

**STATE OF NEW YORK
DEPARTMENT OF STATE**

DETERMINATION

In the matter of a request that School Building Administrator and School District Administrator be designated as eligible professions for the purchase, sale, and use of body armor.

Date of designation: December 22, 2023

Legal framework

To purchase or take possession of body armor in New York State, an individual or entity must be engaged or employed in an eligible profession.¹ Pursuant to Executive Law section 144-a, the Department of State (Department) has created a process whereby individuals and entities may request that the profession in which they engage be added to the Department’s list of eligible professions.² The Department has received a request that “school building administrator” and “school district administrator” be designated as eligible professions. Prior to adding a profession to the list of eligible professions, the Department must first determine whether the duties of the profession may expose an individual engaged in such profession to serious physical injury that may be prevented or mitigated by the wearing of body armor, or whether the duties of the profession are necessary to facilitate the lawful purchase, sale, or use of body armor.

Requests

The requestor requests that the professions “school building administrator” and “school district administrator” be designated as eligible. Notice of this eligible profession request was published on the Department’s website on April 21, 2023, whereby the public was invited to submit additional requests relating to these professions. No other requests relating to these requests have been received by the Department.

Several points of information were provided in support of the request. In a letter accompanying the request, the requestor states:

When there is a school shooting that results in death, in headline after headline, it is reported that a school administrator was killed. . . . The building administrator is expected to ensure the safety and security of their students and staff. This means taking steps to prevent and respond to any threats that may arise. It means head TOWARD the danger. . . . Body armor can help school administrators feel more secure when advancing toward a

¹ New York Penal Law §270.21.

² See 19 NYCRR Chapter XIX, Part 905, generally.

threat, as they are often the very first line of defense in an emergency situation. They [make] critical decisions, potentially saving lives”

The requestor provided an example of a position description for the position of principal from that individual’s school district, which is a school building administrator position. In doing so, the requestor highlighted the following duties required as “Performance Responsibilities” for the position:

1. “Overseeing the plans for and supervision of . . . emergency drills or situations.”
2. “Establishing and maintaining a safe and effective learning climate in the school.”
3. “Assuming responsibility for the safety and administration of the school facility where such facility and its maintenance personnel are under his/her control.”

The requestor provided a copy of several “School Board Policies related to safety, safety plans, training, and responsibilities of administrators,” which provisions have been applicable to the requestor’s school district since 2015 and 2016. The policies identify building principals as being “responsible for annually appointing a building-level emergency response team . . . to assist the school community in responding to a violent incident or emergency” The associated building response plan would be confidential, and the team would include representation from different categories of school personnel, including administrators. The building principals are also responsible for designating a threat assessment team, in consultation with the superintendent, “to provide ongoing support and information in order to identify, and assess individuals who may be potential threats to safety, with the intent of minimizing acts of violence in the school community.” In doing so, the building principal is responsible for informing the superintendent of the activities of the team.

The requestor also described the profession of school district administrator—often referred to as superintendent—as oftentimes coinciding with the role of school building administrator, noting that an

“important factor . . . is that the District offices [in the requestor’s district] are INSIDE the middle school, with students walking by our offices throughout the day, every day that school is in session[.] As such, District administrators step in on a regular basis, addressing student interactions and needs. Further, when a principal is out, a District administrator must fill in and be the acting building level administrator for the day. . . . A school Superintendent or district administrator . . . certainly would be expected to respond when their office is within the building under attack”

In the school board policies documents provided by the requestor, the requestor emphasized the following additional duties specific to the role of the school district administrator:

“The Superintendent of Schools shall be responsible for the development of procedures for investigating and resolving complaints related to the health

and safety issues in the district’s buildings consistent with requirements of state law and regulations.”

“The Superintendent of Schools or designee will be the district’s chief emergency officer, and will coordinate communication between school staff and law enforcement and first responders.”

“The chief emergency officer will ensure that the district-wide plan is coordinated with the building-level plans and will ensure that required evacuation and lock-down drills are conducted.”

The requestor provided several examples of events relevant for consideration of the request, through reference to the following events and related articles. These articles represent instances where an individual in the profession of school building administrator has been injured or killed while responding to, or being the target of, an active shooter incident. The requestor also explained that there are several examples of school building administrators—and at least one instance of a school district administrator—leaving their job after a shooting incident, “whether they were fired or resigned, because there was a belief that they did not execute their role successfully in protecting the individuals in their building.” The requestor further explains that “[t]here is pressure on administrators to do everything in their power during a safety incident, and if they don’t, losing their job is a very real possibility.” This list of articles provided by the requestor is as follows:

1. Sandy Hook Elementary School, Newtown, CT (Dec. 14, 2012), where Sandy Hook Elementary School principal Dawn Hochsprung died after confronting and attempting to physically stop an active shooter in the school. The article states, “. . . Hochsprung had made increasing school security a priority in her two years at Sandy Hook while also maintaining a sense of fun and wonder in the elementary school ‘She loved her students so much and, obviously, enough to die for them.’”³
2. Olathe East High School, Olathe, Kansas (March 4, 2022), where an administrator was one of two individuals injured during a shooting incident.⁴
3. Robb Elementary, Uvalde, Texas (May 24, 2022), where 19 students and 2 teachers were killed in a mass shooting. The principal was shortly thereafter suspended, after further investigation by a Texas House of Representatives investigative committee found that the principal had “been aware of security issues at the school but failed to take the appropriate steps to address them.” Specifically, the principal “had been aware a lock on a door to one of the classrooms involved in the shooting was broken, but did not have it repaired” and never initiated a work order to have it repaired. Further, it was “widely known” among

³ ABC News, Principal Dawn Hochsprung a '5-foot-2-inch Raging Bull' Lifesaver (Dec. 17, 2012), available at <https://abcnews.go.com/blogs/headlines/2012/12/principal-dawn-hochsprung-a-5-foot-2-inch-raging-bull-lifesaver>.

⁴ Newsweek, Kansas High School Principal, Officer Released from Hospital after Shooting (Mar. 4, 2022), available at <https://www.newsweek.com/kansas-high-school-shooting-injures-officer-administrator-1685032>.

students and teachers that the lock on the door to that room—as well as other locks throughout the school—was broken.⁵

4. Richneck Elementary School, Newport News, Virginia (Jan. 6, 2023), where the superintendent, principal, and assistant principal were removed from their positions, after a six-year-old student shot his teacher. The teacher’s attorney alleged that “concerned teachers and employees had warned administrators three times that the boy had a gun on him and had been threatening other students,” but that the administrators failed to respond.⁶
5. East High School, Denver, Colorado (Mar. 22, 2023), where two administrators were shot by a student who “had a safety plan in place that required that he be searched before entering the school each day.” “The shooting happened . . . when the two administrators were patting down the student in an office area separate from other students and found a gun, according to the Denver Police Department. The student fired several shots, injuring both administrators.”⁷
6. Covenant School, Nashville, Tennessee (Mar. 27, 2023), where Head of School Katherine Koonce was killed during a mass shooting at Covenant School.⁸

Findings of fact and analysis

A “profession” refers to any occupation or line of work referenced or included within a category identified in the Standard Occupational Classification Manual published by the federal Office of Management and Budget (SOC Manual), or as otherwise described in a federal, state, or local statute or regulation.⁹ The requestor, in making an application to the Department, indicated the broad occupation identified by SOC code 11-9030, titled “Education and Childcare Administrators.” As the requestor is a superintendent of a school district in New York State, the Department recognizes that the detailed occupation identified by SOC code 11-9032, titled “Education Administrators, Kindergarten through Secondary,” most accurately describes the profession in which the requestor is engaged.¹⁰ This subcategory describes the profession’s duties

⁵ NY Daily News, Principal put on leave after mass shooting at Robb Elementary School (July 26, 2022), available at <https://www.nydailynews.com/news/national/ny-uvalde-robb-elementary-school-principal-suspended-20220726-ygkwz2ya5feo7ehuf4vkvliioe-story.html>.

⁶ FOX News, Virginia school principal, assistant principal depart after 6-year-old shoots teacher (Jan. 28, 2023), available at <https://www.foxnews.com/us/virginia-school-principal-assistant-principal-depart-6-year-old-shoots-teacher>.

⁷ NY Times, Denver Student Shoots 2 School Administrators, Police Say (Mar. 22, 2023, updated Mar. 23, 2023), available at <https://www.nytimes.com/2023/03/22/us/denver-school-shooting.html>.

⁸ BBC News, Nashville school shooting: Beloved school head among victims (Mar. 29, 2023), available at <https://www.bbc.com/news/world-us-canada-65095355>.

⁹ 19 NYCRR 905.1(f).

¹⁰ SOC code 11-9032 is a detailed occupation category that is listed under SOC code 11-9030, which is a broad occupation category titled “Education and Childcare Administrators.” This determination does not contemplate the eligibility of professions within any other detailed occupation listed under SOC code 11-9030, as such professions are considered outside the scope of this request. These detailed occupation categories include: 11-9031 Education

as “[p]lan, direct, or coordinate the academic, administrative, or auxiliary activities of kindergarten, elementary, or secondary schools,” and provides the following illustrative examples: elementary school principal, high school principal, and middle school principal.

A certification in educational leadership service is required to be eligible for employment as a school building administrator or school district administrator at a public school or charter school in the State.¹¹ Regulations adopted by the State Education Department set forth requirements for obtaining a certificate for educational leadership service, which includes principals and assistant principals under the certificate titled “school building leader,”¹² as well as superintendent of schools, district superintendent, deputy superintendent, associate superintendent, and assistant superintendent under the certificate titled “school district leader.”¹³

For all holders of certificates in the educational leadership service—which includes the professions of school building administrator and school district administrator—coursework or training is required in “school violence prevention and intervention,” including “intervention techniques designed to address a school violence situation.”¹⁴ Further, coursework content for the school building leader certification and the school district leader certification must prepare candidates “to demonstrate . . . the knowledge and skills necessary to . . . create the conditions necessary to provide a safe, healthy, and supportive learning environment for all students and staff.”¹⁵ Thus, the training requirements for the professions of school building administrator and school district administrator clearly contemplate the profession’s responsibility for planning for and maintaining a safe school environment.

The job description for the position of principal as submitted by the requestor states that the principal is responsible for emergency drills and situations, maintaining a safe learning climate, and ensuring a safe school facility. As such, the position of principal requires active, physical, proximate response to an active shooter situation that would result in being exposed to gunfire. In

and Childcare Administrators, Preschool and Daycare; 11-9033 Education Administrators, Postsecondary; 11-9039 Education Administrators, All Other.

¹¹ Education Law §3001, 3003; Education Law § 2854(3)(a-1).

¹² 8 NYCRR 80-3.10(a) (concerning “Requirements for Certificates in . . . the Educational Leadership Service Applied for on or [a]fter September 2, 2007 . . .”).

¹³ 8 NYCRR 80-3.10(b); Education Law § 3003.

¹⁴ 8 NYCRR 52.21(c)(1)(iv)(a) (“Programs shall ensure that candidates complete two clock hours of coursework or training in school violence prevention and intervention, in accordance with section 3004 of the Education Law. Such coursework or training shall include but not be limited to, study in the warning signs within a developmental and social context that relate to violence and other troubling behaviors in children; the statutes, regulations and policies relating to a safe nonviolent school climate; effective classroom management techniques and other academic supports that promote a nonviolent school climate and enhance learning; the integration of social and problem solving skill development for students within the regular curriculum; intervention techniques designed to address a school violence situation; and how to participate in an effective school/community referral process for students exhibiting violent behavior.”); *see also* 8 NYCRR 80-1.4 (Required study in child abuse identification and reporting, and school violence prevention and intervention), and 8 NYCRR 80-5.20(a)(1)(ii) and (c)(1)(ii) (Endorsement of certificates for service as a school district leader and school district business leader, and school building leader).

¹⁵ 8 NYCRR 52.21(c)(2)(iv)(a)(9); 8 NYCRR 52.21(c)(3)(iv)(d). *See also* 8 NYCRR 52.21(c)(4)(v)(4) (establishing requirements for the alternative school district leader certification program).

the Comprehensive District-Wide School Safety Plan, both positions have duties related to the assurance of safety in school buildings. Principals are directed to assemble build-level emergency response teams and threat assessment teams, and also act as liaison on these activities and events to the superintendent. The same plan, in turn, expressly designates the superintendent of schools or designee as the district's chief emergency officer, and requires the chief emergency officer to coordinate communication between school staff, law enforcement, and first responders. The applicant further indicates that a superintendent would be expected to respond when their office is within the building under attack by an active shooter, just the same as a building administrator would be. The requestor indicates that when the principal is out of the building, a district administrator must fill in and be the acting building level administrator, which results in the district administrator wearing multiple hats as part of the job, where the superintendent's duties are, at times, interchangeable with that of the principal.

Nonpublic high schools may register with New York State and must do so to be authorized to administer Regents examinations and award diplomas.¹⁶ There is no registration option for nonpublic elementary schools. As of 2022, all nonpublic schools are required to show substantial equivalency, which is reviewed by their local school authority and determined by the local school authority or State Education Commissioner.¹⁷ A nonpublic school is defined as:

a religious or independent school located in New York State that provides elementary and/or secondary education (any grades 1 through 12) and such education is intended to fulfill the compulsory education requirements of Article 65 of the Education Law for the students that attend such school.¹⁸

Still, no further certification is required for teachers or administrators at a nonpublic school. As such, the positions of school building administrator and school district administrator in a private school setting are not required by the State to obtain specific certification to qualify for employment. For the purposes of this determination, their responsibilities for ensuring a safe environment for students and teachers are comparable to their counterparts in public and charter schools.

The State's certification requirements, the position description for school principal that was provided by the requestor, the school board policy documents from the requestor's school district, the location of the superintendent's office in the requestor's district, the assumption of the principal's duties by the superintendent in the requestor's district, and the several instances of school shootings resulting in an administrator's shooting injury, death, dismissal, or resignation, when taken altogether show that the professions of school building administrator and school district administrator are responsible for upholding a safe school environment, which includes responding to a school violence situation, which may include an active shooter situation. In the exceedingly rare but potentially occurring event of an active shooter situation, the limitation that

¹⁶ "Only those . . . nonpublic high schools which are registered by the Board of Regents . . . may issue diplomas and administer Regents examinations . . ." 8 NYCRR 100.2(p).

¹⁷ 8 NYCRR 130.2; 8 NYCRR 130.5.

¹⁸ 8 NYCRR 130.1(d).

would be created by a disallowance upon the purchase or use of body armor by individuals engaged in these professions could potentially expose them to serious physical injury.

Determination

The information set forth above supports a determination by the Department that the duties of the profession of “school building administrator” and “school district administrator” sometimes require individuals engaged or employed in that profession to put themselves in dangerous situations that may expose them to serious physical injury, and that such serious physical injury may be prevented or mitigated by the wearing of body armor.

For the purposes of this determination, the profession of school building administrator includes the professions of principal and assistant principal, where the individual is employed in a public school or charter school that includes any grades from pre-kindergarten through 12, or the equivalent of such position in a nonpublic school as defined under Part 130.1(d) of the State Education Department regulations.¹⁹

Also for the purposes of this determination, the profession of school district administrator includes superintendent of schools, district superintendent, deputy superintendent, associate superintendent, and assistant superintendent, where the individual is employed in a public school or charter school that includes any grades from pre-kindergarten through 12, or the equivalent of such position in a nonpublic school as defined under Part 130.1(d) of the State Education Department regulations.²⁰

Based on the foregoing facts and the requirements of Executive Law §144-a and 19 NYCRR Part 905, the Department designates the professions of “school building administrator” and “school district administrator” as eligible professions for the purchase, sale, and use of body armor and adds such professions to the Department’s list of eligible professions.

¹⁹ As of the date of this writing, this regulation provides the following definition for nonpublic school: “Nonpublic school means a religious or independent school located in New York State that provides elementary and/or secondary education (any grades 1 through 12) and such education is intended to fulfill the compulsory education requirements of Article 65 of the Education Law for the students that attend such school.”

²⁰ As indicated in the previous footnote, as of the date of this writing, this regulation provides the following definition for nonpublic school: “Nonpublic school means a religious or independent school located in New York State that provides elementary and/or secondary education (any grades 1 through 12) and such education is intended to fulfill the compulsory education requirements of Article 65 of the Education Law for the students that attend such school.”