

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Sections 207, 305, 3001-d and 3035 of the Education Law.

1. Subparagraph (iii) of paragraph (5) of subdivision (a) of section 87.5 of the Regulations of the Commissioner of Education is amended, effective April 11, 2012, as follows:

(iii) Such appeal papers, submitted within the timeframes prescribed in subparagraph (i) or (ii) of this paragraph, may include any affidavits or other relevant written information and written argument which the prospective school employee wishes the Commissioner's designee to consider in support of the position that clearance for employment should be granted, including, where applicable, information in regard to his or her good conduct and rehabilitation. [The prospective school employee may request oral argument and must do so in the appeal papers submitted within the timeframes prescribed in subparagraph (i) or (ii) of this paragraph. Such oral argument shall be conducted in accordance with the requirements of subparagraph (iv) of this paragraph.]

2. Subparagraph (iv) of paragraph (5) of subdivision (a) of section 87.5 of the Regulations of the Commissioner of Education is repealed, effective April 11, 2012, as follows:

[(iv) A prospective school employee may request oral argument as part of the appeal of the department's determination denying clearance for employment. The department shall notify the prospective school employee of the time and location of such oral argument. Such argument shall be heard before the Commissioner's designee. At the oral argument, the prospective school employee may present additional affidavits or other relevant written information and written argument which the

prospective school employee wishes the Commissioner's designee, to consider in support of the position that clearance for employment should be granted, including, where applicable, written information in regard to his or her good conduct and rehabilitation. No testimony shall be taken at the oral argument and no transcript of oral argument shall be made. The prospective school employee may make an audio tape recording of the oral argument. However, such audio tape recording or transcript thereof shall not be part of the record upon which the Commissioner's designee makes the determination on whether clearance for employment shall be granted or denied.]

3. Subparagraph (v) of paragraph (5) of subdivision (a) of section 87.5 of the Regulations of the Commissioner of Education is amended, effective April 11, 2012, as follows:

(v) Where a timely request for an appeal is received, upon review of the prospective school employee's criminal history record, related written information obtained by the department pursuant to the review of such criminal history record, written information and written argument submitted by the prospective school employee in this appeal within the timeframes prescribed in subparagraph (i) or (ii) of this paragraph, [and written information provided at oral argument if requested by the prospective school employee,] the Commissioner's designee shall make a determination of whether clearance for employment shall be granted or denied. In such appeal, the Commissioner's designee shall apply the standards for the granting or denial of a license or employment application set forth in Correction Law, section 752 and shall consider the factors specified in Correction Law, section 753. Such appeal shall be conducted in accordance with the requirements of section 296(16) of the

Executive Law. Where the determination of the Commissioner's designee is that clearance for employment is denied, his or her decision shall include the findings of facts and conclusions of law upon which the determination is based. A copy of the determination that clearance for employment is denied, or notice that such clearance is granted, as the case may be, shall be transmitted to the prospective school employee by regular first class mail. In addition, the covered school shall be notified of the denial or granting of clearance.