§ 3204. Instruction required. 1. Place of instruction. A minor required to attend upon instruction by the provisions of part one of this article may attend at a public school or elsewhere. The requirements of this section shall apply to such a minor, irrespective of the place of instruction.

2. Quality and language of instruction; text-books. (i) Instruction may be given only by a competent teacher. In the teaching of the subjects of instruction prescribed by this section, English shall be the language of instruction, and text-books used shall be written in English, except that for a period of three years, which period may be extended by the commissioner with respect to individual pupils, upon application therefor by the appropriate school authorities, to a period not in excess of six years, from the date of enrollment in school, pupils who, by reason of foreign birth or ancestry have limited English proficiency, shall be provided with instructional programs as specified in subdivision two-a of this section and the regulations of the commissioner. The purpose of providing such pupils with instruction shall be to enable them to develop academically while achieving competence in the English language. Instruction given to a minor elsewhere than at a public school shall be at least substantially equivalent to the instruction given to minors of like age and attainments at the public schools of the city or district where the minor resides.

(ii) For purposes of considering substantial equivalence pursuant to this subdivision for nonpublic elementary and middle schools that are: (1) non-profit corporations, (2) have a bi-lingual program, and (3) have an educational program that extends from no later than nine a.m. until no earlier than four p.m. for grades one through three, and no earlier than five thirty p.m. for grades four through eight, on the majority of weekdays, the department shall consider the following, but not limited to: if the curriculum provides academically rigorous instruction that develops critical thinking skills in the school's students, taking into account the entirety of the curriculum, over the course of elementary and middle school, including instruction in English that will prepare pupils to read fiction and nonfiction text for information and to use that information to construct written essays that state a point of view

or support an argument; instruction in mathematics that will prepare pupils to solve real world problems using both number sense and fluency with mathematical functions and operations; instruction in history by being able to interpret and analyze primary text to identify and explore important events in history, to construct written arguments using the supporting information they get from primary source material, demonstrate an understating of the role of geography and economics in the actions of world civilizations, and an understanding of civics and the responsibilities of citizens in world communities; and instruction in science by learning how to gather, analyze and interpret observable data to make informed decisions and solve problems mathematically, using deductive and inductive reasoning to support a hypothesis, and how to differentiate between correlational and causal relationships.

(iii) For purposes of considering substantial equivalence pursuant to this subdivision for nonpublic high schools that: (1) are established for pupils in high school who have graduated from an elementary school that provides instruction as described in this section, (2) are a non-profit corporation, (3) have a bi-lingual program, and (4) have an educational program that extends from no later than nine a.m. until no earlier than six p.m. on the majority of weekdays the department shall consider the following but not limited to: if the curriculum provides academically rigorous instruction that develops critical thinking skills in the school's students, the outcomes of which, taking into account the entirety of the curriculum, result in a sound basic education.

(iv) Nothing herein shall be construed to entitle or permit any school to receive an increase in mandated services aid pursuant to 8 NYCRR 176 on account of providing a longer school day.

(v) The commissioner shall be the entity that determines whether nonpublic elementary and secondary schools are in compliance with the academic requirements set forth in paragraphs (ii) and (iii) of this subdivision.

2-a. Instructional programs for pupils of limited English proficiency. 1. Each school district which is receiving total foundation aid shall develop a comprehensive plan consistent with requirements as the commissioner may establish in regulations to meet the educational needs of pupils of limited English proficiency. Such plan shall include a

description of the programs, activities and services used to meet the educational needs of pupils of limited English proficiency that comply with the regulations of the commissioner governing such programs. By July first, two thousand eight, the commissioner shall develop guidelines for the enhancement of services for such pupils, which shall include but not be limited to the replication of existing model programs that have been effective in meeting the needs of such pupils, and shall establish eligibility standards for incentive grants to improve services to such pupils and the competitive process that will be used to award such grants. On or before March first of each year commencing with March first, two thousand nine, the commissioner shall submit a report to the governor, the director of the budget, the speaker of the assembly, the temporary president of the senate, the chair of the fiscal committees of the senate and assembly on the expenditure of state, local and federal funds by school districts in the prior school year on programs, activities and services for pupils of limited English proficiency, along with recommendations for improvement of such programs.

2. The board of education of each school district receiving such funds shall provide a program of bilingual education or English as a second language for eligible pupils and may contract with a board of cooperative educational services or another school district to provide such program, provided that in a city having a population of one million or more, the community school boards shall provide such program in the schools within their jurisdiction.

3. Eligibility for such programs shall be based on the following criteria. A pupil who by reason of foreign birth or ancestry 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, shall receive a program of bilingual education or English as a second language in accordance with standards established by the commissioner. A pupil's proficiency in the English language shall be measured annually by such language assessment instrument in order to determine further participation in bilingual education or English as a second language program in accordance with standards established by the

commissioner, subject to the provisions of subdivision two of this section. The parent or guardian of a pupil designated as limited English proficient shall be informed by the local school authorities of the pupil's placement in an instructional program.

4. Bilingual programs shall be designed to:

(a) provide content instruction for children of limited English proficiency using the child's native language and English;

(b) provide native language instruction; and

(c) provide English as a second language instruction.

5. English as a second language program shall be designed to develop skills in listening, speaking, reading and writing the English language, and assist in the learning of content areas through monolingual instruction in English.

6. The commissioner shall establish, by regulation, standards for approved programs for pupils of limited English proficiency.

7. After a pupil is enrolled in a regular instructional program, he may receive additional instruction in his native language.

8. A school district which provides a program of bilingual education or English as a second language designed to meet the needs of pupils of limited English proficiency, shall be empowered to:

(a) impart to pupils a knowledge of the history and culture associated with their native languages;

(b) establish closer cooperation between the school and the home;

(c) provide early childhood educational programs related to the purposes of this section and designed to improve the potential for profitable learning activities by children;

(d) offer adult education programs related to the purposes of this section, particularly for parents of pupils with limited English proficiency;

(e) provide programs designed for dropouts or potential dropouts having need of such programs; and

(f) provide other activities deemed desirable to further the purposes

of this section.

9. Any duly authorized local educational agency or agencies is hereby empowered to make application for any grant or grants in furtherance of this section under any public law enacted by the United States Congress.

2-b. Gifted instruction in schools. The governing board of any school district and any community school district is hereby empowered to determine the circumstances wherein instruction shall be given to meet the special needs of gifted pupils as provided in this chapter.

3. Courses of study. a. (1) The course of study for the first eight years of full time public day schools shall provide for instruction in at least the twelve common school branches of arithmetic, reading, spelling, writing, the English language, geography, United States history, civics, hygiene, physical training, the history of New York state and science.

(2) The courses of study and of specialized training beyond the first eight years of full time public day schools shall provide for instruction in at least the English language and its use, in civics, hygiene, physical training, and American history including the principles of government proclaimed in the Declaration of Independence and established by the constitution of the United States.

(3) The courses of study beyond the first eight years of full time public day schools may provide a program for a course in "communism and its methods and its destructive effects".

b. For part time day schools. The course of study of a part time public day school shall include such subjects as will enlarge the civic and vocational intelligence and skill of the minors required to attend.

c. For evening schools. In a public evening school instruction shall be given in at least speaking, reading, and writing English.

d. For parental schools. In a parental school provision shall be made for vocational training and for instruction in other subjects appropriate to the minor's age and attainments.

e. Changes in courses of study. The state education department shall have power to alter the subjects of instruction as prescribed in this section.

4. Length of school sessions. a. A full time day school or class, except as otherwise prescribed, shall be in session for not less than one hundred eighty days each year, exclusive of legal holidays that occur during the term of said school and exclusive of Saturdays.

b. A part time day school or class shall be in session each year for at least four hours of each week during which the full time day schools are in session.

c. Evening schools shall be in session each year as follows:

(1) In cities having a population of one hundred thousand or more, on at least one hundred nights;

(2) In cities having a population of fifty thousand but less than one hundred thousand, on at least seventy-five nights;

(3) In each other city, and in each school district where twenty or more persons from seventeen to twenty-one years of age are required to attend upon evening instruction, on at least fifty nights.

4-a. Special education. Every pupil, having been determined to be a "child with a handicapping condition" by a committee on the handicapped, shall be offered an opportunity to receive the benefits of an appropriate public education as prescribed in article eighty-nine of this chapter.

4-b. The board of education or the board of trustees of each school district shall establish a policy and adopt procedures to allow any student in such district to participate in the graduation ceremony of the student's high school graduating class and all related activities if such student has been awarded a skills and achievement commencement credential or career development and occupational studies commencement credential but has not otherwise qualified for a regents or local diploma. The policy and procedures shall provide annual written notice

to all students and their parents or guardians about the school district's policy and procedures adopted in accordance with this subdivision. Nothing in this subdivision shall compel a student to participate in the high school graduation ceremony and activities. For purposes of this subdivision, a student's high school graduating class shall be the twelfth grade class with which such student entered into ninth grade.

5. Subject to rules and regulations of the board of regents, a pupil may, consistent with the requirements of public education and public health, be excused from such study of health and hygiene as conflicts with the religion of his parents or guardian. Such conflict must be certified by a proper representative of their religion as defined by section two of the religious corporations law.

6. Notwithstanding any law, rule, or regulation to the contrary:

(a) Instruction at a nonpublic school satisfies all the requirements of this part applicable to instruction, including subdivision two of this section, subdivision two of section thirty-two hundred ten of this part, and any other requirements in this chapter applicable to instruction, and shall thereby qualify as and be finally recognized to be at least substantially equivalent to the instruction given to minors of like age and attainments at the public schools of the city or district where the minor resides, if such nonpublic school is:

(i) a registered high school or nonpublic school serving grades one through eight that has a registered high school;

(ii) a state-approved private special education school or state-operated or state-supported school established by the state legislature pursuant to article eighty-five, eighty-seven or eighty-eight of this chapter;

(iii) a nonpublic school that is accredited or is awarded provisional status by an accreditation body approved by the commissioner for purposes of demonstrating compliance with the requirements of this section, except that such provisional status shall only apply for the first five years that such nonpublic school has been awarded provisional status. An accreditation body shall have the knowledge and expertise to properly evaluate the entirety of the day's curriculum of those schools

that it accredits and shall use a peer review process that includes evaluation by leaders of similar nonpublic schools, appropriately train all staff and peer reviewers who are involved in the accreditation process, accredit based on publicly accessible documented standards, perform a comprehensive onsite visit of any school seeking accreditation while such school is in session, and periodically conduct a combination of interim and full accreditation reviews of the nonpublic schools which it accredits during at least a ten-year period. Additionally, such accreditation body shall require nonpublic schools seeking accreditation to have curriculum that is informed by research, document individual student progress, and have mechanisms for monitoring, assessing, and providing feedback on student progress. The commissioner may, at any time, revoke such commissioner's approval of an accreditation body for cause, upon notice and hearing;

(iv) a nonpublic school that participates in the international baccalaureate program;

(v) a nonpublic school whose instruction is approved by the United States government for instruction on a military base or service academy;

(vi) a nonpublic school in which the percentage of students who score "proficient" on a year-end summative or cumulative assessment and taken in the same subject areas and for the same grade levels as the annual New York state testing program to comply with the federal Every Student Succeeds Act is equal to or greater than one of the following metrics, and such school has declared the intended use of such metric at the beginning of the school year:

(1) the percentage of similarly situated public school students scoring at the "proficient" level on New York state testing program tests taken in the same subject areas and grade levels in the school district that serves the same geographic area as the nonpublic school is located; or

(2) the percentage of similarly situated public school students statewide scoring at the "proficient" level on New York state testing program tests taken in the same subject areas and grade levels; or

(vii) a nonpublic school that administers a year-end summative or cumulative assessment taken in substantially the same subject areas and same grade levels as the annual New York state testing program to comply with the federal Every Student Succeeds Act, has a three-year average

participation rate that is equal to or greater than the three-year statewide average participation rate, and uses the results to assess the school's educational program and to seek to improve instruction and its students' performance on such tests.

(a-1) A nonpublic school's satisfaction of one or more criteria listed in paragraph (a) of this subdivision in one school year shall not automatically be deemed satisfaction of such criteria in later school years if such school ceases to satisfy such criteria in such later years.

(b) (i) For purposes of subparagraphs (vi) and (vii) of paragraph (a) of this subdivision, the following terms shall have the following meanings:

(1) "Year-end summative or cumulative assessment" shall mean one or more assessments selected by the nonpublic school that qualifies as (A) a New York state testing program test; (B) an assessment approved by the commissioner; or (C) a nationally-recognized, commercially published norm-referenced achievement test that is: (I) recognized and used in at least three other states; (II) selected by the nonpublic school from one of the following: the Iowa Test of Basic Skills, the California Achievement Test, the Stanford Achievement Test, the Comprehensive Test of Basic Skills, the Metropolitan Achievement Test, i-Ready, a state education department test, or; (III) another test approved by the state education department. All assessments and materials used in connection with such assessments shall be culturally competent and respectful of cultural curricula and pedagogy. A nonpublic school shall not need to use the same year-end summative or cumulative assessment across all grades or years and may change assessments used at any time.

(2) "Proficient" shall mean, as applicable, (A) a score of "proficient" on a New York state testing program test; (B) a score determined by the commissioner for an assessment approved by the commissioner; or (C) a score of at least the thirty-third percentile on a nationally-recognized, commercially published norm-referenced achievement test, unless the commissioner approves a lower percentage for such tests.

(ii) To rely on subparagraph (vi) of paragraph (a) of this subdivision, a nonpublic school shall demonstrate a student participation rate on its year-end summative or cumulative assessment or

assessments equal to or greater than the three-year average statewide participation rate.

(iii) To allow for adequate preparation of students in connection with subparagraphs (vi) and (vii) of paragraph (a) of this subdivision, a phase-in period shall be established. During such phase-in period, a nonpublic school and its affiliated schools shall be deemed to have met the criteria in subparagraphs (vi) and (vii) of paragraph (a) of this subdivision, for purposes of all components of this subdivision. Such phase-in status shall commence upon the effective date of this subdivision, including prior to the administration of any year-end summative or cumulative assessment, and shall continue until the first cohort entering second grade at such nonpublic school after such effective date completes the year-end summative or cumulative assessment for the third grade and shall further continue in the subsequent years, as long as such nonpublic school continues administering a year-end summative or cumulative assessment for the third grade and adds one additional, higher grade each year until such nonpublic school is administering a year-end summative or cumulative assessment for grades three through ten. The phase-in period shall end after the two thousand thirty-two--two thousand thirty-three school year. Prior to such cohorts tested using year-end summative or cumulative assessments under subparagraphs (vi) and (vii) of paragraph (a) of this subdivision, such cohorts may be provided with practice and/or sample testing questions to begin familiarizing themselves with standardized testing methodology. The phase-in period shall be applicable to all nonpublic schools, and it shall only be necessary for a nonpublic school to administer year-end summative or cumulative assessments for the phased-in grades, notwithstanding the nonpublic school's past or current administration of such assessments for other grades.

(iv) If a nonpublic school meets, or has been deemed pursuant to subparagraph (iii) of this paragraph to have met, the criteria in subparagraph (vi) or (vii) of paragraph (a) of this subdivision, then during the phase-in period of subparagraph (iii) of this paragraph, all affiliated schools shall be deemed to have met such criteria. Affiliated schools are those with one of the following: the same office of religious and independent school support (ORISS) code under a single basic educational data system (BEDS) code; or the same organization with

a different BEDS code in the same location; or the same ORISS code and leadership but may have physical buildings in different locations. During the phase-in period of subparagraph (iii) of this paragraph, a nonpublic school which meets the criteria of subparagraph (vii) of paragraph (a) of this subdivision shall include its affiliated schools when using the results of the year-end summative or cumulative assessment to assess educational programming and improve instruction and students' performance on such tests. During the phase-in period of subparagraph (iii) of this paragraph, if a nonpublic school meets the criteria in subparagraph (iii) of paragraph (a) of this subdivision with respect to provisional status then all affiliated schools shall be deemed to have met such criteria. If a nonpublic high school meets the criteria in subparagraph (i) or (vi) of paragraph (a) of this subdivision, then all affiliated middle or elementary schools shall be deemed to have met such criteria.

(c) Nothing in this subdivision shall preclude the commissioner from defining by rule or regulation alternative criteria which may also be used to demonstrate that instruction at a nonpublic school is in compliance with this section. Compliance with this section may be demonstrated through any one or more of the criteria established in this subdivision and shall thereby qualify as and be finally recognized to be substantially equivalent without any further requirements. A nonpublic school's satisfaction of one or more criteria in one school year shall not automatically be deemed satisfaction of such criteria in later school years if such school ceases to satisfy such criteria in such later years. A nonpublic school may elect at any time to select different criteria. A nonpublic school's omission to satisfy one or more criteria shall not affect a nonpublic school's ability to satisfy another criteria, or such criteria at a later date.