



# ESSENTIAL RESOURCES

2ND EDITION

DECEMBER 2017

The Constitutional Requirements for Providing  
All Students in New York State the Opportunity  
for a Sound Basic Education

**Essential Resources:**

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the Opportunity for a  
Sound Basic Education**

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**The Center for Educational Equity** (formerly the Campaign for Educational Equity) is a nonprofit research and policy institute at Teachers College, Columbia University. CEE champions children’s right to a meaningful opportunity to graduate from high school prepared for college, careers, and civic participation. We work to define and secure the full range of resources, supports, and services necessary to guarantee this right to all children, particularly children in poverty and children of color.

Founded in 2005 by educational law scholar Michael A. Rebell, who successfully litigated the landmark school-funding lawsuit, *CFE v. State of New York*, CEE pursues systems change through a dynamic, interrelated program of research, legal analysis, policy development, public engagement, coalition building, and advocacy to advance this agenda at the federal, state, and local levels.

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# INTRODUCTION

In June 2003, the New York Court of Appeals, the state’s highest court, handed down an historic ruling in a case that continues to have important implications for school funding and students’ educational rights. In its decision in *Campaign for Fiscal Equity (CFE) v. State of New York*, the court held that the state government was violating New York City students’ right under the state constitution to the “opportunity for a sound basic education.” It ordered the state to fix the education funding system to remedy this violation.

What is “a sound basic education” and how must schools and school districts be equipped in order to fulfill New York students’ educational rights? We have compiled this report to help answer these basic questions, which are vital to ensuring that the *CFE* decision is implemented effectively.

In defining students’ educational rights, the court held that the state constitution requires New York State to provide all of its students “a meaningful high school education,”<sup>1</sup> one that will prepare them to “function productively as civic participants capable of voting [and] serving on a jury,”<sup>2</sup> and “to obtain ‘competitive employment.’”<sup>3</sup> In the *CFE* litigation, the courts also described in general terms the essential resources that are necessary to provide all students the opportunity for a sound basic education. These essentials were initially expressed in the following words:

Children are entitled to minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn. Children should have access to minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks. Children are also entitled to minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas.<sup>4</sup>

To ensure an appropriate remedy, however, more detail would be necessary.

Adopting this outline, Justice Leland DeGrasse, the *CFE* trial judge, articulated seven specific categories of resources that “essentially fall within the three areas set forth by the Court of Appeals”:<sup>5</sup>

1. sufficient numbers of qualified teachers, principals and other personnel;
2. appropriate class sizes;

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<sup>1</sup> *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 907 (2003) (hereinafter “*CFE II*”).

<sup>2</sup> *Id.* at 905 ((quoting *Campaign for Fiscal Equity, Inc. v. State*, 86 N.Y. 2d 307, 316 (1995) (hereinafter “*CFE I*”).

<sup>3</sup> *See CFE II*, 100 N.Y.2d at 905 (citation omitted). The Court reiterated that holding in 2017 in *New Yorkers for Students’ Educational Rights (NYSER) v. State of New York*, N.Y. 3d (2017).

<sup>4</sup> *CFE I*, 86 N.Y.2d at 317.

<sup>5</sup> *Campaign for Fiscal Equity v. State*, 295 A.D.2d 1, 10(1stDep’t 2002). The term “resources” as defined by the court, and as used in this document, refers broadly to “a means of supplying a deficiency” (Shorter Oxford English Dictionary, 2549 (6th ed. 2007)) and includes, in addition to material assets, suitable programs and activities needed to provide students a meaningful opportunity for a sound basic education.

3. adequate and accessible school buildings with sufficient space to ensure appropriate class size and implementation of a sound curriculum;
4. sufficient and up-to-date books, supplies, libraries, educational technology and laboratories;
5. suitable curricula, including an expanded platform of programs to help at-risk students by giving them “more time on task”;
6. adequate resources for students with extraordinary needs; and
7. a safe orderly environment.<sup>6</sup>

State funding must be adequate to ensure that all schools can, at a minimum, provide all of their students with these resources.

In New York, the Board of Regents has established “learning standards” and academic course requirements that all students must meet in order to receive a high school diploma. The New York State Learning Standards and Regents diploma requirements, therefore, define, in practice, much of what constitutes a “meaningful high school education” for constitutional purposes.<sup>7</sup> All students in the state are entitled to the educational opportunities that will allow them to progress through school and, ultimately, meet these requirements and obtain a high school diploma.

The state education law and the detailed regulations issued by the commissioner of education, as well as certain federal laws and regulations, such as those pertaining to students with disabilities, set forth specific resources that schools must provide to allow students an opportunity to meet the state’s standards and graduation requirements.<sup>8</sup> These statutes and regulations, therefore, operationally identify and define a “qualified” teacher and “sufficient and up-to date books, [and] supplies...adequate and accessible school buildings...suitable curricula...and expanded platform of programs ato help at-risk students...[and] a safe orderly environment.”

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<sup>6</sup> Campaign for Fiscal Equity v. State, 187 Misc. 2d 1, 114-15 (Sup. Ct., N.Y. Cnty. 2001) (hereinafter “*DeGrasse*”). The trial court’s elucidation of the minimum constitutional requirements was directly affirmed by the Appellate Division, First Department. See Campaign for Fiscal Equity v. State, 295 A.D. 2d 1, 10 (1st Dep’t 2002), and then this aspect of the Appellate Division’s decision was implicitly affirmed by the Court of Appeals in *CFE II*, 100 N.Y. 2d at 932.

<sup>7</sup> In the *CFE* litigation, the parties and the Court of Appeals agreed that the learning standards in effect at the time met, and in some respects exceeded, constitutional requirements, and that the Regents’ criteria “standing alone” do not define the constitutional right to a sound basic education. See, *CFE II*, 100 N.Y. at 907-08. For all practical purposes, however, since most students cannot receive a diploma that signifies that they have received a “meaningful high school education” without meeting the New York Learning Standards, and the graduation requirements related to them, the learning standards do define much of the essence of a “meaningful high school education.” Therefore, operationally, the New York Learning Standards and the laws and regulations that have been adopted to implement them must be presumed to accord with constitutional sound basic education requirements. See *CFE II*, 100 N.Y.2d at 915, n.6 (Kaye, C.J.), *CFE II*, 100 N.Y.2d at 951-53 (Read, J., dissenting). Should the legislature or the Regents take any actions to weaken the current standards, such changes might or might not fall afoul of the constitutional standards, but further elucidation by the courts would be needed to discern precisely where the line of minimal constitutional acceptability would be drawn under such circumstances.

<sup>8</sup> In some cases, applicable federal laws and regulations are also a part of the mandatory constitutional requirements. For example, in regard to students with disabilities, compliance with the federal Individuals with Disabilities Education Act must be considered to delineate the “adequate resources” that the state must provide for students with “extraordinary needs.” See generally Individuals with Disabilities Education Act, 20 U.S.C. § 1401 *et seq.*



To implement the *CFE* decision, the state’s statutory and regulatory framework is not, however, complete. Neither the legislature nor the Regents have as yet responded to the Court of Appeals’ *CFE* decision by thoroughly reviewing and revising the education law and commissioner’s regulations to be sure that they identify and define in operational terms all of the essential resources needed to meet constitutional sound basic education requirements. For example, the current state statutes and regulations do not define key constitutional aspects of a “meaningful high school education” such as the programs and assessment criteria needed to prepare students for capable civic participation. And although the Regents have made a general commitment to enhancing their requirements to ensure that high school graduates are prepared for college, career, and civic participation, they have not reviewed and reconsidered teacher qualifications, curricular sufficiency, and other essential resource areas that relate to these desired outcomes.<sup>9</sup>

Because the state has thus far not met its constitutional obligation to delineate the essential resources needed to provide a sound basic education, the Center for Educational Equity developed this compendium of the essential resources for meeting constitutional requirements for providing all students in New York State the opportunity for a sound basic education.

We were initially motivated to compile this information in order to guide a 2012 school-based study of the extent to which high-need schools in New York City and seven other districts throughout the state had sufficient resources to meet constitutional requirements.<sup>10</sup> In the course of compiling the information, however, we recognized that, in the absence of any authoritative analyses of this type from the state, this document may also serve a broader purpose in providing comprehensive guidance to school boards, administrators, parents, advocates—and public officials—on current constitutional requirements for a sound basic education. We originally presented, and have now updated, this document with that broader purpose in mind.

To compile it, we undertook an analysis of all of the relevant judicial, legislative, and regulatory requirements that relate to constitutional compliance and implementation of the New York State Learning Standards. Where the courts have explicitly discussed or defined essential resources, we have relied on those precedents. In the many areas where state law or commissioner’s regulations articulate specific resource requirements that relate to the opportunity for a meaningful high school education, we have incorporated those statutory or

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<sup>9</sup> Specifically, at this time, the Regents and the commissioner need to (1) reconsider and expand some of existing regulations; (2) develop additional regulations in new areas; and (3) enforce these regulations. One of the goals of the present essential resources compendium is to encourage them to do so. For a more detailed discussion of the state’s obligations in this regard, see Michael A. Rebell, *Safeguarding the Right to a Sound Basic Education in Times of Fiscal Constraint*, 75 ALB. L. REV. 1855 (2012).

<sup>10</sup> Rebell, M.A., Wolff, J.R., & Rogers, J.R., Jr. *Deficient Resources: An Analysis of the Availability of Basic Educational Resources in High-Needs Schools in Eight New York State School Districts* (December, 2012). Campaign for Educational Equity.

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regulatory provisions. In most areas, the specific judicial precedents combined with applicable state statutory and regulatory requirements have delineated in operational terms a basic set of essential resources. Where they have not, we have set forth additional criteria based on our analysis of the likely positions that would be taken by the New York courts, consistent with the record and judicial decisions in the *CFE* litigation.

In a number of areas, the courts have not provided definitive criteria as to what would be a “sufficient” or “adequate” level of services, leaving that determination, at least at this stage, to professional judgment. Specific understandings of what are “sufficient” or “adequate” levels of services that are needed to provide the opportunity for a sound basic education are set forth in our 2012 *Deficient Resources* study,<sup>11</sup> based on the combined, considered judgments of the experienced educators who work with students on a daily basis and who participated in that study.<sup>12</sup> In this regard, readers should consider that report a companion piece to the present document.

Since we issued the original version of this report, we have been gratified to see that parents, students, advocates, researchers, policymakers, and the media have used this information productively. We believe that this concrete information about students’ educational rights will continue to foster dialogue among the governor, the legislature, the Regents, the commissioner of education, educators, parents, students, and the general public. We hope it will ultimately lead to the promulgation by the State of New York of a definitive, official, state compendium of the essential resources needed to provide the opportunity for a sound basic education.

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<sup>11</sup> The *Deficient Resources* study is based on nearly 200 school visits and interviews with principals, teachers, and other school personnel in 38 schools in New York City and 25 schools in seven other districts around the state. It details findings on 33 high-needs schools, utilizing detailed rubrics based on the sources for the *Essential Resources* compendium.

<sup>12</sup> Each item in this compendium is footnoted with a reference to the applicable legal authority. Those sources, and the abbreviations for them used in this report, are as follows:

- CFE I: Decision of the New York Court of Appeals, 86 N.Y.2d 307 (1995).
- CFE II: Decision of the New York Court of Appeals, 100 N.Y.2d 893 (2003).
- Comm. Reg: Regulations of the Commissioner of Education, codified at N.Y. COMP. CODES R. & REGS. tit. 8, referenced herein as 8 NYCRR.
- DeGrasse: Decision of trial court justice Leland DeGrasse, 187 Misc.2d 1 (Sup. Ct., N.Y. Cnty. 2001), *aff’d* CFE II, 100 N.Y.2d 893 (2003).
- Ed Dep’t Rep: Decisions of the Commissioner of Education.
- N.Y. EDUC. L.: McKinney’s New York Education Law.
- ESEA: Title I of the federal Elementary and Secondary Education Act, 20 U.S.C. § 7801 *et seq.*
- IDEA: The federal Individuals with Disabilities Education Act, 20 U.S.C. §1401 *et seq.*
- IDEA Regs: Federal regulations issued to implement the IDEA, codified at 34 C.F.R. § 300 *et seq.*
- N.Y. CONST.: The Constitution of the State of New York.



# THE CONSTITUTIONAL REQUIREMENTS

## I. QUALIFIED TEACHERS, PRINCIPALS, AND OTHER PERSONNEL

*Each school must have a sufficient number of qualified and adequately trained teachers, principals, and other personnel to meet the needs of all students. Specifically, each school must have at least a sufficient and adequately trained number of the following personnel:*

### A. Classroom and Core Subject Area Teachers

1. A sufficient number of certified teachers who are adequately trained to provide suitable instruction based on current state standards in the core areas of English language arts, mathematics, science, and social studies for all students, including students performing below grade-level proficiency.<sup>13</sup>

### B. Specialized Subject Area Teachers

1. A sufficient number of certified, adequately trained teachers, with expertise in
  - a. The arts (visual art, music, drama, dance and theatre)<sup>14</sup>
  - b. Career development and occupational studies<sup>15</sup>
  - c. Health<sup>16</sup>
  - d. Physical education<sup>17</sup>
  - e. Family and consumer science/home and career skills (middle schools)<sup>18</sup>

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<sup>13</sup> *CFE I*, 86 N.Y.2d at 319; *CFE II*, 100 N.Y.2d at 910-11; *DeGrasse*, 187 Misc.2d at 114. In public schools “[t]he number of daily periods of classroom instruction for a teacher should not exceed five. A school requiring of any teacher more than six teaching periods a day, or a daily teaching load of more than 150 pupils, should be able to justify the deviation from this policy.” 8 NYCRR § 100.2(i).

<sup>14</sup> 8 NYCRR §§ 100.2(h)(1)-(2), 100.3(a)(3)(iii), 100.3(b)(1)(v), 100.4(b)(1)(v), 100.4(c)(1)(ix).

<sup>15</sup> 8 NYCRR §§ 100.2(h)(1)-(6), 100.3(b)(1)(vi), 100.4(b)(1)(vi), 100.4(c)(1)(xii), 100.4(c)(2)(ii), 100.4(c)(3).

<sup>16</sup> 8 NYCRR §§ 100.2(c)(4), 100.3(a)(3)(vii), 100.3(b)(1)(viii), 100.4(b)(1)(viii), 100.4(c)(1)(viii), 100.4(c)(7), 135.3(b)-(c), 100.5(b)(7)(iv)(f).

<sup>17</sup> N.Y. EDUC. L. § 803 (McKinney 1957); 8 NYCRR §§ 100.3(a)(3)(vi), 100.3(b)(1)(viii), 100.4(c)(1)(vii), 100.4(c)(3), 135.4(c)(1)(iv), 135.4(c)(2)(ii). “Elementary classroom teachers may provide instruction under the direction and supervision of a certified physical education teacher.” 8 NYCRR § 135.4(c)(4)(i).

<sup>18</sup> 8 NYCRR §§ 100.4(b)(1)(vii), 100.4(c)(1)(vi), 100.4(c)(2)(ii).

- f. Technology (middle and high schools)<sup>19</sup>
- g. Languages other than English (middle and high schools)<sup>20</sup>

### **C. Library Media Specialists**

1. A sufficient number of certified library media specialists<sup>21</sup> who are adequately trained to work in coordination with classroom teachers “to ensure coordination and integration of library instruction with classroom instruction.”<sup>22</sup>

### **D. Academic Support Providers**

1. A sufficient number of certified teachers and specialists who are adequately trained to provide appropriate interventions and additional instruction for all students failing or at risk of failing to achieve grade-level performance in English language arts, mathematics, science, or social studies.<sup>23</sup>
2. A sufficient number of staff who are adequately trained to implement appropriate response to intervention procedures.<sup>24</sup>

### **E. Substitute Teachers and Teaching Assistants**

1. A sufficient number of qualified and adequately trained substitute teachers and teaching assistants to ensure that students consistently receive a meaningful opportunity for a sound basic education.<sup>25</sup>

### **F. Administrators**

1. A qualified and certified full-time principal for every school.<sup>26</sup>

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<sup>19</sup> 8 NYCRR §§ 100.4(b)(1)(i), 100.4(c)(1)(v), 100.4(c)(2)(ii), 100.4(c)(3), 100.5(b)(7)(iv)(j).

<sup>20</sup> 8 NYCRR § 100.2(d).

<sup>21</sup> The requirements to hold a library media specialist certificate are laid out in 8 NYCRR § 80-2.8. Each school must have a sufficient and up-to-date library. 8 NYCRR § 91.1; *CFE II*, 100 N.Y.2d at 913; *DeGrasse*, 187 Misc.2d at 57.

<sup>22</sup> 8 NYCRR § 100.4(c)(2)(iii). Each school district must employ a certified library-media specialist. The library-media specialist may work part time in small secondary schools, but schools with 700 students or more must have a full-time library media specialist. 8 NYCRR §§ 91.2(a)-(e). Larger secondary schools must have at least one additional library media specialist for each additional 1,000 students. 8 NYCRR § 91.2(f).

<sup>23</sup> *DeGrasse*, 187 Misc. 2d at 75-76, 114; 8 NYCRR §§ 100.1(g), 100.2(ee).

<sup>24</sup> 8 NYCRR § 100.2(ii)(3).

<sup>25</sup> *CFE I*, 86 N.Y.2d at 316; *CFE II*, 100 N.Y.2d at 910-11; *DeGrasse*, 187 Misc. 2d at 114.

<sup>26</sup> *DeGrasse*, 187 Misc.2d at 114; 8 NYCRR § 100.2(a). The commissioner may approve an alternative mode of administration upon submission of evidence showing justification for such alternative. 8 NYCRR § 100.2(a).

2. A sufficient number of certified and adequately trained assistant principals, and/or coaches and master teachers to provide consistent supervision and professional development to ensure that teachers remain current with the profession and meet the learning needs of their students, especially those at risk; and to promote retention of teachers and other personnel.<sup>27</sup>
3. A sufficient number of certified and adequately trained assistant principals, and/or coaches, and master teachers to carry out the mandated annual professional performance reviews and professional support activities.<sup>28</sup>
4. A sufficient number of certified and adequately trained assistant principals, coaches, and master teachers to provide an adequate mentoring program for new teachers.<sup>29</sup>
5. A sufficient number of administrative support staff to allow administrators to supervise instruction and ensure a “safe orderly environment.”<sup>30</sup>

### **G. Student Support Personnel**<sup>31</sup>

1. School counselors<sup>32</sup>
  - a. In elementary schools: sufficient numbers to assist in program planning and “to help students who exhibit any attendance, academic, behavioral or adjustment problems, to educate students concerning avoidance of child sexual abuse, and to encourage parental involvement;<sup>33</sup> to facilitate articulation to middle school; to provide support for academic intervention services and response to intervention services; and to provide a safe and orderly climate for learning.”<sup>34</sup>

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<sup>27</sup> *CFE I*, 86 N.Y.2d at 316; *DeGrasse*, 187 Misc.2d at 30-31,114; 8 NYCRR § 100.2(dd).

<sup>28</sup> N.Y. EDUC. L. § 3012-c (McKinney 2015).

<sup>29</sup> 8 NYCRR § 100.2(dd)(2)(iv).

<sup>30</sup> *DeGrasse*, 187 Misc.2d at 115.

<sup>31</sup> The requirements set forth in this section pertain to general education students. Requirements for additional support personnel for students with disabilities are set forth in section IV below.

<sup>32</sup> 8 NYCRR §100.2(j).

<sup>33</sup> 8 NYCRR §100.2(j)(1)(i).

<sup>34</sup> 8 NYCRR §§ 100.2(ee); 100.2(ii); 100.1(g); *DeGrasse*, 187 Misc.2d at 115.

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- b. In middle and high schools: sufficient numbers to undertake an annual review of each student’s educational progress and to develop individual high school/postsecondary education and career plans; provide (individually or in cooperation with classroom teachers) grade-level instruction about academic and career planning; to facilitate articulation to high school/college; to help students who exhibit any attendance, academic, behavioral or adjustment problems; to support academic intervention and response to intervention services;<sup>35</sup> to encourage parental awareness and involvement; to foster civility and to provide a safe and orderly climate for learning.<sup>36</sup>

2. School psychologists and school social workers

- a. A sufficient number of certified or licensed school psychologists and social workers to help students who exhibit any attendance, academic, behavioral or adjustment problems (middle and high schools),<sup>37</sup> to support academic intervention services, and to foster civility and to provide a safe and orderly climate for learning.<sup>38</sup>

3. Speech and language teachers

- a. A sufficient number of certified or licensed speech and language teachers to “provide speech and language improvement services to students in grades kindergarten through six with speech impairments of a severity that does not adversely affect the student's educational performance but does present a barrier to communication.”<sup>39</sup>

4. School nurses and other health professionals

- a. A sufficient number of registered school nurses or other health professionals to undertake “medical examinations, dental inspection and/or screening, scoliosis screening, vision screening and audiometer tests . . . to inform parents [and teachers] of the individual child's health condition[s] . . . to guide parents, children and teachers in procedures for preventing and correcting defects and diseases; to instruct the school personnel in procedures to take in case of accident or illness; to survey and make necessary recommendations concerning the health and safety

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<sup>35</sup> 8 NYCRR §§ 100.2(j)(1)(ii), 100.2(ee); 100.2(ii); 100.1(g).

<sup>36</sup> 8 NYCRR § 100.2(j)(1)(ii); N.Y. EDUC. L. §10 (McKinney 2012); *DeGrasse*, 187 Misc.2d at 115.

<sup>37</sup> 8 NYCRR § 100.2(j)(1)(ii)(c).

<sup>38</sup> 8 NYCRR § 100.2(ee); N.Y. EDUC. L. §10 (McKinney 2012); *DeGrasse*, 187 Misc.2d at 115.

<sup>39</sup> N.Y. EDUC. L. § 912-b(1) (McKinney 2012); 8 NYCRR §§ 100.1(p), 100.2(t). “A student whose speech impairment adversely affects the student's educational performance should be referred to the committee on special education for further evaluation and recommendation for special education services.” N.Y. EDUC. L. § 912-b(3) (McKinney 2012).

aspects of school facilities and the provision of health information,”<sup>40</sup> and to administer medication to students diagnosed with diabetes or allergies.<sup>41</sup>

#### H. Disciplinary and Safety Personnel

1. A sufficient number of administrators, deans, school safety officers, and/or school aides to ensure the provision of a safe and supportive school climate.<sup>42</sup>

#### I. Attendance Teachers and Other Attendance Personnel

1. A sufficient number of trained attendance teachers and/or other personnel to promote regular attendance<sup>43</sup>

## II. SUITABLE, UP-TO-DATE CURRICULA

*Each school must provide a suitable, up-to-date curriculum and sufficient course offerings and instructional time to ensure all students a meaningful opportunity to meet the New York State Learning Standards.<sup>44</sup> Specifically, students must have reasonable access<sup>45</sup> to at least the following curricula and assessments.*

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<sup>40</sup> N.Y. EDUC. L. § 901 (McKinney 2006). *See also* N.Y. EDUC. L. § 902 (McKinney 2015); 8 NYCRR §§ 136.1, 136.2, 136.3. These requirements do not pertain to the cities of New York, Buffalo and Rochester, but similar services are expected to be provided in those cities by the municipal departments of health and other municipal agencies working with the education authorities. 8 NYCRR §§ 136.2(b), 136.3(b)(1). In New York City, for example, the New York City Department of Health and Mental Hygiene is responsible for providing school-based health services pursuant to the New York City Charter and the New York City Health Code. (*See, e.g.*, N.Y.C. CODE §17-187 (requiring school nurses in all schools with enrollment over 200 students); New York City Health Code Art. 49.05 (comprehensive examinations).

<sup>41</sup> N.Y. EDUC. L. §§ 902-a and 902-b (McKinney 2006)

<sup>42</sup> *DeGrasse*, 187 Misc.2d at 114-15.

<sup>43</sup> *DeGrasse*, 187 Misc.2d at 111-12, 114-15.

<sup>44</sup> N.Y. CONST. art. XI, § 1.

<sup>45</sup> “Reasonable access” ordinarily means that each of these curriculum offerings should be available in each school. In the case of small rural or urban schools, availability through regional consortia or enrollment options in nearby schools or distance learning may be acceptable if off site or distance learning, including online courses, are appropriate for students’ learning needs and schedules, timely transportation is readily available, and all students have meaningful access to suitable curricula offerings in alternate sites or approved distance learning arrangements. *See* 8 NYCRR § 100.2(e).

## A. State-Required Subjects

1. Grades K-6<sup>46</sup>
  - a. Mathematics (including arithmetic, science and technology)
  - b. English language arts
  - c. Social studies (including geography and U.S. history)
  - d. Languages other than English
  - e. The arts (including visual arts, music, dance, and theatre)
  - f. Career development and occupational studies
  - g. Family and consumer sciences
  - h. Bilingual education and/or English as a second language where needed<sup>47</sup>
  - i. Physical education for at least 120 minutes per week<sup>48</sup>
  - j. A sequential health-education program,<sup>49</sup> and
  - k. Instruction in patriotism and citizenship<sup>50</sup>
2. Grades 7 and 8<sup>51</sup>
  - a. English language arts: two units of study;<sup>52</sup>

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<sup>46</sup> All instruction in English language arts, mathematics, science and technology, social studies, languages other than English, the arts, health and physical education, family and consumer sciences and career development and occupational studies must be aligned with the appropriate levels required by the New York State Learning Standards. 8 NYCRR §§ 100.1(t), 100.3(a)(1), 100.3(b)(1), 100.4(b)(1), 100.4(c)(1), 100.5(b)(7)(iv).

<sup>47</sup> 8 NYCRR §§ 100.3(b), 100.4(b), 165.3(b), 135.4(c)(2)(i).

<sup>48</sup> 8 NYCRR § 135.4(c)(2)(i). Physical education for grades K-3 should be daily; grades 4-6 should be 3x/week. However, “pupils in grades 5-6 who are in a middle school shall participate in the physical education program a minimum of three periods per calendar week during one semester of each school year and two periods during the other semester.” 8 NYCRR § 100.5(d)(6)(ii).

<sup>49</sup> 8 NYCRR § 135.3(b)(1).

<sup>50</sup> 8 NYCRR § 100.2(c)(1); N.Y. Educ. L. § 801 (McKinney 2001).

<sup>51</sup> 8 NYCRR §§ 100.5, 135.4(c)(2)(ii). A “[u]nit of study means at least 180 minutes of instruction per week throughout the school year, or the equivalent.” 8 NYCRR §100.1(a). Students in an approved career and technical program may substitute certain approved career and technical courses for some of these requirements. See 8 NYCRR §100.5(b)(2).

<sup>52</sup> 8 NYCRR § 100.4(c)(1)(i).



- b. Mathematics: two units<sup>53</sup>
- c. Science: two units<sup>54</sup>
- d. Social studies: two units<sup>55</sup>
- e. Instruction in patriotism and citizenship to prepare students to meet the obligations of citizenship (amount not specified)<sup>56</sup>
- f. Visual arts, music, dance and theatre: ½ unit visual art and ½ unit music<sup>57</sup>
- g. Career development and occupational studies (amount not specified)<sup>58</sup>
- h. Languages other than English: two units by grade 9<sup>59</sup>
- i. Technology: one unit<sup>60</sup>
- j. Health: ½ unit<sup>61</sup>
- k. Physical education: three periods/week in one semester; two periods/week in other semester or “a comparable time each semester if the school is organized in other patterns”<sup>62</sup>
- l. Family and consumer science/home and career skills: ¾ of a unit of study<sup>63</sup>

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<sup>53</sup> 8 NYCRR § 100.4(c)(1)(iv).

<sup>54</sup> 8 NYCRR § 100.4(c) (1)(iii).

<sup>55</sup> 8 NYCRR §§ 100.4(c)(1)(ii).

<sup>56</sup> 8 NYCRR § 100.2(c)(1); N.Y. EDUC. L. § 801 (McKinney 2001). Such courses shall include “instruction in patriotism, citizenship, and human rights issues, with particular attention to the study of the inhumanity of genocide, slavery...the Holocaust, and the mass starvation in Ireland from 1845 to 1850.” N.Y. EDUC. L. § 801(1) (McKinney 2001).

<sup>57</sup> 8 NYCRR § 100.4(c)(1)(ix).

<sup>58</sup> 8 NYCRR § 100.4(c)(1)(xii); 8 NYCRR § 100.2(h)(1).

<sup>59</sup> 8 NYCRR § 100.2(d)(1)-(2).

<sup>60</sup> 8 NYCRR § 100.4(c)(1)(v).

<sup>61</sup> 8 NYCRR §§ 100.4(c)(1)(viii), 135.3(c).

<sup>62</sup> 8 NYCRR § 135.4(c)(2)(ii).

<sup>63</sup> 8 NYCRR § 100.4(c)(1)(vi).

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- m. Library and information skills: one period per week<sup>64</sup>
3. High school (commencement level) (grades 9-12)<sup>65</sup>
- a. English language arts: four units of study<sup>66</sup>
  - b. Mathematics: three units<sup>67</sup>
  - c. Science: three units, at least one of which must be in the life sciences and at least one in the physical sciences, plus at least 1,200 minutes of hands-on lab experience per unit in order for students to be eligible to take the applicable Regents exam<sup>68</sup>
  - d. Social studies: four units.<sup>69</sup> High school students entering grade 9 in September 2016 and after: the four units must include one unit in U.S. history, ½ unit in economics, ½ unit in participation in government, and two units in global history and geography<sup>70</sup>
    - i. Instruction in patriotism and citizenship to prepare students to meet the obligations of citizenship (amount not specified)<sup>71</sup>

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<sup>64</sup> 8 NYCRR § 100.4(c)(1)(x). All junior or senior high schools must have libraries that, depending on size, contain at least 1,000 titles (fewer than 200 students) or as many as 8,000 titles (more than 1,000 students). 8 NYCRR § 91.1.

<sup>65</sup> 8 NYCRR §§ 100.5, 135.4(c)(2)(ii). A “[u]nit of study means at least 180 minutes of instruction per week throughout the school year, or the equivalent.” 8 NYCRR §100.1(a). Students in an approved career and technical program may substitute certain approved career and technical courses for some of these requirements. See 8 NYCRR §100.5(b)(2).

<sup>66</sup> 8 NYCRR § 100.5(a)(3)(i). Commencement-level state learning standards and state assessments reflect the knowledge, skills, and understandings all students are expected to know and be able to do upon receiving a high school diploma.

<sup>67</sup> 8 NYCRR § 100.5(a)(3)(iv). Mathematics must be at a more advanced level than grade eight and meet commencement-level learning standards “provided that no more than two credits shall be earned for any Integrated Algebra, Geometry, or Algebra 2 and Trigonometry commencement-level mathematics course.” 8 NYCRR § 100.5(a)(3)(iv).

<sup>68</sup> 8 NYCRR §§ 100.5(a)(3)(iii), 100.5(b)(7)(iv)(d); N.Y. CONST. art. XI, § 1; *CFE II*, 100 N.Y. 2d at 911, n.4.

<sup>69</sup> 8 NYCRR §§ 100.5(a)(6)(ii), 100.5(a)(3)(ii). Students who entered grade 9 before September 2016 are not required to take the two units in global history and geography. 8 NYCRR §§ 100.5(a)(6)(i), 100.5(a)(3)(ii).

<sup>71</sup> 8 NYCRR § 100.2(c)(1); N.Y. EDUC. L. § 801 (McKinney 2001). Such courses shall include “instruction in patriotism, citizenship, and human rights issues, with particular attention to the study of the inhumanity of genocide, slavery...the Holocaust, and the mass starvation in Ireland from 1845 to 1850.” N.Y. EDUC. L § 801(1) (McKinney 2001).

- e. The arts (visual arts, music, dance, and theatre): one unit.<sup>72</sup> School districts must also offer students the opportunity to complete a three- or five-unit sequence the arts.<sup>73</sup>
- f. Career development and occupational studies (CDOS) (amount not specified).<sup>74</sup> School districts must also offer students the opportunity to complete a three-or five-unit sequence in the career and technical development.<sup>75</sup>
- g. Languages other than English:
  - i. Two units by grade 9<sup>76</sup>
  - ii. High school: one unit of commencement-level credit<sup>77</sup>
- h. Technology: one unit or a course integrating technology with math and/or science<sup>78</sup>
- i. Health: ½ unit<sup>79</sup>
- j. Physical education: three periods/week in one semester; two periods/week in other semester or “a comparable time each semester if the school is organized in other patterns”<sup>80</sup>
- k. Family and consumer science/home and career skills: High schools must provide instruction in child development and parental skills and responsibility, but these

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<sup>72</sup> 8 NYCRR § 100.5(a)(3)(v).

<sup>73</sup> 8 NYCRR § 100.2(h)(1).

<sup>74</sup> 8 NYCRR § 100.4(c)(1)(xii); 8 NYCRR § 100.2(h)(1).

<sup>75</sup> 8 NYCRR § 100.2(h)(1). Career and technical education sequences “shall include a minimum of one unit of credit in introduction to occupations, to be offered at any point in the sequence.” 8 NYCRR § 100.2(h)(4).

<sup>76</sup> 8 NYCRR § 100.2(d)(1)-(2).

<sup>77</sup> 8 NYCRR § 100.5(b)(7)(iv)(g), 100.2(d)(4).

<sup>78</sup> 8 NYCRR § 100.5(b)(7)(iv)(j).

<sup>79</sup> 8 NYCRR §§ 100.5(a)(3)(vi), 135.3(c). “Learning standards in the area of parenting shall be attained through either the health or family and consumer sciences programs or a separate course.” 8 NYCRR § 100.5(a)(3)(vi). “The secondary school curriculum shall include health education as a constant for all pupils.” 8 NYCRR § 135.3(c)(1).

<sup>80</sup> 8 NYCRR § 135.4(c)(2)(ii).

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topics may be taught as part of the required high school health course and need not be established as a separate course.<sup>81</sup>

## **B. State-Required Assessments for Secondary School Students**

School districts must provide all students the opportunity to meet all requirements for and receive a Regents diploma.<sup>82</sup> This includes ensuring that students have the opportunity to take Regents courses and Regents exams in grades 9 through 12 and, when appropriate, in grade 8.<sup>83</sup>

1. Students must be offered the opportunity to complete a Regents exam (or NYSED-approved alternative assessment in the following subjects):<sup>84</sup>
  - a. English language arts;<sup>85</sup>
  - b. Math (Algebra I, Geometry, or Algebra II);<sup>86</sup>
  - c. Science (Living Environment, Chemistry, Earth Science, or Physics);<sup>87</sup>
  - d. Social studies (U.S. History and Government);<sup>88</sup> and
  - e. Social studies (Global History and Geography).<sup>89</sup>

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<sup>81</sup> N.Y. EDUC. L. § 804-b(2) (McKinney 2007); 8 NYCRR § 100.5(a)(3)(vi).

<sup>82</sup> Most high schools also provide students the option of earning a Regents diploma “with advanced designation,” an achievement demonstrating that students have completed coursework and assessments aligned with the admissions requirements of many colleges. To earn an advanced Regents diploma, students must complete three years of a language other than English, or, alternatively, a five-unit sequence in career and technical education (CTE) or the arts. They must also complete Algebra 1, Geometry, and Algebra 2 and pass all three of these Regents exams. All students are eligible to pursue an advanced Regents diploma; however, under current state regulations, high schools are not required to provide the additional course offerings necessary to earn one.

<sup>83</sup> 8 NYCRR § 100.2(e).

<sup>84</sup> 8 NYCRR §§ 100.5(a)(5), 100.2(e).

<sup>85</sup> 8 NYCRR §§ 100.5(a)(5)(i)(a)(2).

<sup>86</sup> 8 NYCRR §§ 100.5(a)(5)(i)(b)(2).

<sup>87</sup> 8 NYCRR § 100.5(a)(5)(i)(d)(2).

<sup>88</sup> 8 NYCRR § 100.5(a)(5)(i)(c)(3)(i). Students who enter grade nine before September 2017 may also fulfill this requirement by passing the Regents examination in global history and geography. 8 NYCRR § 100.5(a)(5)(i)(c)(3)(ii). Students who enter grade nine in September 2017 and after may also fulfill this requirement by passing the Regents examination in global history and geography II (1750 to present). 8 NYCRR § 100.5(a)(5)(i)(c)(3)(iii). The state education department may also approve alternatives to these requirements. NYCRR § 100.5(a)(5)(i)(c)(3)(v).

2. In lieu of passing both of the two required social studies exams, students may meet the fifth assessment requirement by passing a Regents-approved assessment in biliteracy (languages other than English), STEM, career and technical education, humanities, or the arts.<sup>90</sup>
3. In lieu of a fifth assessment, a student can complete the requirements for the CDOS commencement credential.<sup>91</sup>
4. All students who have enrolled in a course of study leading to a Regents exam have the right to take that exam. Students may not be barred from an exam for disciplinary reasons or because their achievement or attendance in the course is considered unsatisfactory. Schools may not recommend that certain students not take the Regents exam at the end of a course that culminates in a Regents exam.<sup>92</sup>

### C. Elective Courses

1. An adequate number of credit-bearing commencement-level elective courses to complete a total of 22 units of high school credit necessary for a Regents diploma, including appropriate electives
  - a. to explore academic disciplines not required for graduation,
  - b. to specialize in a given subject, advance to more challenging coursework and/or develop subject-area knowledge in greater depth than the required courses.<sup>93</sup>

### D. Preparation for Civic Participation

1. Adequate curricular emphasis on civic knowledge, skills, responsibilities, and values to prepare students to function productively as civic participants.<sup>94</sup> This must include the following:

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<sup>89</sup> 8 NYCRR § 100.5(a)(5)(i)(c) and (e). Students may also meet this requirement through the alternatives listed in n. 77 above or through a pathway assessment described above in item “f.”

<sup>90</sup> 8 NYCRR § 100.5(a)(5)(i)(f)(1). Certain other options for taking alternative examinations are permitted. See, 8 NYCRR § 100.5(a)(5)(i)(f)(1)(i)-(iii).

<sup>91</sup> See <http://www.p12.nysed.gov/ciai/multiple-pathways/CurrentFinalPathwaysQA.pdf>.

<sup>92</sup> 8 NYCRR §8.2.

<sup>93</sup> 8 NYCRR § 100.5(b)(7)(iv).

<sup>94</sup> *CFE I*, 86 N.Y.2d at 316, *CFE II*, 100 N.Y.2d at 905-06.

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- a. Adequate courses in social studies to teach students “the necessity for establishing governments; the governmental system of the United States and other nations; the United States Constitution; the basic civic values of American constitutional democracy; and the roles, rights and responsibilities of citizenship, including avenues of participation.”<sup>95</sup>
  - b. Instruction that includes “the history, meaning, significance and effect of the provisions of the constitution of the United States,...the declaration of independence, [and] the constitution of the state of New York.”<sup>96</sup>
  - c. One week per year shall be designated by the Regents for a uniform course of exercises that instills “the purpose, meaning and importance of the bill of rights.”<sup>97</sup>
  - d. Adequate courses in English language arts to prepare students to communicate effectively with a wide variety of people and to use such communication to enrich their understanding of people and their views.<sup>98</sup>
2. Sufficient experiential learning opportunities, during the school day and/or through extracurricular/co-curricular activities to acquire the knowledge, skills, experiences, and dispositions needed to function productively as civic participants,<sup>99</sup> including, but not limited to,
    - a. student government, debate, performance, sports, and/or school newspapers,
    - b. service learning, and
    - c. engagement with civic institutions.
  3. Sufficient instruction on “on civility, citizenship and character education...[to] instruct students on the principles of honesty, tolerance, personal responsibility, respect for others, with an emphasis on discouraging acts of harassment, bullying, discrimination, observance of laws and rules, courtesy, dignity and other traits which will enhance the quality of their experiences in, and contributions to, the community.” This also includes “civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes.”<sup>100</sup>

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<sup>95</sup> 8 NYCRR § 100.1(t)(1)(iii)(e).

<sup>96</sup> N.Y. EDUC. L. § 801(2) (McKinney 2001).

<sup>97</sup> N.Y. EDUC. L. § 801(4) (McKinney 2001).

<sup>98</sup> 8 NYCRR § 100.1(t)(1)(i)(d).

<sup>99</sup> *CFE I*, 86 N.Y.2d at 316-18, *CFE II*, 100 N.Y.2d at 906-07.

<sup>100</sup> N.Y. EDUC. L. § 801-a (McKinney 2013).



4. Sufficient instruction on safe, responsible use of the internet and electronic communications<sup>101</sup>

#### **E. Preparation for Postsecondary Education and/or Competitive Employment<sup>102</sup>**

1. Sufficient advanced, honors, college-level, and Advanced Placement and/or International Baccalaureate courses to provide all students a meaningful opportunity to compete for admission to competitive colleges.<sup>103</sup>
2. In grades 7-12, (a) an annual review of each student's educational progress and career plans, conducted with each student individually or with small groups by personnel certified or licensed as school counselors;<sup>104</sup> and (b) sufficient instruction at each grade level to help students learn about various careers and about career planning skills conducted by personnel certified or licensed as school counselors, or by classroom teachers in cooperation with school counselors.
3. Sufficient college counseling to provide high school students with a meaningful opportunity to apply for admission to college and matriculate.<sup>105</sup>
4. Sufficient access to career and technical education courses to provide students a meaningful opportunity, commensurate with their interests and capabilities, to obtain competitive employment and skills in existing and emerging occupations for present and projected employment opportunities.<sup>106</sup>
5. Curricular and extracurricular activities to help students develop the communication, problem-solving, interpersonal, leadership, life-long learning and other skills needed for college and/or competitive employment.<sup>107</sup>

### **III. AN EXPANDED PLATFORM OF SERVICES FOR “AT-RISK” STUDENTS**

*Each school must provide an expanded platform of services, including “more time on task” for students at risk of low academic achievement. Specifically, each school must provide at least the following:*

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<sup>101</sup> *Id.*

<sup>102</sup> CFE II, 100 N.Y.2d at 905; N.Y. CONST. art. XI § 1.

<sup>103</sup> CFE II, 100 N.Y.2d at 905-06; N.Y. CONST. art. XI, § 1.

<sup>104</sup> 8 NYCRR § 100.2(j)(1)(i)(b). Beginning with the 2019-2020 school year, additional more extensive career guidance requirements go into effect. See, 8 NYCRR § 100.2(j)(2).

<sup>105</sup> N.Y. CONST. art. XI, § 1; CFE II, 100 N.Y.2d at 936 (Smith, J., concurring).

<sup>106</sup> N.Y. EDUC. L. § 4602 (McKinney 2007); 8 NYCRR § 100.2(h)(6); CFE II, 100 N.Y.2d at 906; *id.* at 932-33 (Smith, J., concurring); *DeGrasse*, 187 Misc. 2d at 15-18.

<sup>107</sup> CFE II, 100 N.Y.2d at 906; *id.* at 934-36 (Smith, J., concurring); *DeGrasse*, 187 Misc. 2d at 15-18.

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**A. Sufficient and Appropriate Academic Intervention Services (AIS), and/or Response to Intervention (RTI), and Other Nonacademic Support Services**

1. Sufficient and appropriate additional instruction during the regular school day or extended day, as well as through afterschool and/or Saturday, extended-year or summer programs to improve the performance of all students failing to achieve grade-level performance in English language arts, mathematics, science, or social studies.<sup>108</sup>
  - a. For English language learners, these services must be in addition to, and not in place of, the bilingual and English as a Second Language (ESL) instructional program requirements.<sup>109</sup>
  - b. For students with disabilities, AIS must be provided on the same basis as for nondisabled students and must be provided in addition to, and not in place of, special education services; AIS services must also be consistent with accommodations and supports required by the students' individualized educational program (IEP).<sup>110</sup>
2. Sufficient and appropriate response to intervention procedures to implement a multilevel intervention and prevention system, including screening, academic and behavioral interventions adjusted based on student responses to each intervention, and progress monitoring.<sup>111</sup>
3. Sufficient and appropriate nonacademic support services, including guidance and counseling, coordination with services from other agencies, services to improve attendance, and study skills to address barriers to academic progress.<sup>112</sup>

**B. Kindergarten and Pre-Kindergarten Programs**

1. All school districts must provide access to kindergarten programs for all children whose families choose to enroll them.<sup>113</sup> Kindergarten enrollment is compulsory in

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<sup>108</sup> *DeGrasse*, 187 Misc. 2d at 75-76, 115; 8 NYCRR §§ 100.1(g), 100.2(ee), 100.2 (ii).

<sup>109</sup> 8 NYCRR § 100.1(g), 154-1.

<sup>110</sup> 8 NYCRR § 100.1(g).

<sup>111</sup> 8 NYCRR § 100.2(ii).

<sup>112</sup> 8 NYCRR § 100.1(g).

<sup>113</sup> N.Y. EDUC. L. § 3205.2 (c).

Buffalo, New York City, Rochester, Syracuse, Utica, and Yonkers;<sup>114</sup> elsewhere in the state, it is voluntary.

2. All school districts must provide access to prekindergarten (pre-K) programs for all children whose families choose to enroll them.<sup>115</sup> Pre-K enrollment is voluntary.
  - a. Pre-K programs may be offered in local schools or in approved community facilities.

### C. School Health Services

1. All students must have access to school health services including, but not limited to, medical examinations, dental inspections and/or screenings, scoliosis screenings, vision screenings and audiometer tests, designed to [i] determine the health status of a child, [ii] inform parents or other persons in parental relation to the child, pupils and teachers of an individual child’s condition...[iii] guide parents, children and teachers in procedures for preventing and correcting defects and diseases.<sup>116</sup>

### D. Family Outreach and Communication

1. Sufficient family engagement, including translation services as needed, to ensure that parents play an integral role in assisting their child’s learning and that parents are encouraged to be actively involved in their child’s education at school.<sup>117</sup>
  - a. Parents of students receiving academic intervention services must be provided with an opportunity to consult with the student’s regular classroom teacher(s), and other professional staff providing academic intervention services, receive quarterly reports on the student’s progress and work with educators to improve their child’s achievement.<sup>118</sup>

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<sup>114</sup> N.Y. EDUC. L. § 3205.2 (c).

<sup>115</sup> In 2014, the New York State legislature adopted a plan to offer full-day pre-K to all four year olds over the next five years. The state committed \$1.5 billion to the Statewide Universal Full-Day Prekindergarten Program (Full-Day Pre-K), and, for the past four years, the legislature has authorized \$340 million annually for this program. \$300 million has been allocated annually to New York City and \$40 million annually to school districts in the rest of the state.

<sup>116</sup> N.Y. EDUC. L. § 901(2); 8 NYCRR § 136.2(b). These specific requirements do not apply in New York City, Rochester and Buffalo, but similar services are expected to be provided in those cities by the municipal departments of health and other municipal agencies working with the education authorities. In New York City, the New York City Department of Health and Mental Hygiene is responsible for providing health services pursuant to the New York City Charter and the New York City Health Code.

<sup>117</sup> 8 NYCRR §§ 100.11, 100.2(ee)(6) (applicable to all children receiving AIS services); ESEA, 20 U.S.C. §§ 7801(39), 6318 (applicable to schools with students receiving federal Title I funding).

<sup>118</sup> 8 NYCRR § 100.2(ee)(6)(iii)(a)-(c).

- b. Each Title I school must “develop, with parents for all children...a school-parent compact that outlines how parents, the entire school staff, and students will share the responsibility for improv[ing] student academic achievement and the means by which the school and parents will build and develop a partnership to help children achieve the State's high standards .”<sup>119</sup>
- c. Each Title I school must also
  - i. “provide assistance to parents...in understanding such topics as the challenging State academic standards, State and local academic assessments ... and how to monitor a child's progress and work with educators to improve the achievement of their children;”<sup>120</sup> and
  - ii. “provide materials and training to help parents to work with their children to improve their children's achievement, such as literacy training and using technology ...as appropriate, to foster parental involvement.”<sup>121</sup>

#### IV. ADEQUATE RESOURCES FOR STUDENTS WITH EXTRAORDINARY NEEDS

*Each school district must provide all schools with adequate resources to meet the needs of students with disabilities, English language learners, and homeless children.*<sup>122</sup>

##### A. Students with Disabilities

1. Each school district must provide a free appropriate public education, including related services and transportation to meet the unique needs of a students with disabilities,<sup>123</sup> as set forth in individualized education programs (IEPs) designed to meet their unique needs and prepare them for further education, employment, and independent living.<sup>124</sup>
  - a. Special services and programs shall include but are not limited to: “Special classes, transitional support services, resource rooms, direct and indirect consultant teacher services, transition services..., assistive technology devices...,travel training, home instruction, and special teachers.”<sup>125</sup>

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<sup>119</sup> 20 U.S.C. § 6318(d).

<sup>120</sup> 20 U.S.C. § 6318(e)(1).

<sup>121</sup> 20 U.S.C. § 6318(e)(2).

<sup>122</sup> *DeGrasse*, 187 Misc.2d at 115.

<sup>123</sup> N.Y. EDUC. L. § 4401(1) (McKinney 2014).

<sup>124</sup> 20 U.S.C. § 1401(9)(2016), 1401(34)(2016); 8 NYCRR § 200.1(y). *See also DeGrasse*, 187 Misc.2d at 94-98; *CFE II*, 100 N.Y.2d at 921-22.

<sup>125</sup> N.Y. EDUC. L. § 4401(2) (McKinney 2014).

- b. Transition services shall be a results-oriented coordinated set of activities designed to focus on “improving the academic and functional achievement of the student... to facilitate movement from school to post-school activities, including post-secondary education, vocational education, integrated employment..., independent living, or community participation.”<sup>126</sup>
2. Each school that serves students with disabilities must provide students all requisite procedural protections, resources, and services including, but not limited to, referral and accurate evaluation procedures, due process protections, appropriate class sizes, sufficient appropriately certified and adequately trained teachers and other instructional staff, suitable curricula, appropriate instructional materials, a safe orderly environment, and accessible and adequate facilities.<sup>127</sup>
- a. The board of education or trustees must “establish committees and/or subcommittees on special education as necessary to ensure timely evaluation and placement of pupils.”<sup>128</sup>
- i. Committees must include the evaluated student’s parents or persons in parental relationship to the student, the student’s regular education teacher, the student’s special education teacher, a school psychologist, a school district representative, a person to interpret the instructional implications of evaluation results, a school physician, other individuals with special expertise or knowledge of the student, and a parent who is not employed by the school and has a student with a disability or a student who is no longer eligible for IEP.<sup>129</sup>
3. Parents may make a written referral for their child for an initial evaluation if the student is suspected of having a disability.<sup>130</sup> Parents must receive notice of the proposed

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<sup>126</sup> N.Y. EDUC. L. § 4401(8) (McKinney 2014) (effective until June 30, 2018). Effective on June 30, 2018 transition services shall be designed under an outcome-oriented process promoting integrated competitive employment, post-secondary education, community participation, or more. N.Y. EDUC. L. § 4401(9) (McKinney 2014).

<sup>127</sup> *DeGrasse*, 187 Misc.2d at 11 4-15; N.Y. EDUC. L. § 4401 (McKinney 2014); 20 U.S.C. § 1401(9) (2016).

<sup>128</sup> N.Y. EDUC. L. § 4402(1)(b)(1) (McKinney 2014).

<sup>129</sup> N.Y. EDUC. L. § 4402(1)(b)(1)(a) (McKinney 2014). If it is determined that a physical or psychological evaluation is not necessary, a physician or a psychologist need not attend the meeting. *See, e.g.* N.Y. EDUC. L. § 4402(1)(b)(1) (McKinney 2014); 8 NYCRR § 200.4(b)(1). Some school staff members may carry out more than one of the designated roles.

<sup>130</sup> 8 NYCRR § 200.4(a)(1). Referral for initial evaluation may also be made by school district designees, the commissioner, a public agency designee, or “a designee of an education program affiliated with a child care institution with committee on special education responsibility.” 8 NYCRR § 200.4(a)(1).

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evaluation procedures from the local educational agency and give informed consent.<sup>131</sup> Once parental consent is given or “parental refusal to consent is overridden, an individual evaluation of the referred student shall be initiated by a committee on special education ... [and must] be completed within 60 days of receipt of consent.”<sup>132</sup>

- a. The initial evaluation must include but is not limited to a physical examination, a psychological evaluation, the student’s social history, and “an observation of the student in the student’s learning environment ... [or] an environment appropriate for a student of that age.”<sup>133</sup>
  - b. School districts must ensure that assessments are provided in the student’s native language, administered by trained personnel, and are free from racial or cultural discrimination or bias.<sup>134</sup> Assessments must be “sufficiently comprehensive to identify all of the student’s special education needs.”<sup>135</sup>
4. Students eligible for special education must be provided with an individualized education program (IEP).<sup>136</sup> The school district must ensure that an IEP is in effect at the beginning of each school year for each student with a disability.<sup>137</sup>
- a. The board of education must implement the program and services within 60 days of receipt of parental consent for evaluation or within 60 days of the referral to evaluate the student.<sup>138</sup> The IEP must be implemented within the time frame regardless of whether the payment source for the special education program is still being determined.<sup>139</sup>
  - b. The IEP must include but is not limited to:
    - i. The recommended special education program and services;<sup>140</sup>

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<sup>131</sup> 20 U.S.C. §§ 1414(b)(1), 1414(b)(1)(D)(i)(I).

<sup>132</sup> 8 NYCRR §§ 200.4(b)(1), 200.4(b)(7). The parents of the student and the CSE may mutually agree to extend the 60 day requirement. 8 NYCRR § 200.4(b)(1).

<sup>133</sup> 8 NYCRR § 200.4(b)(1)(i)-(iv).

<sup>134</sup> 8 NYCRR § 200.4(b)(6)(i).

<sup>135</sup> 8 NYCRR § 200.4(b)(6)(ix).

<sup>136</sup> 8 NYCRR § 200.4(d)(2).

<sup>137</sup> 8 NYCRR § 200.4(e)(1)(ii).

<sup>138</sup> 8 NYCRR § 200.4(e)(1). If the evaluation recommendation “is for placement in an approved in-state or out-of-state private school, the board shall arrange for such programs and services within 30 school days of the board’s receipt of the recommendation of the committee.” 8 NYCRR § 200.4(e)(1).

<sup>139</sup> 8 NYCRR § 200.4(e)(1).

<sup>140</sup> 8 NYCRR § 200.4(d)(2)(v)(a); N.Y. EDUC. L. § 4401(2) (McKinney 2014).



- ii. The student's present levels of performance and individual needs such as how the disability affects the student's progress in the general curriculum;<sup>141</sup>
  - iii. Measurable annual academic and functional goals;<sup>142</sup>
  - iv. "Short-term instructional objectives and benchmarks;"<sup>143</sup>
  - v. The goal of enabling the student to participate with students without disabilities in regular classes and activities;<sup>144</sup>
  - vi. The student's participation in state and district assessments;<sup>145</sup>
  - vii. Transition services.<sup>146</sup>
5. The IEP of each student must be annually "reviewed and, if appropriate, revised, periodically ... to determine if the annual goals for the student are being achieved."<sup>147</sup> Parents must be notified of the committee on special education's recommendation based on the annual review.<sup>148</sup>
  6. Students with disabilities must be reevaluated every three years, unless the school district and parent agree that such reevaluation is unnecessary.<sup>149</sup> Sufficient reevaluation shall "determine the student's individual needs, educational progress and achievement, the student's ability to participate in instructional programs in regular education and the student's continuing eligibility for special education."<sup>150</sup>

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<sup>141</sup> 8 NYCRR § 200.4(d)(2)(i).

<sup>142</sup> 8 NYCRR § 200.4(d)(2)(iii)(a).

<sup>143</sup> 8 NYCRR § 200.4(d)(2)(iv).

<sup>144</sup> 8 NYCRR § 200.4(d)(2)(vii).

<sup>145</sup> 8 NYCRR § 200.4(d)(2)(vii).

<sup>146</sup> 8 NYCRR § 200.4(d)(2)(ix).

<sup>147</sup> 8 NYCRR § 200.4(f).

<sup>148</sup> 8 NYCRR § 200.4(f)(4).

<sup>149</sup> 8 NYCRR § 200.4(b)(4).

<sup>150</sup> 8 NYCRR § 200.4(b)(4).

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- a. Evaluation results shall be given “to the parents in their native language or mode of communication, unless it is clearly not feasible to do so.”<sup>151</sup>

## **B. English Language Learners**

1. Each district must ensure that English language learners have sufficient resources and opportunities to achieve the same educational goals and meet the same standards as the general student population that have been set by the Board of Regents, and it must provide English language learners “equal access to all school programs and services”<sup>152</sup> offered by the school district, commensurate with the student's age and grade level.”<sup>153</sup> In addition, each school district must develop a comprehensive plan to meet the educational needs of pupils of limited English proficiency.<sup>154</sup>
  - a. A student who speaks a language other than English, and either understands and speaks little or no English, or who has been identified by any English language assessment instrument approved by the commissioner as a pupil of limited English proficiency, must receive a program of bilingual education or English as a second language.<sup>155</sup>
  - b. Each school district must provide additional support services to students in these programs who perform below specified levels of performance on the annual English language proficiency assessment.<sup>156</sup> These support services must be aligned with any academic intervention or other services the school district is already providing to all students.<sup>157</sup>
2. Each school district that enrolls 20 or more English language learners at the same grade level, and who speak the same home language, must provide a sufficient number of bilingual education programs during the following school year, so that there are bilingual education programs available in the district for at least 70 percent of the estimated English language learners who share the same home language... and grade level districtwide.<sup>158</sup>

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<sup>151</sup> 8 NYCRR § 200.4(b)(6)(xii).

<sup>152</sup> 8 NYCRR § 154-2.1(a).

<sup>153</sup> 8 NYCRR § 154-2.1(a).

<sup>154</sup> N.Y. EDUC. L. § 3204(2-a) (1) (McKinney 2008).

<sup>155</sup> N.Y. EDUC. L. § 3204(3) (McKinney 2008); 8 NYCRR § 117.3. A pupil's proficiency in the English language must be reassessed annually in order to determine whether further participation in bilingual education or English as a second language program is necessary. N.Y. EDUC. L. § 3204(3).

<sup>156</sup> 8 NYCRR § 154-2.3(j).

<sup>157</sup> 8 NYCRR § 154-2.3(j)(9).

<sup>158</sup> 8 NYCRR § 154-2.3(d)(2).

- a. New bilingual programs must be placed in a school that has not been identified as a School Under Registration Review or as a Focus or Priority School, if such a school exists in the district.”<sup>159</sup>
3. Parents of English language learners must be given the choice to place the student in either a bilingual education program or an English as a new language program.<sup>160</sup> If the parents’ desired program is not offered at the student’s current school, then parents have the option of transferring the student to a school where the desired program is offered.<sup>161</sup>
    - a. Bilingual education programs shall be research-based and include three components:<sup>162</sup>
      - i. A language arts component comprised of English language arts and language arts in the student’s home language.<sup>163</sup>
      - ii. English as a new language component.<sup>164</sup>
      - iii. A minimum of two bilingual content areas such as, math, science, and social studies.<sup>165</sup>
    - b. English as a new language programs shall be research-based programs comprised of two components:<sup>166</sup>
      - i. “[A] content area instructional component in English (including all core content, *i.e.* English language arts, math, science, or social studies) with home language support...”<sup>167</sup>

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<sup>159</sup> 8 NYCRR § 154-2.3(d)(3). If such a school “does not exist or does not have the physical space ... the district must submit a justification, in a form and according to such timeline as prescribed by the Commissioner, and receive approval ... to place the new Bilingual Education program(s) in a Focus School or in a Priority School.” 8 NYCRR § 154-2.3(d)(3).

<sup>160</sup> 8 NYCRR §§ 154-2.3(d), 154-2.3(f).

<sup>161</sup> 8 NYCRR §§ 154-2.3(f)(2), 154-2.3(d)(5).

<sup>162</sup> 8 NYCRR § 154-2.2(b).

<sup>163</sup> 8 NYCRR § 154-2.2(b)(1).

<sup>164</sup> 8 NYCRR § 154-2.2(b)(2).

<sup>165</sup> 8 NYCRR §154-2.2(b)(3).

<sup>166</sup> 8 NYCRR § 154-2.2(h).

<sup>167</sup> 8 NYCRR § 154-2.2(h).

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- ii. “[A]n English language development component (stand-alone and/or Integrated English as a New Language).”<sup>168</sup>
  4. Students who exit from English language learner status, must receive for at least the following two years at least one half of one unit of study or its equivalent of integrated English as a new language in English language arts or another content area, or such other services that monitor and support the student's language development and academic progress.”<sup>169</sup>
  5. Each school district must “provide professional development to all teachers, Level III teaching assistants and administrators that specifically addresses the needs of English Language Learners.”<sup>170</sup>

### C. Homeless Children and Youth

1. Homeless children and youth are entitled to equal access to free appropriate public education as provided to other students in order to provide homeless children and youth the opportunity to meet the state’s academic standards.<sup>171</sup>
2. The parent or person of parental relation to the student has the right to designate whether the child attends the school of origin or any school that non-homeless children and youth who live in the attendance area in which the child or youth is actually living are eligible to attend, including a preschool,<sup>172</sup> and the school district must admit the student even if certain records usually required for enrollment are missing.<sup>173</sup> The child is entitled to free transportation at the request of the parent or to and from the school of origin.
3. Each school district must ensure homeless students are not separated or segregated in a separate school or program based on their status as homeless.<sup>174</sup>

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<sup>168</sup> 8 NYCRR §154-2.2(h)

<sup>169</sup> 8 NYCRR § 154-2.3(h)(1)(v).

<sup>170</sup> 8 NYCRR § 154-2.3(k). At least 15% of all teachers and administrators’ required professional development hours must be devoted to language acquisition 8 NYCRR § 154-2.3(k)(1), and at least 50% of the required professional development hours of all bilingual and English to speakers of other languages (ESOL) certified teachers must shall be dedicated to language acquisition in alignment with core content area instruction. 8 NYCRR § 154-2.3(k)(1).

<sup>171</sup> 42 U.S.C. § 11431.

<sup>172</sup> 8 NYCRR § 100.2(x)(1)(ii).

<sup>173</sup> 8 NYCRR § 100.2(x)(2). The designated school district may be the district of the student’s current location, the district of origin, or a district that participates in a regional placement plan. 8 NYCRR § 100.2(x)(2)(i).

<sup>174</sup> 8 NYCRR § 100.2(x)(7)(i)(a); 42 U.S.C. § 11431(3).

## V. CLASS SIZE AND INSTRUCTIONAL GROUPINGS

*Each school must have appropriate class sizes and instructional groupings at all grade levels and in all subject areas to meet the needs of all students.*

### A. Appropriate Class Sizes and Instructional Groupings

1. Although the Court of Appeals has decreed no specific maximum class size number, it has indicated that classes of about the sizes listed below are appropriate and that larger class sizes may lead to unsatisfactory results.<sup>175</sup>
  - a. Kindergarten-Grade 3: 20 students.
  - b. Grades 4-6: 21-23 students.
  - c. Middle and High School: 21-23 students. (For schools and classes with large concentrations of students below grade level and for AIS and RTI services, smaller instructional groupings may be necessary.)

## VI. INSTRUMENTALITIES OF LEARNING

*Each school must provide its students with sufficient and up-to-date books, supplies, libraries, educational technology, and laboratories.<sup>176</sup> Specifically, each school must provide at least the following instructional materials:*

### A. Books

1. Each school must have a sufficient number of reasonably current textbooks, including hard-covered or paperback books, workbooks, software, or any other content-based instructional materials in an electronic format.<sup>177</sup>
2. Each school must ensure that such instructional materials are reasonably available to all students in school and at home.<sup>178</sup>

<sup>175</sup> *CFE II*, 100 N.Y.2d at 911-12; *DeGrasse*, 187 Misc.2d at 51-54. The class sizes that the Court of Appeals used as benchmarks in the CFE litigation were based on the average class sizes in effect at the time of the CFE trial in all districts in New York State, excluding New York City. Those class sizes were at the lower end of the ranges listed above. Justice DeGrasse cited examples that included the above ranges. The State Education Department accepted as compliance for purposes of the Contract for Excellence, class sizes for New York City at the high end of the ranges listed above. N.Y. EDUC. L. § 211-d(2)(b)(ii)-(iii) (McKinney 2016). See N. Y.C. DEP'T OF EDUC., FIVE-YEAR CLASS SIZE PLAN Update (Nov.2008), available at [http://www.p12.nysed.gov/mgtserv/C4E/doc/nyc\\_class\\_size\\_reduction\\_plan/2008\\_2009/NYCD.OE\\_CSRP\\_5YR\\_YR\\_2\\_09012\\_FINAL](http://www.p12.nysed.gov/mgtserv/C4E/doc/nyc_class_size_reduction_plan/2008_2009/NYCD.OE_CSRP_5YR_YR_2_09012_FINAL) Different, and generally smaller class size requirements apply to classes for students with disabilities. See 8 NYCRR § 200.6.

<sup>176</sup> *CFE II*, 100 N.Y.2d at 913, 911 n.4. See *CFE I*, 86 N.Y.2d at 317, *DeGrasse*, 187 Misc.2d at 115.

<sup>177</sup> *DeGrasse*, 187 Misc.2d at 57; N.Y. EDUC. L § 701(2) (McKinney 2011).

<sup>178</sup> N.Y. Educ. L § 701(3) (McKinney 2011); Appeal of Lease, 39 Ed Dep't Rep 215, Decision No. 14,219 (1999); Appeal of Lahm, 41 Ed. Dep't Rep 193, Decision No. 14,662 (2001).

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## B. Library Media Centers

1. Each school must have an up-to-date library media center<sup>179</sup> that meets the students' needs and adequately complements the curriculum.<sup>180</sup>
2. Each school must have a library media center providing a sufficient number of books and up-to-date instructional technology and software.<sup>181</sup>
  - a. Libraries in secondary schools with fewer than 200 students: junior high schools and high schools must have at least 1,000 titles; junior-senior high schools must have at least 2,000 titles.<sup>182</sup>
  - b. Libraries in secondary schools with 200 to 500 students must have at least 3,000 titles.<sup>183</sup>
  - c. Libraries in secondary schools with 500 to 1,000 students must have at least 5,000 titles.<sup>184</sup>
  - d. Libraries in secondary schools with over 1,000 students must have at least 8,000 titles.<sup>185</sup>

## C. Instructional Technology

1. Each school must have sufficient and up-to-date instructional technology including computers, related hardware such as printers, and appropriate software and supplies.<sup>186</sup>

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<sup>179</sup> 8 NYCRR § 91.1; *CFE II*, 100 N.Y. 2d at 913; *DeGrasse*, 187 Misc.2d at 57.

<sup>180</sup> 8 NYCRR § 91.1.

<sup>181</sup> *CFE II*, 100 N.Y.2d at 913, *DeGrasse*, 187 Misc.2d at 57-60. The Commissioner's Regulations require secondary school libraries to have at least 5-15 books per student, depending on school size. 8 NYCRR § 91.1. The Court of Appeals has indicated that these minimums are insufficient, and that a ratio somewhere between 9 and 18 books per student is the minimum necessary to meet constitutional requirements. *CFE II*, 100 N.Y.2d at 913.

<sup>182</sup> 8 NYCRR § 91.1(a).

<sup>183</sup> 8 NYCRR § 91.1(b).

<sup>184</sup> 8 NYCRR § 91.1(c).

<sup>185</sup> 8 NYCRR § 91.1(d).

<sup>186</sup> *DeGrasse*, 187 Misc.2d at 58-60, *CFE II*, 100 N.Y.2d at 913.



- a. In order to receive aid for instruction technology each school district must develop a plan “for the use of... instructional computer technology equipment.”<sup>187</sup>

#### **D. Classroom Supplies**

1. Each school must have sufficient basic classroom supplies such as chalk, paper, pencils, and art supplies.<sup>188</sup>

#### **E. Subject-Area-Specific Instructional Materials and Equipment**

1. Each school must have sufficient and up-to-date subject-area-specific instructional materials and equipment such as beakers, Bunsen burners, and microscopes for science, math manipulatives, maps, etc.<sup>189</sup>

#### **F. Classroom Furniture**

1. Each school must have sufficient, adequately maintained classroom furniture and equipment such as desks and chairs.<sup>190</sup>

## **VII. SAFE AND ORDERLY ENVIRONMENT**

*Each school must provide a safe and orderly climate for teaching and instruction and to foster an environment of civility.<sup>191</sup> Specifically, this requires the following:*

#### **A. A Safe and Orderly Environment for Teaching and Learning**

1. Each school district must implement policies to create an environment in all schools that is free from discrimination, harassment and bullying.<sup>192</sup>
  - a. Schools must “require school employees who witness harassment, bullying or discrimination, or receive an oral or written report... to promptly orally notify the principal, superintendent or the principal's or superintendent's designee not later

<sup>187</sup> 8 NYCRR § 100.12(a); N.Y. EDUC. L § 753 (McKinney 2011).

<sup>188</sup> *CFE I*, 86 N.Y.2d at 317; *DeGrasse*, 197 Misc.2d at 58.

<sup>189</sup> *DeGrasse*, 187 Misc.2d at 58.

<sup>190</sup> *CFE I*, 86 N.Y.2d at 317; *DeGrasse*, 187 Misc.2d at 58.

<sup>191</sup> N.Y. EDUC. L. § 10 (McKinney 2012); *DeGrasse*, 187 Misc.2d at 115.

<sup>192</sup> N.Y. EDUC. L. §§ 10 (McKinney 2012), 12 (McKinney 2013).

than one school day [and]...file a written report...not later than two school days after making such oral report.”

- b. School principals, superintendents, or designated employees must lead and thoroughly investigate all reports of harassment, bullying and discrimination, and complete the investigation promptly after receiving a written report of harassment, bullying and discrimination.<sup>194</sup> When it is believed that the reported behavior may constitute criminal conduct, the appropriate local law enforcement agency must be notified.<sup>195</sup>
  - c. When harassment, bullying and discrimination is verified through an investigation, schools must “take prompt actions reasonably calculated to end the [behavior], eliminate any hostile environment, [and] create a more positive school culture and climate.”<sup>196</sup>
  - d. Students and employees who report harassment, bullying or discrimination in good faith shall be free from retaliatory action by the school district or employees.<sup>197</sup>
  - e. At least once a year each school must provide parents, students, and employees with a copy or summary of these policies.<sup>198</sup> Each school district with a website must maintain current versions of the district’s policies on the website.<sup>199</sup>
2. Each school district must implement guidelines and conduct training on harassment, bullying and discrimination.
- a. The guidelines must include remedies and procedures following a progressive model that make appropriate use of intervention, discipline, and education, vary in method according to the nature of the behavior, the developmental age of the student and the student’s history of problem behaviors, and are consistent with the district’s code of conduct.<sup>200</sup>
  - b. The guidelines must also deal with “the development of nondiscriminatory instructional and counseling methods, and require that at least one staff member at every school be thoroughly trained to handle human relations in the areas of

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<sup>193</sup> N.Y. EDUC. L. § 13(1)(c)(McKinney 2013).

<sup>194</sup> N.Y. EDUC. L. § 13(1)(i)(McKinney 2013).

<sup>195</sup> N.Y. EDUC. L. § 13(1)(d)(McKinney 2013).

<sup>196</sup> N.Y. EDUC. L. § 13(1)(e)(McKinney 2013).

<sup>197</sup> N.Y. EDUC. L. § 13(1)(f)(McKinney 2013).

<sup>198</sup> N.Y. EDUC. L. § 13(1)(k) (McKinney 2013).

<sup>199</sup> N.Y. EDUC. L. § 13(1)(l) (McKinney 2013).

<sup>200</sup> N.Y. EDUC. L. § 13(4) (McKinney 2013).

race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, and sex.”<sup>201</sup>

- c. Each school district must adopt a code of conduct containing standards and procedures to assure security and safety of students and school personnel and a safe and supportive school climate in every school building, school structure, or athletic field, and at every school function.<sup>202</sup>
3. Each school district must also adopt district-level and building-level school safety plans that include, among other things, provision for proper training for students and staff and appropriate prevention and intervention strategies such as nonviolent-conflict-resolution training programs; peer mediation programs and youth courts; and extended-day and other school-safety programs.<sup>203</sup>
  4. School districts must ensure that the transportation it provides directly or through contractors is safe<sup>204</sup> and building-level emergency plans contain policies for transportation during emergency situations.<sup>205</sup>
    - a. In order to ensure the proper implementation of the district safety code, the school safety plan, and the provision of a safe and supportive school climate, each school must have:
      - i. a sufficient number of adequately trained disciplinary and safety personnel, including administrators and school safety officers. School safety officers and other safety personnel should be adequately trained to deescalate potentially violent situations.<sup>206</sup>

<sup>201</sup> N.Y. EDUC. L. § 13(3) (McKinney 2013).

<sup>202</sup> N.Y. EDUC. L. § 2801 (McKinney 2012). Specifically,

1. The code must include “provisions regarding conduct, dress and language deemed appropriate and acceptable on school property, and conduct, dress and language deemed unacceptable and inappropriate on school property, and provisions regarding acceptable civil and respectful treatment of teachers, school administrators, other school personnel, students and visitors on school property,... and the roles of teachers, administrators, other school personnel, the board of education and parents.” N.Y. EDUC. L. § 2801(2)(a) (McKinney 2012).
2. The code must also ensure that no student is subjected to harassment or bullying such as “threats, intimidation or abuse, including cyberbullying. N.Y. EDUC. L. § 11(7), (McKinney 2012).

<sup>203</sup> N.Y. EDUC. L. § 2801-a (McKinney 2016); 8 NYCRR § 155.17(c)(1)(iii).

<sup>204</sup> 8 NYCRR § 156.3; *See also* Pratt v. Robinson, 39 N.Y.2d 554, 560 (1976); Appeal of M.H., 43 Ed Dep’t Rep 210, Decision No. 14,973 (2003).

<sup>205</sup> N.Y. EDUC. L. § 2801-a(3)(a) (McKinney 2016).

<sup>206</sup> N.Y. EDUC. L. § 2801-a(2)(c)(i) (McKinney 2016).

- ii a sufficient number of qualified student support staff, including school counselors, social workers, and school psychologists.

## VIII. ADEQUATE AND ACCESSIBLE FACILITIES

*Each school must have a physical environment conducive to learning, one that provides adequate and accessible facilities with enough light, space, heat and air to permit children to learn.*<sup>207</sup> Specifically, each school must have:

### A. Structurally Safe and Adequately Maintained School Buildings<sup>208</sup>

### B. Adequate Levels of Light

1. Each school must have “adequate levels of illumination, for the tasks being performed.”<sup>209</sup>
2. Classrooms and other teaching spaces must have sufficient windows to “permit[] a view of the exterior.”<sup>210</sup>

### C. Sufficient “Controlled Heating and Ventilation”<sup>211</sup>

1. Teaching spaces shall have “a controlled supply of fresh air and ... sufficient air changes to produce healthful conditions and avoid odors or build up or concentrations of toxic substances or dust particles.”<sup>212</sup>

<sup>207</sup> *CFE II*, 100 N.Y.2d at 911, *CFE I*, 86 N.Y.2d at 317; 8 NYCRR § 155.1.

<sup>208</sup> *DeGrasse*, 187 Misc.2d at 46-47; *CFE I*, 86 N.Y.2d at 317, *CFE II*, 100 N.Y.2d at 911. In addition,

1. Each school district must prepare and annually reevaluate “a comprehensive long-range plan pertaining to educational facilities” that includes, among other things, “present and projected pupil enrollments; space use and State-rated pupil capacity of existing facilities; the allocation of instructional space to meet the current and future special education program and service needs [including] serv[ing] students with disabilities in settings with nondisabled peers; priority of need of maintenance, repair or modernization of existing facilities, including consideration of the obsolescence and retirement of certain facilities; and the provision of additional facilities.” 8 NYCRR § 155.1(a).
2. Each school district must conduct annually “[a] visual inspection of structural elements of all school buildings occupied by students.” 8 NYCRR § 155.1(d)(1).
3. “Each school district [must] prepare a five-year capital facilities plan...and update [it] annually.” 8 NYCRR § 155.1(a)(4).

<sup>209</sup> 8 NYCRR § 155.1(b)(2)(i); *see also CFE I*, 86 N.Y.2d at 317.

<sup>210</sup> 8 NYCRR § 155.1 (b)(2)(i); .

<sup>211</sup> 8 NYCRR § 155.1 (b)(3)(i); *CFE I*, 86 N.Y.2d at 317. Air conditioners if necessary to permit children to learn during the summer. *DeGrasse*, 187 Misc.2d at 45-46, 8 NYCRR § 155.1(b)(3)(iii).

<sup>212</sup> 8 NYCRR § 155.1 (b)(2)(i);

- D. Sufficient Space for a Suitable Number of Classrooms of Appropriate Size<sup>213</sup>**
- E. Adequate Specialized Spaces for Libraries, Laboratories, Auditoriums, Gymnasiums, Playgrounds, Art Rooms, Etc.<sup>214</sup>**
- F. Appropriate Electrical Wiring to Support Instructional Technology<sup>215</sup>**
- G. Sufficient Bathrooms, with an Adequate Number of Proper Fixtures, and a Safe and Potable Water Supply<sup>216</sup>**
- H. Ramps, Bathrooms, Elevators and Other Accommodations Sufficient to Meet the Accessibility Needs of Students and Staff with Disabilities<sup>217</sup>**

<sup>213</sup> *CFE I*, 86 N.Y.2d at 317; *CFE II*, 100 N.Y.2d at 911-12. *DeGrasse*, 187 Misc.2d at 114. Increased utilization of existing facilities through double shifts is constitutionally unacceptable. *DeGrasse*, 187 Misc.2d at 50-51.

<sup>214</sup> *CFE II*, 100 N.Y.2d at 911 n.4; *DeGrasse*, 187 Misc.2d at 50-51; 8 NYCRR § 135.4(c)(5).

<sup>215</sup> *DeGrasse*, 187 Misc.2d at 45.

<sup>216</sup> 8 NYCRR §§ 155.7(e) (1)-(2); 155.1(b)(4)

<sup>217</sup> 29 U.S.C. § 794(a) (2002), 34 CFR §§ 104.1, 104.3; 42 U.S.C. §§ 12132, 12133 (1990).



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