

## AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 215, 305, 305(14), 308, 309, 403-a, 403-b, 408, 409, 409-d, 409-e, 409-f(1)-(2), 409-h, 1950(4)(t), 2215(17), 2503, 2554, 2801-a, 3602, 3641, 3713(1)-(2), 4402, and 4403; Energy Law section 9-103(8); Environmental Conservation Law sections 8-0113(3) and 8-0117(5); 26 USC sections 54E-F, 142(a) and (k), and 1397E; Executive Law section 102(2) and article 2-B; Sections 1 and 2 of Chapter 64 of 1994, Chapter 436 of 1997, Chapter 231 of 2002, Chapter 54 of 2016, Part YYY of Chapter 59 of 2019

1. Section 155.1 of the Regulations of the Commissioner of Education shall be amended to read as follows:

155.1. Educational facilities. Each school district shall provide suitable and adequate facilities to accommodate the programs of such district.

(a) ...

(1) ...

(2) Pupil enrollment projections shall be based on a school district census projection of each grade level. [Elementary grade enrollments] Pre-kindergarten and, kindergarten through sixth grade enrollments, shall be projected a maximum of five years. Secondary grade enrollments, seventh through twelfth grade, shall be projected a maximum of 10 years.

(3) Educational specifications for the [erection] construction, enlargement, remodeling or initial use of educational facilities shall be submitted to the commissioner. Such specifications shall be based on the comprehensive long-range plan of the district and shall include the educational philosophy of the project, description of educational program, including activities to be conducted and related space and facilities

requirements; and description of innovative or experimental concepts or features which may be included.

(4) ...

(i) ...

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(ii) ...

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) summary of the triennial asbestos reports required pursuant to the Asbestos Hazard Emergency Response Act (AHERA) regulations, 40 CFR part 763 [(Code of Federal Regulations, 1998 Edition, Superintendent of Public Documents, U.S. Government Printing Office, Washington, DC 20402; 1998; available at Office of Facilities Planning, Education Building Annex, Room 1060, State Education Department, Albany, NY 12234)]; and

(g) ...

(b) ...

(1) Design of a facility shall provide space layouts and number, size and arrangement of exit facilities that will [insure] ensure prompt escape of occupants from a hazard to life safety.

(2) Visual environment of a facility...

(3) Thermal environment of a facility...

(4) Sanitation...

(c) ...

(1) ...

(2) ...

(i) elementary schools [(kindergarten through sixth grade)]: three acres base plus one acre for each 100 pupils or fraction thereof;

(ii) ...

(3) sites shall be developed to conserve natural resources and avoid environmental problems within the limits of the educational program. Care shall be taken to [insure] ensure that the site and facilities thereon are consistent with and contribute to the school and community environment and provide for the health and safety of occupants.

[(d) Inspection of facilities.

(1) Structural safety inspections. Structural safety inspections occurring on or before October 7, 1999 shall be conducted pursuant to the provisions of this subdivision. To insure that all facilities occupied by students are properly maintained and preserved and provide a suitable educational setting, the board of education of each school district shall cause such facilities owned by the district to be inspected in accordance with section 409-d of the Education Law and this paragraph. A visual inspection of structural elements of all school buildings occupied by students annually.

(i)

(a) In districts other than city school districts in cities having 125,000 inhabitants or more, annual structural inspections:

(1) shall include, but not be limited to, inspection of exterior wall components, doors, windows, retaining walls, roofs and interior building components for evidence of movement, deterioration and structural failure;

(2) shall be conducted by a team which is composed of at least the director of facilities, the building custodian and a code enforcement official; and

(3) shall be made prior to the 30th day of June of each school year.

(b) In city school districts in cities having 125,000 inhabitants or more, the visual structural inspection shall be conducted in accordance with standards established by the board of education of such city school district and submitted to the commissioner for approval.

(c) Annual visual safety inspections shall be made prior to the 30th day of June of each school year. Reports of such inspections shall be retained in district files for six years after the building no longer exists, but not less than 21 years, whichever is longer. Such reports shall be available to the public on request.

(ii) When a visual structural inspection discloses evidence of a possible defective structural condition, a licensed architect or licensed professional engineer shall be retained immediately to inspect the condition and ascertain if structural modifications are necessary. The architect or engineer shall present a written report of all findings to the board of education, which shall act to correct any defective structural conditions.

(iii) Building aid computed pursuant to paragraph (d) of subdivision 6 of section 3602 of the Education Law is available for inspections by a licensed architect or engineer which result from the annual visual structural inspection of a building if no

claim for building aid for such an inspection in such building has been filed in the previous five years. The apportionment of such building aid for each school building so inspected by a school district in the base year shall not exceed the lesser of: the product of the building aid ratio and the actual cost, or the structural inspection aid ceiling computed by the commissioner. For aid payable in the 1993-94 school year and thereafter, the structural inspection aid ceiling shall be the sum of \$10,000 plus an additional amount computed as follows:

(a) The monthly indices for the costs of labor and material determined by the New York State Department of Labor, adjusted for the base month of July 1993, shall be used to compute such additional amount. The commissioner shall compute an index number which shall equal the positive remainder resulting when one is subtracted from the quotient of the Department of Labor index for July of the current year divided by the Department of Labor index for July 1993.

(b) The additional amount shall be the positive result of the product of \$10,000 and the index number computed pursuant to clause (a) of this subparagraph for the month of July in the current year.

(iv) Reports of structural inspections by the licensed architect or engineer shall be submitted to the commissioner together with any claim for building aid. For districts other than city school districts in cities having 125,000 inhabitants or more, copies of the reports shall also be submitted to the appropriate district superintendent of schools. A claim for building aid shall be made, in a form prescribed by the commissioner, within six months of the date of the architect's or engineer's report, for aid payable in the following school year.]

2. Section 155.2 of the Regulations of the Commissioner of Education shall be amended to read as follows:

155.2 Construction and remodeling of school district facilities.

(a) All plans, specifications and work regarding the erection, enlargement, repair, replacement, maintenance or remodeling of occupied facilities of school districts and of boards of cooperative educational services shall comply with the Uniform Safety Standards for School Construction and Maintenance Projects as set forth in section 155.5 of this Part. Such uniform safety standards shall include but not be limited to: pre-construction testing and planning, exiting and ventilation, pre-construction notification, asbestos and lead protocols, control of dust, gases and fumes, protection from falling debris, and general safety and security.

(b) ...

(1) ...

(i) Plans and specifications shall conform to the State Uniform Fire Prevention and Building Code ([9]19 NYCRR Parts [600] 1219 through [1250] 1229, the State Energy Conservation Construction Code (19 NYCRR Part 1240) and to this Part, and shall show in detail requirements of design and construction, space layout, circulation and exiting facilities, smoke and fire control, accident protection, visual and thermal environment and related electrical and mechanical work, and sanitation and related plumbing work which [insure] ensure the health, safety and comfort of occupants of the facility.

(ii) ...

(iii) ...

(iv) ...

(v) ...

(vi) ...

(2) ...

(3) ...

(4) Plans and specifications submitted to the commissioner shall bear the signature and seal of an architect or engineer licensed to practice in the State of New York. The architect or engineer who sealed the plans and specifications shall also certify that the plans and specifications conform to the standards set forth in the State Uniform Fire Prevention and Building Code ([9]19 NYCRR Parts [600] 1219 through [1250] 1229) and the State Energy Conservation Construction Code ([9]19 NYCRR [Parts 780 through 7816] Part 1240).

(5) ...

(i) ...

(ii) The building permit may be revoked by the commissioner in the event of violations of the State Uniform Fire Prevention and Building Code ([9]19 NYCRR Parts [600] 1219 through [1250] 1229, the State Energy Conservation Construction Code (19 NYCRR Part 1240), requirements imposed by other departments of the State, this Part or other safety standards imposed by law or regulation.

(6) Following completion of the project or a substantial portion thereof, the architect or engineer shall certify to the commissioner that the project was completed in conformance to the State Uniform Fire Prevention and Building Code ([9]19 NYCRR Parts [600]1219 through [1250]1229), the State Energy Conservation Construction Code (19 NYCRR Part 1240), this Part, and plans and specifications for the project which were previously approved by the commissioner.

(c) For remodeling or construction projects costing \$5,000 or more, the governing body of a school district or a board of cooperative educational services shall assure

compliance with the requirements of the State Uniform Fire Prevention and Building Code ([9]19 NYCRR Parts [600]1219 through [1250]1229, the State Energy Conservation Construction Code (19 NYCRR Part 1240), and of this Part, and shall retain the services of an architect or engineer licensed to practice in New York State.

(d) For remodeling or construction projects costing less than \$5,000, the governing body of a school district or a board of cooperative educational services shall assure compliance with the requirements of the State Uniform Fire Prevention and Building Code ([9]19 NYCRR Parts [600]1219 through [1250]1229, the State Energy Conservation Construction Code (19 NYCRR Part 1240), and of this Part.

(e)

(1) For each project for which a certificate of substantial completion is issued on or after April 1, 1995 and for projects approved by the Commissioner on or before July 1, 2011, and for all other eligible school construction projects as defined in Education Law §3602(6-f)(b), all school districts, including a city school district having one million inhabitants or more and all boards of cooperative educational services, shall submit to the Commissioner a final cost report for the project by June 30 of the school year in which the certificate of substantial completion of the project is issued by the architect or engineer, or six months after issuance of such certificate, whichever is later. For projects for which a certificate of substantial completion is issued prior to April 1, 1995, the deadline for submission of a final cost report for the project shall be October 1, 1995.

[(2)] The commissioner may grant one or more extensions of the applicable deadline for submission of a final cost report pursuant to this section, upon a finding that the district is unable to complete the final cost report by the prescribed date because of



circumstances beyond the control of the district. Each extension may be granted for a period of up to one year.

(2) For all projects other than those described in paragraph (1) of this subdivision all school districts, including a city school district having one million inhabitants or more and all boards of cooperative educational services shall submit to the Commissioner a final cost report for the project.

3. Subdivision (b) of section 155.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(b) [Annual visual] Visual inspections. The board of education of each school district and each board of cooperative educational services shall conduct [annual] visual inspections of each occupied school building in accordance with the provisions of section 155.4(b)(2) of this Part, provided that the board of education of each school district and each board of cooperative educational services shall implement a safety rating system for all occupied school buildings pursuant to section 155.4(c) of this Part.

4. Section 155.4 of the Regulations of the Commissioner of Education shall be amended to read as follows:

155.4 Uniform Code of Public School Building Inspections, Safety Rating and Monitoring.

(a) ...

(b) Procedures for periodic inspections. To [insure] ensure that all occupied public school [facilities] buildings are properly maintained and preserved and provide a suitable educational setting, the board of education of each school district or board of cooperative educational services (BOCES) shall cause such facilities owned, operated

or leased by the school district or BOCES to be assessed in accordance with sections 409-d and 409-e of the Education Law and this section, and, where applicable, section 807-a of the Education Law and section 155.8 of this Part. Buildings shall be assessed by a building condition survey conducted once every five years, an annual fire safety inspection conducted pursuant to section 807-a of the Education Law and section 155.8 of this Part or pursuant to local law or codes, and [an annual] a visual inspection conducted in years [in which no building condition survey is conducted for the building] 2020 and 2022 to the extent required in paragraph (2) of this subdivision. The commissioner may require additional visual inspections as deemed necessary to maintain the safety of public school buildings and the welfare of the occupants.

(1) Building condition surveys. [A] School districts and BOCES shall conduct a building condition survey [shall be conducted] for all occupied public school buildings [on or before November 15, 2000] in calendar years 2020, 2021, 2022, 2023 or 2024 on a schedule prescribed pursuant to this paragraph and at least every five years thereafter. [, provided that a building condition survey for new buildings which receive a certificate of substantial completion dated August 31, 1995 through September 30, 1999 shall not be required until November 15, 2005 and at least every five years thereafter; and provided further that new buildings which receive a certificate of substantial completion dated October 1, 1999 or thereafter shall be subject to a building condition survey every five years, starting with the second building condition survey following issuance of such certificate] Such schedule shall assign districts to Labor Market Regions (Capital Region, Central NY, Finger Lakes, Hudson Valley, Long Island, Mohawk Valley, North Country, Southern Tier and Western NY) and shall use data regarding the number of occupied buildings for each district to equally distribute the number of buildings to be surveyed within each Labor Market Region in each scheduled

assignment year, and shall use data from the 2015 Building Condition Survey to the greatest extent practicable to assign districts with the highest number of buildings rated unsatisfactory or poor to the first two years of the assignment schedule while at the same time ensuring a pro-rated staggered implementation schedule within each Labor Market Region.

(i) ...

(ii) ...

(iii) Reports of building condition surveys, signed and sealed by the licensed architect or engineer, shall be submitted to the commissioner by [January 15, 2001 and January 15<sup>th</sup>] March 1<sup>st</sup> following the calendar year the building condition survey is due pursuant to the staggered schedule set forth in this paragraph and March 1<sup>st</sup> of every fifth year thereafter. Building aid computed pursuant to section 3602(6-e)[(d)] of the Education Law is available for building condition surveys conducted by a licensed architect or engineer if no claim for such a building condition survey in such a building has been filed in the previous five years. The apportionment of such building aid for each school building so inspected by a school district in the base year shall not exceed the lesser of the product of the building aid ratio and the actual cost, or the building condition survey aid ceiling computed by the commissioner. For aid payable in the 2000-2001 school year and thereafter, the building condition survey aid ceiling shall be the product of 20 cents plus an additional amount times the gross area of the building. Such additional amount shall be the result obtained when the cost of labor and material index determined by the New York State Department of Labor for the month of July of the current year is divided by the cost index for July 1999 and the result is rounded to two decimal places. A claim for building aid shall be made in a form prescribed by the commissioner, within six months of the date of the architect or engineer report, for aid

payable in the following school year. Such reports shall be made available to the public on request.

(2) [Annual visual] Visual inspections.

(i) A visual inspection of every occupied public school building shall be conducted [annually] at least once in calendar year 2020 provided, however, that such visual inspection shall not be required where a building condition survey was conducted pursuant to the staggered schedule set forth in paragraph (1) of this subdivision [shall fulfill such requirement for the year in which such survey is conducted, and provided further that the commissioner] in calendar year 2020. A visual inspection of every occupied public school building shall also be conducted at least once in calendar year 2022 provided, however, that such visual inspection shall not be required where a building condition survey was conducted pursuant to the staggered schedule set forth in paragraph (1) of this subdivision in calendar years 2020, 2021, or 2022. The commissioner may require [more frequent] inspections of public school buildings as deemed necessary to maintain the safety of public school buildings and the welfare of their occupants.

(ii) The [annual] visual inspection shall consist of a visual re-inspection of the components of the building condition survey for changes that may have occurred and a review and update of the safety rating as needed.

(iii) The [annual] visual inspection shall be conducted by a team composed of a person certified by the Department of State as a code enforcement official, or in the case of the City of New York, a person certified by the New York City Building Department as a local code enforcement official, the district director of facilities or his or her designee, and a member of the health and safety committee required pursuant to subdivision (d) of this section.

(iv) If [an annual] a visual inspection results in a determination that the building may have a deficiency that would result in a determination pursuant to subdivision (c) of this section that the safety rating of the building is unsatisfactory or unsafe/unhealthful, the board of education or board of cooperative educational services shall retain a licensed architect or engineer to perform a detailed inspection and develop a corrective action plan. In addition, the commissioner may require a board of education or board of cooperative educational services to conduct a detailed inspection by a licensed architect or engineer where the commissioner determines that:

(a) the school district or board of cooperative educational services has provided insufficient spending for maintenance, repair or capital renewal of the building; or

(b) the school provides a poor learning environment pursuant to section 100.2(p) of this Title.

(v) [The annual visual inspection] Visual inspections shall be completed by [November 15 of each year not scheduled for a building condition survey] December 31<sup>st</sup> of calendar years 2020 and 2022 pursuant to subparagraph (i) of this paragraph.

(vi) The results of the [annual] visual inspection of all occupied public school buildings shall be reported to the commissioner on forms prescribed by the commissioner, shall be signed by the person or persons who conducted the inspection and shall be filed with the commissioner [by January 15<sup>th</sup>] within 60 days of the completion of the inspection. Such reports shall indicate if more [frequent] inspections and repairs are necessary to protect the health and safety of students and staff occupying such school buildings. [Annual visual] Visual inspection reports shall be made available to the public.

(vii) ...

(c) ...

(1) ...

(2) The major system components of each occupied school building shall be rated in one of the following categories:

(i) Excellent: [identifies exemplar systems] system is in new or like-new condition and functioning optimally. No remediation required[, requires]. Requires only routine maintenance as identified in the building comprehensive maintenance plan.

(ii) Satisfactory: system is functioning reliably but routine maintenance and repair required.

(iii) Unsatisfactory: system is functioning unreliably or has exceeded its useful life. A corrective action plan is in place and repairs or replacement have been scheduled.

(iv) [Unsafe/Unhealthful] Non-Functioning: system is non-functioning, not functioning as designed or is unreliable [or not functioning as designed. System endangers] in ways that could endanger occupant health and/or safety[, and/or has deficiencies that have resulted in serious accident or injury]. Repair or replacement of some or all components is needed.

(v) [Indeterminate] Critical Failure: [requires additional probing or testing and a summary report will be issued, or drawings or specifications are required] system is non-functioning, not functioning as designed, or is unreliable in ways that could endanger occupant health and/or safety. The condition of at least one component is so poor that at least part of the building or grounds should not be occupied pending repair/replacement of some or all components.

(3) Building system deficiencies shall be categorized as health and safety, structural, comfort, or aesthetic.

(4) The overall rating of the building shall be determined by a weighted system developed by the commissioner in consideration of paragraphs (2) and (3) of this subdivision and in accordance with the following categories:

(i) Excellent: all systems classified as health and safety or structural rated in overall excellent condition. No systems rated below satisfactory. Preventive maintenance plan in place.

(ii) [Good] Satisfactory: all systems classified as health and safety or structural rated in overall [good] satisfactory or better condition. No systems rated non-functioning or critical failure.

(iii) [Satisfactory] Un-satisfactory: any system [categorized as comfort or aesthetic] classified as health and safety or structural rated as unsatisfactory. [All] No systems categorized as health and safety or structural rated [good or better] non-functioning or critical failure.

(iv) [Unsafe/unhealthful] Failing: any system [categorized] classified as health and safety or structural rated [unsafe and or unhealthful] non-functioning or critical failure. This rating shall result in the revocation of the building's certificate of occupancy.

(d) . . .

5. Section 155.8 of the Regulations of the Commissioner of Education shall be amended to read as follows:

Section 155.8. Fire and building safety inspections

(a) All buildings which are owned, operated or leased by a public school district or board of cooperative educational services shall be inspected for fire safety at least once annually, pursuant to a schedule determined by the commissioner, or at any other

time deemed necessary by the commissioner. Any cost of such inspection shall be borne by the school district or board of cooperative educational services.

(b) All inspections shall be performed, within a period of time determined by the commissioner, by an inspector who is qualified pursuant to procedures established by the State Fire Administrator. The report of the inspection shall be on a form supplied by the commissioner.

(c) Any violation of the State Uniform Fire Prevention and Building Code ([9]19 NYCRR Parts [600]1219 through [1250]1229) or of this Part shall be corrected immediately unless it is impracticable to do so. Violations which are not corrected immediately shall be corrected within a period of time approved by the commissioner.

(d) Where a board of education or board of cooperative educational services is required to convene meetings pursuant to section 807-a(5)(e) of the Education Law, the board shall:

(1) review each nonconformance with the requirements of section [155.3]155.4 of this Part or of [9]19 NYCRR [Parts 1150 through 1197] Part 1225 recorded on the report during the fire inspection;

(2) identify all such nonconformances which have not been corrected by the date of the meeting; and

(3) adopt a plan, in a form prescribed by the commissioner, for correcting all such nonconformances.

(e) No building which is owned, operated or leased by a board of education or a board of cooperative educational services shall be occupied or otherwise used unless the building has a valid certificate of occupancy issued by the commissioner.

(1) A certificate of occupancy will be issued by the commissioner following the annual inspection, if the inspection indicates the building is suitable for occupancy and



free of violations of the State Uniform Fire Prevention and Building Code ([9]19 NYCRR Parts [600]1219 through [1250]1229) and of this Part.

(2) The commissioner may issue a temporary certificate of occupancy at any time if the building is suitable for occupancy and if the board of education or board of cooperative educational services has adopted a plan, subsequently approved by the commissioner, for correcting all violations, pursuant to subdivision (c) of this section.

(3) A certificate of occupancy, a temporary certificate or a building permit may be denied or revoked for any one of the following reasons:

(i) failure to comply with any provision of this Part;

(ii) failure to comply with any provisions of the State Uniform Fire Prevention and Building Code ([9]19 NYCRR Parts [600]1219 through [1250]1229);

(iii) failure to comply with the provisions of section 807-a of the Education Law;

(iv) failure to file an annual or other fire safety inspection report in a timely manner;

(v) failure to correct and/or plan for correction of any nonconformance with the requirements of section [155.3]155.4 of this Part, or of [9]19 NYCRR [Parts 1150 through 1197]Part 1225, which appears on the fire safety inspection report in a timely manner;

(vi) existence of any nonconformance with the requirements of section [155.3]155.4 of this Part, or of [9]19 NYCRR [Parts 1150 through 1197]Part 1225, which appears on the fire safety report and which indicates that a building is not suitable for occupancy or intended use;

(vii) repeated violations of the State Uniform Fire Prevention and Building Code ([9]19 NYCRR Parts [600]1219 through [1250]1229) or this Part; or

(viii) violation of other health or safety standards, imposed by law or regulation, which indicate that a building is not suitable for occupancy or intended use.