AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 3208, 3602, 4002, 4308, 4355, 4401, 4402 and 4403

1. Paragraphs (3) and (6) of subdivision (b) of section 200.7 of the Regulations of the Commissioner of Education are amended, effective May 14, 2014, as follows:

(3) [Code of conduct] Policy on school conduct and discipline. An approved private school, a State-operated school, and a State-supported school shall develop a [code of conduct] policy on school conduct and discipline. The content of such policy shall be consistent with the provisions of section 100.2(l)(1)(i)(a)-(d), (f)-(g) of this Title. The discipline of students with disabilities attending any school governed by this section shall be consistent with Part 201 of this Title. The code of conduct developed by the Justice Center pursuant to article 20 of the Executive Law shall govern the conduct of custodians, as such term is defined in section 200.15(b)(1) of this Part, with respect to the safety, dignity and welfare of students attending in-state residential schools governed by this section.

(6) Personnel qualifications and screening procedures. All professional instructional and supervisory personnel at schools governed by this section shall be appropriately certified in accordance with the provisions of Part 80 of this Title and section 200.6 of this Part. All noninstructional personnel at residential schools governed by this section shall be appropriately qualified in accordance with the provisions of section 200.15 of this Part. All persons applying to be employees or volunteers at residential schools governed by this section shall be screened in accordance with the provisions of section 200.15(c) of this Part. All persons providing preschool special

education services established pursuant to section 4410 of the Education Law shall be screened in accordance with the provisions of sections 424-a and 495(2) and (3) of the Social Services Law.

2. Section 200.15 of the Regulations of the Commissioner of Education is amended, effective May 14, 2014, as follows:

200.15 [Procedures for prevention of abuse, maltreatment or neglect of students in residential placements.] Standards for the protection of day and residential students who attend a residential school governed by this section. The purpose of this section is to protect students in residential schools against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, consistent with the provisions of chapter 501 of the Laws of 2012 “Protection of People with Special Needs Act,” including article 20 of the Executive Law, article 11 of the Social Services Law, and sections 4212, 4314, 4358 and 4403 of the Education Law.

(a) Applicability. This section shall apply to [approved private] residential schools, with respect to their day and residential components, including approved in-state residential schools, State-operated schools, [or] State-supported schools which have a residential component, [and] special act school districts as such term is defined in section 4001(8) of the Education Law and, except as otherwise indicated, approved out-of-state residential schools.

(b) Definitions. As used in this section, the following terms shall have the following meanings, consistent with the definitions of such terms in article 11 of the Social Services Law:

(1) Custodian means a director, operator, employee or volunteer of a residential school; or a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to a residential school pursuant to contract or other arrangement that permits such person to have regular and substantial contact with individuals who are cared for by the residential school.

(2) Justice Center means the Justice Center for the Protection of People with Special Needs established pursuant to article 20 of the Executive Law.

(3) Reportable incident means the following conduct that a mandated reporter is required to report to the Vulnerable Persons' Central Register:

(i) Abuse means physical abuse, sexual abuse, psychological abuse, deliberate inappropriate use of restraints, unauthorized use of aversive interventions, obstruction of reports of reportable incidents, and unlawful use or administration of a controlled substance.

(a) Physical abuse means conduct by a custodian intentionally or recklessly causing, by physical contact, physical injury or serious or protracted impairment of the physical, mental or emotional condition of a student or causing the likelihood of such injury or impairment. Such conduct may include but shall not be limited to: slapping, hitting, kicking, biting, choking, smothering, shoving, dragging, throwing, punching, shaking, burning, cutting or the use of corporal punishment. Physical abuse shall not include reasonable emergency interventions necessary to protect the safety of any person.

(b) Sexual abuse means any conduct by a custodian that subjects a student to any offense defined in article 130 or sections 255.25, 255.26 or 255.27 of the Penal Law; or any conduct or communication by such custodian that allows, permits, uses or encourages a student to engage in any act described in articles 230 or 263 of the Penal Law, except as otherwise provided in section 488(1)(b) of the Social Services Law.

(c) Psychological abuse means conduct by a custodian intentionally or recklessly causing, by verbal or non-verbal conduct, a substantial diminution of a student's emotional, social or behavioral development or condition, supported by a clinical assessment performed by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker or licensed mental health counselor, or causing the likelihood of such diminution. Such conduct may include but shall not be limited to intimidation, threats, the display of a weapon or other object that could reasonably be perceived by a student as a means for infliction of pain or injury, in a manner that constitutes a threat of physical pain or injury, taunts, derogatory comments or ridicule.

(d) Deliberate inappropriate use of restraints means the use of a restraint when the technique that is used, the amount of force that is used or the situation in which the restraint is used is deliberately inconsistent with a student's individual treatment plan or behavioral intervention plan, generally accepted treatment practices and/or any applicable federal or state laws, regulations or policies including but not limited to the prohibition of the use of corporal punishment and aversive interventions in section 19.5 of this Title, except when the restraint is used as a reasonable emergency intervention to prevent imminent risk of harm to a person receiving services or to any

other person. Restraint includes the use of any manual, pharmacological or mechanical measure or device to immobilize or limit the ability of a student to freely move his or her arms, legs or body.

(e) Use of aversive interventions, as such term is defined in section 19.5(b) of this Title, means an intervention that is intended to induce pain or discomfort to a student for the purpose of eliminating or reducing maladaptive behaviors.

(f) Obstruction of reports of reportable incidents means conduct by a custodian that impedes the discovery, reporting or investigation of the treatment of a student by falsifying records related to the safety, treatment or supervision of a student, actively persuading a mandated reporter from making a report of a reportable incident to the Vulnerable Persons' Central Register with the intent to suppress the reporting of the investigation of such incident, intentionally making a false statement or intentionally withholding material information during an investigation into such a report; intentional failure of a supervisor or manager to act upon such a report in accordance with governing regulations, policies or procedures; or for a mandated reporter who is a custodian, failing to report a reportable incident upon discovery.

(g) Unlawful use or administration of a controlled substance means:

(1) any administration by a custodian to a student of a controlled substance as defined by article 33 of the Public Health Law, without a prescription;

(2) any administration by a custodian to a student of other medication not approved for any use by the United States Food and Drug Administration; or

(3) a custodian unlawfully using or distributing a controlled substance as defined by article 33 of the Public Health Law, at the workplace or while on duty.

(ii) Neglect means any action, inaction or lack of attention that breaches a custodian's duty and that results in or is likely to result in physical injury or serious or protracted impairment of the physical, mental or emotional condition of a student. Neglect shall include, but is not limited to:

(a) failure to provide proper supervision, including lack of proper supervision that results in conduct between students that would, if committed by a custodian, constitute abuse as described in subparagraph (i) of this paragraph;

(b) failure to provide adequate food, clothing, shelter, medical, dental, optometric or surgical care, consistent with any rules and regulations governing the same, provided that the residential school has reasonable access to the provision of such services and that necessary consents to any such medical, dental, optometric or surgical treatment have been sought and obtained from the appropriate individuals; or

(c) failure to provide access to educational instruction, by a custodian with a duty to ensure that an individual receives access to such instruction in accordance with the provisions of part one of article 65 of the Education Law and/or the student's individualized education program.

(iii) Significant incident means an incident, other than an incident of abuse or neglect that because of its severity or the sensitivity of the situation may result in, or has the reasonably foreseeable potential to result in, harm to the health, safety or welfare of a student and shall include but not be limited to:

(a) conduct between students that would, if committed by a custodian, constitute abuse as defined in subparagraph (i) of this paragraph; or

(b) conduct on the part of the custodian, which is inconsistent with a student's individual treatment plan or IEP, generally accepted treatment practices and/or applicable federal or state laws, regulations or policies and which impairs or creates a reasonably foreseeable potential to impair the health, safety or welfare of a student, including but not limited to:

(1) unauthorized seclusion, which shall mean the placement of a student in a room or area from which he or she cannot, or perceives that he or she cannot, leave at will, or the placement of the child unsupervised or unobserved in a room from which the student cannot exit without assistance;

(2) unauthorized use of time out, which means the use of a procedure in which a student is removed from regular programming and isolated in a room or area for the convenience of a custodian, or as a substitute for programming but shall not include the use of a time-out as an emergency intervention to protect the health or safety of the individual or other persons or the use of a time out room used in conjunction with a student's IEP or behavioral intervention plan pursuant to section 200.22(c) of this Part;

(3) except as provided for in subparagraph (5)(vii) of this subdivision, the administration of a prescribed or over-the-counter medication, which is inconsistent with a prescription or order issued for a student by a licensed, qualified health care practitioner, and which has an adverse effect on a student. Adverse effect shall mean the unanticipated and undesirable side effect from the administration of a particular medication which unfavorably affects the well-being of the student; or

(4) inappropriate use of restraints, which shall mean the use of a restraint when the technique that is used, the amount of force that is used or the situation in

which the restraint is used is inconsistent with a student's individual treatment plan or behavioral intervention plan, generally accepted treatment practices and/or any applicable federal or state laws, regulations or policies including but not limited to the prohibition of the use of corporal punishment and aversive interventions in section 19.5 of this Title. Restraint includes the use of any manual, pharmacological or mechanical measure or device to immobilize or limit the ability of a student to freely move his or her arms, legs or body.

(4) Staff exclusion list means the register, developed and maintained by the Justice Center pursuant to section 495 of the Social Services Law, of subjects of reports who have been found to have a substantiated category one case of abuse or neglect.

(5) Subject of the report means a custodian who is reported to the Vulnerable Persons' Central Register for the alleged abuse or neglect of a student.

(6) Vulnerable Persons' Central Register means the statewide central register of reportable incidents established and operated in accordance with section 492 of the Social Services Law.

[(b)] (c) Personnel screening procedures. (1) Schools subject to the requirements of sections 4212, 4314, 4358 and 4403(11) of the Education Law and this section shall establish, subject to and consistent with provisions of the Civil Service Law, written procedures to review, evaluate and verify the backgrounds of, and information supplied by, all applicants for employment or voluntary work. Such procedures shall be subject to the review and approval of the commissioner, and shall include, but need not be limited to, the gathering of:

(i) a statement or summary of the applicant's employment history, including, but not limited to, any relevant child-caring experience;

(ii) the names, addresses and telephone numbers of references who can verify the applicant's employment history, work record and qualifications;

(iii) a statement or summary of the applicant's educational experience showing elementary school(s), secondary school(s), or college(s) attended, highest grade level or degree attained, any additional credits earned, and certifications and/or licenses awarded;

(iv) the names and addresses of elementary and secondary schools and other educational institutions that can verify the applicant's educational information;

(v) a listing of special skills or completed training courses which might aid in the performance of duties of the position for which he or she is applying;

(vi) the names, addresses and telephone numbers of at least two personal references, other than relatives, who can attest to the applicant's character, reputation and personal qualifications; [and]

(vii) a sworn statement by the applicant, indicating whether, to the best of his or her knowledge, he or she has ever been convicted of a crime in this State or any other jurisdiction and that all statements in the application are true, to the best of his or her knowledge; and

(viii) for in-state residential schools, other information required by the Justice Center to determine whether the applicant is included on the staff exclusion list.

(2) An in-state residential school shall check the staff exclusion list, pursuant to procedures developed by the Justice Center, before determining whether to hire or

otherwise allow any person as an employee, administrator, consultant, intern, volunteer or contractor to have regular and substantial contact with a student. Consistent with applicable collective bargaining agreements, if a person is listed on the staff exclusion list, the school shall not hire such a person to have regular and substantial contact with a student. If the result of that inquiry is that the person about whom the inquiry is made is not on the staff exclusion list, the school shall make an inquiry of the Statewide Central Register of Child Abuse and Maltreatment pursuant to section 424-a of the Social Services Law.

(3) For in-state residential schools, consistent with existing collective bargaining agreements and applicable provisions of the Civil Service Law, a custodian shall be subject to immediate termination if he or she is convicted of any crime as defined in subdivision six of section 10.00 of the Penal Law that relates directly to the abuse or neglect of a student, or is placed on the staff exclusion list. Nothing in this paragraph shall diminish the rights or remedies otherwise available under law, regulation or appropriate collective bargaining agreements of any residential school with respect to the termination or discipline of employees.

[(c)] (d) Personnel qualifications . . .

[(d)] (e) Staff supervision. Schools governed by this section shall develop written procedures for the supervision of employees and volunteers who have the potential for contact with students in residential care. Such procedures shall be submitted for review and approval within a time frame established by the commissioner. To be approved, such procedures shall be designed to [prevent child abuse and maltreatment] protect students from abuse, neglect and significant incidents by providing for adequate

supervision of such employees and volunteers, taking into consideration such factors as the student population served, architectural factors, and the size of the facility. Such procedures shall include, but need not be limited to, the following:

(1) staffing patterns and the rationale for such;

(2) responsibilities of supervisors;

(3) the method by which staff and volunteers will be made aware of the identity of all supervisors, including designated on-site supervisors;

(4) provision of written supervisory guidelines to employees and volunteers;

(5) periodic observations by supervisors of employees and volunteers in interaction with students;

(6) periodic supervisory conferences for employees and volunteers; and

(7) written performance evaluations of staff to be conducted by supervisors in a manner consistent with applicable provisions of the Civil Service Law and existing collective bargaining agreements.

[(e)] (f) Procedures for the protection of students. All residential schools subject to this section shall develop written procedures for the protection of students [when there is a reason to believe an incident has occurred which would render a student an abused child in residential care or a neglected child in residential care within the meaning of section 412-a of the Social Services Law] from abuse, neglect and significant incidents. Such procedures shall [be submitted for review and approval within a time frame established by the commissioner and shall] include, but need not be limited to, the following:

(1) [Notification. Immediate notification of suspected incidents of abuse or neglect of a child in residential care shall be made to:

(i) the Statewide Central Register of Child Abuse and Maltreatment, unless, pursuant to section 415 of the Social Services Law, the appropriate local plan for the provision of child protective services provides that reports should be made to the child protective service;

(ii) the appropriate local law enforcement agency if the incident is of a criminal nature; and

(iii) the parent(s) of the student, if the incident involves physical injury to the student.] Duty to report. (i) Reporting incidents. Except as provided in subdivision (g) of this section, in-state residential schools shall:

(a) ensure that allegations of reportable incidents, including any death for which there is any reason to believe that abuse or neglect may be involved, shall be identified and immediately reported to the Vulnerable Persons' Central Register upon discovery by a mandated reporter in accordance with the provisions of sections 491 and 492 of the Social Services Law. Nothing in this paragraph shall be construed to prohibit a mandated reporter from contacting or reporting to law enforcement or an emergency services organization as defined in section 155.17(c)(5) of this Title, before or after reporting to the Vulnerable Persons' Central Register.

(b) provide a student's parents with written information explaining the reporting requirements and processes regarding allegations of reportable incidents consistent with article 11 of the Social Services Law, at the time the student is placed in

such school. Such information shall also be made available upon request to any person.

(ii) Reporting deaths. The death of any New York State student attending an in-state or out-of-state residential school shall be immediately reported to the New York State Justice Center for the Protection of People with Special Needs, in the form and manner prescribed by the center, and to the commissioner or his or her designee.

[(2) Investigation. Immediately upon notification that a report of child abuse or neglect of a child in residential care has been made to the Statewide Central Register of Child Abuse and Maltreatment, or, when applicable, to the child protective service of the local department of social services, the chief administrator of the facility or his or her designee shall:

(i) initiate internal investigation procedures;

(ii) preserve any potential evidence through such actions as securing the area wherein suspected abuse or neglect occurred;

(iii) obtain proper medical evaluation and/or treatment, as needed, with documentation of any evidence of abuse or maltreatment; and

(iv) provide necessary assistance to the Office of Children and Family Services in its investigation thereof.]

[(3)] (2) Safety. Upon notification that [a report of child abuse or neglect in residential care] an allegation of a reportable incident has been made to the [Statewide Central Register of Child Abuse and Maltreatment or, when applicable, to the child protective service of the local department of social services] Vulnerable Persons'

Central Register, the chief administrator of the [facility] residential school or his or her designee[,] shall:

(i) preserve any potential evidence through such actions as securing the area wherein the suspected reportable incident occurred;

(ii) obtain proper medical evaluation and/or treatment of a student, as needed, with documentation of any evidence of the reportable incident;

(iii) with consideration for causing as little disruption as possible to the daily routines of the students in the program, [shall] evaluate the situation and immediately take appropriate action to assure the health and safety of the [student] student(s) involved in the report and of any other students similarly situated in the facility or program; and

(iv) take such additional action as is necessary to prevent future acts of abuse [or], neglect or significant incidents. Such action may include:

[(i)] (a) consistent with appropriate collective bargaining agreements and applicable provisions of Civil Service Law:

[(a)] (1) removal or transfer of the [alleged perpetrator] subject of the report;

[(b)] (2) increasing the degree of supervision of the [alleged perpetrator] subject of the report; and/or

[(c)] (3) initiation of appropriate disciplinary action against the [alleged perpetrator] subject of the report;

[(ii)] (b) provision of increased training and/or increased supervision to volunteers and staff pertinent to the prevention and remediation of abuse [and], neglect and significant incidents;

[(iii)] (c) temporary removal of the [students] student(s) from a program and reassignment of the [students] student(s) within the facility, as an emergency measure, if it is determined that there is a risk to the health or safety of such [students] student(s) in remaining in that program. Whenever a student is removed, pursuant to this subparagraph, from a special education program or service specified in his or her individualized education program, such action shall be immediately reported to the commissioner or his designee and referred to the appropriate committee on special education for review; and/or

[(iv)] (d) provision of counseling to the [students] student(s) involved in the report and any other students, as appropriate.

(3) Investigations and report of findings. The residential school shall:

(i) take appropriate action to support a request for information from the Justice Center, its representative or designee, and/or the State Education Department when such requests are made in accordance with law and regulation;

(ii) promptly report to the Justice Center the resignation or termination of a subject of a report of alleged abuse or neglect from his or her position while an investigation is pending;

(iii) if so directed, consistent with guidelines issued by the Department, promptly investigate a report of a significant incident and, within 60 days of the Vulnerable Persons' Central Register accepting a report of a significant incident, submit a report of the findings in writing to the Department; and

(iv) maintain all information, including information identifying the subject of the report of alleged abuse or neglect and other persons named in the report to the

Vulnerable Persons' Central Register, in accordance with section 496 of the Social Services Law. All personally identifiable data information or records with respect to a student shall be subject to the requirements of section 200.2(b)(6) of this Part.

(4) [Corrective action plans] Plans of Prevention and Remediation. (i) [Indicated Reports.] Abuse and neglect. Upon receipt of [an indicated report of child abuse or neglect in residential care, as such terms are defined in sections 412 and 412-a of the Social Services Law] an investigative report of abuse or neglect that identifies the need for corrective action, the chief administrator of the [facility] residential school, after consideration of any recommendations of the [Office of Children and Family Services or, where applicable, the Commission on Quality of Care and Advocacy for Persons with Disabilities] Justice Center, its representative or designee, and/or the State Education Department [for preventive and remedial action, including legal action,] shall:

(a) unless immediate corrective action is warranted, within 10 [calendar] days of receipt of [an indicated] such a report [of child abuse or neglect in residential care], develop, implement and submit to the appropriate designee of the commissioner for approval, a written plan of [action] prevention and remediation to be taken with respect to an individual employee or volunteer and/or the residential school to assure the continued health and safety of students and to provide for the prevention of future acts of abuse or neglect, which [plan] shall include, at a minimum, those actions previously taken pursuant to paragraph [(3)] (2) of this subdivision; and

(b) in the event [an investigation of] a report of [alleged child] abuse or neglect [in residential care] determines that [some credible evidence of abuse or maltreatment]

exists and] such abuse or [maltreatment] neglect may be attributed in whole or in part to noncompliance by the facility with provisions of title 6 of article [6] 11 of the Social Services Law, or [section] sections 4212, 4314, 4358 or 4403(11)-[(13)] (12) of the Education Law or the regulations of the Commissioner of Education, develop and implement a plan of prevention and remediation, which shall address, at minimum, those areas in which the facility has been found to be out of compliance[,] and shall indicate the manner in which the facility will come into compliance[, and shall include the date by which such plan shall be in effect]. Such plan shall be developed and submitted for approval to the appropriate designee of the commissioner within 30 [calendar] days of receipt of such a report.

(ii) [Upon a determination by the Office of Children and Family Services or, where applicable, the Commission on Quality of Care and Advocacy for Persons with Disabilities that it appears likely that a crime may have been committed against a child and/or that a violation of the statutory, regulatory or other requirements of the licensing agency or operating state agency relative to the care and treatment of individuals receiving services has occurred, regardless of whether a report is indicated or unfounded, the chief administrator of the facility, after consideration of any recommendations of the Office of Children and Family Services or, where applicable, the Commission on Quality of Care and Advocacy for Persons with Disabilities for preventative or remedial actions, if any, which may include enforcement or disciplinary actions, shall:

(a) within a reasonably prompt period of time, but not later than 10 calendar days from receipt of such determination, initiate any necessary and appropriate corrective action;

(b) within a reasonably prompt period of time, but not later than 30 calendar days from receipt of such determination, submit to the Department and to the Office of Children and Family Services or, where applicable, the Commission on Quality of Care and Advocacy for Persons with Disabilities a written report of the actions taken to address the findings of the office or commission and such subsequent progress reports as the office or commission may require including any actions to implement a plan of prevention and remediation; and

(c) immediately notify the appropriate law enforcement agency or confirm that such notification has already been made whenever it appears likely that a crime has been committed against a student.] Significant incidents. Upon a determination of the need for preventative or remedial action associated with a report of a significant incident, the chief administrator of the residential school, after consideration of any recommendations of the State Education Department, shall develop and implement a written plan of prevention and remediation to address the investigative findings. Such plan shall be developed and submitted to the appropriate designee of the commissioner within 30 days of such determination.

(iii) Plans of prevention and remediation required to be developed pursuant to subparagraphs (i) and (ii) shall be endorsed with the signature of the chief administrator of the residential school or his or her designee and address at minimum:

(a) the actions to be taken to address the investigative findings;

(b) the person(s) responsible for assessing the efficacy of the remedial action(s); and

(c) the monitoring dates or interval of monitoring dates, if appropriate.

(g) Out-of-State residential schools. In addition to the provisions of subdivisions (c)(1)(i) through (vii), (d), (e), (f)(1)(ii), (f)(2), (f)(3)(i)-(ii), (f)(4), (h), (i)(1), (j), (l)(1) and (m) of this section, out-of-state residential schools shall comply with the following requirements:

(1) When there is an allegation of abuse or neglect of a New York State student, the residential school shall immediately notify the Justice Center, the State Education Department and any local social services district and/or school district who placed the student in the residential school or state agency funding the placement of that student.

(2) For allegations of abuse and neglect, the residential school shall comply with the procedures for the protection of students in subdivision 5 of section 490 of the Social Services Law and shall cooperate with any investigation conducted by the Justice Center.

(3) If the investigation is not conducted by the Justice Center, the out-of-state residential school shall forward the findings of such investigation to the Justice Center, the State Education Department, the committee on special education and the social services district in New York State no later than 90 days from the report of the allegation.

(4) Failure to comply with the requirements of this subdivision shall be grounds for revocation of approval to accept new admissions of New York State

students or termination of private school approval pursuant to paragraph 200.7(a)(3) of this Part.

[(f)] (h) Staff training. To the extent required by the provisions of sections 4212, 4314, 4358 and 4403(11) of the Education Law, schools shall provide, or ensure the provision of, child abuse prevention and identification training to all administrators, employees and volunteers on a regular, but at least annual, basis. [Priority shall be given to the training of administrators, employees and volunteers who have the potential for regular and substantial contact with students in residential care.] A written description of such training plan shall be submitted for review and approval within a time frame established by the commissioner.

(1) The purpose of such training shall be to increase the participants' level of awareness, encourage positive attitudes and enhance knowledge and skill development in areas including, but not limited to, the following:

(i) child abuse prevention and identification;

(ii) safety and security procedures;

(iii) principles of child development;

(iv) characteristics of children in care;

(v) techniques of group and child management, including crisis intervention and appropriate restraint training;

(vi) laws, regulations and procedures, including appropriate reporting responsibilities, governing the protection of students from [abuse and maltreatment] reportable incidents; and

(vii) any relevant information provided by the department.

(2) The department may exempt administrators from such training requirements upon demonstration of substantially equivalent knowledge or experience.

[(g)] (i) Staff orientation.

(1) Each new employee or volunteer shall, immediately upon commencement of duties, be provided an orientation to the procedures of the school and the policies and procedures of the department regarding the protection of students from [abuse and maltreatment] reportable incidents.

(2) Each custodian shall, at the time of his or her initial employment and at least annually thereafter, be provided with a copy of the code of conduct developed by the Justice Center pursuant to article 20 of the Executive Law and acknowledge that he or she has read and understands such code of conduct. Such code of conduct shall govern the conduct of such custodians with respect to the safety, dignity and welfare of students in residential schools to whom they provide care and is enforceable consistent with appropriate collective bargaining agreements.

[(h)] (j) Instruction of students. To the extent required by the provisions of sections 4212, 4314, 4358 and 4403(11) of the Education Law, and in consideration of the needs and circumstances of the program, schools shall provide instruction to all students in techniques and procedures which will enable such students to advocate for and protect themselves from [abuse and maltreatment] reportable incidents.

(1) Such instruction shall be described in a written plan [to be submitted for review and approval within a time frame established by the commissioner], and shall be:

(i) appropriate for the age, individual needs and particular circumstances of [students, including the existence of mental, physical, emotional or sensory] students' disabilities;

(ii) provided at different times throughout the year in a manner which will ensure that all students receive such instruction; and

(iii) provided by individuals who possess appropriate knowledge and training, documentation of which shall be maintained by the school.

(k) Incident Review Committees. All in-state residential schools subject to this section must establish an incident review committee pursuant to section 490(1)(f) of the Social Services Law for the purpose of reviewing individual reportable incidents and incident patterns and trends to identify and implement preventative and corrective actions, which may include, but shall not be limited to, staff retraining or any appropriate disciplinary action allowed by law or contract, as well as opportunities for improvement.

(1) The incident review committee shall be composed of at least one member of the governing body of the residential school and other persons identified by the chief administrator of the residential school including but not limited to one representative of each of the following, but not the chief administrator of the residential school:

(i) direct support staff;

(ii) licensed health care practitioner;

(iii) students or service recipients; and

(iv) representatives of family, consumer and other advocacy organizations.

(2) Members of the incident review committee shall be trained in confidentiality laws and regulations, and shall comply with section 74 of the Public Officers Law.

(3) The incident review committee shall meet regularly to:

(i) review the timeliness, thoroughness and appropriateness of the residential school's response to reportable incidents;

(ii) recommend additional opportunities for improvement to the chief administrator of the residential school, if appropriate;

(iii) review incident trends and patterns concerning reportable incidents; and

(iv) make recommendations to the chief administrator of the residential school to assist in reducing reportable incidents.

(4) The chief administrator of the residential school shall submit a report of incident patterns and trends, and patterns and trends in the reporting and response to reportable incidents to the State Education Department in the form and manner required by the Justice Center.

(l) Access to records and residential schools. (1) The residential school shall grant access to the department, other State oversight agencies and the Justice Center at any and all times to the residential school, and, consistent with section 200.2(b)(6) of this Part and any applicable Federal or State laws or regulations, to all books, records, and data pertaining to any such school deemed necessary for the department, State oversight agency and the Justice Center to carry out its functions, powers and duties pursuant to article 11 of the Social Services Law.

(2) In accordance with section 490(6) of the Social Services Law, records of in-state residential schools not otherwise subject to article 6 of the Public Officers Law shall be made available for public inspection and copying, when such records relate to abuse and neglect of students, consistent with the requirements of section 200.2(b)(6) of this Part. Any request made to a residential school for records relating to abuse and neglect shall be referred to the Justice Center. The residential school shall cooperate with the Justice Center and provide any records that the Justice Center deems subject to disclosure, in accordance with the provisions of 14 NYCRR section 703.

[(i)] (m) Variances. Where the residential component of a school governed by this section is licensed or certified by a State agency other than the State Education Department, a variance may be granted, in whole or in part, from the requirements of subdivision [(b), (d), (e), (f), (g) or (h)] (c), (e), (f), (h) (i) or (j) of this section with respect to employees or volunteers other than those employed in the educational component of such school, upon a finding that such employees or volunteers are subject to overlapping requirements imposed in regulations adopted by such other State agency for the protection of students [in residential care from abuse and maltreatment] from reportable incidents, or, in the event that such other State agency has not adopted regulations regarding a particular requirement, upon a finding that the school has procedures in place regarding such employees or volunteers which are substantially equivalent to those required by this section. The chief administrator of each such school shall submit an application, on a form and within a time frame prescribed by the commissioner, which shall include, but need not be limited to, a list of all licensing or certifying State agencies and an assurance by the chief administrator that the school is

in compliance with the requirements imposed by such other licensing or certifying State agency or agencies, or has procedures in place which are substantially equivalent to those required by this section, regarding the protection of students [in residential care from child abuse and maltreatment] <u>from reportable incidents</u>.

3. Paragraph (3) of subdivision (d) of section 200.22 of the Regulations of the Commissioner of Education is amended, effective May 14, 2014, as follows:

(3) Staff training. Staff who may be called upon to implement emergency interventions shall be provided with appropriate training in safe and effective restraint procedures in accordance with section 100.2(l)(1)(i)(g) of this Title and [200.15(f)(1)] <u>section 200.15(h)(1)</u> of this Part as applicable.