointed for a probationary period of three years; provided that, in the case of a classroom teacher such individual demonstrates that he or she received a 3012-c or 3012-d APPR rating in the 2017-18 or 2018-19 school year. As was written in the law previously, when a shortened probationary appointment based on a prior award of tenure is being made by a BOCES the APPR rating in the final year of service at such other district or BOCES must have been either effective or highly effective. The new law amends this language for 2020-21, 2021-22 or 2022-23 school year BOCES appointments to ratings of effective or highly effective in the 2017-18 or 2018-19 school year in the previous district or BOCES, to account for the ratings gap.

### **2020 Executive Order**

As part of New York State's COVID-19 emergency actions, Governor Cuomo signed an executive order on June 7, 2020 addressing the 2019-20 school year APPR ratings and tenure decisions dependent upon those ratings. As a result of the state's earlier emergency actions of school building closures, virtual teaching and the cancellation of state assessments, districts were unable to complete and comply with the approved Annual Professional Performance Review plans. Required in-person teacher observations were not complete in most districts prior to the buildings being closed and the required student performance measure assessments used for most teachers in their approved plans were canceled due to the pandemic.

The Governor's executive order exempts, to the extent necessary, school districts from completing annual professional performance reviews for classroom teachers and building principals during the 2019-20 school year without the loss of state aid.

The order further addresses tenure decisions for educators in their final year of probation. Under the order, a board of education or the trustees of a common school district, are allowed, for the 2019-20 school year, to grant tenure to those classroom teachers and building principals recommended by the superintendent of schools. These educators must have received the previous requisite annual professional performance review ratings pursuant to §3012-d of the education law, notwithstanding that their annual professional performance review had not been completed and they had not received the necessary effectiveness rating for the 2019-20 school year would have been, in the discretion of the superintendent, qualified for tenure appointment based upon past performance. The ability for the

Board of Education or trustees of a common school district to extend tenure determination for an additional year continues to be an option.

The executive order does not address the lack of 2019-20 APPR ratings on teachers in their first three years of tenure or for tenured teachers seeking a shortened probationary appointment.

### **2019 Budget**

The 2019-2020 State Budget made important changes to the student performance portion of the Annual Professional Performance Review, APPR (3012-c and 3012-d). The Board of Regents adopted emergency regulations on October 8, 2019. The new APPR language eliminated the requirement to use state tests and gives the local collective bargaining representative the right to negotiate the selection and use of an assessment in a teacher or principal's evaluation with the district. The following is an overview of the amended APPR language and how those amendments fit into the entire APPR process for teachers.

### **APPR System**

The system continues the two category matrix system that includes student performance and teacher observation. This matrix system has produced the lowest number of ineffective ratings since the original law was adopted (Note: The matrix appears on page 8).

### **Student Performance Category**

All decisions regarding the student performance category will be made locally through the collective bargaining process. The language eliminates the two tier system where teachers in "tested" subjects must have individual SLOs or growth scores and teachers in "non-tested" subjects individual or group SLO's. It eliminates the calculation and use of the state provided growth model from APPR. The law also eliminates the **requirement** to use state tests in the APPR. This change allows locals to determine whether or not to use the state 3-8 ELA and Math, 4 & 8 Science, NYSESLAT, Alternative Assessment and Regents exams as either individual or group measures in the APPR at the bargaining table.

Each local can choose to continue their current 3012-d transition APPR plan until a new collective bargaining agreement is agreed to that adheres to the new law, with no loss of state aid. All measures already approved for use in APPR are required to remain options under the new law. For example, if locally negotiated, all teachers, including high school Regents teachers, could be covered by group measures, removing the high stakes nature of individual SLOs. The amendments do not give any new authority to the commissioner, the commissioner cannot remove any of the student performance measures already approved nor can the commissioner mandate a new test.

The student performance category continues to have one required and one optional subcomponent, all locally negotiated. The first subcomponent is an SLO consistent with a goal-setting process determined or developed by the commissioner, which results in a student growth score. This subcomponent could be a group measure covering all teachers. This determination is made through collective bargaining. The optional second subcomponent can be either based on a state-created or administered test or based on a state-designed or approved supplemental assessment. The language from 3012-d that created a disincentive to have a second optional subcomponent, effecting the matrix for districts with these subcomponents, has been eliminated from the language.

### Calculating a Student Performance Rating

The Board of Regents has the authority to set weights for the two subcomponents of the student performance category, combining the scores into one rating and determining how teachers receive a rating of Highly Effective, Effective, Developing or Ineffective.

The commissioner's regulations state that each measure used in the student performance category must result in a score between 0-20. Districts will calculate scores for SLOs using the following table designed by SED.

SLO Score Setting

<i>Percent of Students meeting target</i>	<i>Score</i>	<i>Percent of Students meeting target</i>	<i>Score</i>
0-4%	0	49-54%	11
5-8%	1	55-59%	12
9-12%	2	60-66%	13
13-16%	3	67-74%	14
17-20%	4	75-79%	15
21-24%	5	80-84%	16
25-28%	6	85-89%	17
29-33%	7	90-92%	18
34-38%	8	93-96%	19
39-43%	9	97-100%	20
44-48%	10		

For the City School District of the City of New York, scores for SLOs that are based on the percentage of students meeting a target shall be calculated in accordance with the minimum percentages below.

SLO Score Setting City of NY

<i>Percent of Students meeting target</i>	<i>Score</i>	<i>Percent of Students meeting target</i>	<i>Score</i>
0-9%	0	75-77%	11
10-19%	1	78-80%	12
20-29%	2	81-83%	13
30-39%	3	84-86%	14
40-49%	4	87-89%	15
50-59%	5	90-91%	16
60-62%	6	92-93%	17
63-65%	7	94-95%	18
66-68%	8	96-97%	19
69-71%	9	98-100%	20
72-74%	10		

Any other district may submit a variance request to the department pursuant to section 30-3.16 of Commissioner's Regulations to use the scoring ranges described in this specific NYC chart.



A local may negotiate the use of a second measure in the student performance rating.

- If a local chooses to use only the required SLO component, it would count as 100% of the student performance category.
- If a local agrees with the district to use the optional second subcomponent along with the mandatory SLO subcomponent, then weights shall be established locally, subject to approval by the commissioner in the submitted plan.

An overall score of 0-20 shall be generated for the student performance category. If an optional second measure is used, the two scores will be combined using a weighted average to produce an overall score.

#### Overall Students Performance Category Score and Rating

<i>Rating</i>	<i>Minimum</i>	<i>Maximum</i>
Highly Effective	18	20
Effective	15	17
Developing	13	14
Ineffective	0	12

For the City School District of the city of New York, an overall student performance category rating shall be derived from the table below.

#### Overall Students Performance Category Score and Rating - NYC

<i>Rating</i>	<i>Minimum</i>	<i>Maximum</i>
Highly Effective	16	20
Effective	11	15
Developing	6	10
Ineffective	0	5

Any other district may submit a variance request to the department pursuant to section 30-3.16 of Commissioner's Regulations to use the scoring ranges described in this specific NYC chart.

#### Teacher Observation Category

The new language doesn't change the 3012-d requirement of a minimum of two observations: one by a principal or other trained administrator, and another by an impartial independent trained evaluator. Observations by trained peer observers are also allowed as an optional third category, if locally negotiated.

- ▶ Independent evaluators must be trained and selected by the district:
  - May include other administrators, department chairs, or peers (such as teacher leaders on career ladders.)
  - Cannot be from the same school building as the teacher being observed but may be from another school in the district (same building is defined as same BEDS code.)
  - Hardship waivers are available but must be negotiated and requested annually by February 1st; 274 districts have received a waiver. NYSUT is not aware of any waiver requests from a district being turned down.

- ▶ Peer evaluators must have been rated effective or highly effective on his/her overall rating the prior school year and can be from the same school or another school in the district.
- ▶ Commissioner's regulations allow for local flexibility on frequency and duration of observations. Plans may exceed the minimum of two observations. All of these procedures must be collectively bargained.
- ▶ Commissioner's regulation requires one observation to be unannounced.
- ▶ Videotaped observations are allowed but must be collectively bargained.

### **Teacher Practice Rubrics**

The selection of the teacher practice rubric to be used in the teacher observation category must be locally negotiated from a menu of state-approved rubrics.

- ▶ All observations for a teacher for the school year must use the same approved rubric.
- ▶ However, the parties may locally negotiate whether to use different rubrics for teachers who teach different grades and/or subjects.
- ▶ Observations must be based only on observable rubric subcomponents and all observable teaching standards must be addressed across the total number of annual observations. However, not every element or indicator needs to be observed or included in each observation.
- ▶ Teaching standards that are part of the rubric but are not observable during the classroom observation may be observed during any optional pre-observation or post-observation review or other natural conversations between the teacher and evaluator and incorporated into the observation score.
- ▶ Under Education Law 3012-d, artifacts are a prohibited element of teacher evaluations. However, an artifact may be documented as part of an observation cycle (e.g., a lesson plan viewed during the course of the observation cycle may constitute evidence of professional planning).

### **Evaluator Training**

The regulations continue the requirement for evaluators to be trained. All lead evaluators, independent observers and peer observers must complete training.

The training course for lead evaluators shall include:

- ▶ The New York State Teaching Standards;
- ▶ Evidence-based observation techniques that are grounded in research;
- ▶ Application and use of any methodology as part of an SLO and any optional second measures of student performance used by the district to evaluate its teachers;
- ▶ Application and use of the state-approved teacher practice rubrics;
- ▶ Application and use of any assessment tools the district utilizes to evaluate classroom teachers;
- ▶ Application and use of any locally selected measures of student performance in the optional assessment subcomponent;
- ▶ Use of the statewide instructional reporting system;

- ▶ The scoring methodology used by the district to evaluate a teacher; and
- ▶ Specific considerations in evaluating teachers of English language learners and students with disabilities.

The training course for independent evaluators and peer evaluators shall include:

- ▶ The New York State Teaching Standards;
- ▶ Evidence-based observation techniques that are grounded in research; and
- ▶ Application and use of the state-approved teacher practice rubrics.

### Overall Teacher Observation Score and Rating

- ▶ Each observation type (principal/supervisor, independent, peer) would be completed using a 1-4 rubric scale, producing an overall score between 1-4.
  - In the event that a teacher earns a score of 1 on all rated components of the practice rubric across all observations, a score of 0 will be assigned.
- ▶ Observation types would be combined using a weighted average, producing an overall observation category score between 1-4. The weights are determined locally through collective bargaining using parameters established by SED.
  - The weight of the principal/supervisor observation is established locally, but must be at least 80% and could be as high as 90%.
  - The weight of the independent observation is established locally, but must be at least 10%.
  - The weight of the optional peer observation is established locally within these constraints.
- ▶ This overall observation category score of 1-4 would be converted into a HEDI rating using the locally bargained ranges, that meet the overall rubric score conversion guidelines below. The NYSUT recommended scoring ranges are included in the SED regulations and are bolded in the chart below.
- ▶ The resulting rating will be the teacher observation rating used in the matrix to determine a teacher's overall rating.

**Overall Rubric Score Conversion**

	<i>Permissible Statewide Ranges (actual cut scores determined locally)</i>	
	<i>Minimum</i>	<i>Maximum</i>
Highly Effective (H)	<b>3.5 to 3.75</b>	<b>4.0</b>
Effective (E)	<b>2.5 to 2.75</b>	<b>3.49 to 3.74</b>
Developing (D)	<b>1.5 to 1.75</b>	<b>2.49 to 2.74</b>
Ineffective (I)	<b>0</b>	<b>1.49 to 1.74</b>

### Overall Rating

The final rating will be determined using the following matrix or decision table. The teacher's rating for each category is applied to the rubric to determine the overall rating. While the perception is the matrix means the evaluation is 50 percent tests and 50 percent observation, the reality is there are no

percentages attached to the matrix, because it is not mathematical. It is a decision chart. The decision favors the teacher. Neither side of the matrix is 50 percent.

Matrix

		<i>Teacher Observation</i>			
		<i>Highly Effective (H)</i>	<i>Effective (E)</i>	<i>Developing (D)</i>	<i>Ineffective (I)</i>
<i>Student Performance</i>	<b>Highly Effective (H)</b>	H	H	E	D
	<b>Effective (E)</b>	H	E	E	D
	<b>Developing (D)</b>	E	E	D	I
	<b>Ineffective (I)</b>	D	D	I	I

**Prohibited Elements**

3012-d contained a list of elements prohibited from being used in teacher evaluation. These were not changed in the amendment and include:

- ▶ Evidence of student development and performance derived from lesson plans and student portfolios that are not part of an approved rubric;
- ▶ Parent and student surveys;
- ▶ Professional goal setting;
- ▶ Any district or regional assessment not approved by SED; and
- ▶ Any growth or achievement target that does not meet minimum standards.

**Use of APPR Results**

- ▶ A student may not be instructed, for two consecutive years, in the same subject by teacher(s) who received a rating of ineffective. If a district feels it is impractical to comply, the district can request a teacher-specific waiver from SED. Waivers may be granted if the district cannot make alternate arrangements, a true hardship is demonstrated and the district has an improvement and /or removal plan in place for the teacher in question.
- ▶ If a teacher receives two consecutive ineffective ratings, the district may bring a 3020-a/3020-b proceeding and the burden of proof shifts to the teacher with the hearing completed within 90 days.
- ▶ If a teacher receives three consecutive ineffective ratings, the district must bring a 3020-a/3020-b and the only defense a teacher can use is fraud or mistaken identity with the hearing completed within 30 days.

**Privacy Law**

Regulations allow parents to receive, upon request, an overall rating for their child’s teacher.

### **Teacher Improvement Plans (TIPs)**

According to the regulations, a district must develop and implement a teacher improvement plan for teachers receiving a rating of Developing or Ineffective from an APPR conducted under section 3012-d by October 1st in the school year following the school year the teacher received the rating. The improvement plan “shall be developed by the superintendent or his or her designee in the exercise of their pedagogical judgment” and must include at a minimum:

- ▶ Identification of needed areas of improvement;
- ▶ A timeline for achieving improvement;
- ▶ The manner in which the improvement will be assessed; and
- ▶ Where appropriate, differentiated activities to support a teacher’s improvement in those areas.

Notwithstanding language in the regulations and guidance, the TIP process should not change without the District bargaining any changes with the union.

### **Appeals**

The 3012-d regulations continued the appeals process requirements from section 3012-c. The district’s APPR plan must describe the appeals process through which a teacher may challenge her or his APPR rating. A teacher may only challenge the following in an appeal:

- ▶ The substance of the APPR which includes:
  - Where a teacher is rated Ineffective on the student performance category but rated Highly Effective on the observation category based on an anomaly, as determined locally.
- ▶ The district’s adherence to the standards and methodologies of the APPR.
- ▶ The adherence to the regulations and compliance with locally negotiated procedures.
- ▶ District’s issuance and /or implementation of the terms of the teacher improvement plan.

### **Corrective Action Plans**

SED is claiming to have the authority as part of a corrective action plan, to require school districts and their local unions to return to the bargaining table to change negotiated parts of the plan. SED has conducted APPR audits in some districts.

### **Variance**

Although newly negotiated plans must adhere to the law (3012-d as amended by Chapter 59 of the Laws of 2019), districts can apply for a variance from one or more of the requirements, outlined in APPR regulations, where the Law delegated responsibility to the commissioner to establish the standards and procedures. These variances may be granted to a district that negotiates the development and implementation of new and innovative approaches to evaluation. These approaches must meet specific criteria and the district must demonstrate how it will ensure differentiated results over time and how the results of the evaluation will be used to provide personalized professional learning opportunities to teachers. Districts must submit and receive approval of an evaluation plan that complies with all the requirements of Education Law section 3012-d and Subpart 30-3 of commissioners regulations prior to or at the same time as the variance submission.

### **Advice to Local Leaders**

Now that the amendments to the APPR Law have been signed, it is important to focus on next steps at the local level.

1. Districts do not have to complete an APPR in the 2021-2022 school years.
2. The 2019 amendment keeps in place your current transition plan until a new plan is agreed to at the bargaining table, with no loss of state aid.
3. You should review your transition plan to see how it is working for your members. Negotiating a new plan under the amended language gives you the opportunity to make adjustments to the transition plan.
4. In addition to eliminating the growth model, the 2019 amendment language allows you to eliminate individual SLOs for teachers currently required to have an individual SLO ending in a state test. This means all teachers who teach a Regents course can be covered by a group measure.
5. Group measures can also be used for teachers covered by the NYSESLAT, Alternative Assessment or the 4th and 8th grade science tests. Before beginning to negotiate a new plan, you should determine if the teachers covered by individual SLOs want to be included in a group measure.
6. Once all of these decisions are made, you are ready to negotiate a new plan under the amended 2019 language.
7. If you have any questions, contact Heather Adams at [Heather.Adams@nysut.org](mailto:Heather.Adams@nysut.org)

*DK/HA/mc*

5/16/22

**Summary of Regulations: New York State Teacher and Principal Evaluation Under Education Law §3012-d, as Amended by the Laws of 2019<sup>1</sup>**

<b>TEACHERS: Student Performance Category</b>	
<p><b>REQUIRED</b> Growth Using Student Learning Objectives (SLOs)</p> <p><i>100% (Locally determined if an optional student performance measure is selected)</i></p>	<p>For the required subcomponent of the student performance category, all classroom teachers (including those of courses associated with a State assessment or Regents exam) shall have one or more SLOs based on the following options<sup>2</sup>:</p> <p><b>Assessments</b></p> <ul style="list-style-type: none"> <li>• State or Regents assessments</li> <li>• State-approved assessments consisting of the following:               <ul style="list-style-type: none"> <li>○ State-approved third-party assessments</li> <li>○ State-approved district, regional, or BOCES-developed assessments</li> </ul> </li> </ul> <p><b>Measures</b></p> <ul style="list-style-type: none"> <li>• <u>Teacher and course-specific</u> (i.e., scores and ratings will be based on the growth of students in the teacher's course in the current school year).</li> <li>• <u>School- or program-wide linked results</u> (i.e., scores and ratings will be based on the growth of students enrolled in the teacher's course in the current school year taking assessments in other grades/subjects).               <ul style="list-style-type: none"> <li>○ Measure may also be <u>district/BOCES-wide</u> if including the results of assessments administered outside of the building/program in which the teacher teaches.</li> </ul> </li> <li>• <u>School- or program-wide results</u> (i.e., scores and ratings will be based on the growth of all students in a school or program who take the applicable assessments in the current school year).               <ul style="list-style-type: none"> <li>○ Measure may also be <u>district/BOCES-wide</u> if including the results of assessments administered outside of the building/program in which the teacher teaches.</li> </ul> </li> <li>• <u>School- or program-wide group or team results</u> (i.e., scores and ratings for a group or team of teachers will be based on the growth of students in the group/team of teachers' courses in the current school year).               <ul style="list-style-type: none"> <li>○ Measure may also be <u>district-BOCES-wide</u> if including the results of assessments administered outside of the building/program in which the teacher teaches.</li> </ul> </li> </ul>
<p><b>OPTIONAL</b> Locally Selected Measures of Student Growth or Achievement<sup>3</sup></p> <p><i>(percentage weighting to be locally determined, where used)</i></p>	<p>For the optional subcomponent of the student performance category, the same locally selected measures of student growth or achievement must be used in a consistent manner across all classrooms in the same grade/subject in the LEA, to the extent practicable.</p> <p>For the optional subcomponent, a second locally selected measure shall be based on the following options:</p> <p><b>Assessments</b></p> <ul style="list-style-type: none"> <li>• State-created or administered assessments</li> <li>• State-designed supplemental assessments</li> </ul> <p><b>Measures<sup>4</sup></b></p> <ul style="list-style-type: none"> <li>• A second SLO, provided that this SLO is different than that used in the required subcomponent of the teacher's evaluation;</li> <li>• A growth score based on a statistical growth model, where available, for either a State-created or -administered assessment or a State-designed supplemental assessment;</li> <li>• A measure of student growth, other than an SLO, based on State-created or -administered assessments or State-designed supplemental assessments;</li> <li>• A performance index based on State-created or administered assessments or approved student assessments;</li> <li>• An achievement benchmark on State-created or administered assessments or approved student assessments; or</li> <li>• Any other collectively bargained measure of student growth or achievement included in the LEA's evaluation plan as approved by the commissioner.</li> </ul>

<sup>1</sup> The information provided in this memorandum applies to APPR plans approved on or after April 12, 2019.

<sup>2</sup> The selection and use of assessments for SLOs is subject to collective bargaining.

<sup>3</sup> The selection and use of the optional subcomponent of the student performance category is subject to collective bargaining.

<sup>4</sup> All measures in the optional subcomponent of the student performance category may use teacher- and course-specific results, school- or program-wide, group, team, or linked results, or district- or BOCES-wide, group, team, or linked results.

## TEACHERS: Observation Category

**Requirements and options based on practice rubric:** All observations for a teacher for the school year, and across observer types, must use the same State-approved rubric; provided that LEAs may locally determine whether to use different rubrics for teachers who teach different grades and/or subjects during the school year. At least one observation must be unannounced.

### REQUIRED

**Observation by principal or other trained administrator**

*At least 80%, locally determined*

- At least one observation by building principal or other trained administrator:
  - Observations may occur live or by live or recorded video, as determined locally.
  - LEAs may locally determine whether to use more than one observation by principal or other trained administrator.
  - Nothing shall be construed to limit the discretion of management to conduct observations in addition to those required by this section for non-evaluative purposes.
  - The frequency and duration of observations are locally determined.
- Evaluators may select a limited number of observable rubric subcomponents for focus within a particular observation so long as all observable Teaching Standards/domains of the selected practice rubric (e.g., Domains 2 and 3 of the Danielson's 2013 Framework for Teaching) are addressed across the total number of observations.
  - New York State Teaching Standards/domains that are part of the rubric but not observable during the classroom observation may be observed during any optional pre-observation conference or post-observation review or other natural conversations between the teacher and evaluator and incorporated into the observation score.
  - Points shall not be allocated based on any artifacts, unless such artifact constitutes evidence of an otherwise observable rubric subcomponent (e.g., a lesson plan viewed during the course of the classroom observation may constitute evidence of professional planning).

### REQUIRED

**Observation by impartial independent trained evaluator**

*At least 10%, locally determined*

- At least one observation by impartial independent trained evaluator(s):
  - Observations may occur live or by live or recorded video, as determined locally.
  - Impartial independent trained evaluators are trained and selected by the LEA.
  - May be employed within the LEA, but may not be assigned to the same school building as the teacher being evaluated. This could include other administrators, department chairs, or peers (e.g., teacher leaders on career ladder pathways), so long as they are not from the same building (defined as same BEDS code) as the teacher being evaluated.
  - LEAs may locally determine whether to use more than one observation by impartial independent trained evaluator(s).
  - The frequency and duration of observations are locally determined.
- Evaluators may select a limited number of observable rubric subcomponents for focus within a particular observation so long as all observable Teaching Standards/domains of the selected practice rubric (e.g., Domains 2 and 3 of the Danielson's 2013 Framework for Teaching) are addressed across the total number of observations.
  - New York State Teaching Standards/domains that are part of the rubric but not observable during the classroom observation may be observed during any optional pre-observation conference or post-observation review or other natural conversations between the teacher and evaluator and incorporated into the observation score.
  - Points shall not be allocated based on any artifacts, unless such artifact constitutes evidence of an otherwise observable rubric subcomponent (e.g., a lesson plan viewed during the course of the classroom observation may constitute evidence of professional planning).
- If an LEA is granted an annual Independent Evaluator Hardship Waiver by the Department, the process described in the waiver application will be used for the applicable school year to determine both the number of observations and the observer type.

### OPTIONAL

**Observation by trained peer teacher**

*Locally determined, consistent with the requirements that at least 80% of the overall Observation category score be based on observations by the principal/other trained administrator and at least 10% of the overall Observation category score be based on observations by impartial, independent trained evaluator(s) selected by the LEA*

- May include at least one observation by trained peer teacher:
  - Trained peer teacher must have received an overall rating Effective or Highly Effective in the prior school year.
  - Observations may occur live or by live or recorded video, as determined locally.
  - Peer teachers are trained and selected by the LEA.
- Evaluators may select a limited number of observable rubric subcomponents for focus within a particular observation so long as all observable Teaching Standards/domains of the selected practice rubric (e.g., Domains 2 and 3 of the Danielson's 2013 Framework for Teaching) are addressed across the total number of observations.
  - New York State Teaching Standards/domains that are part of the rubric but not observable during the classroom observation may be observed during any optional pre-observation conference or post-observation review or other natural conversations between the teacher and evaluator and incorporated into the observation score.
  - Points shall not be allocated based on any artifacts, unless such artifact constitutes evidence of an otherwise observable rubric subcomponent (e.g., a lesson plan viewed during the course of the classroom observation may constitute evidence of professional planning).



**PRINCIPALS: Student Performance Category**

All Building Principals

**REQUIRED  
Growth Using either  
Student Learning  
Objectives (SLOs) or an  
Input Model**

*100% (Locally determined, if an optional student performance measure is selected)*

For the required subcomponent of the student performance category, an LEA may select, or if applicable, collectively bargain one or more measures for all principals, (including those of buildings which administer State assessments or Regents exams) based on the following options:

**SLOs**

**Assessments**

- State or Regents assessments
- State-approved assessments consisting of the following:
  - State-approved third-party assessments
  - State-approved district, regional, or BOCES-developed assessments

**Measures**

- Principal and building/program-specific (i.e., scores and ratings will be based on the growth of students in the principal's building in the current school year).
  - Measure may also be district- or BOCES-wide if including the results of assessments administered outside of the building/program for which the principal is responsible.

**Input Model**

**Measures:**

- Evidence of principal practice that promotes student growth related to the Leadership Standards

**Optional Subcomponent:  
Locally Selected Measures  
of Student Growth or  
Achievement**

*(percentage weighting to be locally determined, where used)*

For the optional subcomponent of the student performance category, the same locally selected measures of student growth or achievement must be used in a consistent manner across all buildings with the same grade configuration or program in the LEA.

For the optional subcomponent, a second locally selected measure shall be based on the following options:

**Assessments**

- State-created or administered assessments
- State-designed supplemental assessments

**Measures**

- A second SLO, provided that this SLO is different than that used in the required subcomponent of the principal's evaluation;
- A growth score based on a statistical growth model, where available, for either a State-created or administered assessment or a State-designed supplemental assessment;
- A measure of student growth, other than an SLO, based on State-created or administered assessments or State-designed supplemental assessments;
- A performance index based on State-created or administered assessments or approved student assessments;
- An achievement benchmark on State-created or administered assessments or approved student assessments;
- Four, five, or six-year high school graduation rates;
- An input model where the principal's rating shall be determined based on evidence of principal practice that promotes student growth or achievement related to the Leadership Standards; or
- Any other collectively bargained measure of student growth or achievement as described in the LEA's evaluation plan, subject to approval by the commissioner.

### PRINCIPALS: School Visit Category

Principals' professional performance shall be evaluated based on a State-approved rubric using multiple sources of evidence collected and incorporated into the school visit protocol. Where appropriate, such evidence may be aligned to building or district goals; provided, however, that professional goal-setting may not be used as evidence of teacher or principal effectiveness. Such evidence shall reflect school leadership practice aligned to the Leadership Standards and selected practice rubric.

**Requirements and options based on practice rubric:** All school visits for a principal for the year, and across observer types, must use the same State-approved rubric; provided that LEAs may locally determine whether to use different rubrics for a principal assigned to different grade level configurations or building types. At least one school visit must be unannounced.

**REQUIRED**  
School visit by supervisor or other trained administrator

*At least 80%, locally determined*

- At least one school visit by supervisor or other trained administrator:
  - LEAs may locally determine whether to use more than one school visit by superintendent or other trained administrator.
  - Nothing shall be construed to limit the discretion of a board of education or superintendent of schools from conducting additional school visits for non-evaluative purposes.
  - The frequency and duration of school visits are locally determined.
  - School visits may not occur by live or recorded video.
- Evaluators may select a limited number of observable rubric subcomponents for focus within a particular school visit, so long as all observable ISLLC 2008 standards<sup>5</sup> are addressed across the total number of annual school visits.
  - Leadership Standards and their related functions that are part of the rubric but not observable during the course of the school visit may be observed through other natural conversations between the principal and the evaluator and incorporated into the school visit score.
  - Points shall not be allocated based on any artifacts, unless such artifact constitutes evidence of a rubric subcomponent observed during a school visit.
  - Professional goal-setting is a prohibited element of principal evaluations under Education Law §3012-d as amended. However, organizational goal-setting may be used to the extent that it is evidence from the school visit and related to a component of the selected practice rubric.

**REQUIRED**  
School visit by impartial independent trained evaluator

*At least 10%, locally determined*

- At least one school visit by impartial independent trained evaluator(s):
  - Impartial independent trained evaluators are trained and selected by the LEA.
  - May be employed within the LEA but may not be assigned to the same school building as the principal being evaluated. This could include other administrators, department chairs/directors, or peers, so long as they are not from the same building (defined as same BEDS code) as the principal being evaluated.
  - LEAs may locally determine whether to use more than one school visit by impartial independent trained evaluator(s).
  - The frequency and duration of school visits are locally determined.
  - School visits may not occur by live or recorded video.
- Evaluators may select a limited number of observable rubric subcomponents for focus within a particular school visit, so long as all observable ISLLC 2008 standards<sup>6</sup> are addressed across the total number of annual school visits.
  - Leadership Standards and their related functions that are part of the rubric but not observable during the course of the school visit may be observed through other natural conversations between the principal and the evaluator and incorporated into the school visit score.
  - Points shall not be allocated based on any artifacts, unless such artifact constitutes evidence of a rubric subcomponent observed during a school visit.
  - Professional goal-setting is a prohibited element of principal evaluations under Education Law §3012-d as amended. However, organizational goal-setting may be used to the extent that it is evidence from the school visit and related to a component of the selected practice rubric.
- If an LEA is granted an annual Independent Evaluator Hardship Waiver by the Department, the process described in the waiver application will be used for the applicable school year to determine both the number of school visits and the observer type.

<sup>5</sup> For APPRs conducted commencing with the 2022-2023 school year, all rubrics must be aligned to the 2015 Professional Standards for Educational Leaders (PSELs).

<sup>6</sup> For APPRs conducted commencing with the 2022-2023 school year, all rubrics must be aligned to the 2015 Professional Standards for Educational Leaders (PSELs).

**OPTIONAL  
School visit by trained  
peer principal**

Locally determined, consistent with the requirements that at least 80% of the overall School Visit category score be based on school visits by the superintendent/other trained administrator and at least 10% of the overall School Visit category score be based on school visits by impartial, independent trained evaluator(s) selected by the LEA

- May include at least one school visit by trained peer principal:
  - Trained peer principals must have received an overall rating of Effective or Highly Effective in the prior school year.
  - Trained peer principals are trained and selected by the LEA
  - School visits may not occur by live or recorded video.
- Evaluators may select a limited number of observable rubric subcomponents for focus within a particular school visit, so long as all observable ISLLC 2008 standards<sup>7</sup> are addressed across the total number of annual school visits.
  - Leadership Standards and their related functions that are part of the rubric but not observable during the course of the school visit may be observed through other natural conversations between the principal and the evaluator and incorporated into the school visit score.
  - Points shall not be allocated based on any artifacts, unless such artifact constitutes evidence of a rubric subcomponent observed during a school visit.
  - Professional goal-setting is a prohibited element of principal evaluations under Education Law §3012-d. However, organizational goal-setting may be used to the extent that it is evidence from the school visit and related to a component of the selected practice rubric.

**TEACHERS AND PRINCIPALS: Category and Overall Ratings**

**Student Performance Category**

**Scoring<sup>8</sup> SLOs**

Each performance measure (Student Learning Objectives, optional student performance measures) must result in a score between 0-20.  
  
Multiple measures will be combined using a weighted average to produce an overall Student Performance category score between 0-20.

**Rest of State**

Highly Effective	Effective	Developing	Ineffective
18-20 points	15-17 points	13-14 points	0-12 points
90-100% of students meeting or exceeding expected growth targets	75-89% of students meeting or exceeding expected growth targets	60-74% of students meeting or exceeding expected growth targets	0-59% of students meeting or exceeding expected growth targets

**New York City<sup>9</sup>**

Highly Effective	Effective	Developing	Ineffective
16-20 points	11-15 points	6-10 points	0-5 points
90-100% of students meeting or exceeding expected growth targets	75-89% of students meeting or exceeding expected growth targets	60-74% of students meeting or exceeding expected growth targets	0-59% of students meeting or exceeding expected growth targets

**HEDI Ratings**

The overall Student Performance score will be converted into a HEDI rating based on the ranges listed.

**Rest of State**

	Minimum	Maximum
H	18	20
E	15	17
D	13	14
I	0	12

**New York City**

	Minimum	Maximum
H	16	20
E	11	15
D	6	10
I	0	5

**Teacher Observation/Principal School Visit Category**

**Scoring Observations/School Visits**

Each set of observations/school visits (by supervisor/other trained administrator, independent, or peer) will be completed using a rubric with rating categories that are aligned to HEDI ratings and 1-4 levels. The 1-4 score for each set of observations/school visits will incorporate all evidence collected and observed over the course of the school year.  
  
Once all evaluations are complete, the different types of observations/school visits will be combined using a weighted average, producing an overall Observation/School Visit category score between 1-4.

<sup>7</sup> For APPRs conducted commencing with the 2022-2023 school year, all rubrics must be aligned to the 2015 Professional Standards for Educational Leaders (PSELs).

<sup>8</sup> All assessments used for APPR purposes must be capable of generating a growth score from 0-20.

<sup>9</sup> For SLOs calculated based on the percentage of students meeting a target.

**HEDI Ratings**

The overall Observation/ School Visit score will be converted into a HEDI rating based on locally determined ratings consistent with the ranges listed.

	Min	Max
H	3.50 to 3.75	4.0
E	2.50 to 2.75	3.49 to 3.74
D	1.50 to 1.75	2.49 to 2.74
I	0.00 <sup>10</sup>	1.49 to 1.74

**Overall Rating**

The overall rating for an educator shall be determined according to a methodology as follows:

		Observations/School Visits			
		Highly Effective (H)	Effective (E)	Developing (D)	Ineffective (I)
Student Performance	Highly Effective (H)	H	H	E	D
	Effective (E)	H	E	E	D
	Developing (D)	E	E	D	I
	Ineffective (I)	D	D	I	I

**What Is State Determined**

- Minimum growth targets for SLOs under the Required subcomponent of the Student Performance category representing at least one year of expected student growth and following State guidance.
- Scoring ranges for the Required and Optional subcomponents of the Student Performance Category to determine an educator’s rating category of Highly Effective, Effective, Developing, and Ineffective (HEDI).
- The minimum and maximum scores aligned to each of the HEDI rating categories for the Teacher Observation/Principal School Visit categories.
- The weights for all subcomponents of the Student Performance and Teacher Observation/Principal School Visit categories to assign a final rating category of HEDI.
- Pursuant to section 30-3.16 of the Rules of the Board of Regents, an LEA may request a variance from one or more of the regulatory provisions described above to implement new and innovative approaches to educator evaluation so long as such approaches are consistent with the requirements of the Education Law and meet the standards set forth in the regulations.

**What Is Locally-Established through Collective Bargaining**

- The selection and use of the assessment(s) used in a teacher’s or principal’s evaluation.
- Whether to use an SLO or input model for the required student performance category for principals.
- Whether to use the optional subcomponent of the student performance category, and which option will be used.
- Whether to use the optional subcomponent of the teacher observation/principal school visit category.
- How to implement the teacher observation/principal school visit categories, consistent with the corresponding Commissioner’s Regulations, including, but not limited to, the scoring ranges aligned to each HEDI category within the parameters determined by the State.

<sup>10</sup> In the event that an educator earns a score of 1 on all rated components of the practice rubric across all observations, a score of 0 will be assigned.

### Additional Notes

- The process by which weights and scoring ranges are assigned to subcomponents and categories must be transparent and available to those being rated before the beginning of each school year.
- LEAs and collective bargaining units, where one exists, must certify that the process for assigning ratings will use the scoring bands and weighting processes specified in the regulations.
- Pursuant to Education Law §3012-d(6), the following elements may no longer be used in any evaluation subcomponent:
  - Evidence of student development and performance derived from lesson plans, other artifacts of teacher practice, and student portfolios, except for student portfolios measured by a state-approved rubric where permitted by the department;
  - Use of an instrument for parent or student feedback;
  - Use of professional goal-setting as evidence of teacher or principal effectiveness;
  - Any district or regionally-developed assessment that has not been approved by the department; and
  - Any growth or achievement target that does not meet the minimum standards as set forth in Commissioner's regulations.
- The entire Annual Professional Performance Review shall be completed and provided to the teacher or the principal as soon as practicable but in no case later than September 1 of the school year next following the school year for which the teacher or principal's performance is measured.
- The requirements of Education Law section 3012-d as enacted by Chapter 56 of the Laws of 2015 and Subpart 30-2 of the Rules of the Board of Regents shall continue to apply to APPRs conducted prior to the 2019-2020 school year or for any annual professional performance review conducted on or after the 2019-2020 school year pursuant to a collective bargaining agreement entered into on or before April 12, 2019 that remains in effect after April 12, 2019 until a successor agreement is reached. During the implementation of such plans, the transition scores and ratings described in the approved APPR plan will replace the original student performance measures based on the grades 3-8 ELA and math State tests and/or any State-provided growth scores.
- Upon a teacher or a principal receiving an overall rating of Developing or Ineffective for a school year, an LEA shall formulate and commence implementation of a teacher or principal improvement plan for such teacher or principal by October 1 in the school year following the school year for which such teacher's or principal's performance is being measured or as soon as practicable thereafter.
- A variance from one or more of the requirements of the regulations and the LEA's approved APPR plan may be granted to an LEA that seeks to develop and implement new and innovative approaches to evaluation that meets the specific needs of the applicant.
  - An LEA may only seek a variance from provisions of the regulations and their approved APPR plan that have been delegated to the commissioner under Education Law §3012-d.
  - An LEA must collectively bargain the terms and conditions of the variance request where required pursuant to Article 14 of the Civil Service Law.
  - Prior to or with the submission of a variance application, the LEA must submit and receive approval of an APPR plan that complies with all requirements of Education Law 3012-d as amended and the regulations provided, however, that an LEA may, subject to collective bargaining, notify the Department in its variance application that it intends to carry forward its currently approved APPR plan in lieu of submitting a new plan to the Department.



# 3020-a (Discipline), Counseling and Examination

Robert Reilly  
General Counsel  
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*NOTE: In the standard 3020-a, the employee must request a hearing, in writing, within ten (10) days of receipt of the charges, by notifying the secretary or clerk of the board of education.*

**The procedures that must be used for disciplining a tenured teacher are set forth in statute.**

Sections 3020, 3020-a, and 3020-b set out the exclusive procedures for disciplining a tenured teacher. (Education Law §§3020, 3020-a, 3020-b). Pursuant to those sections, a tenured teacher is entitled to a due process hearing to determine if the district had just cause to impose discipline. (*TeBordo v Cold Spring Harbor CSD*, 126 AD2d 542-543 [2d Dept 1987]).

## **Related Concepts:**

Cadet Rights

Counseling Memo

Part 83 Good Moral Character

913 Examination

**Under sections 3020-a and 3020-b, there are various types of hearings that might apply, depending on the conduct charged.**

With the 2015 amendments, there are now six types of hearings that can be held under §§3020-a and 3020-b, those being [1] a standard 3020-a hearing, [2] a probable cause hearing held when a tenured teacher is suspended without pay based on allegations of physical or sexual abuse, [3] an expedited 3020-a based on allegations of physical or sexual abuse, (4) an expedited 3020-b based on two consecutive ineffective APPR ratings, (5) a mandatory expedited 3020-b based on three consecutive ineffective APPR ratings, and (6) an expedited 3020-a based on the revocation of the teacher's certification. The rules vary for each type of hearing. For example, who picks the hearing officer varies, the time frames for completing the hearing vary, and the time markers within which the hearing must be completed vary.

**Section 3020-a generally applies to both allegations of misconduct and incompetence and sets for the standard procedures, which the other types of hearings then vary:**

In the standard 3020-a, the employee must request a hearing, in writing, within ten (10) days of receipt of the charges, by notifying the secretary or clerk of the board of education. The unexcused failure to submit such a written request is deemed a waiver of the right to a due process hearing. If the request for a hearing is properly and timely filed, SED, in conjunction with AAA, will generate and communicate a list of arbitrators to the parties. The parties then have 15 days to pick a hearing officer from their receipt of the

list. The pre-hearing conference is to be held within 10 to 15 days of confirmation of the hearing officer's acceptance of the appointment. Pre-hearing motions are due on notice 5 days before the pre-hearing conference. The hearing is to be completed within 60 days of the pre-hearing conference, with the overall limit on the length of the hearing being 125 days. An appeal must be filed within ten (10) days of receipt of the decision. Such an appeal is governed by CPLR Section 7511 for vacating or modifying an arbitration award.

**The hearing officer in a 3020-a proceeding may award a penalty that the district then must implement.**

Also, in standard Education Law §3020-a cases, hearing officers may impose a penalty. (Education Law §3020-a[4]). These penalties may be a written reprimand; a fine; suspension for a fixed time without pay; or dismissal. (Education Law §3020-a[4]). Under the statute, in lieu of or in addition to imposing a penalty, a hearing officer may also impose remedial action including, but not limited to, leaves of absence with or without pay, continuing education and/or study, a requirement that the employee seek counseling or medical treatment or that the employee engage in any other combination of remedial actions. (Education Law §3020-a[4]).

**A 3020-a hearing officer's award may be vacated or modified by a court but only on exceedingly narrow grounds, not present in the vast majority of cases.**

An employee may move to vacate or modify a hearing officer's decision pursuant to Article 75 of Civil Practice Law and Rules ("CPLR") in state supreme court. (Education Law §3020-a[5]). A court will vacate or modify a hearing officer's decision if the "penalty is so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness." (Matter of Pell v Bd. of Educ. U.F.S.D. No. 1 Towns of Scarsdale and Mamaroneck, 34 NY2d 222, 233 [1974]). In addition, where the parties are subject to compulsory arbitration, the award must also satisfy an additional layer of scrutiny and have "evidentiary support and cannot be arbitrary and capricious." (City School Dist. of NYC v McGraham, 17 NY3d 917, 919 (2011)).

In Matter of Bolt, et al., the New York Court of Appeals overturned three decisions by the Appellate Division, First Department relating to penalties issued by arbitrators in Education Law section 3020-a cases in New York City. In each of the three cases, the arbitrators found that a penalty of termination was appropriate. Following initial challenges at the lower court level, with various outcomes, the Appellate Division determined that termination in each of the three cases "shocked the conscience" and the matters were remanded to the NYC Department of Education for a lesser penalty. (30 NY3d 1065 [2018]).

The Court of Appeals reversed the Appellate Division's rulings and found that the Appellate Division exceeded its authority by "reweighing the evidence and substituting its judgment for that of the hearing officer." The Court cited its prior decisions in Pell v Bd. of Educ. and City Sch. Dist. of the City of New York v McGraham in finding that the penalties imposed (termination) were not irrational and did not shock the conscience.



In a concurring opinion, Justice Rivera wrote separately to clarify the requirements necessary to find that a disciplinary penalty shocks the conscience, warranting a reversal in administrative sanctions. Under Pell, "a result is shocking to one's sense of fairness if the sanction imposed is so grave in its impact on the individual subjected to it that it is disproportionate to the misconduct, incompetence, failure, or turpitude of the individual, or to the harm or risk of harm to the agency or institution, or to the public generally visited or threatened by the derelictions of the individuals." Pell also allows for factors like deterrence, prospect of recurrence by the individual or others, and whether the sanction reflects the standards of society to also be considered in determining the fairness of the sanction. Courts will also consider the misconduct in light of the agency's stated mission or responsibilities to the public.

**Where a teacher has been convicted of certain crimes, employment might be terminated without a hearing.**

However, a tenured teacher/teaching assistant, who otherwise would be entitled to the protections set forth in Education Law §3020-a, is not entitled to such protections, and will be terminated without a hearing "upon conviction of a sex offense" as defined by §305(7-a)(b)(2) of the Education Law. Section 305(7-a)(b) (2) states that Correction Law §168-a(2) and (3) govern and include "an offense committed in any jurisdiction for which the offender is required to register as a sex offender in New York."

**Generally, under section 3020-a, a teacher may be suspended with pay pending the hearing, but allegations of abuse may allow the district to suspend the teacher without pay.**

For the probable cause hearing based on allegations of physical or sexual abuse pursuant to Education Law §3020-a, the teacher may be suspended without pay up for up to 120 days. Moreover, the hearing officer may determine that there is no probable cause to support the charges and reinstate the employee's salary while suspended and awaiting the dues process, evidentiary hearing on the merits. The employee may even receive interest (6%) on the back pay, under certain circumstances, if the hearing officer finds in his/her favor at either the probable cause hearing or the final determination. The Commissioner picks the hearing officer. The hearing is to be held within 10 days of the decision to suspend.

**Allegations of abuse may also trigger an expedited 3020-a proceeding.**

For the expedited 3020-a hearing based on allegations of physical or sexual abuse, the parties have 15 days to pick a hearing officer from their receipt of the list. The pre-hearing conference is to be held within 10 to 15 days of confirmation of the hearing officer's acceptance of the appointment. Pre-hearing motions are due on notice 5 days before the pre-hearing conference. The hearing is to commence within 7 days of the pre-hearing conference. The hearing is to be completed within 60 days of the pre-hearing conference.

**APPR has been integrated into section 3020-b, under which charges and hearings result from consecutive ineffective APPR ratings. A district may bring charges for two consecutive APPR ratings.**

For the expedited 3020-b based on two consecutive ineffective APPR ratings, the parties have 7 days to pick a hearing officer from receipt of the list. The pre-hearing conference is to be held within 7 days of appointment. Pre-hearing motions are due on notice 2 days before the pre-hearing conference. The hearing is to commence within 7 days of the pre-hearing conference. The final hearing is to be held within 90 days of a request for a hearing.

**Charges are mandatory for three consecutive ineffective APPR ratings.**

For a mandatory expedited hearing based on three consecutive ineffective APPR ratings, the Commissioner picks the hearing officer. The pre-hearing conference is to be held within 5 days of notice of the appointment. Pre-hearing motions are due on notice 2 days before the pre-hearing conference. The hearing is to commence within 5 days of the pre-hearing conference. The final hearing is to be held within 30 days of the request for a hearing.

**The revocation of a teaching certificate also will result in an expedited 3020-a hearing.**

For an expedited 3020-a based on the revocation of a teacher's certification, the parties have 15 days to pick a hearing officer from their receipt of the list. The pre-hearing conference is to be held within 10 to 15 days of confirmation of the hearing officer's acceptance of the appointment. Motions are due on notice 5 days before the pre-hearing conference. The hearing is to commence 7 days after the pre-hearing conference. The hearing is limited to one day. A teaching certificate might be revoked in a Part 83 proceeding.

**There is a significant difference between a letter of reprimand, which is discipline, and a counseling memorandum, which is not.**

Section 3020-a does not insulate tenured teachers from all written critical comments from their supervisor (Holt, 52 NY2d at 632). Letters written to warn or instruct rather than to impose punishment do not rise to the level of disciplinary reprimands even if they criticize a teacher's performance. (Holt, 52 NY2d at 633). In Holt v Board of Education, 52 NY2d 625, 439 NYS2d 839 [1981], the Court of Appeals addressed the differences between counseling memos and letters of reprimand. Generally speaking, written admonition of a teacher does not constitute discipline and thus, does not trigger a formal hearing when it is evaluative in nature, intending to warn or instruct, rather than discipline. (Holt v Bd. of Educ. Webutuck CSD, 52 NY2d 625, 632-633 [1981]); Matter of Civil Service Employee's Association v Southold UFSD, 204 AD2d 445, 446 [2d Dept 1994]; Matter of Richardson, 24 Educ Dept Rep 104, Decision No. 11,333 [1984]).

**A local may negotiate alternative procedures, but they must include the option to elect 3020-a.**

A local union and a board of education may enter into a collective bargaining agreement that provides for alternative procedures to discipline tenured teachers. (Bd. of Educ. of UFSD No. 3 of the Town of Huntington v Associated Teachers of Huntington, Inc., 30 NY2d 122, 128 [1972]). There is no inference that the provisions of the tenure law preclude employee organizations from representing employees in the administration of disciplinary grievances. (Id. at 131-32.) To be valid, however, the collective bargaining agreement must give the tenured teacher the option to elect the alternative procedure to the disciplinary process set forth under Education Law section 3020-a and presumably, under section 3020-b as well. (Matter of Kilduff v Rochester CSD, 24 NY3d 505, 509-11 [2014]).

**Under 3020-a a teacher cannot be compelled to testify against themselves and may refuse to answer questions during an investigation, pre-charge, by exercising what is known as Cadet rights. (These rights are particular to tenured employees entitled to section 3020-a, and thus are not available to anyone without such rights including employees covered by the Civil Service Law.)**

Cadet rights, named after the Cadet case, are the rights of teachers not to testify against themselves in the context of a 3020-a hearing and includes the right to refuse to answer questions from the employer and its investigator during the investigative, pre-charge period. It basically gives a teacher the right to remain silent during the investigation and not be found guilty of insubordination.

**3020-a specifies the procedures that an employing school district must use to discipline a tenured teacher; Part 83 of Commissioner's regulations specifies the procedures the State must use to revoke a teacher's certificate.**

The Commissioner of Education can use the procedures set forth in Part 83 of the Commissioner's Regulations to suspend or revoke the certification of any teacher upon a substantial question of moral character (good moral character proceedings).



## DISCIPLINING TENURED TEACHERS\*

\*(Teachers, Teaching Assistants, Counselors, etc., not Teacher Aides, c/s employees)

### Section 3020-a of the Education Law

#### Charges:

Written Charges - only for "just cause"  
Filed by superintendent (or other person)  
Voted on by BOE  
Delivered to teacher by certified mail/personal service  
Teacher has 10 calendar days to request a hearing  
3 year statute of limitations (going back in record)  
Charges can only be brought during school year  
Must define maximum penalty sought  
Penalties against the school district for frivolous charges

#### Grounds:

Insubordination  
Immoral character  
Conduct unbecoming a teacher  
Inefficiency  
Incompetence  
Physical or mental disability (see Section 913 of the Ed Law)  
Neglect of duty  
Failure to maintain teacher certification

#### What to do:

Contact local union President and NYSUT Labor Relations Specialist  
Request hearing using forms enclosed with charges (LRS will help)  
Request copies of everything in personnel file and deliver to Labor Relations Specialist or assigned attorney  
Labor Relations Specialist will get case started (contact NYSUT legal, choose panelist, request for hearing, etc.)  
NYSUT lawyer will contact client  
Prepare written response to charges  
**KEEP QUIET** (everyone is a potential witness *against* you)

Selection of 3 member panel ("pedagogical incompetence") or single hearing officer (all other charges):

Union/employee's panelist (trained by NYSUT)

BOE panelist

Neutral (AAA List) - chosen by other 2 panelists in "pedagogical incompetence" cases

Neutral chosen by lawyers for BOE and employer in all other cases

Rules to expedite the hearing (commitments, limited number of adjournments, etc.)

NYSUT Legal will assign an attorney

Alternative contractual procedures are permitted (i.e., "just cause" provisions, etc.)

Pre-Hearing Conference (1 day):

Issue subpoenas

Discovery

Set dates for hearing

etc.

Hearing:

Strict rules of evidence in hearing (witnesses, cross-examination, etc.)

Burden of proof on school district

Public or private (employee's discretion)

Attorney/client - privileged relationship (union not involved)

Assignment During Hearing:

With pay

Classroom duties or other "assignment"

Without pay for failure to maintain certification; felony conviction regarding drugs or abuse of minor or student

Penalties: (only one penalty)

Suspension

Fine

Letter of reprimand (from BOE)

Termination

Other "creative" penalties such as required training in a specific area of deficiency

McKinney's Consolidated Laws of New York Annotated  
Education Law (Refs & Annos)  
Chapter 16. Of the Consolidated Laws (Refs & Annos)  
Title IV. Teachers and Pupils  
Article 61. Teachers and Supervisory and Administrative Staff (Refs & Annos)

McKinney's Education Law § 3023

§ 3023. Liability of a board of education, trustee, trustees or board of cooperative educational services

Currentness

Notwithstanding any inconsistent provision of law, general, special or local, or the limitation contained in the provisions of any city charter, it shall be the duty of each board of education, trustee or trustees, in any school district having a population of less than one million, and each board of cooperative educational services established pursuant to section nineteen hundred fifty of this chapter, to save harmless and protect all teachers, practice or cadet teachers, authorized participants in a school volunteer program, and members of supervisory and administrative staff or employees from financial loss arising out of any claim, demand, suit or judgment by reason of alleged negligence or other act resulting in accidental bodily injury to any person, or accidental damage to the property of any person within or without the school building, provided such teacher, practice or cadet teacher, authorized participant in a school volunteer program, or member of the supervisory or administrative staff or employee at the time of the accident or injury was acting in the discharge of his duties within the scope of his employment or authorized volunteer duties and/or under the direction of said board of education, trustee, trustees or board of cooperative educational services; and said board of education, trustee, trustees or board of cooperative educational services may arrange for and maintain appropriate insurance with any insurance company created by or under the laws of this state, or in any insurance company authorized by law to transact business in this state, or such board, trustee, trustees or board of cooperative educational services may elect to act as self-insurers to maintain the aforesaid protection. A board of education, trustee, board of trustees, or board of cooperative educational services, however, shall not be subject to the duty imposed by this section, unless such teacher, practice or cadet teacher, authorized participant in a school volunteer program, or member of the supervisory and administrative staff or employee shall, within ten days of the time he is served with any summons, complaint, process, notice, demand or pleading, deliver the original or a copy of the same to such board of education, trustee, board of trustees,<sup>1</sup> or board of cooperative educational services.

Credits

(Added L.1955, c. 583, § 12. Amended L.1961, c. 128; L.1966, c. 98; L.1976, c. 844, § 1.)

Footnotes

1 So in original.

McKinney's Education Law § 3023, NY EDUC § 3023

Current through L.2022, chapters 1 to 481. Some statute sections may be more current, see credits for details.

McKinney's Consolidated Laws of New York Annotated  
Education Law (Refs & Annos)  
Chapter 16. Of the Consolidated Laws (Refs & Annos)  
Title IV. Teachers and Pupils  
Article 61. Teachers and Supervisory and Administrative Staff (Refs & Annos)

McKinney's Education Law § 3028

§ 3028. Liability of school district for cost and attorney's fees of action against, or prosecutions of, teachers, members of supervisory and administrative staff or employees, and school volunteers

Currentness

Notwithstanding any inconsistent provision of any general, special or local law, or the limitations contained in the provisions of any city charter, each board of education, trustee or trustees in the state shall provide an attorney or attorneys for, and pay such attorney's fees and expenses necessarily incurred in the defense of a teacher, member of a supervisory or administrative staff or employee, or authorized participant in a school volunteer program in any civil or criminal<sup>1</sup> action or proceeding arising out of disciplinary action taken against any pupil of the district while in the discharge of his duties within the scope of his employment or authorized volunteer duties. For such purposes the board of education, trustee or trustees may arrange for and maintain appropriate insurance with any insurance company created by or under the laws of this state, or in any insurance company authorized by law to transact business in this state, or such board, trustee or trustees may elect to act as self-insurers to maintain the aforesaid protection. A board of education, trustee or board of trustees, however, shall not be subject to the duty imposed by this section, unless such teacher, or member of the supervisory and administrative staff or employee or authorized participant in a school volunteer program shall, within ten days of the time he is served with any summons, complaint, process, notice, demand or pleading, deliver the original or a copy of the same to such board of education, trustee or board of trustees.

Credits

(Added L.1960, c. 800. Amended L.1971, c. 821, § 1; L.1976, c. 844, § 2.)

Footnotes

1 So in original. Probably should be "criminal".

McKinney's Education Law § 3028, NY EDUC § 3028

Current through L.2022, chapters 1 to 481. Some statute sections may be more current, see credits for details.



McKinney's Consolidated Laws of New York Annotated  
Education Law (Refs & Annos)  
Chapter 16. Of the Consolidated Laws (Refs & Annos)  
Title V. Taxation and Financial Administration  
Article 77. Fines, Penalties, Forfeitures and Costs (Refs & Annos)

McKinney's Education Law § 3811

§ 3811. Costs, expenses and damages a district charge in certain cases

Currentness

1. Whenever the trustees or board of education of any school district, or any school district officers, have been or shall be instructed by a resolution adopted at a district meeting to defend any action brought against them, or to bring or defend an action or proceeding touching any district property or claim of the district, or involving its rights or interests, or to continue any such action or defense, all their costs and reasonable expenses, as well as all costs and damages adjudged against them, shall be a district charge and shall be levied by tax upon the district. Whenever any superintendent, principal, member of the teaching or supervisory staff, member of a committee on special education or subcommittee thereof, surrogate parent as defined in the regulations of the commissioner of education, or any trustee or member of the board of education of a school district or non-instructional employee of any school district other than the city school district of the city of New York or any board of cooperative educational services shall defend any action or proceeding, other than a criminal prosecution or an action or proceeding brought against him by a school district or board of cooperative educational services hereafter brought against him, including proceedings before the commissioner of education, arising out of the exercise of his powers or the performance of his duties under this chapter, all his reasonable costs and expenses, as well as all costs and damages adjudged against him, shall be a district charge and shall be levied by tax upon the district or shall constitute an administrative charge upon the board of cooperative educational services provided that (a) such superintendent, principal, member of the teaching or supervisory staff, member of a committee on special education or subcommittee thereof, surrogate parent as defined in the regulations of the commissioner of education, non-instructional employee of any school district or board of cooperative educational services or such trustee or member of a board of education of such school district or board of cooperative educational services shall notify the trustees or board of education or board of cooperative educational services in writing of the commencement of such action or proceedings against him within five days after service of process upon him; and (b) the trustees or board of education or board of cooperative educational services shall, at any time during the ten days next following the notice to them of the commencement of such action or proceedings, have the right to designate and appoint the legal counsel to represent such superintendent, principal, member of the teaching or supervisory staff, member of a committee on special education or subcommittee thereof, surrogate parent as defined in the regulations of the commissioner of education, non-instructional employee of any school district or board of cooperative educational services or such trustee or member of the board of education or board of cooperative educational services in such action or proceedings against him, in the absence of which designation and appointment within the time specified such superintendent, principal, member of the teaching or supervisory staff, member of a committee on special education or subcommittee thereof, surrogate parent as defined in the regulations of the commissioner of education, non-instructional employee of any school district or board of cooperative educational services or such trustee or member of the board of education or board of cooperative educational services may select his own legal counsel; (c) it shall be certified by the court or by the commissioner of education, as the case may be, that he appeared to have acted in good faith with respect to the exercise of his powers or the performance of his duties under this chapter.

2. If the amount claimed hereunder be disputed by a district meeting, the board of education or the board of trustees, it shall be adjusted by the county judge of any county in which the district or any part of it is situated.

## Indemnification of School Employees By School District

School districts must provide an attorney and pay legal fees in a case where civil or criminal action is brought against a teacher or SRP who, in the discharge of his or her duties, takes disciplinary action against a student (§3028).

In addition, school districts must provide legal assistance to employees facing claims of alleged negligence or acts resulting in accidental bodily injury to any person within or without a school building, provided such employee at the time of the accident or injury was acting in the discharge of his or her duties within the scope of his or her employment and/or under the direction of the school board (§3023). The teacher or SRP must send copies of the legal papers in the criminal or civil proceedings to the district within ten days of being served to be eligible for district assistance (§3023, §3028). The time limit is only five days for requests for indemnification for non-criminal proceedings not falling within §3023 or §3028 (see §3811). These requirements do not apply to an action or proceeding brought against an employee by the school district.

Also, section 18 of the Public Officers Law permits a school board to adopt a resolution to replace or supplement the protection provided by the Education Law. In such instances, the notice requirements of the Public Officers Law apply.

McKinney's Consolidated Laws of New York Annotated  
Education Law (Refs & Annos)  
Chapter 16. Of the Consolidated Laws (Refs & Annos)  
Title IV. Teachers and Pupils  
Article 61. Teachers and Supervisory and Administrative Staff (Refs & Annos)

McKinney's Education Law § 3031

§ 3031. Procedure when tenure not to be granted at conclusion  
of probationary period or when services to be discontinued

Currentness

Notwithstanding any other provision of this chapter: (a) boards of education, trustees of common school districts and boards of cooperative educational services shall review all recommendations not to appoint a person on tenure, and, teachers, administrators and supervisors employed on probation by any school district or by any board of cooperative educational services, as to whom a recommendation is to be made that appointment on tenure not be granted or that their services be discontinued shall, at least thirty days prior to the board meeting at which such recommendation is to be considered, be notified of such intended recommendation and the date of the board meeting at which it is to be considered. Such teacher, administrator and supervisor may, not later than twenty-one days prior to such meeting, request in writing that he be furnished with a written statement giving the reasons for such recommendation and within seven days thereafter such written statement shall be furnished. Such teacher, administrator and supervisor may file a written response to such statement with the district clerk not later than seven days prior to the date of the board meeting.

(b) Where a board of education, trustees of a common school district, or board of cooperative educational services votes to reject the recommendation of a superintendent of schools, district superintendent or district principal to grant tenure to any teacher, administrator and supervisor employed on probation, such vote shall be considered advisory and at least thirty days prior to the board meeting at which such recommendation is to be finally considered, the board shall notify said teacher, administrator and supervisor of its intention to deny tenure and the date of the board meeting at which it will take final action. Such teacher, administrator and supervisor may, not later than twenty-one days prior to such meeting, request in writing that he be furnished with a written statement giving the board's reasons for such intended action and within seven days thereafter such written statement should be furnished. Such teacher, administrator and supervisor may file a written response to such statement with the district clerk not later than seven days prior to the date of the board meeting.

(c) This section shall not be construed as modifying existing law with respect to the rights of probationary teachers or the powers and duties of boards of education, trustees of common school districts or boards of cooperative educational services, with respect to the discontinuance of services of teachers, administrators and supervisors or appointments on tenure of teachers, administrators and supervisors.

**Credits**

(Added L.1972, c. 866, § 1. Amended L.1976, c. 493, § 1; L.1980, c. 442 § 4; L.1985, c. 232, § 1; L.1993, c. 691, § 1.)

McKinney's Education Law § 3031, NY EDUC § 3031

Current through L.2022, chapters 1 to 481. Some statute sections may be more current, see credits for details.

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# Incidental Teaching & Substitute Teaching



No. 21-20 (Updated and replaces 20-17)

November 2021

## November 2021:

In its ongoing response to the COVID-19 crisis and the reopening of schools, the State Education Department has amended regulations that governing incidental teaching and substitute teaching. These changes initially in effect for the 2020-2021 school year remain in effect for the 2021-2022 school year.

**Incidental teaching:** For the 2020-2021 and 2021-2022 school years, a superintendent of schools may assign certified teachers to teach a subject not covered by their certificate for a period not to exceed ten (10) classroom hours a week when no certified or qualified teacher is available after an extensive and documented search. For additional information about incidental teaching, please see <http://www.highered.nysed.gov/tcert/resteachers/employmentissues.html#incidental>.

Incidental teaching, governed by Part 80.5-3 of Commissioner's Regulations, occurs when a teacher is assigned to teach a subject outside of the teacher's certification area. Such an assignment may only take place when the district can document that no certified or qualified teacher is available after extensive recruitment. Historically these assignments were not to exceed five (5) classroom hours per week.

### NOTE:

- Incidental teaching assignments do not apply to teaching special education; the federal Individuals with Disabilities Act (IDEA) requires that special education instruction must be provided by certified special education teachers.
- Ten (10) classroom hours may constitute a 'substantial portion' of time as defined in Part 30 Regulations of the Commissioner and thus may raise questions relating to tenure. However, appropriate tenure assignments require proper certification and incidental assignments, by definition, preclude the teacher having the proper certification.

**Substitute teaching:** During the 2020-2021 and 2021-2022 school years, substitute teachers who do not hold a valid teaching certificate and are not working towards certification may be employed by the school district or BOCES beyond the 40-day limit.

Employment may be continued up to an additional 50 days (90 days total in a school year) if the BOCES district superintendent or the school superintendent certifies that the school district or BOCES, as applicable, has conducted a good faith recruitment search for a properly certified candidate and determined that there are no available certified teachers that can perform the duties of such position.

In rare circumstances, a district or BOCES may hire a substitute teacher beyond the 90 days, if a BOCES district superintendent or school superintendent attests that a good faith recruitment search has been conducted and that there are still no available certified teachers who can perform the duties of such position and that a particular substitute teacher is needed to work with a specific class or group of students until the end of the school year.

For additional information about student teaching go to the Substitute Teaching webpage.

Members who want to explore their certification options in relation to incidental teaching assignments or have questions about using substitute teaching for certification purposes can submit their questions at Contact (nysut.org).

8 CRR-NY 80-5.3  
NY-CRR

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK  
TITLE 8. EDUCATION DEPARTMENT  
CHAPTER II. REGULATIONS OF THE COMMISSIONER  
SUBCHAPTER C. TEACHERS  
PART 80. REQUIREMENTS FOR TEACHERS' CERTIFICATES AND TEACHING PRACTICE  
SUBPART 80-5. REQUIREMENTS RELATING TO CLASSROOM TEACHING AND EDUCATIONAL LEADERSHIP  
PRACTICE AND SPECIALIZED CREDENTIALS

8 CRR-NY 80-5.3  
8 CRR-NY 80-5.3

## 80-5.3 Incidental teaching.

A superintendent of schools may assign a teacher to teach a subject not covered by such a teacher's certificate or license for a period not to exceed five classroom hours a week, and due to the COVID-19 crisis during the 2020-2021 school year for a period not to exceed ten classroom hours a week, when no certified or qualified teacher is available after extensive and documented recruitment, and provided that approval of the commissioner is obtained in accordance with the following requirements:

(a) Not later than 20 business days after such an assignment, the superintendent of schools shall submit for approval an application, in a form satisfactory to the commissioner, containing the following information:

- (1) evidence of extensive recruitment of a teacher certified in the appropriate area;
- (2) the name and certification status of the teacher given such assignment;
- (3) the subject which the teacher is being assigned to teach on an incidental basis and the total number of classes in such subject being taught on an incidental basis;
- (4) the qualifications of the teacher to teach such subject on an incidental basis;
- (5) the specific reasons why an incidental assignment is necessary;
- (6) the anticipated duration of the incidental teaching assignment; and
- (7) the number of applications, approved or pending, for authorization to make incidental teaching assignments in the same certification area for which the current authorization is being sought.

(b) To be approved, such application shall demonstrate to the satisfaction of the commissioner that an incidental teaching assignment is necessary, that the teacher so assigned is the best qualified to teach the subject on an incidental basis, and that the requirements of this subdivision have been met.

(c) The commissioner will issue a determination within 20 business days of receipt of the district's application.

(d) In the event that the application is disapproved, the superintendent of schools, within seven business days of receipt of notice of such disapproval, shall terminate the incidental assignment. In the event that the application is approved, such approval shall be deemed to have commenced on the date of the incidental teaching assignment and shall terminate on the last day of the school year for which it is granted. The superintendent of schools may apply, in accordance with subdivision (e) of this section, for renewal of such approval for any teacher.

(e) To obtain renewal of such approval in any subsequent year, the superintendent of schools, as soon as possible after learning that the continued assignment of an incidental teacher is necessary, shall submit an application which, in addition to setting forth the information required pursuant to subdivision (a) of this section, contains an assurance by the superintendent of schools that:

- (1) the teacher who previously taught the course on an incidental basis has been offered the opportunity to continue to teach the course or has not been offered such an opportunity because the superintendent has evidence that the course was not taught in an acceptable manner;
- (2) the teacher who is assigned to teach the course has completed, or has agreed to complete no later than September 1st of the school year next following the first renewal of such approval, at least three semester hours of credit or a satisfactory

equivalent leading to certification in the subject which the teacher is being assigned to teach; and

(3) the teacher who is assigned to teach the course will be reimbursed by the school district for the tuition cost of any portion of the three semester hours of credit or the equivalent required pursuant to paragraph (2) of this subdivision that is taken by the teacher at the request of the school district, and satisfactory evidence that the teacher has been so reimbursed in the event the teacher who is assigned has previously taught the course on an incidental basis, pursuant to a previous renewed approval.

8 CRR-NY 80-5.3  
Current through March 31, 2021

END OF DOCUMENT



8 CRR-NY 80-5.6  
NY-CRR

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK  
TITLE 8. EDUCATION DEPARTMENT  
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PRACTICE AND SPECIALIZED CREDENTIALS

8 CRR-NY 80-5.6  
8 CRR-NY 80-5.6

## 80-5.6 Supplemental school personnel.

(a) For purposes of this section, *school year* shall mean a minimum of 180 days of full-time school experience or the substantial equivalent, as defined by the commissioner.

(b) **Teacher aide.**

A teacher aide may be assigned by the board of education to assist teachers in such nonteaching duties as:

- (1) managing records, materials and equipment;
- (2) attending to the physical needs of children; and
- (3) supervising students and performing such other services as support teaching duties when such services are determined and supervised by teacher.

(c) **Teaching assistant.**

(1) Description and duties.

(i) Description. A teaching assistant is appointed by a board of education to provide, under the general supervision of a licensed or certified teacher, direct instructional service to students.

(ii) Duties.

(a) Teaching assistants assist teachers by performing duties such as:

- (1) working with individual pupils or groups of pupils on special instructional projects;
- (2) providing the teacher with information about pupils that will assist the teacher in the development of appropriate learning experiences;
- (3) assisting pupils in the use of available instructional resources, and assisting in the development of instructional materials;
- (4) utilizing their own special skills and abilities by assisting in instructional programs in such areas as: foreign languages, arts, crafts, music and similar subjects; and
- (5) assisting in related instructional work as required.

(b) Teaching assistants who hold the pre-professional teaching assistant certificate shall have the same scope of practice as other teaching assistants, in accordance with the duties prescribed in clause (a) of this subparagraph. Within that scope of practice, teaching assistants holding a pre-professional teaching assistant certificate may, at the discretion of the employing district, and while under the general supervision of a teacher, perform such duties as:

- (1) working with small groups of children so the teacher can work with a large group or individual children;
- (2) helping a teacher to construct a lesson plan;

- (3) presenting segments of lesson plans, as directed by the teacher;
- (4) communicating with parents of students at a school site or as otherwise directed by a teacher; and
- (5) helping a teacher to train other teaching assistants.

(2) Licensure and certification requirements.

(i) The requirements of this subparagraph shall be applicable in the event that an application has been submitted to the department on behalf of the candidate on or before February 1, 2004 for either the temporary license or continuing certificate, and upon application the candidate qualifies or has qualified for the credential; and for candidates who do not meet this condition, the requirements of subparagraph (ii) of this paragraph apply. Any such candidate employed as a teaching assistant shall hold one of the following credentials:

(a) Temporary license. Upon application of a superintendent of schools, a temporary license as a teaching assistant may be issued to a person having the qualifications defined in subclause (1) of this clause:

(1) Preparation. The candidate shall have completed a four-year high school program or its equivalent. Such study shall be supplemented by training and experience appropriate to the position in question.

(2) The application for this license shall be filed on forms prescribed by the commissioner and shall include the following information: the name and address of the candidate; the candidate's education; related teaching, administrative and/or supervisory experience; occupational and/or practical experience; and other unusual qualifications; a description of the teaching assistant's duties; a description of how the teaching assistant will be supervised; a description of the employing school district's in-service training program for teaching assistants and the professional staff utilizing such personnel; and a description of the district's plan for using teaching assistants.

(3) Time validity. The temporary license shall be valid for one year from its effective date. No more than two temporary licenses may be issued to the same individual.

(b) Continuing certificate. Upon application of a superintendent of schools, a continuing certificate as a teaching assistant may be issued to a person having the qualifications defined in subclauses (1) and (2) of this clause:

(1) Preparation. The candidate shall have completed six semester hours of appropriate collegiate study in or related to the field of elementary and/or secondary school service at a regionally accredited institution of higher education or at an institution approved by the department. The commissioner may approve alternative preparation as required in this paragraph.

(2) Experience. The candidate shall have completed one year of experience as a licensed teaching assistant or as a certified teacher in an approved school.

(3) Time validity. The continuing certificate shall be valid continuously, except when the holder thereof has not been regularly employed as a teaching assistant in the public schools of New York for a period of five consecutive years, in which case the validity of the certificate shall lapse.

(ii) The requirements of this subparagraph shall apply to candidates who apply on or after February 2, 2004 for a credential to work as a teaching assistant. The candidate shall apply to the department for the certificate.

(a) Level I teaching assistant certificate.

(1) Preparation. The candidate shall meet the requirements in each of the following items:

(i) Education. The candidate shall have attained a high school diploma or its equivalent.

(ii) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State assessment of teaching assistant skills.

(2) Time validity. The certificate shall be valid for three years from its effective date. The certificate shall be renewable on one occasion only for three years, except for a certificate that already has been renewed once for a one-year term which may be renewed on one additional occasion only for three years, provided that for a certificate to be renewed the candidate must submit to the department adequate evidence substantiating that the candidate has a commitment for employment in a teaching assistant position under the level I teaching assistant certificate. For individuals called to active duty, the validity period of the level I teaching assistant certificate may be extended by the commissioner for a candidate called to active duty in the Armed Forces for the period of active service and an additional 12 months from the end of such service.

(b) Level II teaching assistant certificate.

(1) Preparation. The candidate shall meet the requirements in each of the following items:

(i) Education. The candidate shall have attained a high school diploma or its equivalent. In addition, the candidate who applies for the certificate on or before February 1, 2007, shall be required to have successfully completed a total of at least six semester hours of

collegiate study acceptable toward meeting the requirements for an associate or baccalaureate degree and the candidate who applies for the certificate after February 1, 2007 shall be required to have successfully completed a total of at least nine semester hours of such collegiate study.

(ii) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State assessment of teaching assistant skills.

(iii) Experience. The candidate shall submit adequate evidence substantiating satisfactory employment as a teaching assistant for one school year under a level I teaching assistant certificate or an emergency COVID-19 teaching assistant certificate or under a temporary license authorizing employment as a teaching assistant.

(2) Time validity. The certificate shall be valid for three years from its effective date and shall not be renewable, except that the validity period of the level II teaching assistant certificate may be extended by the commissioner for a candidate called to active duty in the Armed Forces for the period of active service and an additional 12 months from the end of such service. The commissioner may also extend the time validity of an expired level II teaching assistant certificate in increments of one year for a candidate who has applied for citizenship or permanent residency, and whose application for citizenship or permanent residency has not been acted upon by the U.S. Citizenship and Immigration Services (USCIS) until the USCIS acts upon such application. Such candidates must provide documentation satisfactory to the department that they meet these requirements, and that they have completed all other requirements for a level III certificate.

(c) Level III teaching assistant certificate.

(1) Preparation. The candidate shall meet the requirements in each of the following items:

(i) Education. The candidate shall have attained a high school diploma or its equivalent and successfully completed a total of at least 18 semester hours of collegiate study acceptable toward meeting the requirements for an associate or baccalaureate degree.

(ii) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State assessment of teaching assistant skills.

(iii) Experience. The candidate shall submit adequate evidence substantiating satisfactory employment as a teacher in the classroom teaching service as defined in section 80-1.1 of this Part, a teaching assistant for one school year under a level I teaching assistant certificate, a level II teaching assistant certificate, or an emergency COVID-19 teaching assistant certificate, or under a temporary license authorizing employment as a teaching assistant.

(2) Validity of certificate. The level III teaching assistant certificate shall be continuously valid.

(d) Pre-professional teaching assistant certificate.

(1) Preparation. The candidate shall meet the requirements in each of the following items:

(i) Education. The candidate shall have attained a high school diploma or its equivalent, successfully completed a total of at least 18 semester hours of collegiate study acceptable toward meeting the requirements for an associate or baccalaureate degree, and be matriculated in a program registered as leading to teacher certification pursuant to section 52.21 of this Title, or its equivalent, or in a program with an articulation agreement with such a program.

(ii) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State assessment of teaching assistant skills.

(iii) Experience. The candidate shall submit adequate evidence substantiating satisfactory employment as a teaching assistant for one school year under a level I teaching assistant certificate, a level II teaching assistant certificate, or a level III teaching assistant certificate, or an emergency COVID-19 teaching assistant certificate, or under a temporary license or continuing certificate authorizing employment as a teaching assistant.

(2) Validity of certificate and renewal of certificate. The certificate shall be valid for five years from its effective date, at which time it must be renewed to be valid. In order to be renewed, the holder of the certificate shall demonstrate matriculation in a program registered as leading to teacher certification pursuant to section 52.21 of this Title, or its equivalent, or in a program with an articulation agreement with such a program, and completion during the five-year period in which the certificate is held of 30 semester hours of coursework in such a program. For individuals called to active duty in the Armed Forces, the validity period for a pre-professional teaching assistant certificate and any renewal of such certificate may be extended by the commissioner for the time of active service and an additional 12 months from the end of such service.

(d) Visiting lecturer.

(1) Upon application of a superintendent of schools, a time-limited license as visiting lecturer may be issued to a person having unusual qualifications in a specific subject to supplement the regular program of instruction.

(2) The request shall be submitted on forms prescribed by the commissioner and shall include the following information:

(i) the name and address of the candidate;

(ii) the specific subject for which the license is to be issued;

(iii) the institutions attended by the candidate, major subject field, degrees or number of semester hours earned, and dates of degrees;

(iv) the candidate's experience pertinent to the unusual qualifications;

(v) the program to be supplemented; and

(vi) the extent of service to be rendered by the visiting lecturer.

(3) Time validity. The license shall be valid for one year from its effective date.

**(e) Authorization for supplementary service in areas for which no certificate exists.**

(1) Upon the approval of the commissioner, a permit may be granted to a school district for employment of a qualified person for a position in the public schools for which no certificate currently exists. The superintendent of schools applying for such authorization shall submit:

(i) a detailed job description outlining the nature of the position;

(ii) a statement of the qualifications which are deemed necessary for candidates for the position; and

(iii) a listing of the candidate or candidates holding the necessary qualifications and eligible for appointment to the position if the permit is granted.

(2) Time validity. A permit granted pursuant to this subdivision shall be valid for employment in the district for which it is granted for a period not to exceed two years unless further extended by the commissioner for intervals not to exceed five years.

8 CRR-NY 80-5.6

Current through March 31, 2021

END OF DOCUMENT

*Certification Requirements  
for Teaching Assistants*



No. 21-18 Updates and Replaces Fact Sheet No. 19-14

November 2021

**Background**

This Fact Sheet focuses on certification requirements for teaching assistants post February 2004 when the last major revisions to certification requirements were done.

It also summarizes the duties of teacher aides and teaching assistants in the areas of employment, job duties, licensing and certification, including New York State laws and regulations governing each area. Finally, it addresses the most frequently asked questions related to certification and licensure.

The document is provided for general information purposes only. An official response on the interpretation of certification regulations or the determination of individual certification status can only be obtained from the Office of Teaching Initiatives of the New York State Education Department.

**Teaching Assistants**

According to the Regulations of the Commissioner of Education, Section 80-5.6:

A teaching assistant “is appointed by a board of education to provide, under the general supervision of a licensed or certified teacher, direct instructional service to students” (emphasis added). The teaching assistant is provided “general” (as contrasted with direct or personal) supervision by the certified teacher(s) who are responsible for the student’s instruction.

Commissioner’s Regulations also describe the duties of a teaching assistant:

- ❖ Working with individual pupils or groups of pupils on special instructional projects;
- ❖ Providing the teacher with information about pupils that will assist the teacher in the development of appropriate learning experiences;
- ❖ Assisting pupils in the use of available instructional resources, and assisting in the development of instructional materials;
- ❖ Utilizing their own special skills and abilities by assisting in instructional programs in such areas as: foreign languages, arts, crafts, music and similar subjects; and
- ❖ Assisting in related instructional work as required.

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Teaching assistants, unlike teacher aides, are members of the teaching staff and must be given a probationary appointment as a teaching assistant and are eligible for tenure according to Section 30.8(d) of the Regulations of the Commissioner of Education.

**Summary of Teaching Assistant Certification Requirements post  
February 2004**

Level I	Level II	Level III	Pre-Professional
<ul style="list-style-type: none"> <li>▪ high school diploma or equivalent</li> <li>▪ pass ATAS*</li> <li>▪ Child Abuse workshop</li> <li>▪ School Violence Prevention workshop</li> <li>▪ 6-hour Harassment, Bullying and Discrimination Prevention and Intervention training</li> <li>▪ valid for three (3) years</li> <li>▪ may be renewed once for three (3) years with a commitment for employment</li> <li>▪ commitment for employment must be verified by district/BOCES using superintendent statements via TEACH online services</li> </ul>	<ul style="list-style-type: none"> <li>▪ must have one (1) year of experience as teaching assistant</li> <li>▪ 9 college credits</li> <li>▪ valid for three (3) years</li> <li>▪ not renewable</li> </ul>	<ul style="list-style-type: none"> <li>▪ must have one (1) year of experience as teaching assistant</li> <li>▪ a total of 18 college credits</li> <li>▪ continuously valid with completion of CTLE hours every five (5) year registration cycle</li> </ul>	<ul style="list-style-type: none"> <li>▪ must have one (1) year of experience as teaching assistant</li> <li>▪ 18 college credits</li> <li>▪ matriculation in teacher preparation program</li> <li>▪ valid for five (5) years</li> <li>▪ may be renewed if individual has taken 30 college credits in the previous five (5) year period</li> </ul>

\*New York State Assessment of Teaching Assistant Skills Test

All applications for teaching assistant certificates are done using the State Education Department's TEACH online system - <http://www.highered.nysed.gov/tcert/teach/home.html>.

When applying for a certificate, please note the following:

- The state requires that all documents (letters, high school diplomas, college transcripts) submitted for certification purposes must include the applicant's name as it appears on TEACH, the last four digits of the applicant's social security number, and the applicant's date of birth. If this information is not on the actual document, attach a cover letter including this information to the document before sending it to SED.

- SED provides guidance for submitting proof of a high school diploma or equivalent for Level I certificates at <http://www.highered.nysed.gov/tcert/teach/submitdocs.html>.
- As of September 1 2016, SED requires all applicants for certification to use a form to verify employment as a teaching assistant to progress to Level II or Level III. The Verification of Experience form can be found at <http://www.highered.nysed.gov/tcert/certificate/form.html>.
- The 6-hour DASA workshop is required for any application for certification submitted after January 1, 2014. Individuals in need of the workshop can check for approved providers at <http://www.highered.nysed.gov/tcert/certificate/dasa-applicant.html> and can also check with local BOCES, NYS colleges/universities that offer teacher education programs, and teacher centers.
- The Level III certificate is continuously valid, provided that the Continuing Teacher & Leader Education (CTLE) hours' requirement of 100 hours every five (5) years is met.
- It is possible to move from Level I to Level III directly after one year of employment as a TA if the applicant has the appropriate number of college credits completed.
- College credits required for Levels II and III do not have to be earned in education courses; they just need to be earned at accredited colleges.

The State Education Department [website](#) provides a summary of the requirements for each Teaching Assistant Certificate Level (I, II, III) and useful information regarding the application process.

## Portability of Teaching Assistant Credential

A continuing certificate as well as a Level I, II or III certificate or a Pre-Professional certificate is portable across school district and BOCES boundaries, in the same way a teaching certificate is portable. A teaching assistant is not required to obtain a new certificate if they choose to seek employment in another school district or BOCES.

## Registering with SED and CTLE Hours

As of July 1, 2016, all Level III teaching assistant certificate holders are required to register with the State Education Department (SED) using the TEACH online system. Each registration begins a five (5) year cycle during which Level III certificate holders are required to complete 100 hours of Continuing Teacher & Leader Education (CTLE) hours. Individuals whose Level III Teaching Assistant certificates are issued by SED after July 1, 2016 will be automatically registered. For additional information on the registration process and CTLE requirements, please see <http://www.highered.nysed.gov/tcert/resteachers/registrationctlehome.html>.

At the conclusion of the five (5) year registration cycle, Level III teaching assistants will logon to their TEACH accounts to register for a new five (5) year registration cycle. During this process the teaching assistant will attest to completing the required CTLE hours to renew the Level III certificate. No documentation is sent to the state unless the state specifically asks for it.

For information on the re-registration process, see Fact Sheet "*Registration and CTLE – Teaching Assistants Level III*" and/or Certification FAQ's at [Frequently Asked Questions \(nysut.org\)](http://www.nysut.org).

School districts or BOCES are required to comply with regulations that govern the development, content, and implementation of professional development plans – Part 100.2(dd). School districts or BOCES are required to provide CTLE hours so that faculty and staff remain current with their profession, meet the learning needs of their students, and are able to maintain their certificates in good standing based upon successfully completing 100 CTLE hours every five (5) years as prescribed in Part 80.6 of Commissioner’s Regulations.

The Professional Learning Plan (PLP) as defined in Part 100.2(dd) of Commissioner’s Regulations requires that each school district and BOCES develop a professional learning plan that ensures that “holders of Level III teaching assistant’s certificates... are provided the opportunity to participate in the professional development program of the district or BOCES.”

Thus, districts that employ Level III teaching assistants are required to provide opportunities for the Level III Teaching Assistants to accumulate the required CTLE hours necessary to maintain their certificates.

### **NYSUT’S Education & Learning Trust**

NYSUT’s Education & Learning Trust (ELT) offers a variety of professional development/CTLE opportunities to assist teaching assistants in meeting their certification requirements. These include:

**Undergraduate Courses:** The Education & Learning Trust has partnered with a number of colleges throughout New York State to offer online, face-to-face, and CD-based undergraduate courses. The courses are designed for teaching assistants seeking NYS certification, and those interested in furthering their education, including pursuing a degree in teaching.

**Professional Development Workshops:** To maintain their certification, Level III teaching assistants are required to complete 100 CTLE hours every five (5) years. ELT is a state-approved sponsor for CTLE hours and offers over 15 workshops to meet the CTLE requirements. Topics include: Helping Students Succeed; Disability Awareness; Dealing with Difficult Students; Supporting Students with Autism; Strategies for Struggling Readers and Using the IEP to Support Student Instruction.

For additional information on courses, workshops and other programs available through NYSUT’s Education & Learning Trust, please call 1-800-528-6208 or visit the website at [elt.nysut.org](http://elt.nysut.org).

### **Teacher Aides**

According to Education Law, Section 3009 (2)(a):

A teacher aide is appointed by a board of education to assist teachers “in the performance of their teaching functions by performing those non-teaching duties (emphasis added) otherwise performed by such regular teacher or teachers.”

Commissioner’s Regulations, Section 80 – 5.6, Supplementary School Personnel, describe the duties of a teacher aide. They include:

- ❖ Managing records, materials and equipment;
- ❖ Attending to the physical needs of children, and
- ❖ Supervising students and performing such other non-teaching duties which support teaching when such services are determined and supervised by the teacher.



Teacher aides are classified employees, whose employment rights are governed by Civil Service Law. They are not subject to licensure and certification requirements under Education Law.

## Frequently Asked Questions

1. **What impact, if any, will the post-2004 certification titles have on teaching assistants holding a continuing certificate?**

The requirements of the post-2004 certificate titles (Levels I, II, III) and the post July 1, 2016 registration and CTLE requirements do not apply to TAs with the continuing certificate. Those TAs holding a continuing certificate will retain it indefinitely unless the individual has not been regularly employed as a teaching assistant in a public school for five (5) consecutive years.

2. **Will teaching assistants holding a continuing certificate be required to take the New York State Teacher Assistant Certification Examination?**

No. Only those applying for certification on or after February 2, 2004 will be required to take the test, unless a continuing certificate holder chooses to apply for a Level I, II, or III teaching assistant certificate.

3. **Are there different job duties assigned to each of the levels leading to the pre-professional teaching certificate?**

According to Commissioner's Regulations, the description of job duties contained in Section 80-5.6 (b) (1) (ii) (a), applies to all teaching assistants, whether they hold a Level I, II or III certificate.

4. **All Level III teaching assistants are required to complete 100 CTLE during their five (5) year registration cycle to maintain their certificate. Who is responsible for providing the CTLE activities and will it be available to Level I and Level II teaching assistants?**

Commissioner's Regulations, Part 100.2(dd), require a school district and BOCES to include in their professional learning plan (PLP) how they will provide teachers and Level III teaching assistants with substantial professional learning opportunities (including CTLE hours) to maintain their certificates in good standing.

The district is required to make professional learning available during the normal school day and school year. Professional learning can take place outside of the normal school day and school year if it is collectively bargained.

5. **What are the requirements for certified teachers to be hired as teaching assistants?**

Certified teachers may be hired as teaching assistants based upon possession of a valid classroom teaching certificate. Please note that some districts may require certified teachers to obtain a teaching assistant certificate for employment.

## Resources

- ❑ **Commissioner’s Regulations § 80-5.6 Supplementary school personnel.**  
 This section of regulations provides definitions and duties for Teacher Aides, Teaching Assistants, as well as licensure and certification requirements.  
<http://www.highered.nysed.gov/tcert/regulations.html>
- ❑ **Commissioner’s Regulations § 80-6 Registration and Continuing Teacher and Leader Education (CTLE) Requirements for Classroom Teachers and School Leaders Holding a Permanent or Professional Certificate, and Level III Teaching Assistant Certificate Holders effective 7/1/2016.**  
 This section of regulations provides specific information related to the 100 CTLE hours’ requirement for Level III teaching assistants, including adjustments to the requirement and reporting responsibilities. <http://www.highered.nysed.gov/tcert/regulations.html>
- ❑ **Commissioner’s Regulations § 100.2(dd) Requirements for Professional Development Plans**  
 This section of regulations provides specific information related to the development and adoption of a PDP, measuring the impact of a PDP, and reporting and recordkeeping requirements. <http://www.highered.nysed.gov/tcert/regulations.html>

### STATE EDUCATION DEPARTMENT CONTACT INFORMATION

Only the State Education Department’s (SED) Office of Teaching Initiatives can officially interpret certification regulations and make determinations regarding the certification status of individual applicants.

Issue	Contact
Locked out of, or trouble accessing TEACH, password re-sets, TEACH Technical Support	E-Mail: <a href="mailto:TEACHHELP@nysed.gov">TEACHHELP@nysed.gov</a> Phone: 518-486-6041
General questions about teacher/TA certification	E-Mail: <a href="mailto:TCERT@nysed.gov">TCERT@nysed.gov</a> Phone: 518-474-3901
Pre-1983 Certificate Information not listed on TEACH	E-Mail: <a href="mailto:OTIregistration@nysed.gov">OTIregistration@nysed.gov</a> Phone: 518-474-3901
Questions about CTLE from professionals subject to the new requirements	E-Mail: <a href="mailto:CTLE@nysed.gov">CTLE@nysed.gov</a> Phone: 518-474-3901
Questions about Registration from professionals subject to the new requirements	E-Mail: <a href="mailto:OTIregistration@nysed.gov">OTIregistration@nysed.gov</a> Phone: 518-474-3901
Prospective or Approved Providers of CTLE	E-Mail: <a href="mailto:CTLEsponsor@nysed.gov">CTLEsponsor@nysed.gov</a> Phone: 518-474-4661

# Registration and CTLE: Teaching Assistant - Level III



Fact Sheet No. 21-19 Updated and Replaces 21-15

November 2021

## Overview

The 2015 New York State budget included requirements for certain certificate holders to register with the State Education Department (SED) and complete Continuing Teacher & Leader Education hours (CTLE hours). Chapter 56 of the Laws of 2015 specified that these requirements be implemented as of July 1, 2016. These requirements are found in Part 80-6 of Commissioner's Regulations.

## Registering with the State Education Department

Beginning July 1, 2016, Level III teaching assistant certificate holders were required to register their certificates in TEACH every five (5) years. The State Education Department automatically registers Level III teaching assistant certificates issued after July 1, 2016 for the first five (5) year cycle. Teaching Assistant Level III certificate holders must re-register themselves for subsequent cycles.

Teaching Assistants with a Continuing Certificate or a Level I or Level II certificate are not required to register their certificates in TEACH. See the state's [Registration & CTLE Requirement Chart](#) for a complete list of certificate types that are required to register.

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Certificate Title	Registration Required
Teaching Assistant Level III	YES
Teaching Assistant with a Continuing Certificate	NO

Registering in TEACH creates a five (5) year registration cycle and depending upon the registration status selected, the Level III teaching assistant may be required to complete 100 Continuing Teacher & Leader Education (CTLE) hours during this five (5) year registration cycle. The registration cycle begins the first day of the teaching assistant's birth month and ends on the last day of the month prior to their birth month.

Level III Teaching Assistants can select one of the following statuses when they register in TEACH:

- **Registered - Active:**  
These Level III TAs are registered and are practicing in an applicable school.
- **Registered - Inactive:**  
These Level III TAs are registered but are not practicing in an applicable school.

The state defines practicing as: “employed 90 days or more during a school year by a single applicable school in New York State in a position requiring certification. For the purposes of this definition, a day of employment shall include a day actually worked in whole or in part, or a day not actually worked but a day paid.”

Some examples to clarify ‘practicing’:

- If you are a Level III TA and employed full-time, you are practicing according to the state’s definition.
- If you are a Level III TA and you work part-time every day of the school year, you are practicing according to the state’s definition.
- If you are a Level III TA and you are on a leave for a year, you are not practicing according to the state’s definition.

Other registration statuses that may be entered on TEACH by the state include:

- **Registration Expired:**  
These educators were registered, but their registration period expired. They have not re-registered.
- **Not Registered:**  
These educators have never registered and did not begin the registration process.
- **Registration/Re-Registration Incomplete:**  
These educators began the registration/re-registration process but did not complete it.

Near the end of the five (5) year registration cycle, the state will email the Level III Teaching Assistant, (using the email address entered in TEACH by the teaching assistant), a notification that the five (5) year cycle is coming to an end and the teaching assistant needs to take action.

For additional information on registering with SED, please visit their website [Registration:OTI:NYSED](#).

## Continuing Teacher & Leader Education (CTLE) Requirements

As indicated on the chart below, Level III Teaching Assistants and professionally certified classroom teachers/educational leaders will be required to complete Continuing Teacher & Leader Education hours during each five (5) year registration period.

	Required to Complete CTLE Hours	Hours Required per 5-Year Registration
Teaching Assistant Level III	YES	100
Professionally certified classroom teachers/ educational leaders	YES	100

CTLE activities are designed to improve the teaching assistant's pedagogical and/or leadership skills and are targeted at improving student performance. CTLE activities address the content one teaches and/or how one teaches that content, and language acquisition that addresses the needs of English language learners.

What counts for the CTLE hours' requirement is a local determination and should be reflected in the district's Professional Learning Plan to the extent possible. The Professional Learning Plan or PLP (see Part 100. 2(dd) of Commissioner's Regulations) requires that each school district and BOCES develop a professional learning plan that ensures "...how it will provide teachers it employs holding a professional certificate and/or level III teaching assistant certificate with opportunities to complete 100 hours of continuing teacher and leader education, as required every five (5) years under Part 80 of this Title."

Level III teaching assistants are required to complete a minimum of 15% of their required 100 CTLE hours in areas that address the needs of ELLs. An exemption to the 15% requirements is available for districts/BOCES with less than 5% (or 30 enrolled) ELL students.

When a registration cycle is set to expire, Level III teaching assistants are required to re-register with the state to create a new five (5) year registration cycle. Level III teaching assistants will re-register on TEACH and attest to completing or not completing the required CTLE hours for their expiring registration period. For additional information on the re-registration process and CTLE requirements, please visit NYSUT's webpage Frequently Asked Questions.

## Re-registering with the State

To re-register, Level III Teaching Assistants follow the steps outlined on [Re-registration and Conditional Registration Directions:OTI:NYSED](#). You can view NYSUT's summary of this process at [Certification Re-Registration - July 2021](#).

As you re-register you will be prompted to report how many years within your five (5) year registration cycle you were required to complete CTLE hours. This is question #1 below. You are also prompted to enter the number of years during your five (5) year registration cycle that you were employed by a district/BOCES that had a waiver for the language acquisition hours. This is question #2 below.

Answer the following CTLE Questions

1. During your registration period, how many years did you practice in an applicable school while holding a Professional teacher, Professional educational leader, or a Teaching Assistant Level III certificate? The answer would be a whole number between 0-5.


- "Applicable schools" include New York State (NYS) school districts or BOCES. NYS nonpublic schools also became applicable schools on October 17, 2017. In addition, the New York City Department of Education and any of its components are considered a single applicable school.
- "Practicing" means employed 90 days or more during a school year by a single applicable school in New York State. A day of employment includes a day actually worked in whole or in part, or a day not actually worked but a day paid.

Select ▾

2. During the years that you practiced in an applicable school while holding a Professional teacher, Professional educational leader, or a Teaching Assistant Level III certificate, how many of those years were you employed by an applicable school with an approved exemption for the CTLE language acquisition requirement? You could check the CTLE language acquisition requirement webpage to see if your employer(s) had an approved exemption in a given year. The answer would be a whole number between 0-5.

- School districts can seek an exemption for the CTLE language acquisition requirement related to ELLs if they have fewer than 30 ELLs enrolled, or ELLs comprise less than 5% of the district's total student population, as of a date established by the Office of Bilingual Education and World Languages (OBEWL). The school district, rather than the educator, would obtain the exemption by submitting the appropriate form to the OBEWL.

Select ▾

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Based on what you answer to questions #1 and #2 above, the TEACH system calculates how many CTLE hours you should have completed.

If you completed the required CTLE hours, you will answer the moral character and other questions and then register as either Registered - Active or Registered - Inactive. You can verify your new registration status by clicking on "View or Change Registration Status" from your TEACH home screen.

If you were unable to complete the required CTLE hours within your five (5) year registration period, request a conditional registration. This conditional registration provides you with an additional year to complete any missing CTLE hours and it does not require submission of any documentation; you just request it. When you have completed the missing hours, you repeat the process on TEACH, indicate that all hours have been completed, and then begin a new five (5) year registration cycle.

## CTLE Sponsors (approved providers)

SED regulations require that the CTLE activities be offered by SED-approved sponsors. A list of SED-approved CTLE sponsors is available on SED's [approved CTLE sponsors](#) page. School districts, BOCES, teacher centers, many NYS institutions of higher education, NYSUT's Education & Learning Trust and other professional organizations are included on this list. All CTLE providers must apply every five (5) years to the State Education Department to continue as CTLE sponsors.

## Record-keeping and Reporting CTLE Hours

Districts and other approved CTLE sponsors are required to maintain records of the CTLE activities that they offer for a period of eight (8) years. Similarly, Level III Teaching Assistants are required to maintain records of their own CTLE hours for eight (8) years – the five (5) year registration cycle plus three (3) additional years.

District-based CTLE activities should be included, (to the extent they are known in advance), in the district Professional Development Plan (PDP) which is still required to be submitted to SED annually – see [Part 100.2\(dd\) PDP regulations](#). These regulations stipulate that school districts and BOCES are required to provide CTLE hours so that faculty and staff remain current with their profession, meet the learning needs of their students and, are able to maintain their certificates in good standing.

Districts and other approved CTLE sponsors are required to provide CTLE participants with access to a 'certificate of completion' for each CTLE activity that the participant completes. SED guidance allows for this 'certificate of completion' to be paper or electronic.

Neither CTLE sponsors nor CTLE certificate holders are required to submit hours to SED unless they are specifically asked by SED to provide them. If the state asks for documentation, it will be during the re-registration process when CTLE certificate holders attest to completing or not completing the required CTLE hours. Original SED guidance was that this would be a random audit process, yet this process has not been implemented to date.

The regulations governing Registration and CTLE requirements are found in [Part 80.6](#) of Commissioner's Regulations.

### Items for Local Leaders:

Members need to be able to access their CTLE hours if requested by SED. Members can request paper copies of CTLE Certificates of Completion or can have access to electronic copies of these certificates. Local leaders and members should consider the reliability of a district's CTLE tracking system, (such as Frontline/My Learning Plan), when determining if paper or electronic copies are preferable.

The process of registering with SED includes a requirement for members to answer a series of 'moral character' questions. Local leaders and members should note that SED has the authority to ask these questions of certificate holders, as well as members of other professions in NYS.

Determinations as to what counts as a CTLE activity is a local decision and is typically handled by the Professional Learning Team.

### Resources

#### Teaching Assistant Certificates :OTI:NYSED

This state education department site provides an overview of the application process for teaching assistants.

New registration and continuing teacher and leader education (CTLE) requirements for classroom teachers and school leaders holding a Permanent or Professional certificate, and Teaching Assistant Level III certificate holders :OTI:NYSED This state education department site, updated in June 2021, includes current information related to registering certificates with the state as well as CTLE requirements.

#### ELT - NYSUT Education and Learning Trust - Professional Learning

ELT offers a variety of professional learning sessions as well as course work that can be used to move from Level I to Levels II or III.

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# Teacher Certification in New York State



No. 21-13 (Updated from July, 2021)

March 2022

All teachers employed in the public schools in New York State must hold a valid certificate issued in accordance with Sections 3001 and 3009 of Education Law and Part 80 of the Regulations of the Commissioner of Education. Section 3001 establishes that no one is authorized to teach in a public school without a teaching certificate, and Section 3009 clearly states that unqualified teachers cannot be paid with district funds. Part 80 contains certification requirements for classroom teaching, administrative/ supervisory and pupil personnel (school) service titles. The Office of Teaching Initiatives at the State Education Department is responsible for certifying teachers in New York State.

State certification is also required for teachers employed in state-operated and state-supported schools, Special Act school districts, approved private schools for the education of students with disabilities, and approved preschool special education programs.

Only the Office of Teaching Initiatives (OTI) of the State Education Department can make determinations regarding the certification status of individual members. This document is for information only.

## Overview

New York State teachers, administrators, and pupil personnel service providers must hold a New York State certificate to be employed in the State's public schools. The certificates are issued by the Office of Teaching Initiatives and certify that an individual has met required degree, coursework, assessment, and experience requirements. Certificates are issued in a number of titles in three (3) major categories: classroom teaching, administrative/supervisory, and pupil personnel service (i.e., school counselor, psychologist, social worker).

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Prior to February 2004, Classroom Teaching and Administrative and Supervisory certificate titles were either provisional (entry level) or permanent (final). In February 2004, the provisional/permanent certificates were replaced by Initial certificates (entry level) and Professional certificates (final). See <http://www.highered.nysed.gov/tcert/certificate/typesofcerts.html> for types of certificates and licenses.

Note that the School Counselor certificate titles will change to initial/professional in 2023; the remaining Pupil Personnel Service certificate titles will remain as provisional and permanent.

All applicants for certification must be fingerprinted. An individual who has been fingerprinted for certification for public school employment purposes does not need to be fingerprinted again for subsequent certification or employment. For detailed information on fingerprinting, access the NYS State Education Department Office of School Personnel Review and Accountability (OSPRA) Web site at: <http://www.nysed.gov/educator-integrity>.

All applications for certification are submitted online using the TEACH Online System, found at <http://www.highered.nysed.gov/tcert/>.

#### **Initial to Professional Teacher Certification**

There are multiple pathways to obtaining an initial teaching certificate in New York State – see ‘Preparation Pathways’ at <http://www.highered.nysed.gov/tcert/certificate/pathways.html>.

Initial certificates are valid for five (5) years with the potential for a time extension or a re-issuance of the initial certificate in certain circumstances. The State Education Department no longer prints Initial certificates; individuals can confirm their certification status by checking their individual TEACH accounts.

Holders of initial teaching certificates are expected to progress to the professional teaching certificate, within the stated five (5) year period, by completing the requirements for professional certification, including:

- Three (3) years of teaching experience, with one (1) year as a mentored experience;
- successful completion of an appropriate master’s degree, and
- completion of the 6-hour DASA training workshop (if not completed as a requirement for the initial certificate).

#### **Three Years Teaching Experience**

Applicants for professional certification can count teaching experience in public and private schools, part-time or full-time, per diem and long-term substitute teaching, and in-state or out-of-state teaching. See SED’s guidance at

<http://www.highered.nysed.gov/tcert/certificate/exp/home.html> for additional settings that can be used to fulfill this requirement. Experience as a teaching assistant does not fulfill this requirement.

Individuals self-report their work experience on the TEACH system and must also have their employing districts submit SED's Experience Verification form – see <http://www.highered.nysed.gov/tcert/certificate/form.html>.

### **Mentored Teaching Experience**

Applicants for Professional certification are required to provide verification of being mentored while initially certified. "Mentored experience" refers to the guidance and support that experienced, certified teachers/school building leaders provide to new teachers/school building leaders. The mentoring requirement must be verified by the superintendent of the employing school district through the TEACH Online System.

Individuals who have had at least two (2) years of teaching prior to service in a public (or private) school under an initial certificate are exempt from this requirement.

### **Successful Completion of a Master's Degree**

The professional certification requirement is satisfied, if an individual:

- Successfully completes a graduate teacher education program from an accredited college in New York State or another jurisdiction that qualifies the individual for a new or additional certificate (in NYS or in another jurisdiction);
- holds a master's degree accepted previously to satisfy requirements for a NYS permanent or professional certificate;
- successfully completes a master's or higher degree program in the content core of the initial certificate or in a related content area; or
- successfully completes a master's or higher degree program in any field, provided that the individual has completed at least 12 semester hours of graduate study in the content core of the initial certificate or in a related content area.

For more information, go to the Professional Certificate - Master's Degree Requirement at <http://www.highered.nysed.gov/tcert/certificate/relatedmasters.html>.

### **Time Extensions**

Extensions are available to initially certified teachers who are unable to fulfill the requirements for the professional certificate within a five (5) year period. Visit the State Education Department's web site at: <http://www.highered.nysed.gov/tcert/certificate/timeext.html> for additional information regarding time extensions and the conditions that allow for them. Individuals who require an extension must apply for the extension using the TEACH online system. The application should be made within seven (7) months of the expiration date of the certificate.

## Reissuance of an Initial Certificate

An expired initial certificate can be reissued for a period of five (5) years if the certificate holder has not completed the three (3) years teaching experience requirement. Applicants seeking a reissuance of an Initial certificate will be required to:

- re-take and pass the applicable NYSTCE Content Specialty Test(s), and
- complete the Attestation of LESS Than Three Years of Acceptable Classroom Teaching Experience for the Initial Reissuance,  
<http://www.highered.nysed.gov/tcert/pdf/IR-attestation-teacher.pdf>

The initial certificate can only be reissued once. Check the NYSED Web page: <http://www.highered.nysed.gov/tcert/certificate/reissue.html> for related information.

Initial certificate holders can obtain both a time extension and a re-issuance.

## Registering with SED and CTLE Hours

As of July 1, 2016, all permanently and professionally certified teachers working in a NYS public school or BOCES were required to register with the State Education Department (SED) using the TEACH online system. Registering is a step in the process of maintaining a certificate; registering creates a five (5) year registration cycle. Registration cycles are automatically created in TEACH for professional certificates issued after July 1, 2016.

Permanently certified teachers are required to register every five (5) years but are not required to complete Continuing Teacher & Leader Education (CTLE) hours. Professionally certified teachers are required to complete 100 Continuing Teacher & Leader Education (CTLE) hours during each five (5) year registration cycle. For additional information on the registration process and CTLE requirements, please visit NYSUT's website at [www.nysut.org/certification](http://www.nysut.org/certification).

CTLE activities are designed to improve the teacher or leader's pedagogical and/or leadership skills and are targeted at improving student performance. The activities also promote the professionalization of teaching and educational leadership. CTLE activities should address the content one teaches and/or how one teaches that content, and language acquisition that addresses the needs of English language learners.

What counts for the CTLE hours' requirement is a local determination and should be reflected in the district's Professional Learning Plan to the extent possible. School districts or BOCES are required to provide CTLE hours so that faculty and staff remain current with their profession, meet the learning needs of their students, and are able to maintain their certificates in good standing (Part 80.6 of Commissioner's Regulations).

The Professional Learning Plan or PLP (see Part 100. 2(dd) of Commissioner's Regulations) requires that each school district and BOCES develop a professional learning plan that ensures "...how it will provide teachers it employs holding a professional certificate and/or level III teaching assistant certificate with opportunities to complete 100 hours of continuing teacher and leader education, as required every five (5) years under Part 80 of this Title".

When a registration cycle is set to expire, permanently and/or professionally certified teachers are required to re-register with the state to create a new five (5) year registration cycle. Teachers with permanent certificates will only create a new five (5) year cycle and indicate if they are still employed in an applicable school. Teachers with professional certification will do the same but will also attest to completing or not completing the required CTLE hours for their expiring registration period. For additional information on the re-registration process and CTLE requirements, please visit NYSUT's website at [Frequently Asked Questions \(nysut.org\)](http://www.nysut.org).

### Teach Online Services

The New York State Education Department uses its TEACH Online System, commonly known as TEACH, to process all matters related to certification in New York State. TEACH provides services for:

- a. Individuals, who can apply for certificates, check on the status of certificate application(s), update demographic and employment information, and verify or update registration status.
- b. Colleges/Universities that offer teacher and/or leadership preparation programs can submit certification recommendations for their program graduates.
- c. School Employers, who can access an employee (or prospective employee's) certification, fingerprint, and employment history, and obtain application status updates on current or potential employees.

All individuals possessing a NYS Teaching Certificate have a TEACH account and should check it annually periodically for accuracy. You can access your TEACH account by using this link to self-register and choose a login name and password. [TEACH Resources: TEACH System: OTI:NYSED](#).

### State Education Department Contact Information

Only the State Education Department's (SED) Office of Teaching Initiatives can officially interpret certification regulations and make determinations regarding the certification status of individual applicants.

Issue	Contact
Locked out of, or trouble accessing TEACH, password re-sets, TEACH Technical Support	E-Mail: <a href="mailto:TEACHHELP@nysed.gov">TEACHHELP@nysed.gov</a>
General questions about teacher/TA certification	E-Mail: <a href="mailto:TCERT@nysed.gov">TCERT@nysed.gov</a>
Questions about CTLE	E-Mail: <a href="mailto:CTLE@nysed.gov">CTLE@nysed.gov</a>
Questions about Registration	E-Mail <a href="mailto:OTIregistration@nysed.gov">OTIregistration@nysed.gov</a>
Prospective or Approved Providers of CTLE	E-Mail: <a href="mailto:CTLEsponsor@nysed.gov">CTLEsponsor@nysed.gov</a>

### NYS Teacher Certification Examination Program

The New York State Teacher Certification Examination (NYSTCE) program is designed to help ensure that certified teachers have the knowledge and skills to succeed in New York State public schools.

Exams for Initial Certificate Applications after May 1, 2014:

- **The Teacher Performance Assessment (edTPA):**The edTPA is a portfolio-based assessment for pre-service teacher candidates, i.e., those individuals seeking their first New York State teaching certificate.
- **Educating All Students (EAS):** This examination is designed to assess if an individual possesses the professional and pedagogical knowledge and skills to teach all students effectively in New York state public schools.
- **Content Specialty Tests (CST):** These examinations focus on knowledge of the NYS Learning Standards associated with the candidate's subject specific teaching certification area.

Visit <http://www.nystce.nesinc.com/> for the scheduled availability of the examinations.

### Safety Nets for NYS Certification Examinations

The State Education Department has created safety for specific exams and for specific time periods. For current information on what safety net is available for specific certification examinations, and when the safety nets are due to expire, visit SED's at <http://www.highered.nysed.gov/tcert/certificate/certexamsafetynets.html>.

## Other Certification Information

### Certified Teachers Seeking Additional Teaching Certificates

Certified teachers who seek an additional certificate(s) should review the requirements for the certificate sought at the NYSED Office of Teaching Initiatives web site at <http://eservices.nysed.gov/teach/certhelp/CertRequirementHelp.do>. After entering the specific certificate title of interest, review the requirements under “Pathway: Additional Classroom Teaching Certificate”. This Pathway indicates the minimal qualifications required.

If the review of your application by the Office of Teaching identifies unmet requirements, please visit NYSED’s FAQ section, ‘Coursework to Satisfy Unmet Requirements’ page at [Applying for a Certificate: Frequently Asked Questions: OTI: NYSED](#).

Any applicant for an administrative or supervisory service certificate, classroom teaching certificate or school service certificate after January 1, 2014 is required to complete the 6-hour DASA workshop as per the Dignity for All Students Act. Approved providers can be found at <http://www.highered.nysed.gov/tcert/certificate/dasa-applicant.html>. Individuals can also check with local BOCES, colleges/universities that offer teacher education programs, and teacher centers for this training.

### Supplementary Certificates

The supplementary teaching certificate allows currently certified teachers to obtain an additional teaching certificate in certain situations where there is a demonstrated need by completing some of the requirements for the additional certificate up front, and then completing remaining requirements over a five (5) year period. See NYSUT Fact Sheet No. 17-10, [Fact Sheet 17-10: Supplementary Teaching Certificate \(nysut.org\)](#).

### Incidental Teaching

A superintendent of schools may assign a certified teacher to teach a subject not covered by the teacher's license or certificate, for a period not to exceed five classroom hours per week, when no certified teacher is available. During the 2020-21 school year this maximum was raised to ten (10) classroom hours per week. This change will continue during the 2021-2022 school year. The regulations require that the district first seek a certified teacher, file an application, and receive approval of the Commissioner. Special education programs and services may not be taught on an incidental basis.

## Interstate Applicants

Applicants who hold a certificate from another state and have been employed for at least three (3) years in another state or who have completed a comparable teacher education program in another state may be eligible for a NYS certificate through the interstate application process. See Applicants from Other States (Interstate Reciprocity):Preparation Pathways:OTI:NYSED

## Revocation

Under Part 83 Regulations the Commissioner of Education may institute proceedings to remove a teacher's certificate for cause under the good moral character requirement. A due process hearing is required. Certification may be revoked for conviction of a serious crime, or if the teacher has committed an act which raises a reasonable question as to the teacher's moral character.

## Substitute Teachers

Commissioner's Regulations define a substitute teacher as "one who is employed in place of a regularly appointed teacher who is absent but is expected to return." Persons serving on a long-term basis must have proper certification for the position. There are three categories of substitutes:

### **1. Substitutes with valid teaching certificates.**

Service may be rendered in any capacity for any number of days. If employed on more than an "itinerant basis" such persons will be employed in an area for which they are certified.

### **2. Substitutes without a valid certificate, but who are completing collegiate study towards certification at the rate of not less than six semester hours per year.**

Services may be rendered in any capacity for any number of days, in any number of school districts. If employed on more than an "itinerant basis," such persons will be employed in an area for which they are seeking certification.

### **3. Substitutes without a valid certificate and who are not working toward certification.**

Service may be rendered in New York State public schools for no more than 40 days in a given school district in a school year. During the 2020-21 school year these individuals were allowed to substitute for up to 180 days under certain circumstance due to COVID-19. This allowance will continue during the 2021-2022 school year.



## General Items to Consider regarding Certification

- Individual teachers are expected to know their own certification requirements.
- Individual NYSUT members experiencing certification problems are urged to keep their local union leadership informed of these issues as they could impact their employment. Failure to maintain certification is grounds for dismissal.
- Local leaders contacted by members with certification issues are urged to notify their NYSUT Labor Relations Specialist (LRS)
- Permanent and professional certificate holders will be required to update their registration status every 5 years.
- All certified teachers are encouraged to maintain a personal certification file. This file could include copies of certificates, transcripts, correspondence with SED concerning certification, CTLE hours, etc.
- When applying for NYS teaching certificates, applicants should allow 3-4 months for application processing by the NYS Education Department.
- A limited number of regional certification offices are operated by Boards of Cooperative Educational Services (BOCES) and are available to the public for certification assistance. Their certification specialists can advise on requirements for certification, evaluate credentials for many (but not all) certificate titles/pathways, and offer expedited processing of applications via the district superintendent's request.

## Resources

- Office of Teaching Initiatives: the state office that handles certification
- Commissioner's Regulations: Links to regulations that govern certification requirements for teachers, pupil personnel, educational leaders, and school related professionals
- Certification Topics A-Z
- [www.nysut.org/certification](http://www.nysut.org/certification)

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# Teacher Certification in Computer Science



Fact Sheet No. 23-05 (replaces 21-08)

March 2023

Update 1: Members can now apply for the SOCE in Computer Science. The application was previously not available in TEACH.

Update 2: This Fact Sheet has been updated to reflect SED adding Computer Science as a Career & Technical Education subject and what this means regarding possible teaching assignments.

The NYS Board of Regents adopted regulations in March 2018 that created a classroom teaching certificate in computer science and a corresponding tenure area. The regulations designate the computer science certificate as part of the 'special subjects' tenure area. The regulations also identified multiple pathways to obtain the computer science certificate that include course work, course work and/or work experience, and a 'grandfathering' provision for those teachers currently teaching computer science courses. Teachers who are currently teaching computer science courses can apply for a Statement of Continuing Eligibility (SOCE) up to September 1, 2024.

## What is Computer Science?

As per the March 2018 Regents item: "Through these concepts, students [will] engage in a variety of activities including: creating prototypes that use algorithms to solve computational programs; comparing interactions between application software, system software, and hardware layers; refining computational models based on data; evaluating the ways that computing impacts social and economic practices; and comparing various security measures of a computing system. These types of activities immerse students in creative problem solving where they learn how to identify and present problems that computers can solve and how computers can solve them."

The Computer Science and Digital Fluency Standards ([nysed.gov](http://nysed.gov)) were approved by the NYS Board of Regents in December 2020 and focus on five concepts: Impacts of Computing; Computational Thinking; Networks & Systems Design; Cybersecurity; and Digital Literacy. The standards are grouped into grade-bands: K-1, 2-3, 4-6, 7-8, and 9-12.

## Transition to the Computer Science Certificate

SED policy regarding the teaching of computer literacy (computer science) prior to these new regulations has been that teachers holding a valid teaching certificate could teach computer science courses based on local determinations regarding their expertise in computer science. The new regulations outline a process for "grandfathering" teachers currently teaching computer science courses, as well as those who begin teaching computer science courses between now and September 1, 2024.

### Computer Science Statement of Continued Eligibility (SOCE)

Currently certified teachers who are or will be teaching computer science courses within the 7 years prior to September 1, 2024, can apply using TEACH for the Statement of Continuing Eligibility (SOCE) in Computer Science. The SOCE allows the teacher to continue to teach computer science courses in the same school district, board of cooperative educational services, or other school that employed such individual when the statement of continued eligibility was issued. The SOCE is valid for a period of 10 years from the date it is issued. Applications for the Statement of Continued Eligibility must be submitted on TEACH on or before September 1, 2024. Applicants must possess a valid professional or permanent teaching certificate to obtain the SOCE.

The computer science certificate does not prevent teachers who hold other certificates from teaching aspects of these concepts in other subject area courses and in elementary schools.

### Pathways to Computer Science Certification (other than SOCE)

SED added Computer Science as a CTE Subject in October 2022 in an effort to provide flexibility in how computer science courses could be used to meet diploma and program requirements. This flexibility includes:

- Computer science in grades 5-8 could be used to meet the middle-level 1.75-unit CTE requirement.
- Considering the shortage of CTE teachers in nearly all areas, adding computer science as an eligible CTE subject to meet the middle-level requirement would help schools, especially our high-need schools, by expanding the pool of eligible teachers to deliver the 1.75-unit middle-level requirement.
- Computer science in grades 9-12 could be used as CTE coursework to meet career development and occupational studies (CDOS) commencement credential and CDOS +1 pathway requirements, increasing graduation options for students.
- Computer science in grades 9-12 could be used towards a five-unit CTE sequence in CTE leading to a Regents Diploma with Advanced Designation.
- Districts would have the ability to apply for NYSED CTE program approval for computer science programs in grades 9-12, opening opportunities for LEAs and BOCES to offer programs in a high-skill, high-wage, high-demand field leading to various industry credentials as well as the technical endorsement for students.
- Eligible schools and BOCES with Department-approved CTE programs could utilize Carl D. Perkins Career and Technical Education Act funding to improve computer science instruction.
- As CTE teachers, computer science teachers would be eligible to teach career and financial management and obtain the extension of Coordinator of Work-Based Learning Programs for Career Development. Computer science teachers would also be better able to connect the classroom to the real world with this flexibility.

This regulatory change would not impact existing computer science offerings leading to math or science credit, or elective credit. It would simply add the flexibility of utilizing computer science courses to meet requirements in CTE where appropriate.

### **Pathways to Computer Science Certification (other than SOCE)**

For individuals who seek an initial certificate in computer science other than the SOCE, the following pathways are available:

1. Approved program pathway: an individual pursuing a bachelor's degree in an educator preparation program leading to an initial certificate in computer science or a master's degree in an educator preparation program leading to an initial computer science certificate.
2. Individual evaluation pathway: an individual with a bachelor's degree or higher and at least 12 credits of coursework in computer science may pursue this pathway upon meeting pedagogy and student teaching requirements.
3. Industry experience: individuals who already have a bachelor's degree or higher and also have had three or more years of experience working in a position that requires the skills of a computer scientist may pursue this pathway and would need to complete specific pedagogical coursework.
4. Additional certificate pathway: individuals who already hold a teaching certificate may pursue an additional certificate in computer science by meeting specific computer science coursework.

### **Changes to Part 30 Tenure Rules**

Computer science will be considered a "special subject" across all grades. After September 1, 2023 an educator who was previously appointed tenure in a different tenure area may choose to continue to receive credit toward tenure and seniority rights in their previous tenure area while devoting a substantial portion of their time to teaching computer science courses, or they may choose to change their tenure area to receive credit and accrue seniority rights in the special subject tenure area of computer science.

For educators assigned/appointed on or after September 1, 2023, who are devoting a substantial portion (40% or more) of their time teaching computer science, probationary appointments and appointments in tenure will be made in accordance with normal tenure rules. Specifically, these teachers must be appointed tenure in the special subject tenure area: computer science.

## ATTACHMENT A

### REGULATIONS AMENDMENT TO THE RULES OF THE BOARD OF REGENTS AND THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 210, 215, 305, 3001, 3004 and 3009.

1. Subdivision (d) of section 30-1.2 of the Rules of the Board of Regents shall be amended as follows:

(d) The provisions of this Subpart shall apply to a professional educator employed by a school district or board of cooperative educational services to devote a substantial portion of his or her time to the provision of instruction in computer science, on or after August 1, 1975, as follows:

(1) A professional educator employed by a school district or board of cooperative educational services on September 1, 2023, who was previously appointed by the board to tenure or a probationary period in a tenure area identified in this Subpart shall either:

(i) continue to receive credit toward tenure and/or accrue tenure and seniority rights in his or her previous tenure area from the initial date of his or her assignment and continue to receive tenure and/or seniority rights in his or her previous tenure area while assigned to devote a substantial portion of his or her time to the provision of instruction in computer science: or

(ii) if the professional educator provides knowing consent to the school district or board of cooperative educational services to change his or her tenure area pursuant to section 30-1.9 of this Subpart by September 1, 2023, he or she may receive credit toward tenure and/or accrue tenure and seniority rights in the special subject 8 tenure area of computer science, established in section 30-1.8 of this Subpart, from the date of his or her initial assignment to a position where he or she devoted a substantial portion of his or her time to the provision of instruction in computer science and he or she shall continue to receive tenure and seniority rights in that tenure area while assigned to a position where he or she devotes a substantial portion of his or her time to the provision of computer science instruction appropriate for such tenure area.

(2) Any school district or board of cooperative educational services that appoints or assigns a professional educator on or after September 1, 2023, to devote a substantial portion of his or her time to the provision of computer science instruction shall make probationary appointments and appointments on tenure in accordance with section 30-1.8(e) of this Subpart.

(3) Any board of cooperative educational services that appoints a professional educator on or after September 1, 2023 to devote a substantial portion of his or her time to computer science instruction as a result of a board of cooperative educational services taking over a program formerly operated by a school district or a county vocational education and extension board pursuant to section 3014-a of the Education Law, shall credit the professional educator with tenure and seniority rights in the special subject tenure area for computer science instruction established in section 30-1.8(e) of this Subpart from the initial date of his or her assignment to the performance of computer science instruction in the school district or county vocational education and extension board and shall continue to credit the professional educator with tenure and/or seniority rights in such tenure area

while he or she is assigned to 9 devote a substantial portion of his or her time to the performance of computer science instruction in such tenure area at the board of cooperative educational services.

(4) Any board of education that appoints a professional educator on or after September 1, 2023 to devote a substantial portion of his or her time to computer science instruction as a result of a school district taking over a program formerly operated by a board of cooperative educational services pursuant to section 3014-b of the Education Law, where the professional educator is serving in a computer science instruction tenure area pursuant to section 30-1.9(b) of this Subpart, shall credit the professional educator with tenure and seniority rights in a tenure area for which he or she holds the proper certification as described in section 30-1.9(b) of this Subpart, from the initial date of his or her assignment to the performance of computer science instruction in the board of cooperative educational services and shall continue to credit such professional educator with tenure and/or seniority rights in such tenure area while he or she is assigned to devote a substantial portion of his or her time to the performance of computer science instruction provided that he or she holds the proper certification for such tenure area.

**Statement of continued eligibility for teachers of computer science.**

Section 80-3.14 of the Regulations of the Commissioner of Education shall be amended as follows:

(a) Upon application, any person holding a valid certificate in the classroom teaching service and employed within the seven years immediately preceding September 1, 2024 as a teacher of computer science courses in a New York State public school or board of cooperative educational services or any other school where teacher certification is required, may be issued a statement of continued eligibility so that such person may continue to teach computer science courses in the employing school district, school or board of cooperative educational services. The statement of continued eligibility shall be valid for 10 years from the date the statement of continued eligibility is issued, and the candidate shall not be required to hold a computer science certificate as prescribed in section 80-3.2 of this Subpart, provided such person holds a permanent or professional certificate in another certification area in the classroom teaching service.

(b) A statement of continued eligibility shall only be valid for service in the school district, board of cooperative educational services, or other school that employed such individual when the statement of continued eligibility was issued.

(c) Applications for the statement of continued eligibility must be filed with the department on or before September 1, 2024.





# NYS Certification: Students with Disabilities



No. 22-09 (Replaces 20-10)

October 2022

## BACKGROUND

Special education certification has undergone many changes in the past 20 years. Prior to 2004, the special education certificate was considered an ‘All Grades’ certificate, or K-12. In 2004 the special education certificate was replaced by the certificate title of Students with Disabilities (SWD) and this SWD title was broken into four (4) grade level certificates:

- SWD: Birth – Grade 2
- SWD: Grades 1 – 6
- SWD: Grades 5 – 9
- SWD: Grades 7-12: Content Area.

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The SWD Grades 5-9 certificate was further delineated into a generalist title (for non-departmentalized assignments) or a content-specific title. The SWD Grades 7-12 certificates were separated into content area, requiring knowledge of a specific content area in addition to the knowledge base in special education.

In 2011 the SWD: Grades 5-9 and the SWD: Grades 7-12 content-specific certificate titles were eliminated and replaced with the SWD Grades 7-12 Generalist certificate, with the availability of content area extensions that could be attached to this certificate.

In 2018-19, additional changes were made to the SWD titles; state regulations were amended to allow for grade level extensions to existing SWD certificate titles.

In the fall of 2019, the State Education Department (SED) more clearly defined the appropriate credentials for special education teachers assigned to special classes: a 7-12 subject area certificate, the Statement of Continued Eligibility, the Limited Subject Area Extension, or the Subject Area Extension.

In September 2022 SED created the Students with Disabilities - All Grades certificate. This certificate is now available for interested applicants, and NY colleges that offer teacher preparation programs in special education will be transitioning to this certificate by 2030.

SED also changed the requirements for the Subject Area Extension, used to teach content in certain special classes in grades 7-12.

**STUDENTS WITH DISABILITIES - ALL GRADES CERTIFICATE**

The SWD - All Grades certificate covers teaching students with disabilities from PreK – Grade 12. It does not cover students with disabilities from age 0-2. Applications for this certificate can be entered on the state’s TEACH system as of September 28, 2022.

Currently certified special education teachers DO NOT have to apply for the SWD - All Grades certificate. The pre-2004 special education certificate and the grade-level SWD certificate titles remain valid. Currently certified special education teachers continue to meet the requirements of their current certificates i.e., fulfill requirements for the professional certificate and registration/CTLE requirements.

Currently certified special education teachers who wish to obtain the SWD - All Grades certificate can view the requirements at <https://eservices.nysed.gov/teach/certhelp/CertRequirementHelp.do>. Interested members should note that currently there is no CST specific to this new certificate, so the state is accepting the pre-9/24/214 Multisubject exam or current grade-level CST exams including Multi-subject: Childhood Grades 1-6; Multi-subject: Middle Childhood Grades 5-9; Multi-subject: Secondary Teachers Grades 7-12. The Birth - Grade 2 Multi-subject CST is not acceptable for the SWD - All Grades certificate.

Current Special Ed Titles	Special Ed Titles After 9/28/22
SWD, Birth – Grade 2	SWD, Birth – Grade 2
SWD, Grades 1 – 6	*SWD, Grades 1 – 6
SWD, Grades 7 – 12	*SWD, Grades 7 – 12
*SWD, Grades 5 – 9	*SWD, Grades 5 – 9
*Special Education, Permanent	*Special Education, Permanent
SWD - All Grades	

\* These titles still exist, yet SED has either stopped issuing them or will stop issuing them. Note that eventually the State Education Department will only issue two certificates, the SWD Birth – Grade 2 certificate and the SWD - All Grades certificate.

Currently certified special education teachers who possess a grade-level SWD certificate can still apply for an additional grade-level SWD certificate or SWD grade-level extension.

Members who may want an additional grade-level SWD certificate have two options:

- a. Apply on TEACH using the Additional Classroom Teaching Certificate pathway prior to September 1, 2023 if they are completing courses on their own (like ELT’s SWD courses).

- b. Apply on TEACH using an Approved Teacher Prep Program pathway if completing a NYS-approved teacher education program prior to September 1, 2029 or when the college stops offering the program, whichever comes first.

### GRADE-LEVEL EXTENSIONS

Grade-level extensions will continue to be available to special education teachers who hold grade-level Students with Disabilities certificates. The introduction of the Students with Disabilities – All Grades certificate does not impact the availability of these extensions.

Current Certification	Teaching Experience Requirement	Teachers Choose One of the Following Requirements:		Grade Extension to Current SWD Certificate
		Continuing Teacher & Leader Education (CTLE)	College Course	
SWD Birth - Grade 2	Minimum of 3 years teaching experience at 1 <sup>st</sup> and/or 2 <sup>nd</sup> grade levels.	Minimum of 45 hours of acceptable CTLE focused on SWD at the elementary level.	Minimum of 3 credits of pedagogical course work focused on SWD at the elementary education level.	Grades 3-4
SWD Grades 1 -6	Minimum of 3 years teaching experience at 1 <sup>st</sup> and/or 2 <sup>nd</sup> grade levels.	Minimum of 45 hours of acceptable CTLE focused on SWD at the early childhood level.	Minimum of 3 credits of pedagogical course work focused on SWD at the early childhood education level.	PK-K
	Minimum of 3 years teaching experience at 5 <sup>th</sup> and/or 6 <sup>th</sup> grade levels.	Minimum of 45 hours of acceptable CTLE focused on SWD at the middle education level.	Minimum of 3 credits of pedagogical course work focused on SWD at the middle education level.	Grades 7-8
SWD 7-12 Generalist or Content Specialist	Minimum of 3 years teaching experience at 7 <sup>th</sup> and/or 8 <sup>th</sup> grade levels.	Minimum of 45 hours of acceptable CTLE focused on SWD at the middle education level.	Minimum of 3 credits of pedagogical course work focused on SWD at the middle education level.	Grades 5-6
SWD 5-9 Generalist or Content Specialist	Minimum of 3 years teaching experience at 8 <sup>th</sup> and/or 9 <sup>th</sup> grade levels.	Minimum of 45 hours of acceptable CTLE focused on SWD at the adolescent education level AND 15 hours of acceptable CTLE in ELA OR 3 credits in ELA.	Minimum of 3 credits of pedagogical course work focused on SWD at the adolescent education level AND 15 hours of acceptable CTLE in ELA OR 3 credits in ELA.	Grades 10-12

For each of the grade level extensions, teaching experience is defined as at least 75% or more of the applicant's time is spent teaching students with disabilities in either of the two grade levels closest to the grade level extension during each of the three school years. Applicants for the grade level extension(s) use the state's Verification of Paid Experience form for Classroom Teachers and Pupil

Personnel Services Professionals: Professional and Permanent Certificates, Extensions, Limited Extensions, and Statements of Continued Eligibility to fulfill this requirement.

New York State Teacher Centers offer state approved CTLE courses that fulfill the requirement for grade level extensions. For information on availability of these courses, visit the Teacher Center website at [NYS Teachers Centers](#).

### **STATEMENTS OF CONTINUED ELIGIBILITY, LIMITED SUBJECT AREA EXTENSIONS AND SUBJECT AREA EXTENSION**

In addition to grade level flexibility, the State Education Department also allows special education teachers with select Students with Disabilities certificates to teach special classes. The SWD titles eligible for this flexibility include: SWD 7-12 Generalist, SWD 7-12 Content Specialist, SWD 5-9 Generalist, SWD 5-9 Content Specialist, and Special Education K-12.

Effective July 1, 2021, special education teachers who teach one or more subject areas in a special class in grades 7-12, with some or no students under alternate assessment, must either:

- 1) meet the teaching experience requirement for the statement of continued eligibility (SOCE) and have an active SOCE application in TEACH in each subject area that they teach, or
- 2) be appropriately certified in each subject area that they teach, (content 7-12 certificate, Subject Area Extension, or Limited subject Area Extension).

**Statement of Continued Eligibility or SOCE:** The SOCE was available to special education teachers with select certificate titles and at least three years of special education teaching experience in a special class in grades 7-12. The deadline to apply for a SOCE was June 30, 2021.

Special education teachers can complete the SOCE requirements within three years of the application date or two official state evaluations of the application, whichever comes first, with the exception that the teaching experience requirement must have been completed by June 30, 2021.

**Limited Subject Area Extension:** The [time] limited extension is available to special education teachers with any of the eligible certificate titles identified above who will teach a special class but did not qualify for the SOCE. The limited extension enables these teachers to teach special classes for five years (with additional 5-year renewal option) while they complete the requirements for a subject area extension. Extensions are available in the following subjects: biology, chemistry, earth science, ELA, general science, languages other than English, mathematics, physics, and social studies.

Limited extensions can be obtained by:

- having at least two years of satisfactory full-time teaching experience with students with disabilities in grades 7-12 prior to July 1, 2021, and be deemed Highly Qualified by a district in the subject area using the HOUSSE rubric; or
- passing an industry accepted exam in the subject area; or

- completing at least 9 credits of course work in the subject area; or
- completing at least 45 CTLE hours in the subject area and either:
  - having at least two years of satisfactory full-time teaching experience with students with disabilities in grades 7-12 in the subject area, or
  - being mentored for at least one year by a teacher in the school or school district who holds a professional or permanent certificate in the subject area.

**Subject Area Extension:** The subject area extension is available to special education teachers with any of the eligible certificate titles identified above who teach one or more subject areas in a special class in grades 7-12, with some or no students under alternate assessment. The subject area extension requires 12 credits in a content area (biology, chemistry, earth science, ELA, general science, languages other than English, mathematics, physics, and social studies) or passing the corresponding Content Specialty Test.

Depending upon the special education certificate (permanent or initial/professional) held by the teacher, the subject area certificate may include some or all of the following:

- Being fingerprinted;
- Child Abuse Identification and Reporting workshop;
- School Violence Intervention and Prevention workshop;
- 6-hour DASA workshop;
- Autism workshop.

## ATTACHMENT A: Current SED Guidance

### Special Education Teaching Assignments and Certification

The following table shows the certification required for various types of special education teaching assignments. The types of teaching assignments are described on the [Continuum of Special Education Services for School-Age Students with Disabilities](#) webpage. Certification requirements are available on the [Search Certification Requirements](#) webpage.

Effective July 1, 2021, all special education teachers who teach a subject area in a special class (self-contained class) with some or no students under alternate assessment in grades 7-12 must be certified in the subject area, including Permanent Special Education certificate holders. They could earn subject area certification through a limited extension, SOCE, subject area extension, or additional certificate.

Please note that special education teachers can only teach students who are in the grade levels in which their certificate is valid, with the exception of teachers who teach a special class where all students are under alternate assessment.

For questions about teaching assignments that are not answered in the following table, please contact the Office of Special Education at [speced@nysed.gov](mailto:speced@nysed.gov). For questions about certification requirements, please contact the Office of Teaching Initiatives at [tcert@nysed.gov](mailto:tcert@nysed.gov).

Special Education Certification	Special Education Teaching Assignment:			
	Preschool Itinerant Teacher	Consultant Teacher, Resource Room Teacher, Integrated Co-Teacher	Special Class Teacher – Some or No Students Under Alternate Assessment	Special Class Teacher – All Students Under Alternate Assessment
SWD (Birth-Grade 2) only	Yes	Birth-Grade 2	Birth-Grade 2	All grades
SWD (Birth-Grade 2) • With SWD grade-level extension (Grades 3-4)	Yes	Birth-Grade 4	Birth-Grade 4	All grades
SWD (Grades 1-6) only	No	Grades 1-6	Grades 1-6	All grades
SWD (Grades 1-6) • With SWD grade-level extension (PK-K)	Yes	PK-Grade 6	PK-Grade 6	All grades
SWD (Grades 1-6) • With SWD grade-level extension (Grades 7-8)	No	Grades 1-8	Grades 1-6*	All grades
SWD (Grades 5-9) Generalist only	No	Grades 5-9	Grades 5-6*	All grades

Special Education Certification	Special Education Teaching Assignment:			
	Preschool Itinerant Teacher	Consultant Teacher, Resource Room Teacher, Integrated Co-Teacher	Special Class Teacher – Some or No Students Under Alternate Assessment	Special Class Teacher – All Students Under Alternate Assessment
<b>SWD (Grades 5-9) Generalist</b> • With SWD grade-level extension (Grades 10- 12)	No	Grades 5-12	Grades 5-6*	All grades
<b>SWD (Grades 5-9) Generalist</b> • With a subject area certificate or extension in grades 7-12 and in the subject area to be taught	No	• Grades 5-9 • Grades 7-12 in the subject area of the certificate held	• Grades 5-6 • Grades 7-12 in the subject area of the certificate held*	All grades
<b>SWD (Grades 5-9) Generalist</b> • With a limited extension or statement of continued eligibility in grades 7-12 and in the subject area to be taught (only valid in a special class)	No	Grades 5-9	• Grades 5-6 • Grades 7-12 in the subject area of the certificate held*	All grades
<b>SWD (Grades 5-9) Content Specialist only</b>	No	Grades 5-9	• Grades 5-6 • Grades 7-9 in the subject area of the content specialty*	All grades
<b>SWD (Grades 5-9) Content Specialist</b> • With SWD grade-level extension (Grades 10- 12)	No	Grades 5-12	• Grades 5-6 • Grades 7-12 in the subject area of the content specialty*	All grades



Special Education Certification	Special Education Teaching Assignment:			
	Preschool Itinerant Teacher	Consultant Teacher, Resource Room Teacher, Integrated Co-Teacher	Special Class Teacher – Some or No Students Under Alternate Assessment	Special Class Teacher – All Students Under Alternate Assessment
<b>SWD (Grades 5-9) Content Specialist</b> • With a subject area limited extension or statement of continued eligibility in grades 7-12 and the subject area to be taught (only valid in a special class)	No	Grades 5-9	• Grades 5-6 • Grades 7-9 in the subject area of content specialty • Grades 7-12 in the subject area of the certificate held*	All grades
<b>SWD Generalist (Grades 7-12) only</b>	No	Grades 7-12	Not eligible; does not hold content area certification*	All grades
<b>SWD Generalist (Grades 7-12)</b> • With SWD grade-level extension (Grades 5-6)	No	Grades 5-12	Grades 5-6*	All grades
<b>SWD Generalist (Grades 7-12)</b> • With a subject area certificate, extension, limited extension, or statement of continued eligibility in grades 7-12 and in the subject area to be taught	No	Grades 7-12	Grades 7-12 in the subject area of the certificate held*	All grades
<b>SWD (Grades 7-12) Content Specialist only</b>	No	Grades 7-12	Grades 7-12 in the subject area of the content specialty*	All grades
<b>SWD (Grades 7-12) Content Specialist</b> • With SWD grade-level extension (Grades 5-6)	No	Grades 5-12	• Grades 5-6 Grades 7-12 in the subject area of the content specialty*	All grades

Special Education Certification	Special Education Teaching Assignment:			
	Preschool Itinerant Teacher	Consultant Teacher, Resource Room Teacher, Integrated Co-Teacher	Special Class Teacher – Some or No Students Under Alternate Assessment	Special Class Teacher – All Students Under Alternate Assessment
<b>SWD (Grades 7-12) Content Specialist</b> • With a subject area limited extension or statement of continued eligibility in grades 7- 12 and the subject area to be taught	No	Grades 7-12	• Grades 5-6 • Grades 7-12 in the subject area of the content specialty • Grades 7-12 in the subject area of certificate held*	All grades
<b>Permanent Special Education only</b>	Yes	Birth-Grade 12	Birth-Grade 6*	All grades
<b>Permanent Special Education</b> • With a subject area certificate, extension, limited extension, or statement of continued eligibility in grades 7- 12 and the subject area to be taught	Yes	Birth-Grade 12	• Birth-Grade 6 • Grades 7-12 in the subject area of certificate held*	All grades

\* Through June 30, 2021, special education teachers may teach a particular subject area in a special class in grades 7-12 for which they do not hold subject area certification only if they: 1) hold a certificate at the appropriate grade/developmental level, and 2) would be considered Highly Qualified in the subject area throughout their teaching assignment in a special class through passing a HOUSSE rubric. The HOUSSE rubric completed by the school district for this purpose can also be used for the limited extension and statement of continued eligibility (SOCE) application.

**Severe or Multiple Disabilities Annotation**

Special education teachers who hold the Severe or Multiple Disabilities Annotation can teach a special class where all students are under alternative assessment and all students have severe cognitive disabilities. Students can be at any developmental level (birth-grade 12).

# Registration and Continuing Teacher and Leader Education: Teacher



Fact Sheet No. 21- 14 *Updated and Replaces 17-11*

August 2021

## Overview

The 2015 New York State budget included requirements for certain certificate holders to register with the State Education Department (SED) and complete Continuing Teacher & Leader Education hours (CTLE hours). Chapter 56 of the Laws of 2015 specified that these requirements be implemented as of July 1, 2016. These requirements are found in Part 80-6 of Commissioner's Regulations.

## Registering with the State Education Department

As of July 1, 2016, any holder of a certificate that is valid for life must register with the state every five (5) years. Registration is done using the State Education Department's (SED) TEACH system. See the state's [Registration & CTLE Requirement Chart](#) for an overview of who is required to register.

Permanently or professionally certified classroom teachers, educational leaders (i.e., School Administrator/Supervisor, School Building leader, School District leader, School District Administrator, School District Business Leader or School Business Administrator) and Level III Teaching Assistants who are practicing in a NYS School District or BOCES must select a registration status on their TEACH account.

Practicing is defined as employed 90 days or more during a school year by a single applicable school in New York in a position requiring state certification. A day of employment includes a day actually worked in whole or in part, or a day not actually worked but a day paid. An applicable school is defined as a NYS public school or BOCES.

Since July 1, 2016, registration cycles are automatically created when a professional certificate or a Level III Teaching Assistant certificate is issued. If you obtain multiple professional certificates, the registration cycle is connected to the professional certificate that was issued first.

For additional information on registering with SED, please visit their website [Registration:OTI:NYSED](#).

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Educators subject to registration requirements select one of the following registration statuses:

- **Registered - Active:**  
These educators are registered and are practicing in an applicable school.
- **Registered - Inactive:**  
These educators are registered and are not practicing in an applicable school.

One's registration status can change during a five (5) year registration period. For example, a professionally certified teacher may take a one (1) year leave. For that year, the teacher should change the registration status to 'Registered – Inactive'. At the completion of the leave and the resumption of teaching duties, the teacher would change the registration status to 'Registered – Active'.

The state may assign other registration statuses including:

- **Registration Expired:**  
These educators were registered, but their registration period expired. They have not re-registered.
- **Not Registered:**  
These educators have never registered and did not begin the registration process.
- **Registration/Re-Registration Incomplete:**  
These educators began the registration/re-registration process but did not complete it.

### Continuing Teacher & Leader Education (CTLE) Requirements

As indicated below, professionally certified classroom teachers/educational leaders and Level III Teaching Assistants are required to complete Continuing Teacher & Leader Education hours during each five (5) year registration period.

	Required to Complete CTLE Hours	Hours Required per 5-Year Registration
Permanently certified classroom teachers/educational leaders	NO	None
Professionally certified classroom teachers/educational leaders	YES	100
Teaching Assistant Level III	YES	100

See the state's [Registration & CTLE Requirement Chart](#) for a complete list of who is required to complete CTLE hours and who is not. Note that when School Counseling certificate titles change to Initial/Professional in 2023, school counselors will be required to register and complete CTLE hours.

Acceptable CTLE is study in the content area of any certificate title held by the individual or in pedagogy and include study in language acquisition addressing the needs of English language learners. The state also determined that a peer review teacher or a principal acting as an independent evaluator within a teacher evaluation system may credit such time towards his/her CTLE requirement. Similarly, achieving National Board certification during a registration period will satisfy the CTLE requirement for that five (5) year cycle.

Professionally certified ESOL teachers and holders of the bilingual extension are required to complete a minimum of 50% of their CTLE hours in language acquisition that addresses the needs of English language learners. All other CTLE certificate holders are required to complete minimum of 15% of their hours in language acquisition. Districts with less than 5% (or 30 enrolled) ELL students can obtain a waiver for this 15% - see [CTLE Language Acquisition Requirements:OTI:NYSED](#).

What counts for the CTLE hours' requirement is a local determination and should be reflected in a district's Professional Learning Plan to the extent possible. CTLE activities are offered by SED-approved sponsors which include districts, BOCES, and a variety of other providers – see [Approved CTLE Sponsors:OTI:NYSED](#).

The CTLE hours may be completed at any time during the registration cycle, yet CTLE hours may not be carried over from one registration period to the next. If a certificate holder stops practicing during the five (5) year registration period, the state expectation is completion of a minimum of 20 CTLE hours for every year spent practicing in an [applicable school](#) during that registration cycle.

Note: Practicing is defined as “employed 90 days or more during a school year by a single applicable school in New York State. A day of employment includes a day actually worked in whole or in part, or a day not actually worked but a day paid.

## Re-registering with the State

Registration cycles are five (5) years long and at the completion of a cycle, the certificate holder is expected to re-register on TEACH. The following screen shots can be found on [Re-registration and Conditional Registration Directions:OTI:NYSED](#).

For educators who are required to register but **NOT** to complete CTLE hours:

1. [Log in to your TEACH account](#).
2. On your TEACH home screen, either:
  - Click on “View or Change Registration Status” under the “Inquiry Links” heading. You will see your “Registration Status” screen. Click “here” in the phrase, “Your current registration is about to expire! Click here to re-register.”
  - OR
  - Click on “Account Information” under the “Inquiry Links” heading. Under “Registration Information”, click “here” in the phrase, “Your current registration is about to expire! Click here to re-register.”
3. You will see a screen with information about registration and CTLE.
4. Answer the moral character and other questions.
5. Select one of the following options:

Make a Selection

I would like to register as active. I am practicing in an applicable school.

I would like to register as inactive. I am currently not practicing in an applicable school.

BACK CONTINUE

6. You will see a screen confirming your new registration status. You can verify your new registration status by clicking on “View or Change Registration Status” or “Account Information” under the “Inquiry Links” heading on your TEACH home screen.

For educators who are required to register AND complete CTLE hours, complete the process on TEACH following the steps outlined on [Re-registration and Conditional Registration Directions:OTI:NYSED](#). You can view NYSUT's summary of this process at [Certification Re-Registration - July 2021](#).

As you re-register you will be prompted to report how many years within your five (5) year registration cycle you were required to complete CTLE hours. This is question #1 below. You are also prompted to enter the number of years during your five (5) year registration cycle that you were employed by a district/BOCES that had a waiver for the language acquisition hours. This is question #2 below.

Answer the following CTLE Questions

1. During your registration period, how many years did you practice in an applicable school while holding a Professional teacher, Professional educational leader, or a Teaching Assistant Level III certificate? The answer would be a whole number between 0-5.


- "Applicable schools" include New York State (NYS) school districts or BOCES. NYS nonpublic schools also became applicable schools on October 17, 2017. In addition, the New York City Department of Education and any of its components are considered a single applicable school.
- "Practicing" means employed 90 days or more during a school year by a single applicable school in New York State. A day of employment includes a day actually worked in whole or in part, or a day not actually worked but a day paid.

Select ▾

2. During the years that you practiced in an applicable school while holding a Professional teacher, Professional educational leader, or a Teaching Assistant Level III certificate, how many of those years were you employed by an applicable school with an approved exemption for the CTLE language acquisition requirement? You could check the CTLE language acquisition requirement webpage to see if your employer(s) had an approved exemption in a given year. The answer would be a whole number between 0-5.

- School districts can seek an exemption for the CTLE language acquisition requirement related to ELLs if they have fewer than 30 ELLs enrolled, or ELLs comprise less than 5% of the district's total student population, as of a date established by the Office of Bilingual Education and World Languages (OBEWL). The school district, rather than the educator, would obtain the exemption by submitting the appropriate form to the OBEWL.

Select ▾

Back 

Based on what you answer to questions #1 and #2 above, the TEACH system calculates how many CTLE hours you should have completed.

If you were unable to complete the required CTLE hours within your five (5) year registration period, request a conditional registration. This conditional registration provides you with an additional year to complete any missing CTLE hours and it does not require submission of any documentation; you just request it.

When you have completed the missing hours, you repeat the process on TEACH, indicate that all hours have been completed, and then begin a new five (5) year registration cycle.

## CTLE Sponsors (approved providers)

SED regulations require that the CTLE activities be offered by SED-approved sponsors. A list of SED-approved CTLE sponsors is available on SED's [approved CTLE sponsors](#) page. School districts, BOCES, teacher centers, many NYS institutions of higher education, NYSUT's Education & Learning Trust and other professional organizations are included on this list. All CTLE providers must apply every five (5) years to the State Education Department to continue as CTLE sponsors.

## Record-keeping and Reporting CTLE Hours

Districts and other approved CTLE sponsors are required to maintain records of the CTLE activities that they offer for a period of eight (8) years. Similarly, CTLE certificate holders are required to maintain records of their own CTLE hours for eight (8) years – the five (5) year registration cycle plus three (3) additional years.

District-based CTLE activities should be included, (to the extent they are known in advance), in the district Professional Development Plan (PDP) which is still required to be submitted to SED annually – see [Part 100.2\(dd\) PDP regulations](#). These regulations stipulate that school districts and BOCES are required to provide CTLE hours so that faculty and staff remain current with their profession, meet the learning needs of their students, and are able to maintain their certificates in good standing.

Districts and other approved CTLE sponsors are required to provide CTLE participants with access to a 'certificate of completion' for each CTLE activity that the participant completes. SED guidance allows for this 'certificate of completion' to be paper or electronic.

Neither CTLE sponsors nor CTLE certificate holders are required to submit hours to SED unless they are specifically asked by SED to provide them. If the state asks for documentation, it will be during the re-registration process when CTLE certificate holders attest to completing or not completing the required CTLE hours. Original SED guidance was that this would be a random audit process, yet this process has not been implemented to date.

The regulations governing Registration and CTLE requirements are found in [Part 80.6](#) of Commissioner's Regulations.

### Items for Local Leaders:

Members need to be able to access their CTLE hours if requested by SED. Members can request paper copies of CTLE Certificates of Completion or can have access to electronic copies of these certificates. Local leaders and members should consider the reliability of a district's CTLE tracking system, (such as Frontline/My Learning Plan), when determining if paper or electronic copies are preferable.

The process of registering with SED includes a requirement for members to answer a series of 'moral character' questions. Local leaders and members should note that SED has the authority to ask these questions of certificate holders, as well as members of other professions in NYS.

Determinations as to what counts as a CTLE activity is a local decision and is typically handled by the Professional Learning Team.







No. 12-06

March 2012  
(Updated February 2014)

**What is the Dignity Act?**

**Overview**

The New York State (NYS) *Dignity for All Students* (Dignity Act), Chapter 482 of the Laws of 2010, was signed into law on September 13, 2010, effective July 1, 2012. The Dignity Act prohibits harassment and discrimination of individuals on school property or at a school function based upon a person’s actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.

The Dignity Act amends Section 801-a of NYS Education Law regarding instruction in civility, citizenship, and character education by expanding the concepts of tolerance, respect for others and dignity. The Dignity Act further amends Section 2801 of the Education Law requiring Boards of Education and BOCES to include language addressing the legislative requirements in their codes of conduct.

Research indicates that there is a direct link between success in school and the school environment in which student learning takes place. Students are more likely to achieve their full potential in schools that have a positive school culture and an environment in which students feel safe and supported. Creating a school culture of respect is important and hard work. The goal of the Dignity Act is to promote a safe and supportive learning environment in all public schools, free from harassment and discrimination.

**Background**

The NYS Dignity Coalition comprised of over 120 national, state, and local organizations, including NYSUT, worked for the better part of a decade to see the Dignity Act enacted; all were involved in some way in promoting the law’s enactment. More importantly, these organizations are now invested in the meaningful implementation of this legislation that will significantly bolster NYS public schools' commitments to tolerance, respect, and dignity.

The Board of Regents Dignity Act Task Force, created in January 2011, is comprised of key stakeholders in the education community and advocates, including many members of the New York State Dignity Coalition. The NYS Education Department staff continues to guide the Dignity Act Task Force, charged with conducting research and making recommendations to the Board of Regents.

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## Who is Protected Under the Dignity Act?

The Dignity Act protects all public school students in NYS from harassment or discrimination by other students or adults. The definitions of harassment and discrimination in the law were not intended to be inclusive of the eleven protected classes identified in the Dignity Act. For example, although height is not specifically cited in the law, a student harassed for being tall or short would be protected. The harassment of any student is prohibited.

## How Does the Dignity Act Relate to SAVE?

The Safe Schools Against Violence in Education Act of 2000 (SAVE) requires a focus on all acts of violence including, but not limited to, the impact of acts of bullying, threats, discrimination, harassment or intimidation, disruptive behavior in class, carrying of weapons, fighting, physical assaults, and other behaviors that impede learning.

The Dignity Act builds upon the SAVE Legislation by targeting discrimination and harassment in public schools. The Dignity Act impacts the following SAVE requirements:

- **Codes of Conduct - Commissioner's Regulations 100.2(l) and 119.6** - The Code of Conduct language must be amended to reflect the prohibition of discrimination and harassment of students by students or staff. The Code of Conduct applies to all public and charter school students, staff, and visitors in the school, on school property, at a school-sponsored event, or in a school vehicle. School districts and BOCES that maintain web sites are required to post their codes of conduct, and any updates and amendments on the web site. A plain language age-appropriate summary must be provided to all students. A complete Code of Conduct should be given to each teacher and parents and guardians of students are required to receive a plain language summary at the beginning of every school year.
- **Instruction in civility, citizenship and character education – Commissioner's Regulations 100.2(c)**: For all public schools, required instruction will be expanded to include, but not be limited to, awareness and sensitivity to harassment and discrimination within the protected classes, identified in the legislation as those who are subjected to intimidation or abuse based on actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability sexual orientation, gender or sex.
- **Reporting requirements under the Dignity Act – Commissioner's Regulations 100.2 (kk)**: The Dignity Act requires the development of a system whereby schools will annually report material incidents of discrimination and harassment on school grounds or at a school function to the Commissioner of the State Education Department.
- **School employee training – Commissioner's Regulations 100.2(jj)**: All school employees must receive training to promote a positive school environment that is free from discrimination and harassment; and to prevent and respond to incidents of discrimination and/or harassment on school property or at a school function. At least one employee in every school is required to be designated as a Dignity Act Coordinator and instructed in the provisions of this subdivision and thoroughly trained to handle human relations in the areas of the protected classes. The name(s) and contact information of the Dignity Act Coordinator(s) must be provided to school personnel, students, and parents or guardians.

## **How Does the Dignity Act Relate to Federal Law?**

### **Federal Civil Rights Statutes Related to Schools and Harassment**

A school is responsible for addressing harassment incidents about which it knows or reasonably should have known.

- Title VI of the Civil Rights Act of 1964 (Title VI) prohibits discrimination on the basis of race, color, or national origin;
- Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II) prohibit discrimination on the basis of disability.

The United States Department of Education Office of Civil Rights October 26, 2010 *Dear Colleague* letter, clarifies the relationship between bullying and discriminatory harassment, and reminds schools that by limiting their responses to a specific application of an anti-bullying or other disciplinary policy, they may fail to properly consider whether the student misconduct also results in discrimination in violation of students' federal civil rights.

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>

### **Does the Dignity Act Address Bullying/Cyber Bullying?**

The Dignity Act defines harassment as the "creation of a hostile environment by conduct or verbal threats, intimidation or abuse that has or would have the effect of unreasonably and substantially interfering with a students' educational performance, opportunities or benefits, or mental, emotional or physical well-being..." Bullying can be considered a form of harassment. The legislation does not specifically address cyber bullying (e-communication), and there is no statutory or other legal definition of cyber bullying in NYS. Conduct that unreasonably, substantially and materially interferes with another student's education is harassment that is prohibited by the Dignity Act, regardless of the method of communication.

Bullying or other harassing behavior that occurs through e-communication using a school computer or other school-owned electronic device, using any electronic device while at school or on school property, or using any electronic device while at a school function, would be prohibited under the Dignity Act. This includes computer, cell phone, texting, or other forms of electronic communication.

If off-school behavior starts to negatively affect another student's learning in school, the issue may be covered under the Dignity Act. A school district should consult its attorney in determining how the information related to this behavior may be used and what follow-up actions may be appropriate.

### **What are the Board of Education Responsibilities?**

The board of education, BOCES, other governing body, or the Chancellor of the New York City School District are required to develop a policy intended to create a school environment

that is free from discrimination or harassment consistent with the requirements of the Dignity Act. Each school district's policy must include guidelines for school training programs to:

- Raise the awareness and sensitivity of school employees to potential discrimination and/or harassment;
- Enable all employees to prevent and respond to discrimination and/or harassment; and

The District Policy must also describe the process on:

- development of nondiscriminatory instructional and counseling methods.
- indicate at least one staff member at every school will be designated as the Dignity Act Coordinator.

### **What is the Role of the Dignity Act Coordinator?**

- The Coordinator must receive training in the provisions of the Dignity Act and be thoroughly trained in methods to respond to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.
- The Dignity Act Coordinator is approved by the Board of Education. A currently employed person may be identified and receive training. There is no requirement for this position to be filled by a new employee.
- The name(s) and contact information of Dignity Act Coordinator must be made available and shared with all school personnel, students and persons in parental relations.

### **How Does the Dignity Act Affect Instruction?**

- Educators in grades K-12 will be required to teach students civility, citizenship and character education, including but not limited to, awareness and sensitivity to discrimination or harassment and civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders and sexes. See Appendix B for instructional resources.

### **What Else Should Teachers Consider?**

Educators share commitment to fostering an environment of respect in their schools. This work is not done in isolation – it is part of a continuum. Connections should be made to the Social /Emotional Developmental Learning Guidelines, Teaching Standards for Teacher Practice and the NYS Learning Standards and the NYS P-12 Common Core Learning Standards for English Language Arts & Literacy and Mathematics.

- Focus on the development of the whole child, consistent with the Social and Emotional Development and Learning (SEDL) Guidelines. The SEDL Guidelines can serve as a foundation for success in academic learning, ensuring that students in P-12 schools are ready for college and careers.

- Create a dynamic learning environment for all students that support achievement and growth, aligned with Standard IV of the NYS Teaching Standards for Teacher Practice, the Learning Environment.
- Integrate the Dignity Act principles (these include tolerance and respect for others of different races, sizes, skin color, sexual orientation, national or ethnic origin, religions, religious practices, mental or physical abilities, genders or sexes) can be infused into the NYS P-12 Common Core Learning Standards for English Language Arts & Literacy and Mathematics and the NYS Learning Standards. Many of the standards address communication skills, problem solving, decision-making skills, citizenship, and choosing healthy behaviors, to name a few.
- Collaborate with other school personnel to formulate consistent and specific school and classroom rules against discrimination and harassment and make them visible and available to all students and staff at the beginning of the school term.
- Discuss with students and colleagues ways to encourage and support positive behaviors and the positive actions of bystanders.
- Invite experts in the field of bullying/harassment prevention, gender, cultural competency, hate crimes, etc. to work with both adults and youth at your school. Use presentations that are designed to lead to action rather than just awareness.
- Model respectful behavior.
- Use a variety of mentoring strategies to build staff connections for all students.
- Attend training and learn to recognize signs that a student may be harassed or bullied

## Advice to Local Leaders

- A district's Code of Conduct is required to be amended under the Dignity Act. It must be developed in collaboration with students, teachers, administrators, parents, school safety personnel, and other school staff. Local leaders should appoint members of the collective bargaining unit who will participate in this process. Local leaders should review amended codes of conduct provisions with their respective Labor Relations Specialist. Local leaders should be aware that codes of conduct should be reviewed annually.
- Although adults are not covered by the Dignity Act, the school's code of conduct is required to govern the conduct and address issues related to acceptable civil and respectful treatment of teachers, school administrators, other school personnel, students, and visitors on school property and at school-sponsored functions, including the appropriate range of disciplinary measures which may be imposed for violation of such code.
- All staff, volunteers and students should be informed of the Dignity Act policy and the implementation process.
- The SAVE law already requires violence prevention training and some aspects of the Dignity Act may be able to be integrated into that training. Local leaders should discuss the Dignity Act training with their superintendents.
- Local leaders should work with the administration to ensure school-wide systems are established to support students who have experienced discrimination and/or harassment and school-wide prevention and intervention programs are identified to support all students.
- Local leaders should ensure members know they are provided civil immunity for reporting behavior or conduct when they have "reasonable cause" to suspect that discrimination or harassment has occurred and they make a report to school officials. (Dignity Act §16).

## Appendix A -Definition of terms from the Dignity Act Legislation

- **School Property** is defined as “in or within any building, structure, athletic playing field, playground, parking lot, or land contained within the real property boundary line of a public elementary or secondary school; or in or on a school bus” (Dignity Act § 11(1)).
- **School function** is defined as “a school-sponsored extra-curricular event or activity” (Dignity Act § 11(2)).
- Executive Law §292 (21) provides the definition of the term “**disability**” as  
“ (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or  
(b) a record of such an impairment or (c) a condition regarded by others as such an impairment, provided, however, that in all provision of this article dealing with employment, the term shall be limited to disabilities which, upon the provision of reasonable accommodations, do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held.”
- **"Employee"** is defined in subdivision three of section 1125 of the Laws of NYS and “means any person receiving compensation from a school district or employee of a contracted service provider or worker placed within the school under a public assistance employment program, pursuant to title nine-B of article five of the social services law, and consistent with the provisions of such title for the provision of services to such district, its students or employees, directly or through contract, whereby such services performed by such person involve direct student contact.”
- **“Sexual orientation”** is defined to mean “actual or perceived heterosexuality, homosexuality or bisexuality” (Dignity Act § 11(5)).
- **“Gender”** is defined to mean “actual or perceived sex and shall include a person’s gender identity or expression” (Dignity Act § 11(6)).
- **Harassment** is defined as “the creation of a hostile environment by conduct or verbal threats, intimidation or abuse that has or would have the effect of unreasonably and substantially interfering with a student’s educational performance, opportunities or benefits, or mental, emotional or physical well-being; or conduct, verbal threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety” (Dignity Act § 11(7)).

## Appendix B – Resources

- **AbilityPath.org** is a support for parents of children with special needs. *Walk A Mile In Their Shoes: Bullying and the Child with Special Needs* is a report and guide compiled to address the issue of children with special needs being targets of harassing behavior. [AbilityPath.org](http://AbilityPath.org)
- **American Federation of Teachers (AFT)** gives teachers a list of resources to make a difference in their classrooms. The website contains tips on how to identify bullies and victims, how to create a safe environment, and access to webinars discussing the 'See a Bully, Stop a Bully: Make a Difference Campaign'. <http://aft.org/teachers/pubs-reports/tq.htm>
- **American Psychological Association** *Bullying: What Parents, Teachers Can Do to Stop It: Questions for bullying expert Susan Swearer*. [www.apa.org/news/press/releases/2010/04/bullying.aspx](http://www.apa.org/news/press/releases/2010/04/bullying.aspx)
- **Anti-Defamation League (ADL)** 'A Classroom of Difference' is a program designed to address diversity issues in pre-kindergarten through 12th grade school communities. The program provides an anti-bias curriculum supplying teachers with lessons to help students explore bigotry and prejudice, examine diverse viewpoints, and take leadership roles. [http://www.adl.org/education/edu\\_awod/awod\\_classroom.asp](http://www.adl.org/education/edu_awod/awod_classroom.asp)
- **Bridging Refugee Youth and Children's Services (BRYCS)** provides national technical assistance to organizations serving refugee and immigrants. [www.brycs.org](http://www.brycs.org)
- **Bully Police** reports on legislation across the country regarding changes in bullying state laws. <http://www.bullypolice.org/>
- **Bullying Statistics** provides information on harassment/violence facts and stats, prevention, and articles on the various types of bullying. <http://www.bullyingstatistics.org/>
- **Center for Safe and Responsible Internet Use (CSRIU)** is a guide for educators. CSRIU includes professional resources, articles, and reports regarding cyber bullying. <http://www.cyberbully.org/>
- **Collaborative for Academic, Social, and Emotional Learning (CASEL)** A not-for-profit organization that works to advance the science and evidence-based practice of social and emotional learning to promote children's success in school and life through the establishment of social and emotional learning as an essential part of education. [www.Casel.org](http://www.Casel.org)
- **Cyber Bullying Research Center** provides up-to-date information about the nature, extent, causes, and consequences of cyber bullying among adolescents. Research on cyber bullying is discussed in blogs, videos, presentations, and publications. The website also allows people to share their stories about their own experiences with cyber bullying. <http://www.cyberbullying.us/>



- **Cyberbullying.org** provides examples of what is considered cyber bullying, discusses prevention, and offers other resources for students, parents, and educators to learn more. <http://www.cyberbullying.org/>
- **CyberSmart** is a partnership between National School Board association and CyberSmart to create K-12 Student Curriculum. <http://www.cybersmartcurriculum.org/cyberbullying/nsba>
- **Dignity for All Students Facebook Page:** <http://www.facebook.com/dignityact>
- **GLSEN** seeks to develop school climates where difference is valued for the positive contribution it makes in creating a more vibrant and diverse community. <http://www.glsen.org>
- **Ground Spark's Respect for All Project** facilitates the development of inclusive, bias-free schools and communities by providing media resources, support and training to youth, educators, and service providers. <http://groundspark.org/respect-for-all>
- **Guidance on Bullying and Cyberbullying Prevention Provided by the New York State Education Department:** [http://www.p12.nysed.gov/technology/internet\\_safety/documents/cyberbullying.html](http://www.p12.nysed.gov/technology/internet_safety/documents/cyberbullying.html)
- **International Bullying Prevention Association (IPBA)** supports research based bullying prevention principles and practices in order to achieve a safe school climate, healthy work environment, good citizenship and civic responsibility. <http://www.stopbullyingworld.org/>
- **i-SAFE Inc.** is a non-profit organization dedicated to educating and empowering youth (and others) to safely, responsibly and productively use Information and Communications Technologies (ICT). i-SAFE provides classroom curriculum for primary and secondary school students. [www.isafe.org](http://www.isafe.org)
- **National Association of School Psychologists** lists bullying facts for schools and parents. The article highlights many factors that cause people to become bullies and victims, along with preventative options for schools, parents, and community members. [http://www.nasponline.org/resources/factsheets/bullying\\_fs.aspx](http://www.nasponline.org/resources/factsheets/bullying_fs.aspx)
- **National Crime Prevention Council** provides information and resources to curb the growing problem of cyber bullying. <http://www.ncpc.org/topics/cyberbullying>
- **National Cyber Security Alliance's** mission is to educate and empower a digital society to use the internet safely and securely at home, work, and school, protecting the technology individuals' use, the networks they connect to and our shared digital assets. <http://www.staysafeonline.org>
- **National School Climate Center** is an organization that helps schools to integrate crucial social and emotional learning with academic instruction. In doing so, NSCC enhances student performance, prevents dropouts, reduces physical violence and bullying, and develops healthy and positively engaged adults. <http://www.schoolclimate.org/>
- **NEA bNetS@vvy: Tools for Adults to Help Kids Connect Safely, A project of the NEA Health Information Network** <http://www.neahin.org/bnetsavvy/>

- **NEA's Bully Free: It Starts With Me** has resources and information to put an end to bullying at your school. <http://www.nea.org/home/NEABullyFreeSchools.html>
- **New York State Center for School Safety:** <http://www.nyscenterforschoolsafety.org>
- **New York State Education Department Dignity Act Web page:** <http://www.p12.nysed.gov/dignityact/>
- **New York State P-12 Common Core Learning Standards for English Language Arts & Literacy and Mathematics along with the New York State Learning Standards** are found at <http://www.p12.nysed.gov/ciai/cores.html>.
- **NYSUT Education and Learning Trust (ELT)** workshops and courses: <http://www.nysut.org/cps/rde/xchg/nysut/hs.xsl/elt.htm>
- **NYSUT Social justice and Labor Center:** <http://www.nysut.org/cps/rde/xchg/nysut/hs.xsl/labor.htm>
- **NYSUT** web page for updates on the Dignity Act: <http://www.nysut.org>
- **PACER's National Bullying Prevention Center** unites, engages, and educates communities nationwide to address bullying through creative, relevant, and interactive resources. <http://www.pacer.org/bullying/>
- **PBS Kids *It's My Life*** put together this guide to provide the basics of dealing with bullying. <http://pbskids.org/itsmylife/friends/bullies/>
- **Social and Emotional Development and Learning (SEDL) Guidelines** can be found at <http://www.p12.nysed.gov/sss/sedl/SEDLguidelines.pdf>.
- **StopBullying.gov** provides information from various government agencies on how kids, teens, young adults, parents, educators and others in the community can prevent or stop bullying. <http://www.stopbullying.gov/>
- **Teaching Standards for Teacher Practice** can be found at <http://engageny.org/resource/new-york-state-teaching-standards>
- **Teaching Tolerance** is a Project of the Southern Poverty Law Center dedicated to reducing prejudice, improving intergroup relations and supporting equitable school experiences for our nation's children. <http://www.tolerance.org>
- **Utterly Global** creates safe school and community environments through positive character development. The website provides research-based programs for schools, bullying prevention camps, campaigns, and training for parents and staff. <http://antibullyingprograms.org>
- **Wired Kids Inc.** provides kid-friendly information on what cyber bullying is, why it happens, and how to prevent it. [www.stopcyberbullying.org](http://www.stopcyberbullying.org)

88373 – updated 2/14

# Transgender Rights



Fact Sheet No. 16-13

November 2016

There has recently been a heated national debate over transgender rights in schools and public life. There is no doubt that transgender students and gender nonconforming students face difficulties and discrimination in New York Public schools. Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex. There are federal civil rights statutes related to schools and harassment that outline a school’s responsibility for addressing harassment incidents about which it knows or reasonably should have known. This Fact Sheet provides information on the latest guidance from the Obama administration on the rights of all students, including transgender students in public schools.

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## Background

In June 2015, the NYCLU released *Dignity For All? Discrimination Against Transgender and Gender Nonconforming Students in New York State*. The report identified issues of harassment and discrimination faced by transgender and gender nonconforming students throughout New York State since the passage of the Dignity Act. In response to this report, the State Education Department (SED) released guidance on transgender and gender nonconforming students.

Since 2010, the U.S Department of Education’s Office for Civil Rights has issued over a dozen “Dear Colleague Letters” (DCLs) addressing “discriminatory conduct” in K-12 schools. These guidance documents have addressed issues such as retaliation, bullying/harassment, sexual violence, and inclusion of students with disabilities in athletics.

The Education Department's Office of Civil Rights previously released a 2010 "Dear Colleague" letter that addressed schools' obligations to protect transgender and gay students from bullying under Title IX (<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>). The 2010 Dear Colleague letter, clarifies the relationship between bullying and discriminatory harassment, and reminds schools that by limiting their responses to a specific application of an

anti-bullying or other disciplinary policy, they may fail to properly consider whether the student misconduct also results in discrimination in violation of students' federal civil rights. An updated question and answer guidance document was released in 2014 related to sexual assault and harassment (<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>). Many advocates felt these guidance documents did not go far enough to explicitly outline how schools must accommodate the gender identities of students.

### **Dear Colleague Letter – May 13, 2016**

The most recent DCL released jointly by the U.S. Department of Education's Office for Civil Rights (USDE OCR) and the Civil Rights Division of the U. S. Department of Justice (DOJ) on May 13, 2016, addresses how schools can ensure the civil rights of all students, including transgender students (<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>). The Education Department and the Department of Justice have determined this letter constitutes *significant guidance*. (Office of Management and Budget, final Bulletin for Agency Good guidance Practices, 72 Fed. Reg.3432. Jan. 25, 2007) Schools are required to comply with the DCLs' stipulations, along with state and federal regulations.

The Department's new guidance document was a result of an increasing number of questions from all education stakeholders about civil rights protections for transgender students. Title IX of the Education Amendments of 1972 (Title IX) prohibits sex discrimination in schools receiving federal money. A school must not treat a transgender student differently from the way it treats other students of the same gender identity.

The guidance directs public schools to allow transgender students to use bathrooms, locker rooms and other sex-segregated facilities matching their gender identity. Staff should use the names and pronouns preferred by the students. Schools cannot require students to have a medical diagnosis, undergo any medical treatment, or produce a birth certificate before treating them consistent with their gender identity and students do not need parental approval to identify in school as they choose.

### **NY State Requirements Related to the "Dear Colleague" Letter**

#### **The Dignity for All Students Act (DASA)**

No student shall be subjected to harassment or bullying by employees or students on school property or at a school function; nor shall any student be subjected to discrimination based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (including gender identity or expression), or sex by school employees or students on school property or at a school function.

#### **Dignity Act Regulations:**

**Code of Conduct 100. 2(l):** Each school district code of conduct must include:

- Prohibition of discrimination, bullying, and harassment of students by students or staff and provisions for responding to acts of discrimination, bullying or harassment.

- Guidelines to ensure effective implementation of school policy on school conduct and discipline, which includes guidelines on promoting a safe and supportive student climate.
- A bill of rights and responsibilities of students which focuses on positive student behavior and a safe and supportive climate.

#### **Instruction in Civility, Citizenship and Character Education 100.2(c)**

- Educators in grades K-12 are required to teach students civility and social skills to encourage a welcoming and positive school environment.
- Instruction is required to explicitly include bullying and cyberbullying, with an emphasis on discouraging acts of harassment, bullying and discrimination and included instruction in the safe, responsible use of the internet and electronic communication.

#### **Training 100.2 (jj)**

School districts, BOCES and charter schools are required to:

- Implement an annual employee training program to promote a positive school environment;
- Provide employee training to raise awareness and understanding of the code of conduct, sensitivity to potential acts of discrimination and harassment, and to enable employees to prevent and to respond to acts of discrimination and harassment;
- Develop nondiscriminatory instructional and counseling methods; and
- Designate at least one Dignity Act coordinator per school.

**New York State Education Law §3201-a** prohibits discrimination based on sex with respect to admission into or inclusion in courses of instruction and athletic teams in public schools.

#### **Recent Court Activity**

On August 21, 2016, the United States District Court, Northern District of Texas, issued a nationwide preliminary injunction, effectively blocking the U.S. Departments of Education, Justice, Labor and the Equal Employment Opportunity Commission from taking any enforcement actions consistent with the Dear Colleague Letter (DCL) issued on May 13, 2016. The District Court reasoned that the "guidance" was legislative (rather than interpretive) and, as such, public notice and comment was required under the Administrative Procedures Act. The Court found that the plaintiffs met the high burden for a preliminary injunction, in part, by accepting their arguments that "gender identify" is not synonymous with "sex" and that the DCL conflicts with their long-standing policies and practices regarding sex-segregated bathrooms, locker-rooms etc. (*Texas v. U.S.*, --F.Supp.3d -- (N.D. Texas 2016), 2016 WL 4426495). The U.S. appealed this decision to Court of Appeals, Fifth Circuit, on October 21, 2016.

In another case, *G.G. v. Gloucester County School*, the United States Court of Appeals, Fourth Circuit, reversed a District's Court's dismissal of a transgender male's challenge to a school

district policy prohibiting him from using the bathroom facilities consistent with his gender identity (822 F.3d 709). The student alleged violations under the Equal Protection Clause and Title IX of the Education Amendments of 1972. The Fourth Circuit held that the District Court applied the wrong legal standard in considering the student's request for a preliminary injunction, failed to give due weight to the DCL and failed to consider the student's evidence. The Plaintiffs sought leave to appeal to the U.S. Supreme Court and, on October 28, 2016, the Court agreed to hear the case. Arguments are expected to be scheduled early in 2017.

### **Advice to Local Leaders**

- Work with your district to schedule ongoing trainings for teachers and students to prepare them to support all students. There is a need for training and guidance for all staff on how best to support transgender and gender nonconforming students, best practices to prevent bullying and harassment and how to improve school climate.
- Discuss VADIR and DASA reporting procedures with the district. SED is proposing to align the reporting of VADIR and DASA data into one reporting system so be aware of a possible change to reporting systems.
- Support and promote a positive school climate and positive behavioral interventions and supports. Encourage all staff to model behavior they wish to see in others.
- Promote representation of all types of diversity in school hallways, classrooms, curriculum and events.
- Contact the State Education Department Office of Student Support Services, [StudentSupportServices@nysed.gov](mailto:StudentSupportServices@nysed.gov) if a district is not following the requirements outlined in the May 2016 DCL.
- Resources and information on training can be found on NYSUT's LGBTQ Committee webpage: [www.nysut.org/lgbtq](http://www.nysut.org/lgbtq). For more information or questions, please contact Jim Larson, at [jl Larson@nysutmail.org](mailto:jl Larson@nysutmail.org)

### **Resources**

US Department of Education, Examples of Policies and Emerging Practices for Supporting Transgender Students: <http://www2.ed.gov/about/offices/list/oese/osh/osh/emergingpractices.pdf>

New York State Education Department, Guidance to School Districts for Creating a Safe and Supportive School Environment For Transgender and Gender Nonconforming Students, July 2015: [http://www.p12.nysed.gov/dignityact/documents/Transg\\_GNCGuidanceFINAL.pdf](http://www.p12.nysed.gov/dignityact/documents/Transg_GNCGuidanceFINAL.pdf)

New York State Safe Schools Against Violence in Education (SAVE): <http://www.nysut.org/resources/all-listing/2001/february/safe-schools-against-violence-in-education-act>

Dignity for All Students Act: <http://www.nysut.org/resources/all-listing/2014/march/fact-sheet-12-06--the-dignity-for-all-students-act>

Dignity for All Students Amendment : <http://www.nysut.org/resources/all-listing/2013/september/fact-sheet-13-10-amendment-to-the-dignity-for-all-students-act>

Resources for Implementation of the Dignity Act: <http://www.nysut.org/resources/all-listing/2013/march/resources-for-implementation-of-the-dignity-act>

Social Emotional Development Guidelines in New York State:  
<http://www.p12.nysed.gov/sss/sedl/SEDLguidelines.pdf>

Transgender Legal Defense and Education Fund (TLDEF)  
<http://tldef.org/>

Gay, Lesbian, and Straight Education Network (GLSEN)  
<http://www.glsen.org/>

The Capital Pride Center (Albany, NY)  
<https://www.capitalpridecenter.org/>

Teaching Tolerance <http://www.tolerance.org/lgbt-best-practices> Read their publication "Best Practices: Creating an LGBT inclusive school climate"

TM/mc - 102510







**Guidance to School Districts for  
Creating a Safe and Supportive School Environment  
For Transgender and Gender Nonconforming Students  
JULY 2015**

**Introduction**

The New York State Education Department (“NYSED”) is committed to providing all public school students, including transgender and gender nonconforming (“GNC”) students, with an environment free from discrimination and harassment, to fostering civility in public schools, and to ensuring that every student has equal access to educational programs and activities. The Dignity for All Students Act (“DASA”) illustrates the State’s commitment to ensuring that all students are educated in a safe and supportive school environment.<sup>1</sup>

New York State Education Law § 3201-a prohibits discrimination based on sex with respect to admission into or inclusion in courses of instruction and athletic teams in public schools.<sup>2</sup> Furthermore, DASA specifically provides that “no student shall be subjected to harassment or bullying by employees or students on school property or at a school function; nor shall any student be subjected to discrimination based on a person’s actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender (including gender identity or expression), or sex by school employees or students on school property or at a school function.”<sup>3</sup> DASA includes gender as a protected category and defines gender as “a person’s actual or perceived sex and includes a person’s gender identity or expression.”<sup>4</sup>

Title IX of the Education Amendments of 1972 (“Title IX”) specifically prohibits discrimination on the basis of sex in federally-funded education programs and activities.<sup>5</sup> The United States Department of Education’s Office for Civil Rights has issued guidance recognizing that Title IX protects transgender students against discrimination based on their gender identity.<sup>6</sup>

<sup>1</sup> N.Y. EDUC. LAW ART 2.

<sup>2</sup> N.Y. EDUC. LAW § 3201-a. Some states and local governments have adopted legislation providing explicit protections for transgender students in public schools. *See e.g.* CAL. EDUC. CODE § 221.5, MASS. GEN. L. CH. 76, § 5. *See also* NEW YORK CITY, N.Y. ADMIN. CODE §§ 8-101 TO 8-1103, BINGHAMTON, N.Y. CODE PT. I, §§ 45, 45-A.

<sup>3</sup> N.Y. EDUC. LAW § 11(7); 8 NYCRR § 100.2[1][2].

<sup>4</sup> N.Y. EDUC. LAW § 11(6). For an extensive resource on the implementation of DASA, please see the New York State Education Department’s (NYSED) publication: *The Dignity Act, A Resource and Promising Practices Guide for School Administrators & Faculty* available at <http://www.p12.nysed.gov/dignityact/resourceguide.html>

<sup>5</sup> 20 U.S.C. § 1681(a); *see also* 34 C.F.R. § 106.31(a); 28 C.F.R. § 54.400(a)

<sup>6</sup> *See* 20 U.S.C. §§ 1681-1688 (2006); 34 C.F.R. Part 106 (2010); 54 C.F.R. Part 54 (2000); United States Department of Education, Office for Civil Rights, *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities* (December 1, 2014), available at

Additionally, the U.S. Departments of Education and Justice have stated that under Title IX, “discrimination based on a person’s gender identity, a person’s transgender status, or a person’s nonconformity to sex stereotypes constitutes discrimination based on sex” and asserted a significant interest in ensuring that all students, including transgender students, have the opportunity to learn in an environment free of sex discrimination in public schools.<sup>7</sup>

The purpose of this guidance is to assist school districts in fostering an educational environment for all students that is safe and free from discrimination—regardless of sex, gender identity, or expression—and to facilitate compliance with local, state and federal laws concerning bullying, harassment, discrimination, and student privacy. All students need a safe and supportive school environment to progress academically and developmentally. Administrators, faculty, staff, and students each play an important part in creating and sustaining that environment. This guidance document is intended as a resource guide to help school and district administrators continue to take proactive steps to create a culture in which transgender and GNC students feel safe, supported, and fully included, and to meet each school’s obligation to provide all students with an environment free from harassment, bullying and discrimination. This guidance is intended to be complimentary to the existing comprehensive resources made available by NYSED relating to the implementation of DASA.<sup>8</sup>

In order to make this document as helpful as possible, illustrative examples that highlight frequently-asked questions appear throughout in italics. These scenarios and remedies are based on real-life examples from New York-based students and schools, and are not meant to be exhaustive of all potential scenarios or remedies appropriate for each school community.

### **Definitions**

Understanding the common terminology associated with gender identity is important to providing a safe and supportive school environment for students. The following terms appear in this document and we present the following definitions used by research, advocacy and governmental organizations to assist in understanding the guidance presented. Although these are the most commonly used terms, students may prefer other terms to describe their gender identity, appearance, or behavior. Terminology and language describing transgender and GNC individuals can differ based on region, language, race or ethnicity, age, culture, and many other factors. Generally speaking, we recommend that school staff and educators inquire which terms students prefer; a good general guideline is to employ those terms which the students use to describe themselves.

*Assigned Sex at Birth*: the sex designation, usually “male” or “female,” assigned to a person when they are born.<sup>9</sup>

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<http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>, at 25; United States Department of Education, Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence (April 29, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>, at 5.

<sup>7</sup> Statement of Interest of the United States, *Grimm v. Gloucester County School Board*, Case No. 4:15cv54 (E.D. Virg. filed June 29, 2015), at 2, available at

[https://www.aclu.org/sites/default/files/field\\_document/stmtinterestunitedstatesecf28\\_redacted.pdf](https://www.aclu.org/sites/default/files/field_document/stmtinterestunitedstatesecf28_redacted.pdf)

<sup>8</sup> N.Y. EDUC. LAW ART. 2.

<sup>9</sup> See GLAAD Media Reference Guide – Transgender Issues, available at

<http://www.glaad.org/reference/transgender>, Trans Student Educational Resources (TSER) – Definitions, available

*Cisgender*: an adjective describing a person whose gender identity corresponds to their assigned sex at birth.

*Gender expression*: the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms.<sup>10</sup>

*Gender identity*: a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth. Everyone has a gender identity.<sup>11</sup>

*Gender nonconforming (GNC)*: a term used to describe people whose gender expression differs from stereotypic expectations. The terms "gender variant" or "gender atypical" are also used. Gender nonconforming individuals may identify as male, female, some combination of both, or neither.<sup>12</sup>

*Sexual Orientation*: a person's emotional and sexual attraction to other people based on the gender of the other person. Sexual orientation is not the same as gender identity. Not all transgender youth identify as gay, lesbian or bisexual, and not all gay, lesbian and bisexual youth display gender-nonconforming characteristics.<sup>13</sup>

*Transgender*: an adjective describing a person whose gender identity does not correspond to their assigned sex at birth.<sup>14</sup>

*Transition*: the process by which a person socially and/or physically aligns their gender expression more closely to their actual gender identity and away from that associated with their assigned sex at birth.

### **Understanding School Climate and Transgender Students**

Research indicates that transgender and GNC students are targeted with physical violence and experience a hostile school environment at an even higher rate than their Lesbian, Gay, and

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at <http://transstudent.org/definitions>; see also Resolution Agreement Between Arcadia Unified Sch. Dist., the U.S. Dept. of Educ., and the U.S. Dept. of Justice, OCR Case No. 09-12-1020, DOJ Case No. 169-12C-70 (July 24, 2013).

<sup>10</sup> GLSEN Model District Policy on Transgender and Gender Nonconforming Students, available at [http://www.glsen.org/sites/default/files/Trans\\_ModelPolicy\\_2014.pdf](http://www.glsen.org/sites/default/files/Trans_ModelPolicy_2014.pdf); Massachusetts Dep't of Educ. Guidance, available at <http://www.doe.mass.edu/ssce/GenderIdentity.pdf>.

<sup>11</sup> Mass. Gen. Laws ch. 4, § 7; Massachusetts Dep't of Educ. Guidance.

<sup>12</sup> Massachusetts Dep't of Educ. Guidance; see also GLSEN Model District Policy on Transgender and Gender Nonconforming Students ("A term for people whose gender expression differs from stereotypical expectations...").

<sup>13</sup> California School Board Association, *Policy Brief: Providing a Safe, Nondiscriminatory School Environment for Transgender and Gender-Nonconforming Students*, 1 (2014), available at <http://www.csba.org/~media/E68E16A652D34EADA2BFDCD9668B1C8F.ashx>.

<sup>14</sup> See GLSEN Model District Policy on Transgender and Gender Nonconforming Students; Massachusetts Dep't of Educ. Guidance; Trans Student Educational Resources – Definitions; GLAAD Media Reference Guide – Transgender Issues.

Bisexual peers, both nationally and in New York State.<sup>15</sup> In one 2013 national survey, 74.1% of LGBT students reported having been verbally harassed in the previous year, 36.2% physically harassed, and 16.5% physically assaulted.<sup>16</sup> These high rates of bullying correspond to adverse health and educational consequences. Transgender and GNC experienced higher rates of verbal harassment and were twice as likely to report feeling unsafe at school than their cisgender peers.<sup>17</sup> A different national survey, also conducted in 2011, found that 51% of respondents who were harassed or bullied in school reported attempting suicide, compared to 1.6% of the general population.<sup>18</sup> Students also suffered harassment so severe that it led almost one-sixth (15%) to leave a school in K-12 settings or in higher education.<sup>19</sup> Moreover, LGBTQ students who are bullied and harassed are more likely to miss days of school, feel excluded from the school community, and have lower academic achievement and stunted educational aspirations.<sup>20</sup>

Both DASA, including its implementing regulations and guidance, and this guidance document reflect the reality that transgender and GNC students are enrolled in New York's public schools. These students, because of the possibility of misunderstanding and lack of knowledge about their lives, may be at a higher risk for peer ostracism, victimization, and bullying. Educators play an essential role in advocating for the well-being of students and creating a supportive school culture.

### Understanding Gender Identity

Transgender youth are those whose assigned birth sex does not match their internalized sense of their gender (their "gender-related identity"), and GNC youth are those whose gender-related identity does not meet the stereotypically expected norms associated with their assigned sex at birth.<sup>21</sup> A transgender boy, for example, is a youth who identifies as male, but was assigned the sex of female at birth.<sup>22</sup> A transgender girl is a youth who identifies as female, but was assigned the sex of male at birth.<sup>23</sup> GNC youth vary in the ways in which they identify as male, female, some combination of both, or neither.<sup>24</sup>

The person best situated to determine a student's gender identity is the individual student. In the case of very young students not yet able to advocate for themselves, the request to respect and

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<sup>15</sup> GLSEN (Gay, Lesbian, Straight Education Network), *School Climate in New York (State Snapshot)*, 2 (2013), available at <http://glsen.org/learn/research/local/state-snapshots> (finding the majority of New York K-12 students surveyed reported being verbally harassed based on their gender identity/expression and/or sexual orientation).

<sup>16</sup> GLSEN, *2013 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools*, xvii (2014), available at [http://www.glsen.org/sites/default/files/2013%20National%20School%20Climate%20Survey%20Full%20Report\\_0.pdf](http://www.glsen.org/sites/default/files/2013%20National%20School%20Climate%20Survey%20Full%20Report_0.pdf) [hereinafter "National School Climate Survey"].

<sup>17</sup> *National School Climate Survey*, *supra* note 16 at 88-90.

<sup>18</sup> Jaime M. Grant, et al., National Center for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, 3, 45 (2011), [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf)

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *National School Climate Survey*, *supra* note 16, at 12, 24, 42, 47, 49, 52, 67.

<sup>21</sup> See GLSEN Model District Policy on Transgender and Gender Nonconforming Students; Massachusetts Dep't of Educ. Guidance; Trans Student Educational Resources – Definitions; GLAAD Media Reference Guide – Transgender Issues.

<sup>22</sup> See *id.*

<sup>23</sup> See *id.*

<sup>24</sup> See *id.*

affirm a student's identity will likely come from the student's parent or guardian.<sup>25</sup> One's gender identity is an innate, largely inflexible characteristic of each individual's personality that is generally established by age four, although the age at which individuals come to understand and express their gender identity may vary based on each person's social and familial development.<sup>26</sup>

Schools should work closely with the student and family in devising an appropriate plan regarding the confidentiality of the student's transgender status. In some cases, transgender students may feel more supported and safe if other students are aware that they are transgender. In these cases, school staff should work closely with the student, families, and other staff members on a plan to inform and educate the student's peers. It may also be appropriate to engage with community resources to assist with educational efforts. However, in other cases, transgender students do not want their parents to know about their transgender status. These situations must be addressed on a case-by-case basis and will require schools to balance the goal of supporting the student with the requirement that parents be kept informed about their children. The paramount consideration in those situations is the health and safety of the student and making sure that the student's gender identity is affirmed in a manner in which the level of privacy and confidentiality is maintained necessary to protect the student's safety.

**EXAMPLE:**

*The parents of a pre-school-age child who was assigned "female" at birth noted throughout the child's early years that their child identified as a boy. For as long as the parents could remember, the child preferred to play with boys rather than girls, wanted a short haircut, rejected wearing any clothing that the child identified as "something a girl would wear," and ignored anyone who called him by his stereotypically feminine name. When it was time for the child to enter kindergarten, the child said to his parents, "You have to tell them when I go to kindergarten that I'm a boy."*

It is recommended that schools accept a student's assertion of his/her/their own gender identity. A student who says she is a girl and wishes to be regarded that way throughout the school day should be respected and treated like any other girl. So too with a student who says he is a boy and wishes to be regarded that way throughout the school day. Such a student should be respected and treated like any other boy.

Many transgender people experience discrimination and some experience violence due to their status. Some environments may feel safe and inclusive, and others less so, challenging a person's ability to live consistently with one gender identity in all aspects of life. For example, it is possible that a student assigned "male" at birth, with a female gender identity, who lives as a girl, is not able to express her female gender identity all the time.

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<sup>25</sup> When used in this document, the term "parent" refers to parent as well as legal guardian.

<sup>26</sup> See Gerald P. Mallon, "Practice with Transgendered Children," in *Social Services with Transgendered Youth*, 49, 55-58 (Gerald P. Mallon ed., 1999). See also Stephanie Brill & Rachel Pepper, "Developmental Stages and the Transgender Child," in *The Transgender Child*, 61-64.

**EXAMPLE:**

*In one case, a transgender female student agreed to present as a boy when visiting relatives until the student's parents could explain the student's transgender identity to them. The fact that the student did not exclusively assert her female identity did not alter the fact that she had a female gender identity.*

Confirmation of a student's asserted gender identity is usually as simple as a statement from the student; it may also include a letter from an adult familiar with the student's situation, such as a parent, health care provider, school staff member familiar with the student (a teacher, guidance counselor, or school psychologist, among others), or other family members or friends. A letter from a social worker, doctor, nurse practitioner, or other health care provider stating that a student is being provided medical care or treatment relating to her/his/their gender identity is another form of confirmation of an asserted gender identity. Similarly, a letter from a clergy member, coach, family friend, or relative stating that the student has asked to be treated consistent with her/his/their asserted gender identity, or photographs at public events or family gatherings are other potential forms of confirmation. These examples are intended to be illustrative rather than comprehensive, and in most cases nothing beyond a statement from the student should be required. Transgender and GNC students form a diverse community, and they may differ in how they present, including differences in factors like their comfort level with being known as transgender or GNC, their transition status, their age, and their gender expression. Schools and districts should adopt a flexible approach in this area given that transgender students may not feel comfortable or safe being their authentic selves in all contexts.

**EXAMPLE:**

*In one middle school, a student explained to her guidance counselor that she was a transgender girl who had heretofore only been able to express her female gender identity while at home. The stress associated with having to hide her female gender identity by presenting as male at school was having a negative impact on her mental health, as well as on her academic performance. The student and her parents asked if it would be okay if she expressed her female gender identity at school. The guidance counselor responded favorably to the request. The fact that the student presented no documentation to support her gender identity was not a concern since the school had no reason to believe the request was based on anything other than a sincerely held belief that she had a female gender identity.*

**Gender Transition**

Many, though not all, transgender youth undergo the experience of gender transition. The term "gender transition" describes the experience by which a person socially and/or physically aligns their gender expression more closely to their true gender identity, and away from that associated with their assigned sex at birth. For most youth, and for all young children, the experience of gender transition is focused solely on "social transition," whereby they begin to live as the gender consistent with their gender-related identity.<sup>27</sup> Transgender youth who are in the process

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<sup>27</sup> See, e.g., World Professional Association for Transgender Health (WPATH), Standards of Care 7, at 17 ("Social Transition in Early Childhood"), available at [http://www.wpath.org/uploaded\\_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf](http://www.wpath.org/uploaded_files/140/files/Standards%20of%20Care,%20V7%20Full%20Book.pdf).

of social gender transition often choose a new name and gender pronouns that better reflect their gender identity, may begin to dress and style their hair in ways that better reflect their gender identity, and, as all young people do, seek social affirmation of their gender identity from peers and other important figures in their lives. Some transgender youth who are close to reaching puberty, or after commencing puberty, may complement social transition with medical intervention that may include hormone suppressants, cross-gender hormone therapy, and, for a small number of young people, a range of gender-confirming surgeries.<sup>28</sup> An individual's decision about whether and how to undergo gender transition is personal and it will depend on the unique circumstances of each student. There is no threshold medical or mental health diagnosis or treatment requirement that any student must meet in order to have his/her/their gender identity recognized and respected by a school.<sup>29</sup>

Some transgender and GNC students have not talked to their families about their gender identity for reasons including safety concerns or a lack of acceptance.<sup>30</sup> School personnel should speak with the student first before discussing a student's gender nonconformity or transgender status with the student's parent or guardian. For the same reasons, school personnel should discuss with the student how the school should refer to the student, e.g., appropriate pronoun use, in written communication to the student's parent or guardian.<sup>31</sup>

### Common Areas of Concern Relating to Transgender Students

#### **1: Names and Pronouns**

The matter of determining which name and pronoun to use in referring to a transgender student may be one of the first that schools must address in their efforts to create an environment in which that student feels safe and supported. Transgender students often choose to change the name assigned to them at birth to a name that is associated with their gender identity. As with most other issues involved with creating a safe and supportive environment for transgender students, the best course is to engage the student, and possibly the parent, with respect to name and pronoun use, and agree on a plan to reflect the individual needs of each student to initiate that name and pronoun use within the school. The plan also could include when and how this is communicated to students and their parents.

For those students who have been attending a school and undergo gender transition while attending the same school, it is important to develop a plan for initiating use of the chosen name and pronouns consistent with the student's gender identity.

#### **EXAMPLE:**

*In one situation where a transgender girl was entering high school, she and her parent*

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<sup>28</sup> See *id.* at 18-21 ("Physical Interventions for Adolescents").

<sup>29</sup> See *id.*; see also GLSEN Model District Policy on Transgender and Gender Nonconforming Students, at 2 (*Medical Considerations and Identity Documents*).

<sup>30</sup> Jaime M. Grant, et al., National Center for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011), at 88 (53% of transgender people surveyed had experienced family rejection, and 19% experienced domestic violence by a family member because they were transgender), [http://www.thetaskforce.org/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf).

<sup>31</sup> See *id.*

*asked the principal to inform her teachers that even though her school records indicate that her name is John, she goes by the name Jane and uses female pronouns. With permission from Jane, the school principal sent the following memorandum to the student's classroom teachers: "The student John Smith wishes to be referred to by the name Jane Smith, a name that is consistent with the student's female gender identity. Please be certain to use the student's preferred name in all contexts, as well as the feminine pronouns. It is my expectation that students will similarly refer to the student by her chosen name and preferred pronouns. Your role modeling will help make a smooth transition for all concerned. Continued, repeated, and intentional misuse of names and pronouns may erode the educational environment for Jane. If you need any assistance to make sure that Jane Smith experiences a safe, nondiscriminatory classroom atmosphere, please contact me."*

## **2: Privacy, Confidentiality, and Student Records**

New York State Education Law § 2-d prohibits the unauthorized release of a student's personally identifiable information, including but not limited to the student's name, indirect identifiers, and other information that alone or in combination is linked or linkable to a specific student that would allow a reasonable person in the school community to identify the student.<sup>32</sup> The federal Family Educational Rights and Privacy Act (FERPA)<sup>33</sup> also protects the privacy of student educational records and places restrictions on the release of students' personally identifiable information. For specific inquiries regarding what constitutes the unauthorized release of a student's personally identifiable information, school districts should consult their attorneys. For more information on student privacy, in general, see NYSED's Parents' Bill of Rights for Data Privacy and Security at <http://www.p12.nysed.gov/docs/parents-bill-of-rights.pdf>.

Within the school and school district, when a transgender or GNC student new to a school is using a chosen name, the birth name should be kept confidential by school and district staff. School districts are reminded that, while disclosure of personally identifiable information from a student's education record to other school officials, including teachers, within the district whom the district has determined to have legitimate educational interests may be permissible under FERPA, the district must, among other things, use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests.<sup>34</sup>

Generally, records with the student's birth name should be kept in a separate, confidential file. If the student has previously been known at school or in school records by his/her/their birth name, the principal should direct school personnel to use the student's chosen name and not the student's birth name. To ensure consistency among teachers, school administrators, substitute teachers and other staff, every effort should be made to immediately update student education records (for example, attendance records, transcripts, Individualized Education Programs, etc.) with the student's chosen name and appropriate gender markers and not circulate records with the student's birth name. A school's failure or refusal to amend such records could, for example,

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<sup>32</sup> N.Y. EDUC. LAW § 2-d.

<sup>33</sup> 20 U.S.C. 1232g; 34 C.F.R. Part 99.

<sup>34</sup> 34 C.F.R. § 99.31(a)(1).



lead to delays in the student's receipt of appropriate services or create problems related to the award of appropriate high school course credit, thereby imperiling a student's ability to graduate with his or her class.

With respect to student medical records, school nurses and other licensed professionals need accurate and reliable information to confirm a student's identity in order to ensure that the student receives appropriate care and to enable them to coordinate care with other health care providers or licensed professionals, as well as to file health insurance claims with other organizations, such as Medicaid. Nurses are legally required to maintain patient records that accurately document clinical information relating to their patients and must keep their patients' health records confidential.<sup>35</sup> In the case of a transgender student, a school nurse should use the student's chosen name, and should use the student's birth name only when necessary to ensure that the student receives appropriate care and to enable the school nurse to coordinate care for the student with other health care providers or licensed professionals, as well as to file health insurance claims. For more information on the maintenance and confidentiality of student medical records, please contact the New York State Education Department Office of Student Support Services or the New York State Statewide School Health Services Center.

***EXAMPLE:***

*One school administrator dealt with information in the student's file by starting a new file with the student's chosen name, entered previous academic records under the student's chosen name, and created a separate, confidential folder that contained the student's past information and birth name.*

**3: Gender-Based Activities, Rules, Policies, and Practices**

Gender-based policies, rules, and practices can have the effect of marginalizing, stigmatizing, stereotyping and excluding students, whether they are transgender or GNC or not. For these reasons, school districts should consult with their attorneys to review such policies, rules and practices, and should eliminate any that do not serve a clear pedagogical purpose.

***EXAMPLE:***

*One school that previously had blue graduation gowns for boys and white ones for girls switched to blue gowns for all graduates. The school also changed its gender-based dress code for the National Honor Society ceremony, which had required girls to wear dresses.*

School districts, as well as students and their families, may find the use of restrooms, changing facilities, and participation in extracurricular activities to be among the more important issues in this area. The United States Departments of Education and Justice have stated that:

[u]nder Title IX, discrimination based on a person's gender identity, a person's transgender status, or a person's nonconformity to sex stereotypes constitutes discrimination based on sex. As such, **prohibiting a student from accessing the restrooms that match his gender identity is prohibited sex discrimination under**

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<sup>35</sup> See 8 NYCRR §29.1(b)(8), 29.2(a)(3).

**Title IX.** There is a public interest in ensuring that all students, including transgender students, have the opportunity to learn in an environment free of sex discrimination (emphasis added).<sup>36</sup>

Alternative accommodations, such as a single “unisex” bathroom or private changing space, should be made available to students who request them, **but should never be forced upon students**, nor presented as the only option. The following are examples of ways in which school officials have responded to situations involving gender-segregated activities or spaces:

**EXAMPLES:**

*In one elementary school, a transgender second-grader socially transitioned from female to male. After consultation with the student’s family and in accordance with the student’s wishes, the principal informed the staff: In order to foster an inclusive and supportive learning environment, the student will begin using male restrooms, in accordance with the student’s male gender identity and expression.*

*In one high school, a transgender female student was given access to the female changing facility, but the student was uncomfortable using the female changing facility with other female students because there were no private changing areas within the facility. The principal examined the changing facility and determined that curtains could easily be put up along one side of a row of benches near the group lockers, providing private changing areas for any students who wished to use them. After the school put up the curtains, the student was comfortable using the changing facility.*

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<sup>36</sup> Statement of Interest of the United States, *Grimm v. Gloucester County School Board*, Case No. 4:15cv54 (E.D. Virg. filed June 29, 2015), at 1, available at [https://www.aclu.org/sites/default/files/field\\_document/stmtinterestunitedstatesecf28\\_redacted.pdf](https://www.aclu.org/sites/default/files/field_document/stmtinterestunitedstatesecf28_redacted.pdf); See also Statement of Interest of the United States, *Tooley v. Van Buren Public Schools*, Case No. 2:14-cv-13466 (E.D. Mich. filed Sept. 5, 2014), at 18, available at <http://blogs.edweek.org/edweek/rulesforengagement/Tooley%20SOI%20-%202-24-15.pdf>; U.S. Dep’t. of Ed. Office for Civil Rights: *Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities*, 25 (Dec. 1, 2014) (schools “generally must treat transgender students consistent with their gender identity”), available at <http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>; *Downey Unified School District Resolution Agreement*, 1-3 (Oct. 8, 2014) (mandating “access to sex-designated facilities for female students at school, and at all District-sponsored activities, including overnight events, try-outs and participation in extracurricular activities on and off campus, consistent with her gender identity” for a transgender student), available at <http://www2.ed.gov/documents/press-releases/downey-school-district-agreement.pdf>; *Questions and Answers on Title IX and Sexual Violence*, (April 29, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>; *Arcadia Unified School District Resolution Agreement*, 3 (July 24, 2013) (mandating “access to sex-specific facilities designated for male students at school consistent with his gender identity” for transgender student), available at <http://www.justice.gov/crt/about/edu/documents/arcadiaagree.pdf>; “Dear Colleague” Letter of Russlynn Ali, Ass’t Sec’y for Civil Rights, 7 (Oct. 26, 2010), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>; see also *Lusardi v. McHugh et al.*, E.E.O.C. Appeal No. 0120133395 (April 1, 2015), at 8-11 (in the analogous context of Title VII sex discrimination, barring a transgender woman from the communal women’s room was “direct evidence of discrimination on the basis of sex,” since “where . . . a transgender female has notified her employer that she has begun living and working full-time as a woman, the agency must allow her access to the women’s restrooms,” and “supervisory or co-worker confusion or anxiety cannot justify discriminatory terms and conditions of employment”), available at <http://transgenderlawcenter.org/archives/11521>.

Similarly, physical education is a required part of the curriculum and an important part of many students' lives. Most physical education classes in New York's schools are coed, so the gender identity of students should not be an issue with respect to these classes. Where there are sex-segregated classes, students should be allowed to participate in a manner consistent with their gender identity.

### **Resources, Education, and Training for School Districts and Communities**

The New York State Education Department continues to be committed to providing all public school students with an environment free from discrimination and harassment, to fostering civility in public schools, and to ensuring that every student has equal access to educational programs and activities. In order to ensure that all students—including transgender and GNC students—are provided with an environment free from discrimination and harassment and to foster civility in the school community, school districts are encouraged to provide this guidance document and other resources, such as trainings and information sessions, to the school community including, but not limited to, parents, students, staff and residents. Such efforts will help to ensure that the school community understands the importance of a safe and supportive school environment for all students and how community members can play an active role in fostering such an environment. Schools should refer to existing New York State Education Department Guidance for expanded resources for fostering an inclusive school community.<sup>37</sup>

As with other efforts to promote a positive school culture, it is recommended that student leaders and school personnel, particularly school administrators, become familiar with applicable law, regulations, guidance, and related resources, and that they communicate and model respect for the gender identity of all students. We also encourage schools to continue to have an open dialogue with their school community when working together to foster an inclusive school environment.

This guidance cannot anticipate every situation in which questions may arise relating to transgender and gender non-conforming students. Therefore, the specific needs of each transgender or GNC student should be assessed and addressed on a case-by-case basis. NYSED will continue to provide assistance, support and resources as we work together to create a safe and supportive school environment for all students. For further information or questions about the content of this guidance, please contact the Student Support Services Office at (518) 486-6090.

For additional information and resources regarding transgender students in schools please see below for a small sample of available government and advocacy resources:

#### *New York State Education Department:*

The Dignity for All Students Act (DASA) seeks to provide the State's public elementary

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<sup>37</sup> For an extensive resource on the implementation of DASA and information on creating an inclusive school community and fostering sensitivity to the school experience of lesbian, gay, bisexual, transgender, queer and questioning (LGBTQ) students, please see the New York State Education Department (NYSED), *The Dignity Act, A Resource and Promising Practices Guide for School Administrators & Faculty, Creating an Inclusive School Community: Sensitivity to the Experience of Specific Student Populations: LGBTQ Children*, Section II (Mar. 11, 2014), available at <http://www.p12.nysed.gov/dignityact/rsection2.html> (defining LGBTQ as "individuals who self-identify as either lesbian, gay, bisexual, transgender, or questioning").

and secondary school students with a safe and supportive environment free from discrimination, intimidation, taunting, harassment, and bullying on school property, a school bus and/or at a school function.

<http://www.p12.nysed.gov/dignityact/>

*New York City Department of Education:*

Pursuant to the New York City Human Rights Law, the New York City Department of Education has issued guidance regarding transgender students within the jurisdiction of NYC DOE. While it does not apply statewide, it can be used as a reference as to what one New York district in has adopted regarding accommodations for transgender students.

<http://schools.nyc.gov/RulesPolicies/TransgenderStudentGuidelines/default.htm>

Examples of Guidance and Related Materials from Other States With Specific Transgender Student Non-Discrimination Statutes:

*Washington:*

Prohibiting Discrimination in Washington Public Schools

<http://www.k12.wa.us/Equity/pubdocs/ProhibitingDiscriminationInPublicSchools.pdf>

*Connecticut:*

[http://www.sde.ct.gov/sde/lib/sde/pdf/equity/title\\_ix/guidelines\\_for\\_schools\\_on\\_gender\\_identity\\_and\\_expression2012oct4.pdf](http://www.sde.ct.gov/sde/lib/sde/pdf/equity/title_ix/guidelines_for_schools_on_gender_identity_and_expression2012oct4.pdf)

*Massachusetts:*

The Massachusetts Department of Elementary and Secondary Education,

<http://www.doe.mass.edu/ssce/GenderIdentity.pdf>

*California:* Arcadia USD, OCR, and DOJ Resolution Agreement: July, 2013

[http://www.nclrights.org/wp-content/uploads/2013/09/Arcadia\\_Resolution\\_agreement\\_07.24.2013.pdf](http://www.nclrights.org/wp-content/uploads/2013/09/Arcadia_Resolution_agreement_07.24.2013.pdf)

*California:* Notification Letter to Arcadia USD from OCR/DOJ:

<http://www.justice.gov/crt/about/edu/documents/arcadialetter.pdf>

The Department supports the efforts of school communities to implement this guidance which is intended to be a resource for schools and districts. It includes links to websites that contain information, resources, and tools to assist schools and districts. Please evaluate each resource to determine if it is developmentally age appropriate for your school population. The State Education Department does not endorse any particular programs. The intent of this document is to provide information only. Schools, districts and BOCES should consult with their school attorneys regarding specific legal questions. Analyses of examples contained herein do not represent official determination(s) or interpretation(s) by the Department. Examples described in this guidance may be the subject of an appeal to the Commissioner of Education under section 310 of the Education Law; as a result, the information contained herein is advisory only and does not necessarily represent an official legal opinion of the Commissioner of Education or of the State Education Department.

## Family Educational Rights and Privacy Act (FERPA)

Get the Latest on FERPA at <https://studentprivacy.ed.gov/>  
(<https://studentprivacy.ed.gov/?src=fpco>)

- **Frequently Asked Questions** (<https://studentprivacy.ed.gov/frequently-asked-questions>)
- FERPA for **parents and students** (<https://studentprivacy.ed.gov/audience/parents-and-students>), **K12 school officials** (<https://studentprivacy.ed.gov/audience/school-officials-k-12>) and **Postsecondary school officials** (<https://studentprivacy.ed.gov/audience/school-officials-post-secondary>)
- Protection of Pupil Rights Amendment (PPRA) (<https://studentprivacy.ed.gov/content/ppra>)
- **Guidance** (<https://studentprivacy.ed.gov/guidance>) and **Notices** (<https://studentprivacy.ed.gov/annual-notices>)
- **Filing a complaint under FERPA or PPRA** (<https://studentprivacy.ed.gov/file-a-complaint>)

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."

- Parents or eligible students have the right to inspect and review the student's education records maintained by the school. Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records. Schools may charge a fee for copies.
- Parents or eligible students have the right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.
- Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):
  - School officials with legitimate educational interest;
  - Other schools to which a student is transferring;
  - Specified officials for audit or evaluation purposes;
  - Appropriate parties in connection with financial aid to a student;

- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific State law.

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school.

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## Fact Sheet #28: The Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. This fact sheet provides general information about which employers are covered by the FMLA, when employees are eligible and entitled to take FMLA leave, and what rules apply when employees take FMLA leave.

### COVERED EMPLOYERS

The FMLA only applies to employers that meet certain criteria. A **covered employer** is a:

- Private-sector employer, with 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer;
- Public agency, including a local, state, or Federal government agency, regardless of the number of employees it employs; or
- Public or private elementary or secondary school, regardless of the number of employees it employs.

### ELIGIBLE EMPLOYEES

Only eligible employees are entitled to take FMLA leave. An **eligible employee** is one who:

- Works for a *covered employer*;
- Has worked for the employer for at least *12 months*;
- Has at least *1,250 hours* of service for the employer during the 12 month period immediately preceding the leave\*; and
- Works at a location where the employer has at least *50 employees within 75 miles*.

\* Special hours of service eligibility requirements apply to airline flight crew employees. See [Fact Sheet 28J: Special Rules for Airline Flight Crew Employees under the Family and Medical Leave Act](#).

The 12 months of employment do not have to be consecutive. That means any time previously worked for the same employer (including seasonal work) could, in most cases, be used to meet the 12-month requirement. If the employee has a break in service that lasted seven years or more, the time worked prior to the break will not count *unless* the break is due to service covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA), or there is a written agreement, including a collective bargaining agreement, outlining the employer's intention to rehire the employee after the break in service. See ["FMLA Special Rules for Returning Reservists"](#).

### LEAVE ENTITLEMENT

Eligible employees may take up to 12 workweeks of leave in a 12-month period for one or more of the following reasons:

- The birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care;
- To care for a spouse, son, daughter, or parent who has a serious health condition;
- For a serious health condition that makes the employee unable to perform the essential functions of his or her job; or
- For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.

An eligible employee may also take up to **26 workweeks** of leave during a "single 12-month period" to care for a covered servicemember with a serious injury or illness, when the employee is the spouse, son, daughter, parent, or next of kin of the servicemember. The "single 12-month period" for military caregiver leave is different from the 12-month period used for other FMLA leave reasons. See Fact Sheets 28F: Qualifying Reasons under the FMLA and 28M: The Military Family Leave Provisions under the FMLA.

Under some circumstances, employees may take FMLA leave on an intermittent or reduced schedule basis. That means an employee may take leave in separate blocks of time or by reducing the time he or she works each day or week for a single qualifying reason. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operations. If FMLA leave is for the birth, adoption, or foster placement of a child, use of intermittent or reduced schedule leave requires the employer's approval.

Under certain conditions, employees may choose, or employers may require employees, to "substitute" (run concurrently) accrued paid leave, such as sick or vacation leave, to cover some or all of the FMLA leave period. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy.

## NOTICE

Employees must comply with their employer's usual and customary requirements for requesting leave and provide enough information for their employer to reasonably determine whether the FMLA may apply to the leave request. Employees generally must request leave 30 days in advance when the need for leave is foreseeable. When the need for leave is foreseeable less than 30 days in advance or is unforeseeable, employees must provide notice as soon as possible and practicable under the circumstances.

When an employee seeks leave for a FMLA-qualifying reason for the first time, the employee need not expressly assert FMLA rights or even mention the FMLA. If an employee later requests additional leave for the same qualifying condition, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave. See Fact Sheet 28E: Employee Notice Requirements under the FMLA .

Covered employers must:

- (1) Post a notice explaining rights and responsibilities under the FMLA. Covered employers may be subject to a civil money penalty for willful failure to post. For current penalty amounts, see [www.dol.gov/whd/fmla/applicable\\_laws.htm](http://www.dol.gov/whd/fmla/applicable_laws.htm);
- (2) Include information about the FMLA in their employee handbooks or provide information to new employees upon hire;



- (3) When an employee requests FMLA leave or the employer acquires knowledge that leave may be for a FMLA-qualifying reason, provide the employee with notice concerning his or her eligibility for FMLA leave and his or her rights and responsibilities under the FMLA; and
- (4) Notify employees whether leave is designated as FMLA leave and the amount of leave that will be deducted from the employee's FMLA entitlement.

See Fact Sheet 28D: Employer Notice Requirements under the FMLA.

## CERTIFICATION

When an employee requests FMLA leave due to his or her own serious health condition or a covered family member's serious health condition, the employer may require certification in support of the leave from a health care provider. An employer may also require second or third medical opinions (at the employer's expense) and periodic recertification of a serious health condition. See Fact Sheet 28G: Certification of a Serious Health Condition under the FMLA. For information on certification requirements for military family leave, See Fact Sheet 28M(c): Qualifying Exigency Leave under the FMLA; Fact Sheet 28M(a): Military Caregiver Leave for a Current Servicemember under the FMLA; and Fact Sheet 28M(b): Military Caregiver Leave for a Veteran under the FMLA.

## JOB RESTORATION AND HEALTH BENEFITS

Upon return from FMLA leave, an employee must be restored to his or her original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. An employee's use of FMLA leave cannot be counted against the employee under a "no-fault" attendance policy. Employers are also required to continue group health insurance coverage for an employee on FMLA leave under the same terms and conditions as if the employee had not taken leave. See Fact Sheet 28A: Employee Protections under the Family and Medical Leave Act .

## OTHER PROVISIONS

Special rules apply to employees of local education agencies. Generally, these rules apply to intermittent or reduced schedule FMLA leave or the taking of FMLA leave near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under the FLSA regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to an eligible employee's use of FMLA leave.

## ENFORCEMENT

It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any

proceeding, related to the FMLA. *See Fact Sheet 77B*: Protections for Individuals under the FMLA . The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. Most federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court.

**For additional information, visit our Wage and Hour Division Website:**  
**<http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4-USWAGE (1-866-487-9243).**

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