S T A T E O F N E W Y O R K

9824

I N A S S E M B L Y

April 13, 2012

Introduced by M. of A. CAMARA -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to providing supplemental educational services to students from low-income families who are enrolled in schools that have failed to make adequate yearly progress for two consecutive years

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative intent. The legislature hereby finds and declares it necessary to preserve and continue supplemental educational services in the state that provide low-income students with tutoring free of charge. This program empowers parents to take an active role in the education of their children, as it is parents who decide which state-approved tutoring provider they will send their children to. Parents are engaged in every aspect of the interventions, and it is the parents, rather than the school district, making decisions for their children that will help their children catch up to their peers.

Currently 87,406 low-income students attend failing schools in this state and receive supplemental educational services tutoring. The program is available to all low-income students attending schools that fail to meet Federal Adequate Yearly Progress for consecutive years. These are schools that the United States Department of Education deems as failing to meet the basic educational needs of their students. Nearly 66% of children eligible for the program in this state elect to take part in the tutoring program. The program provides low-income parents with a range of educational opportunities outside of the normal school day that help their children improve academically.

Supplemental educational services is a highly effective way to provide one-to-one or small group instruction to disadvantaged students. Studies by the United States Department of Education conclude that the tutoring programs lead to significant gains in student achievement in reading and math.

The legislature hereby finds and declares that supplemental educational services are a proven way to help improve student performance and

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD15214-02-2

these services must be maintained while the state is in the process of creating and implementing systemic reforms to improve student performance and ensure students graduate college- and career-ready. At a time when the state is looking to reform its education system, disadvantaged students struggling individually with academics should not be left without services because they attend a school that has been continuously failing.

S 2. The education law is amended by adding a new section 3209-b to read as follows:

S 3209-B. SUPPLEMENTAL EDUCATIONAL SERVICES. 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. "APPROVED PROVIDER TUTORING" SHALL MEAN A PROVIDER APPROVED BY THE COMMISSIONER PURSUANT TO THE PROVISIONS OF THIS SECTION FOR PURPOSES OF INCLUSION ON THE DEPARTMENT'S LIST OF APPROVED SUPPLEMENTAL EDUCATIONAL SERVICES PROVIDERS.

B. "ELIGIBLE APPLICANT" SHALL MEAN A SCHOOL DISTRICT THAT IS NOT CURRENTLY IDENTIFIED FOR IMPROVEMENT, CORRECTIVE ACTION OR RESTRUCTURING PURSUANT TO SECTION 20 U.S.C. SECTION 6316(B)(1)(A), 20 U.S.C. SECTION 6316(B)(7) OR SECTION 1116(B)(8), 20 U.S.C. SECTION 6316(B)(8), RESPECTIVELY, OR A NON-PROFIT ENTITY OR A FOR-PROFIT ENTITY AUTHORIZED TO PROVIDE THE PROPOSED SERVICES IN THE STATE, INCLUDING, BUT NOT LIMITED TO, A CHARTER SCHOOL, NONPUBLIC SCHOOL, BOARD OF COOPERATIVE EDUCATIONAL SERVICES OR COUNTY VOCATIONAL EDUCATION AND EXTENSION BOARD.

C. "ELIGIBLE STUDENT" SHALL MEAN AN ELIGIBLE CHILD, AS DEFINED IN SECTION 20 U.S.C. SECTION 6316(E)(12)(A) WHO IS ENTITLED TO RECEIVE SUPPLEMENTAL EDUCATIONAL SERVICES, SUBJECT TO THE PROVISIONS OF SECTION 20 U.S.C. SECTION 6316(B)(10)(C).

D. "ACADEMIC YEAR" SHALL MEAN THE PERIOD COMMENCING ON SEPTEMBER FIRST AND ENDING ON AUGUST THIRTY-FIRST OF THE NEXT SUCCEEDING CALENDAR YEAR; AND

E. "SUPPLEMENTAL EDUCATIONAL SERVICES" SHALL HAVE THE SAME MEANING AS SET FORTH IN 20 U.S.C. SECTION 6316(E)(12)(C).

2. A SCHOOL DISTRICT SHALL MAKE SUPPLEMENTAL EDUCATIONAL SERVICES AVAILABLE TO ELIGIBLE STUDENTS WHO ATTEND A SCHOOL THAT IS IN SCHOOL IMPROVEMENT STATUS, A SCHOOL IN CORRECTIVE ACTION STATUS OR A SCHOOL IN RESTRUCTURING STATUS.

3. THE PER PUPIL SPENDING LIMIT THAT A SCHOOL DISTRICT SHALL PROVIDE FOR SUPPLEMENTAL EDUCATIONAL SERVICES SHALL BE THE LESSER OF THE FOLLOWING:

A. THE AMOUNT OF THE SCHOOL DISTRICT'S ALLOCATION UNDER TITLE I, PART A, SUBPART 2 OF THE NO CHILD LEFT BEHIND ACT, DIVIDED BY THE NUMBER OF CHILDREN FROM FAMILIES BELOW THE POVERTY LEVEL COUNTED UNDER SECTION 20 U.S.C. 6333(C)(1)(A); OR

B. THE ACTUAL COST OF THE SUPPLEMENTAL EDUCATIONAL SERVICES PROVIDED TO EACH ELIGIBLE STUDENT.

4. A. AN ELIGIBLE APPLICANT THAT SEEKS TO BECOME AN APPROVED PROVIDER SHALL SUBMIT TO THE COMMISSIONER A WRITTEN APPLICATION IN A FORM AND WITHIN THE TIME PRESCRIBED BY THE COMMISSIONER.

B. THE COMMISSIONER SHALL APPROVE AN ELIGIBLE APPLICANT FOR INCLUSION ON THE DEPARTMENT'S LIST OF APPROVED SUPPLEMENTAL EDUCATIONAL SERVICE PROVIDERS, UPON THE COMMISSIONER'S DETERMINATION THAT ITS APPLICATION SATISFIES EACH OF THE FOLLOWING CRITERIA:

(I) THE APPLICANT HAS A DEMONSTRATED RECORD OF EFFECTIVENESS IN INCREASING STUDENT ACADEMIC ACHIEVEMENT IN ENGLISH LANGUAGE ARTS (INCLUDING READING) AND/OR MATHEMATICS;

(II) THE INSTRUCTION TO BE PROVIDED AND CONTENT TO BE USED ARE ALIGNED WITH STATE LEARNING STANDARDS IN THE AREAS OF ENGLISH LANGUAGE ARTS (INCLUDING READING) AND MATHEMATICS;

(III) INSTRUCTION WILL BE PROVIDED UNDER THE GENERAL SUPERVISION OF A TEACHER CERTIFIED PURSUANT TO ARTICLE SIXTY-ONE OF THIS TITLE;

(IV) THE SUPPLEMENTAL EDUCATIONAL SERVICES ARE OF HIGH QUALITY, RESEARCH-BASED AND SPECIFICALLY DESIGNED TO INCREASE THE ACADEMIC ACHIEVEMENT OF ELIGIBLE STUDENTS ON THE REQUIRED STATE ASSESSMENTS IN THE AREAS OF ENGLISH LANGUAGE ARTS (INCLUDING READING) AND MATHEMATICS AND TO ATTAIN PROFICIENCY IN MEETING STATE LEARNING STANDARDS IN THOSE AREAS;

(V) THE APPLICANT WILL PROVIDE APPROPRIATE ACCOMMODATIONS AND SUPPORTS TO STUDENTS WITH DISABILITIES TO ENSURE SUCH STUDENTS BENEFIT FROM SUPPLEMENTAL EDUCATIONAL SERVICES;

(VI) THE SUPPLEMENTAL EDUCATIONAL SERVICES WILL BE PROVIDED OUTSIDE THE REGULAR SCHOOL DAY INCLUDING, BUT NOT LIMITED TO, BEFORE OR AFTER SCHOOL, WEEKEND OR SUMMER SESSIONS;

(VII) LETTERS OF REFERENCE FROM PARENTS, SCHOOLS AND/OR OTHER APPROPRIATE PARTIES WHO ARE CURRENT OR FORMER RECIPIENTS OF THE PROVIDER SERVICES ARE PROVIDED;

(VIII) THE APPLICANT WILL REQUIRE THAT ALL INDIVIDUALS EMPLOYED BY, OR OTHERWISE ASSOCIATED WITH, THE APPLICANT WHO WILL HAVE DIRECT CONTACT WITH ELIGIBLE STUDENTS SHALL BE SUBJECT TO THE FINGERPRINT AND CRIMINAL HISTORY RECORD CHECK REQUIREMENTS CONTAINED IN LAW INCLUDING, BUT NOT LIMITED TO, THIS CHAPTER;

(IX) THE APPLICANT IS FISCALLY SOUND AND WILL BE ABLE TO FULFILL ITS AGREEMENT TO PROVIDE SERVICES TO THE ELIGIBLE CHILD AND THE SCHOOL DISTRICT;

(X) SUPPLEMENTAL EDUCATIONAL SERVICES INSTRUCTION AND CONTENT ARE SECULAR, NEUTRAL AND NONIDEOLOGICAL;

(XI) THE APPLICANT WILL COMPLY WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL HEALTH, SAFETY AND CIVIL RIGHTS LAWS;

(XII) THE APPLICANT WILL ASSURE THAT SUPPLEMENTAL EDUCATIONAL SERVICES ARE AVAILABLE IN LOCATIONS ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES, TO THE EXTENT REQUIRED BY SECTION 504 OF THE REHABILITATION ACT OF 1973 (29 U.S.C. SECTION 794) AND THE AMERICANS WITH DISABILITIES ACT (42 U.S.C. SECTION 12101 ET SEQ.); AND

(XIII) THE APPLICANT SHALL PROVIDE ADDITIONAL ASSURANCES THAT:

(1) THE INSTRUCTION AND CONTENT USED ARE CONSISTENT WITH THE INSTRUCTION PROVIDED AND CONTENT USED BY THE SCHOOL DISTRICT AND STATE, AND ARE ALIGNED WITH STATE LEARNING STANDARDS IN ENGLISH LANGUAGE ARTS (INCLUDING READING) AND/OR MATHEMATICS,

(2) ELIGIBLE STUDENTS WITH DISABILITIES AND ELIGIBLE STUDENTS WITH LIMITED ENGLISH PROFICIENCY WILL HAVE EQUAL ACCESS TO SERVICES OFFERED BY THE APPLICANT,

(3) THE APPLICANT WILL NOT DISCLOSE TO THE PUBLIC THE IDENTITY OF ANY STUDENT WHO IS ELIGIBLE FOR OR RECEIVING SUPPLEMENTAL EDUCATIONAL SERVICES WITHOUT THE WRITTEN PERMISSION OF THE PARENTS OF THE STUDENT,

(4) THE APPLICANT WILL NOT IMPOSE ADDITIONAL ADMISSION CRITERIA ON ELIGIBLE STUDENTS,

(5) THE APPLICANT WILL PROVIDE PARENTS AND TEACHERS OF ELIGIBLE STUDENTS RECEIVING SUPPLEMENTAL EDUCATIONAL SERVICES AND THE APPROPRIATE SCHOOL DISTRICT WITH INFORMATION ON THE PROGRESS OF SUCH STUDENTS IN INCREASING ACHIEVEMENT IN A FORMAT, AND TO THE EXTENT PRACTICABLE, IN A LANGUAGE OR OTHER MODE OF COMMUNICATION THAT SUCH PARENTS CAN UNDERSTAND,

(6) THE APPLICANT HAS ADEQUATE INSURANCE FOR LIABILITY, PROPERTY LOSS AND PERSONAL INJURY INVOLVING STUDENTS RECEIVING SUPPLEMENTAL EDUCATIONAL SERVICES FROM THE APPLICANT, AND

(7) THE APPLICANT SHALL NOT MAKE ANY OFFER OR ADVERTISEMENT OF REWARDS, GIFTS, INCENTIVES, GRATUITIES, PAYMENTS OR COMPENSATION OF ANY KIND TO PARENTS, STUDENTS, SCHOOL DISTRICTS, SCHOOL DISTRICT STAFF AND/OR SCHOOL STAFF FOR PURPOSES OF OR TENDING TO HAVE THE EFFECT OF, SOLICITING ENROLLMENT, ENCOURAGING PARENTS TO SWITCH PROVIDERS ONCE STUDENTS ARE ENROLLED, AND/OR ATTEMPTING TO INFLUENCE PARENTS, STUDENTS, SCHOOL DISTRICTS, SCHOOL DISTRICT STAFF AND/OR SCHOOL STAFF; PROVIDED THAT NOTHING HEREIN SHALL BE DEEMED TO PROHIBIT THE USE, AS PART OF THE INSTRUCTIONAL PROGRAM, OF NOMINAL REWARDS OR INCENTIVES.

C. WHERE AN APPLICANT USES ALTERNATE METHODS FOR DELIVERY OF SERVICES, WHICH MAY INCLUDE ONLINE, INTERNET-BASED APPROACHES, AS WELL AS OTHER DISTANCE-LEARNING TECHNOLOGIES, THE PROVISION OF EQUIPMENT, INCLUDING COMPUTERS, TO STUDENTS TO USE OR KEEP AS A MEANS OF RECEIVING SUCH SUPPLEMENTAL EDUCATIONAL SERVICES, MUST BE APPROVED BY THE COMMISSIONER AS PART OF THE APPLICANT'S INSTRUCTIONAL PROGRAM.

5. A. APPROVAL FOR INCLUSION ON THE DEPARTMENT'S LIST OF APPROVED SUPPLEMENTAL EDUCATIONAL SERVICES PROVIDERS SHALL BE WITHDRAWN FROM A PROVIDER FOR GOOD CAUSE INCLUDING, BUT NOT LIMITED TO, A DETERMINATION BY THE COMMISSIONER THAT THE PROVIDER:

(I) IS IN NONCOMPLIANCE WITH ONE OR MORE OF THE CRITERIA FOR APPROVAL SET FORTH IN PARAGRAPH B OF SUBDIVISION FOUR OF THIS SECTION; AND/OR

(II) HAS FAILED FOR TWO CONSECUTIVE YEARS TO CONTRIBUTE TO INCREASING THE ACADEMIC PROFICIENCY OF STUDENTS RECEIVING SUPPLEMENTAL EDUCATIONAL SERVICES FROM SUCH PROVIDER.

B. TERMINATION OF PROVIDER APPROVAL SHALL BE CONDUCTED IN ACCORDANCE WITH THE FOLLOWING PROCEDURES:

(I) THE COMMISSIONER OR HIS OR HER DESIGNEE SHALL NOTIFY THE PROVIDER IN WRITING OF THE INTENT TO TERMINATE APPROVAL AT LEAST THIRTY CALENDAR DAYS PRIOR TO THE EFFECTIVE DATE OF THE TERMINATION, INCLUDING A LIST OF THE IDENTIFIED DEFICIENCIES AND/OR VIOLATIONS OF STATE OR FEDERAL LAWS OR REGULATIONS THAT ARE BELIEVED TO EXIST.

(II) THE PROVIDER MAY REPLY IN WRITING WITHIN TEN CALENDAR DAYS OF RECEIPT OF THE COMMISSIONER'S NOTIFICATION, ADDRESSING THE COMMISSIONER'S STATEMENT OF REASONS, INDICATING WHETHER DEFICIENCIES AND/OR VIOLATIONS EXIST, WHAT STEPS HAVE BEEN TAKEN TO CORRECT CONCEDED DEFICIENCIES AND/OR VIOLATIONS, AND THE TIME PERIOD AND STEPS BY WHICH DEFICIENCIES AND/OR VIOLATIONS WILL BE CORRECTED. IF NO REPLY IS RECEIVED, TERMINATION AND REMOVAL FROM THE LIST WILL BECOME EFFECTIVE THIRTY CALENDAR DAYS FROM THE DATE OF RECEIPT OF THE COMMISSIONER'S NOTIFICATION.

(III) WITHIN THREE BUSINESS DAYS OF RECEIPT OF THE COMMISSIONER'S NOTIFICATION, THE PROVIDER MAY REQUEST ORAL ARGUMENT BEFORE THE COMMISSIONER OR HIS OR HER DESIGNEE.

(IV) AFTER CONSIDERATION OF ANY WRITTEN RESPONSE AND OF ANY ORAL ARGUMENT, A DETERMINATION SHALL BE MADE WHETHER APPROVAL SHALL BE TERMINATED. NOTICE OF SUCH DETERMINATION SHALL BE PROVIDED IN WRITING TO THE PROVIDER.

C. NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH B OF THIS SUBDIVISION, THE COMMISSIONER MAY ISSUE AN EMERGENCY ORDER IMMEDIATELY SUSPENDING THE PROVISION OF SERVICES UNDER THIS SECTION, PENDING A FINAL DETERMINATION OF THE PROVIDER'S APPROVAL STATUS, UPON THE COMMISSIONER'S DETERMINATION THAT AN IMMEDIATE THREAT EXISTS TO THE HEALTH AND/OR SAFETY OF STUDENTS.

6. A SCHOOL DISTRICT THAT IS REQUIRED TO ARRANGE FOR THE PROVISION OF SUPPLEMENTAL EDUCATIONAL SERVICES WITH AN APPROVED PROVIDER SHALL:

A. NOTIFY PARENTS OF ELIGIBLE STUDENTS ANNUALLY, IN A FORMAT AND, TO THE EXTENT PRACTICABLE, IN A LANGUAGE THAT SUCH PARENTS CAN UNDERSTAND, OF:

(I) THE AVAILABILITY OF SUPPLEMENTAL EDUCATION SERVICES; AND

(II) THE IDENTITY OF APPROVED PROVIDERS OF THOSE SERVICES THAT ARE WITHIN THE AREA SERVED BY THE SCHOOL DISTRICT, INCLUDING ANY APPROVED PROVIDERS OF TECHNOLOGY-BASED OR DISTANCE LEARNING SUPPLEMENTAL EDUCATIONAL SERVICES, OR ARE REASONABLY AVAILABLE IN NEIGHBORING SCHOOL DISTRICTS, TOGETHER WITH A BRIEF DESCRIPTION OF THE SERVICES, QUALIFICATIONS AND DEMONSTRATED EFFECTIVENESS OF EACH SUCH PROVIDER;

B. IF REQUESTED, ASSIST PARENTS IN CHOOSING AN APPROVED PROVIDER;

C. ENSURE THAT IF THE AMOUNT OF FUNDS AVAILABLE PURSUANT TO THE NO CHILD LEFT BEHIND ACT TO PROVIDE SUPPLEMENTAL EDUCATIONAL SERVICES IS INSUFFICIENT TO PROVIDE SUCH SERVICES TO EACH ELIGIBLE STUDENT WHOSE PARENTS REQUEST THE SERVICES, PRIORITY IS GIVEN TO PROVIDING THE SERVICES TO THE LOWEST ACHIEVING ELIGIBLE STUDENTS;

D. APPLY FAIR AND EQUITABLE PROCEDURES FOR SERVING ELIGIBLE STUDENTS IF THE NUMBER OF SPACES AT APPROVED PROVIDERS IS NOT SUFFICIENT TO SERVE ALL SUCH STUDENTS;

E. NOT DISCLOSE TO THE PUBLIC THE IDENTITY OF ANY STUDENT WHO IS ELIGIBLE FOR, OR RECEIVING, SUPPLEMENTAL EDUCATIONAL SERVICES WITHOUT THE WRITTEN PERMISSION OF THE PARENTS OF THE STUDENT;

F. ENSURE THAT ELIGIBLE STUDENTS WITH DISABILITIES UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AND ELIGIBLE STUDENTS WHO ARE INDIVIDUALS WITH DISABILITIES COVERED BY SECTION 504 OF THE REHABILITATION ACT OF 1973 (29 U.S.C. SECTION 794) RECEIVE APPROPRIATE SUPPLEMENTAL EDUCATIONAL SERVICES AND ACCOMMODATIONS IN THE PROVISION OF THOSE SERVICES;

G. ENSURE THAT ELIGIBLE LIMITED ENGLISH PROFICIENT STUDENTS RECEIVE APPROPRIATE SUPPLEMENTAL EDUCATIONAL SERVICES AND LANGUAGE ASSISTANCE IN THE PROVISION OF THOSE SERVICES;

H. CONTACT PROVIDERS SELECTED BY THE PARENTS AND ENTER INTO A CONTRACTUAL AGREEMENT WITH EACH SUCH PROVIDER THAT INCLUDES:

(I) A STATEMENT OF SPECIFIC ACHIEVEMENT GOALS FOR EACH ELIGIBLE STUDENT BASED UPON SUCH STUDENT'S SPECIFIC EDUCATIONAL NEEDS,

(II) A DESCRIPTION OF HOW EACH SUCH STUDENT'S PROGRESS WILL BE MEASURED,

(III) A TIMETABLE FOR IMPROVING ACHIEVEMENT,

(IV) FOR ELIGIBLE STUDENTS WITH DISABILITIES UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT AND ELIGIBLE STUDENTS WHO ARE INDIVIDUALS WITH DISABILITIES COVERED BY SECTION 504 OF THE REHABILITATION ACT OF 1973 (29 U.S.C. SECTION 794), THE GOALS, METHOD OF MEASUREMENT AND TIMETABLE SET FORTH IN THE AGREEMENT MUST BE CONSISTENT WITH SUCH STUDENT'S INDIVIDUALIZED EDUCATION PROGRAM PURSUANT TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT OR THE STUDENT'S SECTION 504 PLAN, WHERE APPLICABLE,

(V) THE INITIATION DATE, FREQUENCY AND DURATION OF SERVICES TO BE PROVIDED,

(VI) THE LOCATION WHERE SERVICES WILL BE PROVIDED,

(VII) A DESCRIPTION OF HOW EACH ELIGIBLE STUDENT'S PARENTS, TEACHERS AND THE LOCAL SCHOOL DISTRICT WILL BE REGULARLY INFORMED, AT LEAST QUARTERLY, OF THE STUDENT'S PROGRESS,

(VIII) A PROVISION FOR TERMINATION OF THE AGREEMENT IF THE PROVIDER IS UNABLE TO MEET THE GOALS AND TIMETABLES,

(IX) A PROVISION THAT THE TERM OF THE AGREEMENT SHALL NOT EXCEED THE END OF THE ACADEMIC YEAR IN WHICH THE STUDENT FIRST RECEIVED SUCH SERVICES,

(X) A PROVISION THAT THE AGREEMENT WILL TERMINATE IMMEDIATELY UPON THE PROVIDER'S REMOVAL FROM THE DEPARTMENT'S LIST OF APPROVED SUPPLEMENTAL EDUCATIONAL SERVICES PROVIDERS, PURSUANT TO SUBDIVISION FIVE OF THIS SECTION,

(XI) PAYMENT PROVISIONS BASED ON ELIGIBLE STUDENT ATTENDANCE AND DELIVERY OF SUPPLEMENTAL EDUCATIONAL SERVICES,

(XII) AN ASSURANCE FROM THE PROVIDER THAT THE IDENTITY OF ANY STUDENT WHO IS ELIGIBLE FOR OR RECEIVING, SUPPLEMENTAL EDUCATIONAL SERVICES WILL NOT BE DISCLOSED WITHOUT THE WRITTEN PERMISSION OF THE PARENTS OF THE STUDENT,

(XIII) A DESCRIPTION OF THE PROGRAM TO BE USED,

(XIV) THE EXPERIENCE AND QUALIFICATIONS OF STAFF RESPONSIBLE FOR THE DELIVERY OF THE INSTRUCTIONAL PROGRAM, INCLUDING AN ASSURANCE THAT INSTRUCTION WILL BE PROVIDED UNDER THE GENERAL SUPERVISION OF A TEACHER CERTIFIED PURSUANT TO ARTICLE SIXTY-ONE OF THIS TITLE,

(XV) PROVISIONS THAT SUBJECT ALL INDIVIDUALS EMPLOYED BY, OR OTHERWISE ASSOCIATED WITH, THE PROVIDER WHO WILL HAVE DIRECT CONTACT WITH STUDENTS, TO THE FINGERPRINT AND CRIMINAL HISTORY RECORD CHECK REQUIREMENTS CONTAINED IN LAW, INCLUDING, BUT NOT LIMITED TO, THIS CHAPTER,

(XVI) A REQUIREMENT THAT THE PROVIDER SUBMIT TO THE SCHOOL DISTRICT, ANNUALLY ON OR BEFORE SEPTEMBER THIRTIETH, A FINAL WRITTEN REPORT IN A FORM PRESCRIBED BY THE COMMISSIONER THAT SUMMARIZES THE PROGRESS OF ELIGIBLE STUDENTS PROVIDED WITH SUPPLEMENTAL EDUCATIONAL SERVICES DURING THE PRECEDING ACADEMIC YEAR, PURSUANT TO ITS AGREEMENTS WITH THE LOCAL EDUCATIONAL AGENCY, AND

(XVII) A PROVISION STATING: THE PROVIDER IS PROHIBITED FROM MAKING ANY OFFER OR ADVERTISEMENT OF REWARDS, GIFTS, INCENTIVES, GRATUITIES, PAYMENTS OR COMPENSATION OF ANY KIND TO PARENTS, STUDENTS, SCHOOL DISTRICTS, SCHOOL DISTRICT STAFF AND/OR SCHOOL STAFF FOR PURPOSES OF OR TENDING TO HAVE THE EFFECT OF SOLICITING ENROLLMENT, ENCOURAGING PARENTS TO SWITCH PROVIDERS ONCE STUDENTS ARE ENROLLED, AND/OR ATTEMPTING TO INFLUENCE PARENTS, STUDENTS, SCHOOL DISTRICTS, SCHOOL DISTRICT STAFF AND/OR SCHOOL STAFF; PROVIDED THAT NOTHING HEREIN SHALL BE DEEMED TO PROHIBIT THE USE, AS PART OF THE INSTRUCTIONAL PROGRAM, OF NOMINAL REWARDS OR INCENTIVES AS DEFINED IN SECTION 120.4(F)(8)(XVII) OF TITLE EIGHT OF THE NEW YORK STATE CODES, RULES AND REGULATIONS. FOR PURPOSES OF THIS SUBPARAGRAPH, A NOMINAL REWARD OR INCENTIVE IS DEFINED AS AN AWARD OR INCENTIVE THAT:

(1) DOES NOT EXCEED A TOTAL VALUE OF TWENTY-FIVE DOLLARS PER STUDENT PER YEAR,

(2) IS DIRECTLY LINKED TO DOCUMENTED MEANINGFUL ATTENDANCE BENCHMARKS AND/OR COMPLETION OF ASSESSMENT AND PROGRAM OBJECTIVES, AND

(3) IS APPROVED BY THE COMMISSIONER AS PART OF THE PROVIDER'S INSTRUCTIONAL PROGRAM;

I. MONITOR THE FOLLOWING:

(I) THE QUALITY AND EFFECTIVENESS OF THE SERVICES OFFERED BY EACH APPROVED PROVIDER THE SCHOOL DISTRICT HAS CONTRACTED WITH, AND

(II) THE RESPONSIBILITIES OF EACH APPROVED PROVIDER WITH WHICH THE SCHOOL DISTRICT HAS CONTRACTED WITH TO:

(1) ENSURE THAT THE INSTRUCTION PROVIDED AND CONTENT USED ARE CONSISTENT WITH THE INSTRUCTION PROVIDED AND CONTENT USED BY THE SCHOOL DISTRICT AND THE STATE, AND ARE ALIGNED WITH THE STATE LEARNING STAND-

ARDS IN THE AREAS OF ENGLISH LANGUAGE ARTS (INCLUDING READING) AND MATHEMATICS,

(2) PROVIDE PARENTS AND TEACHERS OF ALL STUDENTS RECEIVING SUPPLEMENTAL EDUCATIONAL SERVICES, THE SCHOOL DISTRICT AND THE SCHOOL WITH INFORMATION ON THE PROGRESS OF THE STUDENTS IN INCREASING ACHIEVEMENT, IN A FORMAT AND, TO THE EXTENT PRACTICABLE, IN A LANGUAGE THAT SUCH PARENTS CAN UNDERSTAND,

(3) ENSURE THAT SUPPLEMENTAL EDUCATIONAL SERVICES INSTRUCTION AND CONTENT ARE SECULAR, NEUTRAL AND NONIDEOLOGICAL AND THAT FUNDS WILL NOT BE USED FOR RELIGIOUS WORSHIP OR INSTRUCTION,

(4) COMPLY WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL HEALTH, SAFETY AND CIVIL RIGHTS LAWS, AND

(5) COMPLY WITH THE APPLICABLE CONTRACTUAL AGREEMENT PURSUANT TO PARAGRAPH (H) OF THIS SUBDIVISION;

J. NOTIFY THE DEPARTMENT OF ANY NONCOMPLIANCE BY AN APPROVED PROVIDER WITH RESPECT TO THE PROVIDER'S RESPONSIBILITIES AS LISTED IN SUBPARAGRAPH (II) OF PARAGRAPH I OF THIS SUBDIVISION, INCLUDING IMMEDIATE NOTIFICATION OF THE DEPARTMENT OF ANY NONCOMPLIANCE INVOLVING A THREAT TO THE HEALTH AND/OR SAFETY OF STUDENTS; AND

K. SUBMIT TO THE DEPARTMENT, ANNUALLY ON OR BEFORE OCTOBER THIRTY-FIRST, A MONITORING REPORT OF SUPPLEMENTAL EDUCATIONAL SERVICES PROVIDED DURING THE PRECEDING ACADEMIC YEAR, IN A FORM PRESCRIBED BY THE COMMISSIONER, TOGETHER WITH A COPY OF EACH PROVIDER'S REPORT PREPARED PURSUANT TO SUBPARAGRAPH (XVI) OF PARAGRAPH H OF THIS SUBDIVISION.

S 3. This act shall take effect immediately.