

## AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Sections 101, 207, 305, 3024, 3205, 3210 and 3211 of the Education Law  
Section 104.1 of the Regulations of the Commissioner of Education is amended, effective November 29, 2001, as follows:

### 104.1 Pupil attendance recordkeeping.

(a) **Purpose.** The purpose of this section is to:

- (1) ensure the maintenance of an adequate record verifying the attendance of all children at instruction in accordance with Education Law section 3205;
- (2) establish a practical mechanism for every public and nonpublic elementary, middle and secondary school in the State of New York to account to the parents of all children enrolled in such schools for the whereabouts of such children throughout each school day; and
- (3) ensure sufficient pupil attendance at all scheduled periods of actual instruction or supervised study activities to permit such pupils to succeed at meeting the State learning standards.

(b) **Definitions.** Whenever used in this section, the following terms shall have the respective meanings hereinafter set forth or indicated:

- (1) **Pupil.** A child enrolled in any public or nonpublic elementary, middle or secondary school.
- (2) **Register of attendance.** Any written or electronic record maintained for the purpose of recording the attendance, absence, tardiness or early departure of a pupil.
- (3) **Scheduled instruction.** Every period that a pupil is scheduled to attend actual instructional or supervised study activities during the course of a school day during the school year from July 1 through June 30.
- (4) **Teacher.** A member of the teaching or supervisory staff of a public or nonpublic elementary, middle or secondary school.
- (5) **Employee other than a teacher.** A suitable person other than a teacher employed by a public or nonpublic elementary, middle or secondary school in a position appropriate for the maintenance of pupil records.

(c) **The record of each pupil's presence, absence, tardiness and early departure** shall be kept by each public and nonpublic elementary, middle or secondary school in a register of attendance in a manner consistent with subdivision (d) of this section.

(d) **The register of attendance** shall set forth at least the following for each pupil:

- name;*
- date of birth;*
- (3) *full names of parent(s) or person(s) in parental relation;*
- (4) *address where the pupil resides;*
- (5) *phone number(s) where the parent(s) or person(s) in parental relation may be contacted;*
- (6) *date of the pupil's enrollment;*
- (7) *a record of the pupil's attendance on each day of scheduled instruction. Commencing July 1, 2003, attendance shall be taken and recorded in accordance with the following:*
  - (i) for pupils in **non-departmentalized kindergarten through grade eight** such pupil's presence or absence shall be recorded after the taking of attendance once per school day, provided that if pupils in such schools are dismissed from school grounds during a lunch period, each such pupil's presence or absence shall also be recorded after the taking of attendance a second time upon the pupil's return from the lunch period each school day;
  - (ii) for pupils in **grades nine through twelve or in departmentalized schools at any grade level**, each such pupil's presence or absence shall be recorded after the taking of attendance in each period of scheduled instruction except that where such pupils do not change classrooms for each period of scheduled instruction attendance shall be taken in accordance with subparagraph (i) of this paragraph;
  - (iii) any absence for a school day or portion thereof shall be recorded as excused or unexcused in accordance with the standards articulated in the comprehensive attendance policy adopted in accordance with subdivision (i) of this section;
  - (iv) in the event that a pupil at any instructional level from kindergarten through grade twelve arrives late for or departs early from scheduled instruction, such **tardiness or**

**early departure** shall be recorded as excused or unexcused in accordance with the standards articulated in the comprehensive attendance policy;

(8) **a record of each scheduled day of instruction during which the school is closed for all or part of the day because of extraordinary circumstances including water supply, shortage of fuel, destruction of or damage to a school building, or such other cause as may be found satisfactory to the Commissioner; and**

(9) **the date when the pupil withdraws from enrollment or is dropped from enrollment in accordance with Education Law section 3202(1-a).**

(e) **All entries** in a register of attendance shall be **made either by a teacher, or by an employee other than a teacher designated by the board of education of a school district or board of cooperative educational services or administrator of a nonpublic school.**

(f) The **board of education, board of cooperative educational services or administrator of a nonpublic school** shall **designate a teacher or other district employee to supervise** the keeping of the register of attendance.

(g) The **entries** in the register of attendance shall be **verified by** the oath or affirmation of the **person making the entries** in the register of attendance.

(h) Commencing with the 2003-2004 school year, **pupil attendance records shall be reviewed by the principal** of every public school building and the **administrator** in charge of every nonpublic school **as well as the individual designated in each school building** in accordance with subdivision (i)(2)(ix) of this section **for the purpose of initiating appropriate action to address unexcused pupil absence, tardiness and early departure** consistent with the comprehensive attendance policy described in subdivision (i) of this section.

## **(i) Comprehensive Attendance Policy.**

(1) **Requirement.** On or before June 30, 2002, each public school district, board of cooperative educational services (BOCES), charter school, county vocational education and extension board and nonpublic elementary, middle and secondary school shall adopt a comprehensive attendance policy that contains the elements described in paragraph (2) of this subdivision. The purpose of the policy shall be to ensure the maintenance of an adequate record verifying the attendance of all children at instruction in accordance with Education Law sections 3205 and 3210 and establish a mechanism by which the patterns of pupil absence can be examined to develop effective intervention strategies to improve school attendance. A public school district, BOCES, charter school or county vocational education and extension board shall adopt its comprehensive attendance policy only after at least one public hearing that provides for the participation of school personnel, parents, students and any other interested party.

(2) **Content of the policy.** The board of education, board of cooperative educational services, charter school board, county vocational education and extension board, and administrator of a nonpublic school shall incorporate the following elements into the comprehensive attendance policy:

- (i) a **statement of the overall objectives** to be accomplished;
- (ii) a **description of the specific strategies** to be employed to accomplish these objectives;
- (iii) a **determination of which pupil absences, tardiness and early departures will be excused** and which will not be excused and an illustrative list of excused and unexcused pupil absences and tardiness;
- (iv) a **description of the coding system** used to identify the reason for a pupil's absence, tardiness or early departure recorded in the register of attendance;
- (v) a **description of the school district, BOCES, charter school, county vocational education and extension board or nonpublic school policy regarding pupil attendance and a pupil's ability to receive course credit.** Any board of education, board of cooperative educational services, charter school board or county vocational education

and extension board that adopts a policy establishing a minimum standard of attendance in order for a pupil to be eligible for course credit shall have the **AUTHORITY** to determine that a properly excused pupil absence, for which the pupil has performed any assigned make up work, shall not be counted as an absence for the purpose of determining the pupil's eligibility for course credit under such policy. In the event a board of education, board of cooperative educational services, charter school board or county vocational education and extension board adopts a minimum attendance standard as a component of its policy, such policy shall include a description of the notice to a pupil's parent(s) or person(s) in parental relation as well as the specific intervention strategies to be employed prior to the denial of course credit to the pupil for insufficient attendance.

(vi) a **description of the incentives** to be employed to encourage pupil attendance **and any disciplinary sanctions** to be used to discourage unexcused pupil absences, tardiness and early departures;

(vii) a **description of the notice to be provided to the parent(s)** of or person(s) in parental relation to pupils who are absent, tardy or depart early without proper excuse.

(viii) a **description of the process to develop specific intervention strategies** to be employed by teachers and other school employees to address identified patterns of unexcused pupil absence, tardiness or early departure;

(ix) **identification of the person(s) designated in each school building** who will be responsible for reviewing pupil attendance records and initiating appropriate action to address unexcused pupil absence, tardiness and early departure consistent with the comprehensive attendance policy.

(3) The **board of education, board of cooperative educational services, charter school board, county vocational education and extension board and governing body of a nonpublic school shall annually review the building level pupil attendance records** and if such records show a decline in pupil attendance the board or governing body shall revise the comprehensive pupil attendance policy and make any revisions to the plan deemed necessary to improve pupil attendance.

(4) Each board of education, board of cooperative educational services, charter school board, county vocational education and extension board, and nonpublic school shall **promote necessary community awareness** of its comprehensive attendance policy by:

(i) **providing a plain language summary of the policy to the parents** or persons in parental relation to students at the beginning of each school year and taking such other steps deemed necessary to promote the understanding of such policy by students and their parents or persons in parental relation;

(ii) **providing each teacher with a copy of the policy** and any amendments thereto as soon as practicable following initial adoption or amendment of the policy, and providing new teachers with a copy of the policy upon their employment; and

(iii) **making copies of the policy available to any other member of the community** upon request.