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STATE COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 8. EDUCATION DEPARTMENT
CHAPTER II. REGULATIONS OF THE COMMISSIONER
SUBCHAPTER E. ELEMENTARY AND SECONDARY EDUCATION
PART 100. ELEMENTARY AND SECONDARY EDUCATION SCHOOL PROGRAM

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100.10 Home instruction.

(a) Purpose of section.

The purpose of this section is to establish procedures to assist school authorities in fulfilling their responsibility under Education Law, sections 3204(2) and 3210(2)(d), and in meeting their responsibility of determining the competency of the instructor and substantial equivalence of instruction being provided at home to students of compulsory school attendance age, and to assist parents who exercise their right to provide required instruction at home to such students in fulfilling their responsibilities under Education Law, section 3212(2).

(b) Notice of intention to instruct at home.

(1) Except as otherwise provided in paragraphs (2) and (3) of this subdivision, parents or other persons in parental relation to a student of compulsory school attendance age shall annually provide written notice to the superintendent of schools of their school district of residence of their intention to educate their child at home by July 1st of each school year. The school year begins July 1st and ends June 30th for all purposes within this section. In the case of the City School District of the City of New York, the school district of residence for students who, if enrolled in the public schools, would attend elementary school, intermediate school or junior high school in a community school district, shall be deemed to be the community school district in which the parents reside.

(2) Parents who determine to commence home instruction after the start of the school year, or who establish residence in the school district after the start of the school year, shall provide written notice of their intention to educate their child at home within 14 days following the commencement of home instruction within the school district.

(3) For the 1988-89 school year only, the written notice of intention to instruct at home required in paragraph (1) of this subdivision shall be due on August 1, 1988.

(4) For the 2020-21 school year, the written notice of intention to instruct at home required in paragraph (1) of this subdivision shall be due on August 1, 2020 due to the State of emergency declared by the governor pursuant to an Executive Order(s) for the COVID-19 crisis.

(c) Procedures for development and review of an individualized home instruction plan (IHIP).

(1) Within 10 business days of the receipt of the notice of intention to instruct at home, the school district shall send to the parents a copy of this section 100.10 of the Regulations of the Commissioner of Education and a form on which to submit an individualized home instruction plan (IHIP) for each child of compulsory attendance age who is to be taught at home.

(2) Within four weeks of the receipt of such materials, or by August 15th, or for the 1988-89 school year by September 15, 1988, whichever is later, the parent shall submit the completed IHIP form to the school district. The district shall provide assistance in preparation of the forms, if requested by the parents.

(3) Within 10 business days of receipt of the IHIP, or by August 31st, or for the 1988-89 school year by September 30, 1988, whichever is later, the school district shall either notify the parents that the IHIP complies with the requirements of subdivisions (d) and (e) of this section or shall give the parents written notice of any deficiency in the IHIP.

(4) Within 15 days of receipt of a notice of a deficiency in the IHIP, or by September 15th, or for the 1988-89 school year by October 15, 1988, whichever is later, the parents shall submit a revised IHIP which corrects any such deficiencies.

(5) The superintendent of schools shall review the revised IHIP and shall notify the parents as to whether the revised IHIP complies with subdivisions (d) and (e) of this section within 15 days of receipt of the revised IHIP or by September 30th, or for the 1988-89 school year by October 31, 1988, whichever is later. If the revised IHIP is determined not to be in compliance with subdivisions (d) and (e) of this section, then the parents shall be notified in writing of the reasons for such determination. Such notice shall also contain the date of the next regularly scheduled meeting of the board of education that will be held at least 10 days after the date of mailing of the notice, and shall indicate that if the parents wish to contest the determination of noncompliance, the parents must so notify the board of education at least three business days prior to such meeting. At such board meeting, the parents shall have the right to present proof of compliance, and the board of education shall make a final determination of compliance or noncompliance.

(6) The parents shall have the right to appeal any such final school district determination of noncompliance to the Commissioner of Education within 30 days after receipt of such determination.

(7) When administrative review of a school district determination of noncompliance is completed, the parents shall immediately provide for the instruction of their children at a public school or elsewhere in compliance with Education Law, sections 3204 and 3210. For purposes of this subdivision, such administrative review shall be deemed to be completed when one of the following events has occurred:

(i) the parents have failed to contest a determination of noncompliance by appealing to the board of education;

(ii) the parents have failed to appeal a final school district determination of noncompliance to the Commissioner of Education; or

(iii) the parents have received a decision of the Commissioner of Education which upholds a final school district determination of noncompliance.

(8) Within 10 days after administrative review of the determination of noncompliance is completed, the parents shall furnish the superintendent of schools with written notice of the arrangements they have made to provide their children with the required instruction, except that such notice shall not be required if the parents enroll their children in a public school.

(d) Content of individualized home instruction plan (IHIP).

Each child's IHIP shall contain:

(1) the child's name, age and grade level;

(2) a list of the syllabi, curriculum materials, textbooks or plan of instruction to be used in each of the required subjects listed in subdivision (e) of this section;

(3) the dates for submission to the school district of the parents' quarterly reports as required in subdivision (g) of this section. These reports shall be spaced in even and logical periods;

(4) the names of the individuals providing instruction; and

(5) a statement that the child will be meeting the compulsory educational requirements of Education Law, section 3205 through full-time study at a degree-granting institution, meaning enrollment for at least 12 semester hours in a semester or its equivalent, if that is the case. In this situation, the IHIP shall identify the degree-granting institution and the subjects to be covered by that study.

(e) Required courses.

(1) For purposes of this subdivision, a *unit* means 6,480 minutes of instruction per school year.

(2) Instruction in the following subjects shall be required:

(i) For grades one through six: arithmetic, reading, spelling, writing, the English language, geography, United States history, science, health education, music, visual arts, physical education, bilingual education and/or English as a second language where the need is indicated.

(ii) For grades seven and eight: English (two units); history and geography (two units); science (two units); mathematics (two units); physical education (on a regular basis); health education (on a regular basis); art (one-half unit); music (one-half unit); practical arts (on a regular basis); and library skills (on a regular basis). The units required herein are cumulative requirements for both grades seven and eight.

(iii) The following courses shall be taught at least once during the first eight grades: United States history, New York State history, and the Constitutions of the United States and New York State.

(iv) For grades 9 through 12: English (four units); social studies (four units), which includes one unit of American history, one-half unit in participation in government, and one-half unit of economics; mathematics (two units); science (two units); art and/or music (one unit); health education (one-half unit); physical education (two units); and three units of electives. The units required herein are cumulative requirements for grades 9 through 12.

(v) Education Law, sections 801, 804, 806 and 808, also require the following subjects to be covered during grades kindergarten through 12:

- (a) patriotism and citizenship;
- (b) health education regarding alcohol, drug and tobacco misuse;
- (c) highway safety and traffic regulations, including bicycle safety; and
- (d) fire and arson prevention and safety.

(3) A student shall be exempted from the unit of study requirement of paragraph (1) of this subdivision if such student is unable to meet such unit of study requirement due to the State of emergency declared by the governor pursuant to an Executive Order for the COVID-19 crisis where such student otherwise achieves the learning outcomes for the portion of such unit of study completed.

(f) Attendance requirements.

Each child shall attend upon instruction as follows:

- (1) The substantial equivalent of 180 days of instruction shall be provided each school year.
- (2) The cumulative hours of instruction for grades 1 through 6 shall be 900 hours per year. The cumulative hours of instruction for grades 7 through 12 shall be 990 hours per year.
- (3) Absences shall be permitted on the same basis as provided in the policy of the school district for its own students.
- (4) Records of attendance shall be maintained by the parent and shall be made available to the school district upon request.
- (5) Instruction provided at a site other than the primary residence of the parents shall be provided in a building which has not been determined to be in violation of the local building code.
- (6) A student shall be exempted from the instructional day and/or hour requirement(s) set forth in paragraphs (1) and (2) of this subdivision where a home instruction program is unable to provide such instructional days and/or hours due to the State of emergency declared by the governor pursuant to an Executive Order for the COVID-19 crisis provided that such home instruction provided continuity of learning for such student.

(g) Quarterly reports.

On or before the dates specified by the parent in the IHIP, a quarterly report for each child shall be furnished by the parent to the school district. The quarterly report shall contain the following:

- (1) the number of hours of instruction during said quarter;
- (2) a description of the material covered in each subject listed in the IHIP;
- (3) either a grade for the child in each subject or a written narrative evaluating the child's progress; and
- (4) a written explanation in the event that less than 80 percent of the amount of the course materials as set forth in the IHIP planned for that quarter has been covered in any subject.

(h) Annual assessment.

At the time of filing the fourth quarterly report as specified in the IHIP, the parent shall also file an annual assessment in accordance with this subdivision. The annual assessment shall include the results of a commercially published norm referenced achievement test which meets the requirements of paragraph (1) of this subdivision, or an alternative form of evaluation which meets the requirements of paragraph (2) of this subdivision.

- (1) Commercially published norm-referenced achievement tests.
 - (i) The test shall be selected by the parent from one of the following: the Iowa Test of Basic Skills, the California Achievement Test, the Stanford Achievement Test, the Comprehensive Test of Basic Skills, the Metropolitan Achievement Test, a State Education Department test, or another test approved by the State Education Department.
 - (ii) The test shall be administered in accordance with one of the following options, to be selected by the parents:
 - (a) at the public school, by its professional staff;

(b) at a registered nonpublic school, by its professional staff, provided that the consent of the chief school officer of the nonpublic school is obtained;

(c) at a nonregistered nonpublic school, by its professional staff, provided that the consent of the superintendent of schools of the school district and of the chief school officer of the nonpublic school is obtained; or

(d) at the parents' home or at any other reasonable location, by a New York State- certified teacher or by another qualified person, provided that the superintendent has consented to having said certified teacher or other person administer the test.

(iii) The test shall be scored by the persons administering the test or by other persons who are mutually agreeable to the parents and the superintendent of schools.

(iv) The test shall be provided by the school district upon request by the parent, provided that the cost of any testing facilities, transportation, and/or personnel for testing conducted at a location other than the public school shall be borne by the parent.

(v) If a score on a test is determined to be inadequate, the program shall be placed on probation pursuant to subdivision (i) of this section. A student's score shall be deemed adequate if:

(a) the student has a composite score above the 33rd percentile on national norms; or

(b) the student's score reflects one academic year of growth as compared to a test administered during or subsequent to the prior school year.

(2) Alternative evaluation methods. An alternative form of evaluation shall be permitted to be chosen by the parent only as follows:

(i) for grades one through three, a written narrative prepared by a person specified in subparagraph (iii) of this paragraph;

(ii) for grades four through eight, a written narrative prepared by a person specified in subparagraph (iii) of this paragraph. This alternative form of evaluation may be used no more often than every other school year for these grades;

(iii) for the purposes of this paragraph, the person who prepares the written narrative shall be a New York State-certified teacher, a home instruction peer group review panel, or other person, who has interviewed the child and reviewed a portfolio of the child's work. Such person shall certify either that the child has made adequate academic progress or that the child has failed to make adequate progress. In the event that such child has failed to make adequate progress, the home instruction program shall be placed on probation pursuant to subdivision (i) of this section. The certified teacher, peer review panel or other person shall be chosen by the parent with the consent of the superintendent. Any resulting cost shall be borne by the parent.

(3) If a dispute arises between the parents and the superintendent of schools, including disputes over the administration of the commercially published norm-referenced achievement test or the use of alternative evaluation methods, the parents may appeal to the board of education. If the parents disagree with the determination of the board of education, the parents may appeal to the Commissioner of Education within 30 days of receipt of the board's final determination.

(4) Due to the State of Emergency declared by the governor pursuant to an Executive Order for the COVID-19 crisis, students shall be exempt from the annual assessment and alternative evaluation requirements of this subdivision for the 2019-2020 and 2020-2021 school years where a student otherwise achieves the learning outcomes in accordance with this IHIP.

(i) Probation.

(1) If a child's annual assessment fails to comply with the requirements of subdivision (h) of this section, the home instruction program shall be placed on probation for a period of up to two school years. The parent shall be required to submit a plan of remediation which addresses the deficiencies in the child's achievement, and seeks to remedy said deficiencies. The plan shall be reviewed by the school district. The school district may require the parents to make changes in the plan prior to acceptance.

(2) If after the end of any semester of the probationary period, the child progresses to the level specified in the remediation plan, then the home instruction program shall be removed from probation. If the child does not attain at least 75 percent of the objectives specified in the remediation plan at the end of any given semester within the period of probation, or if after two years on probation 100 percent of the objectives of the remediation plan have not been satisfied, the superintendent of schools shall provide the parents with the notice specified in paragraph (c)(5) of this section and the board of education shall review the determination of noncompliance in accordance with such paragraph, except that consent of the parents to such review shall not be required.

(3) If, during the period of probation, the superintendent of schools has reasonable grounds to believe that the program of home instruction is in substantial noncompliance with these regulations, the superintendent may require one or more home visits. Such home visit(s) shall be made only after three days' written notice. The purpose of such visit(s) shall be to ascertain areas of noncompliance with these regulations and to determine methods of remediating any such deficiencies. The home visit(s) shall

be conducted by the superintendent or by the superintendent's designee. The superintendent may include members of a home instruction peer review panel in the home visit team.

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Current through August 15, 2021

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