

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 215, 305, 1604, 1709, 2503, 2554, 3202, 3204, and 3205 of the Education Law.

1. Part 100 of the Regulations of the Commissioner of Education, is amended by adding a new section 100.22 to read as follows:

§100.22 Instruction provided to students in a home, hospital, or institutional setting other than a school (homebound instruction).

(a) Purpose. The purpose of this section is to establish minimum instructional requirements that must be provided to students who are anticipated to be unable to attend school in person for at least ten days during a three-month period due to illness or injury which requires the student to remain at home or in a hospital or other institution for the treatment of children, other than a school.

(b) Definitions. As used in this section:

(1) Remote instruction shall have the same meaning as defined in section 100.1(u) of this Part.

(2) Tutor means an employee of the school district of residence or an individual with whom the school district of residence contracts to provide home, hospital, or institutional instruction pursuant to this section. Such tutor must hold a New York State teaching certificate pursuant to Part 80 of this Title. A tutor may include a teacher employed by a board of cooperative educational services (BOCES) that contracts with the school district of residence to provide such instruction pursuant to Education Law §1950.

(3) Instruction delivery plan means a written plan to continue the student's academic progress and to maintain a record of delivery of instructional services and student progress, in accordance with paragraph (1) of subdivision (e) of this section.

(4) School district of residence means the public school district within the State of New York where students legally reside with their parents or guardians.

(5) Treating health care provider means a person who is treating a student and is licensed or otherwise authorized to provide diagnosis pursuant to a profession enumerated in Title VIII of the Education Law.

(c) Responsibility for instruction.

(1) The board of education of the school district of residence shall provide instructional services to all resident students enrolled in a public or nonpublic school from kindergarten to age 21 when, due to a temporary or chronic physical, mental, emotional illness or injury, as documented by the student's treating healthcare provider, the student is unable to participate in their usual education setting.

(2) Such instruction may be provided by the district or by a tutor; provided, however, that for hospital and institutional instruction, such instruction may also be provided via contract with a school connected with such hospital or institution, or by contract with the local public school district in which such hospital or institution is located. Such contract shall be limited to the cost of educational services and shall not include maintenance or medical services.

(d) Request for instruction.

(1) When requesting home, hospital, or institutional instruction, the parent or guardian must submit a request to the school district of residence that includes written

medical verification from the student's treating healthcare provider demonstrating the student's anticipated inability to attend school in person for at least ten days during the next three months and written consent authorizing the director of school health services or designee to contact the treating healthcare provider. Refusal to provide such written consent will result in a denial of the request for home, hospital, or institutional instruction.

(2) The school district shall forward the request to the director of school health services, who shall review the need for home, hospital, or institutional instruction. The director of school health services may contact the student's treating healthcare provider to obtain additional information necessary regarding the student's health or mental health.

(3) The school district shall provide instructional services to the student within five school days after the school district receives notification of the student's medical condition or within five school days from the parent or guardian's request for home, hospital, or institutional instruction, whichever occurs first.

(4) The school district shall notify the parent or guardian regarding the director of school health services approval or reason(s) for denial within five school days after receipt of written medical verification from the student's treating healthcare provider.

(5) The parent or guardian may appeal the director of school health services denial to the school district's board of education within ten school days of receipt thereof.

(6) Instructional services shall be provided during the timeframe prescribed in paragraph (3) of this subdivision while an appeal of a denial of home, hospital or

institutional instruction is pending before the school district's board of education pursuant to paragraph (5) of this subdivision.

(e) Instructional requirements. Home, hospital, or institutional instruction, which may include remote instruction, shall meet the following minimum requirements:

(1) The school district shall establish a written home, hospital, or institution instruction delivery plan to continue the student's academic progress, obtaining and considering input from the parent/guardian and, if appropriate, the student, where appropriate. The instruction plan shall be reviewed by the school district as needed, based upon changed condition and/or needs of the student. The school district shall maintain a record of delivery of instructional services and student progress. The instruction delivery plan shall include, but not be limited to:

(i) the number of hours per week and hours per day that the student will receive instructional services;

(ii) the method by which instructional services will be delivered;

(iii) the location where instructional services will be provided, such as the home, hospital, or institution; and

(iv) an explanation of how the instructional services will enable the student to maintain academic progress.

(2) (i) Prior to July 1, 2023, the student shall receive instruction for the number of days and length of time necessary to continue the student's academic progress, which includes at a minimum:

(a) at the elementary school level, 5 hours of instruction per week. To the extent possible, at least one hour of instruction shall be provided each day.

(b) at the secondary school level, 10 hours of instruction per week. To the extent possible, at least two hours of instruction shall be provided daily.

(ii) On and after July 1, 2023, the student shall receive instruction for the number of days and length of time necessary to continue the student's academic progress, which includes at a minimum:

(a) at the elementary school level, 10 hours of instruction per week. To the extent possible, at least two hours of instruction shall be provided daily.

(b) at the secondary school level, 15 hours of instruction per week. To the extent possible, at least three hours of instruction shall be provided daily.

(3) Notwithstanding paragraph (2) of this subdivision, students may receive less than the required amount of instruction per week if requested by their parent(s) or guardian(s) and supported by documentation submitted by their treating healthcare provider. The district must ensure that the student is unable to receive the additional hours of instruction required by such paragraph and that the reason why the student is receiving less instruction is documented in the instruction delivery plan required pursuant to paragraph (1) of this subdivision. Under these circumstances, the district must ensure that the student's instruction delivery plan is reviewed regularly, but not less than once a month, to determine when the student's instructional hours may be increased; provided, however, that for purposes of determining average daily attendance pursuant to Education Law §3602(1)(d) and average daily membership pursuant to Education Law §3602(1)(l), a student must receive the minimum amount of instruction as prescribed in section 175.21 of this Chapter.

(4) The school district of residence shall maintain a record of the dates, amount, and type of instructional services the student received, including the teacher's name, subjects taught, and the location where the instructional services were provided.

(f) Students with disabilities. Notwithstanding the provisions of this section, students with disabilities who are recommended for home, hospital, or institutional instruction by the committee on special education pursuant to section 200.6(i) of this Chapter shall be provided instruction and related services as prescribed in such section.

2. Subdivision (i) of section 200.6 of the Regulations of the Commissioner of Education is amended to read as follows:

(i) Home and hospital instruction. Students with disabilities who are recommended for home and/or hospital instruction by the committee on special education shall be provided instruction and appropriate related services as determined and documented by the committee on special education in consideration of the student's unique needs. Home and hospital instruction shall only be recommended if such placement is in the least restrictive environment and must be provided for at least the number of days and length of time as provided in section 100.22(e)(2) of this Chapter.

[(1) a minimum of five hours per week at the elementary level, preferably one hour daily; or

(2) a minimum of 10 hours per week at the secondary level, preferably two hours daily].