

**DESIGNATION BY OFFICE OF PARKS, RECREATION  
AND HISTORIC PRESERVATION UNDER 9 NYCRR PART  
428.12 OF EXEMPTIONS FROM OPRHP REVIEW FOR CERTAIN STATE  
AGENCY ACTIVITIES RELATING TO NEW YORK STATE PUBLIC SCHOOLS  
CAPITAL CONSTRUCTION PROJECTS AND PUBLIC LIBRARY  
CONSTRUCTION GRANT PROGRAM ACTIVITIES AFFECTING HISTORIC OR  
CULTURAL PROPERTIES**

The New York State Education Department (“Department” or “SED”), having offices at 89 Washington Avenue, Albany, New York 12234, is seeking exemptions from review under Parks, Recreation and Historic Preservation Law (“PRHPL”) Section 14.09 for specific building construction and rehabilitation activities associated with New York State Public Schools Capital Construction and Public Library Construction Grant programs (together hereinafter “Programs”).

The Commissioner (“Commissioner”) of the Office of Parks, Recreation and Historic Preservation (“OPRHP”), with an office at 625 Broadway, Albany, New York 12207, or their designee determines whether a state agency’s undertaking will cause a change, beneficial or adverse, in the quality of any historical, architectural or archaeological/cultural property listed on the National or State registers of historic places, or property determined to be eligible for listing, and consults with the state agency on measures to avoid or mitigate impacts to these historic resources (*PRHPL § 14.09; 9 NYCRR Part 428*). The state agency, however, has an independent duty to comply with PRHPL § 14.09.

Section 428.12 of 9 NYCRR allows the Commissioner to designate as exempt from review certain categories of projects funded, undertaken, or permitted by the Department under specific programs provided the projects do not change the quality of historic resources.

The Department has provided the following information to OPRHP as required by 9 NYCRR § 428.12(a)(1) for these Programs:

1. The Department is the Authority Having Jurisdiction for New York State School systems and provides financial aid and assistance through the Capital Construction Program for a variety of building rehabilitation, new construction, facility upgrades and maintenance projects.
2. The Department manages a State Aid for Library Construction program for a variety of library construction and rehabilitation activities. This program is accessible by public and association libraries throughout New York State.
3. These programs provide important services and financial assistance to New York's school districts and public library systems. It is of paramount importance to the Department that PRHPL § 14.09 be undertaken in a consistent and timely manner to ensure safe and modern educational facilities and public libraries for the State's population.
4. The funding programs supported by the Department have the potential to directly impact historic school and library buildings as well as archaeological sites.<sup>1</sup> Historic school buildings and libraries often present challenges when being rehabilitated or upgraded to meet the demands of efficient and modern environmental and academic requirements.

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<sup>1</sup> Historic resources are those properties that have been identified as being listed or determined eligible for listing in the New York State and/or National Registers of Historic Places.

5. It is in the best interest of the people of the State of New York and the state's cultural and historic resources to ensure that routine daily operations and maintenance in these public facilities can continue unimpeded, while allowing for more thoughtful and comprehensive assessments through the PRHPL § 14.09 process for activities that fall outside the categories defined by this agreement.

The Department has provided the information to OPRHP as required by 9 NYCRR § 428.12(a)(1&2) for the New York State School Capital Construction Program and Public Library Grant Programs:

1. Understanding the potential issues associated with historic/archaeological resources, the Department seeks to harmonize the requirements and mission of PRHPL 14.09 with its practical concerns for creating safe spaces and the need to provide funding to the state's public schools and libraries to ensure safe and modern facilities for the benefit of the people of the state of New York.
2. Certain categories of work have been determined to have little or no potential impact the character of historic resources. The potential changes in the character and quality of a historic resources are generally considered to include:
  - a. activities that would destroy or alter all or any part of the property;
  - b. any action that would isolate the historic site or building separating it from its historic setting or environment;
  - c. the introduction of visual, audible or atmospheric elements that are out of character with the historic building or site or that might alter its setting; or
  - d. any activity that would lead to the deterioration or destruction of a historic property through neglect.
3. Categories of work, which the agencies have mutually agreed do not have the potential to directly or indirectly affect the character or qualities of a historic building, site or district are included in Attachment 1 . This list includes activities that are classified as routine or general maintenance as well as health and safety related improvements to a public building. Other activities on the list include minor changes, repairs, or additions to the building or its grounds that, if performed within the parameters defined in this agreement, will not alter the historic resource or adjacent resources. These activities, as a result of their scope and nature, would be classified as having No Adverse Impact on the historic or archaeological resources as defined under 9 NYCRR Part 428.7(d).

Attachment 1 must be used in conjunction with all applicable local and State building codes and federal laws and regulations.

**OPRHP, therefore, designates the following New York State Public Schools Capital Construction Program and New York State Aid for Library Construction Program activities within the Programs as categories exempt from review pursuant to 9 NYCRR § 428.12(c) for the following reasons and subject to the following conditions:**

1. Buildings or structures that are less than 50 years old at the time of the scope start of the Department's project shall be exempt from review by OPRHP. Determination of building or structure age shall either be by the certificate of occupancy date or by date on building dedication plaque, whichever is earlier. Where the construction date of a resource cannot be established through primary records, a reasonable effort to determine such date through secondary sources (e.g., newspaper accounts, building department records) shall be made by the Applicant in consultation with the Department. Where the project involves site work or any other activity that will lead to ground disturbance, that portion of the project shall be submitted

for OPRHP's review of possible impacts to archeological resources unless the site work is an exempt category as detailed in Attachment 1.

- a. Exception: Proposed work at buildings or structures that are known to be the work of a recognized master architect, designer or builder, or are associated with persons or events significant in the history of the State of New York shall be submitted to OPRHP for review and comment.
  - b. Exception: Work taking place on additions that are built on existing historic resources or buildings 50 years or older are subject to review, unless the work falls under the applicable exempted work activities.
2. Buildings or structures over 50 years of age or older that have been previously evaluated by OPRHP and found to not meet the criteria for inclusion in the State and National Register (S/NR) are exempt from further review. However, where the project involves site work or any other activity that will lead to ground disturbance, those portions of the project shall be submitted for OPRHP's review of possible impacts to archeological resources unless the work is an exempt category as detailed in Attachment 1.
- a. Exception: If OPRHP receives information subsequent to the initial S/NR review that demonstrates the building is eligible for the State Register, OPRHP shall notify the Department promptly and the Department shall review all work taking into consideration that the structure is historic.
  - b. Exception: Information received by OPRHP after initial review (e.g., evidence of pioneering or innovative school design) may demonstrate the S/NR eligibility of buildings or structures previously determined not to be S/NR eligible. Where such change of status is warranted, OPRHP will notify the Department of the revised determination by mail or electronically at the earliest opportunity.
3. Attachment 2 (Human Remains Discovery Protocol) is incorporated as a condition of this exemption when dealing with ground disturbing activities (Attachment 1, Section I).
4. For each request to review and comment by OPRHP, the Applicant will submit their project information utilizing OPRHP's Cultural Resource Information System (CRIS) project submission portal. The system will guide the applicant through uploading project specific information.
5. All work funded, undertaken, or approved by the Department on historic structures should follow the Secretary of the Interior Standards for Rehabilitation<sup>2</sup> and NPS Preservation Briefs 1<sup>3</sup> and 2<sup>4</sup>.
6. OPRHP may monitor activities carried out pursuant to this Designation at their discretion. The Department shall cooperate with OPRHP with respect to such monitoring activities.
7. This Designation shall remain in force for five (5) years from date of signature. Signatories may extend this Designation upon mutual agreement.
8. Notwithstanding any other provisions of this Designation, a signatory may request that it be amended, whereupon, the signatories will consult to consider such amendment. Any amendment must be in writing and signed by the Department and OPRHP.

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<sup>2</sup> Washington, D.C., National Park Service, Secretary of the Interior Standards for Rehabilitation, which can be found at: <https://www.nps.gov/articles/000/treatment-standards-rehabilitation.htm>.

<sup>3</sup> Mack, Robert C. and Grimmer, Anne. Preservation Brief 1: Assessing Cleaning and Water-Repellent Treatments for Historic Masonry Buildings, which can be found at: <https://www.nps.gov/orgs/1739/upload/preservation-brief-01-cleaning-masonry.pdf>. Washington, D.C.: Technical Preservation Services, National Park Service, 2000.

<sup>4</sup> Mack, Robert C. and Speweik, John. Preservation Brief 2: Repainting Mortar Joints in Historic Masonry Buildings, which can be found at: <https://www.nps.gov/orgs/1739/upload/preservation-brief-02-repointing.pdf>. Washington, D.C.: Technical Preservation Services, National Park Service, 1998.

9. This Designation may be terminated at the request of any of the signatories within 30 calendar days of written notification to the other signatories. In the event the Designation is terminated, the Department shall consult with OPRHP regarding its responsibilities under PRHPL § 14.09 for each proposed individual project.

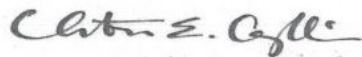
SIGNATURE PAGES TO FOLLOW

NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION

R Daniel Mackay  
R. Daniel Mackay  
Deputy Commissioner for Historic Preservation/SHPO

Date: 1/10/24

NEW YORK STATE DEPARTMENT OF EDUCATION/SED LIBRARIES



Christina Coughlin  
Chief Financial Officer for NYSED

Date: 12/20/2023

## Attachment 1

The following work items are exempt from OPRHP review because they are either a replacement in-kind or the proposed work is so minor that it would not adversely impact a historic property, if such a property existed.

\*\*\*Please note, some sites have cemeteries located on the same parcel of land. Our office recommends documenting these cemeteries and making all proper inquiries to ensure existing cemeteries are not disturbed by future projects.

### **I. Site Work: In-Kind Repair/Replacement of site improvements in existing footprint, including, but not limited to: curbs, fences, landscaping, ramps stairs and flag poles.**

1. Repaving/resurfacing of existing paved areas, e.g., school yards, parking areas, sidewalks, tennis courts, outdoor basketball courts where the proposed work does not exceed the depth of previously disturbed soil.
2. Minor drainage work at athletic fields where no other new excavation work is needed or the excavation work is limited to twelve inches or less in depth.
3. Repair of existing athletic field houses and bleachers at athletic fields, excluding foundation work and excluding installation of new open bleachers at athletic fields.
4. New installation of school yard fencing on the condition that it is located at the rear portion of the building or not visible from the street/right-of-way.
5. Installation of exterior freestanding signage and kiosks, except those located in front of the main entrance/façade of the building.
6. Repair and replacement of existing (or installation of new) mechanical, electrical, and plumbing equipment (eg., an emergency generator or air-cooled condenser) on the condition that no trim or architectural features are altered and that no ground disturbing work is proposed that will exceed the depth of previously disturbed soil. New equipment shall be located at the rear portion of the building or not visible from the street/right-of-way.
7. Installation of new lighting (including new underground conduit and conductors).
8. Underground Utilities. Repair or replacement of existing water, sewer, natural gas, electric or telecommunications lines and if it occurs in or adjacent to the existing trench and provided there is no substantial proposed ground disturbance. Substantial proposed ground disturbance includes: (1) grading and excavation more than six inches deep; (2) grubbing, tree and stump removal; or (3) trenches more than three feet wide.
9. In-place repair/replacement of septic system, where the proposed work does not exceed the depth of previously disturbed soil.
10. Ground disturbance impacting areas within a distance of ten (10) feet or less of the existing building.
11. Repair and replacement of play equipment and safety surfacing.

### **II. Exterior**

As noted above, buildings or structures that are less than 50 years old at the time of the scope start of the Department's project are exempt from review by OPRHP as are buildings or structures over 50 years of age or older that have been previously evaluated by OPRHP and found to not meet the criteria for inclusion in the State and National Registers (S/NR).

1. Repair/Replacement of flat roofs, roof hatches, roof drains, and rooftop mechanical, electrical, and plumbing equipment.
2. In-kind Repair/Replacement of the surface materials on pitched roofs (ie slate for slate, asphalt for asphalt, etc.).
3. Masonry repair and repointing up to 50% of a building on the condition that it follows the guidelines in the National Park Service publications previously referenced. New mortar shall

match existing in profile, shape, color, and composition. This includes repointing or recaulking of coping units at the roof level.

4. In-kind replacement of windows:
  - a) that are less than 50 years old, or;
  - b) that match the configuration, dimensions, proportions of existing historic windows or archival evidence of original window configurations, or;
  - c) that match the current configuration,
  - d) Always required for all options: provide muntins as true divided lights or as a three-part grid system with exterior/interior-applied muntins and an interior spacer bar. At a minimum, OPRHP will accept exterior-applied muntins, but interior-only muntins or muntins located between the double-insulated glass panels is not acceptable.
5. In-kind repair/replacement of window guards.
6. In-kind repair/replacement of speakers and public address systems on the condition that no trim or architectural features are altered.
7. Installation or replacement of video surveillance cameras, fire alarm systems, security systems, exterior/security lighting, and lightning protection on the condition that no trim or architectural features are altered, and that the fixtures are not mounted directly to masonry (utilize masonry joints where feasible).
8. In-kind repair/replacement of non-decorative/non-historic exterior doors and door hardware.
9. Repainting to match existing of exterior masonry. Note: Do not paint existing masonry if it is currently not painted.
10. Installation of new rooftop mechanical, electrical, and plumbing equipment, where not visible from the street at the front facade/main entrance of the building.
11. Installation or replacement of exterior connections for sprinkler and standpipe systems on the condition that no trim or architectural features are altered. \*Note that exterior fire department connections must be visible and accessible to fire department personnel.

### **III. Interior**

1. Replacement of auditorium seating, curtains, draperies, stage rigging, and stage lighting on the condition that no trim or architectural features are altered.
2. Replacement of corridor lockers.
3. Installation or replacement of video surveillance cameras, fire alarm systems, security systems, public address systems, auditorium/gym sound systems, assistive listening equipment, area of refuge communication equipment, telephone (intercom) systems, and data (computer network, power) systems on the condition that no trim or architectural features are altered. Note that surface raceways may be included in this installation.
4. Installation or replacement of switchboards, motor control centers, panel boards, conductors and conduit, transformers, generators, power receptacles, and similar electrical service components with the condition that no trim or architectural features are altered or obscured.
5. Installation or replacement of sprinkler and standpipe systems on the condition that no trim or architectural features are altered.
14. Replacement of toilet room fixtures; partitions; floor; wall or ceiling surfaces.
15. Replacement of plumbing fixtures, building-wide.
16. Installation of moveable partition control systems.
17. Installation or replacement of lighting fixtures and their controls such as switching and/or occupancy sensors on the condition that no trim or architectural features are altered.
  - a. Exception: Replacement of lighting within school lobbies, school auditoriums, and school libraries, and public and association libraries to be reviewed by OPRHP.
18. Installation or replacement of kitchen equipment on the condition that no trim or architectural features or trim are altered.



19. Elevator retrofits.
20. Interior repainting.
21. Renovation of Interior School Spaces:
  - a) In order to meet the curriculum of a school, it may be necessary to renovate interior spaces by either enlarging, reducing, or combining rooms to create new spaces such as libraries, shop classrooms, science labs, art rooms or offices. Projects of this type, including interior mechanical, electric, and plumbing revisions to support the program shall be exempt from review if the existing spaces do not contain wood molding, hardwood flooring, plaster walls or other historic finishes.
  - b) Work removing non-original asbestos tile, vinyl floor tile, concrete floor, vinyl base molding, gypsum partitions, hollow metal doors and frames, lay-in acoustic tile ceilings, or sheetrock ceilings are exempt from review. Please note that there may be schools that were constructed in the twentieth century containing these materials originally and would not be subject to this exemption from review.
  - c) During a potential renovation, up to three rooms can be combined in a school building without review.
  - d) Rooms that have existing wood molding (baseboards, window and door trim, and crown molding) shall be patched/repared/replaced in-kind with wood matching the existing profiles, materials and dimensions.
  - e) In-kind repair/replacement of classroom and office wood floors.
  - f) In-kind repair/replacement of classroom and office wood base moldings.
  - g) Existing wood floors will be salvaged only if they can be sanded, refinished and match in elevations with surrounding surfaces. Should water damage be present, wood floors may be replaced with an alternative floor finish, including carpeting in libraries.
  - h) Should rooms be converted into a shop or science lab, wood floor may be replaced with an alternative floor finish, such as vinyl tile.
  - i) Doors, jambs, and trim facing a corridor must be retained and have the same appearance on the corridor side of the wall. If a door is no longer in use, it should be locked and retained or pinned open in place to accommodate the installation of a new door.
  - j) Ceiling height changes that do not block existing window openings will be appropriate. Drapery pockets are appropriate in cases where a window opening would otherwise be blocked by a dropped ceiling.
  - k) In-kind repair and replacement of ceilings.
  - l) In-kind repair/replacement of wood flooring in gymnasiums.
  - m) In-kind repair of classroom components, including contemporary chalkboards, cupboards, shelving, walls, etc.

#### **IV. Mechanical Systems, Electrical Systems, and Plumbing Systems**

1. Installation and replacement of heating, ventilation, and cooling systems other than in original/historic public libraries and association libraries, school auditoriums and lobbies, and school libraries, on the condition that no trim or architectural features are altered. Note that ductwork visible in areas other than utilitarian basement areas should be reviewed by OPRHP.
2. Installation of backflow preventers, water mains, electrical service upgrades, new gas services, and other main utility upgrades. This includes gas pipe runs within the building and exterior runs where not visible from the street.
3. Installation, repair, and replacement of automatic HVAC control systems on the condition that no trim or architectural features are altered.
4. All other mechanical, electrical & plumbing work in boiler rooms, fan rooms, utility rooms, storage rooms, and custodial spaces on the condition that no trim or architectural features are altered.

5. Installation or replacement of mechanical, plumbing, and electrical distribution equipment on the condition that no trim or architectural features are altered.

*\*\*Note that visible penetrations greater than 6" in diameter through walls or floors or wall removal for pipe or duct removal/installation should be reviewed by OPRHP. Additionally, all planned wall or floor penetrations shall be located in areas avoiding historic wall and floor finishes, as well as be minimally visible. For wall penetrations to the exterior of the buildings, locate wall cores close to the ground and at side and rear facades to reduce their visibility.*

## **V. Health & Safety Hazards**

1. Removal of asbestos containing materials (ACM), e.g., floor tile, insulation, glazing putty, lead based paint material, or PCB containing materials, e.g., PCB containing caulk.
2. Installation or replacement of emergency egress lighting systems and exiting signage with the condition that no trim or architectural features are altered.
3. Emergency removal or in-kind repair of masonry cracks and/or falling masonry elements.
4. Removal and in-kind replacement of falling plaster walls and ceilings, or replacement with gypsum board, on the condition that no trim or architectural features are altered. Do not fur out walls beyond their existing location.

## Attachment 2

### **STATE HISTORIC PRESERVATION OFFICE/NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION HUMAN REMAINS DISCOVERY PROTOCOL (JANUARY 2021)**

If human remains are encountered during construction or archaeological investigations, the New York State Historic Preservation Office (SHPO) recommends that the following protocol is implemented:

- Human remains shall be treated with dignity and respect. Should human remains or suspected human remains be encountered, work in the general area of the discovery shall stop immediately and the location shall be secured and protected from damage and disturbance.
- If skeletal remains are identified and the archaeologist is not able to conclusively determine if they are human, the remains and any associated materials shall be left in place. A qualified forensic anthropologist, bioarchaeologist, or physical anthropologist shall assess the remains in situ to help determine if they are human.
- If the remains are determined to be human, law enforcement, the SHPO, the appropriate Indian Nations, and the involved state and federal agencies shall be notified immediately. If law enforcement determines that the burial site is not a criminal matter, no skeletal remains or associated materials shall be removed until appropriate consultation takes place.
- If human remains are determined to be Native American, they shall be left in place and protected from further disturbance until a plan for their avoidance or removal is developed. Please note that avoidance is the preferred option of the SHPO and the Indian Nations. The involved agency shall consult SHPO and the appropriate Indian Nations to develop a plan of action. Photographs of Native American human remains and associated materials should not be taken without consulting with the involved Indian Nations.
- If human remains are determined to be non-Native American, the remains shall be left in place and protected from further disturbance until a plan for their avoidance or removal is developed. Please note that avoidance is the preferred option of the SHPO. The involved agency shall consult SHPO and other appropriate parties to develop a plan of action.
- The SHPO recommends that burial information is not released to the public to protect burial sites from possible looting.

### Attachment 3

#### DEFINITIONS

- "Agency Preservation Officer" (APO) shall mean the commissioner, director or chairperson of SED, or a representative identified in accordance with the provisions of subdivision 2 of Section 14.05 of the Parks, Recreation and Historic Preservation Law. If the Department chooses to appoint a representative, this representative shall meet the federal qualifications as stated in 36 CFR 61. The qualifications of the appointed person shall be submitted to OPRHP for our review and acceptance prior to appointment.
- "Eligible" shall mean a property meets the criteria for listing on the State and National Register of Historic Places.
- "Historic" shall mean those finishes, furnishings, and building components that may be original to the building, or were installed not long after the building was completed, or installed over fifty years ago.
- "Historic Preservation" shall mean the study, designation, protection, restoration, rehabilitation and use of buildings, structures, historic districts, areas and sites significant in the history, architecture, archeology or culture of this State, its communities or the nation.
- "In-kind Replacement" shall mean the removal of any element and the insertion of a new element with the same material matching the same design, form, dimension, color, and texture as that being replaced.
- "Installation" shall mean the installation of any element with a material that is typically used per current practice.
- "Original" shall mean those finishes, furnishings, and building components that were used at the point a building was first constructed.
- "Reconstruction" shall mean the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.
- "Rehabilitation" shall mean the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.
- "Repair" shall mean an action to restore the mechanical, structural, or aesthetic function of any element of an historic resource using materials and methods compatible with the original function of that element.
- "Replacement" shall mean the removal of any element and the insertion of a new element with a material that is typically used per current practice in that location. (e.g. replacement of asphalted concrete rolled flooring with vinyl tile).

- “Restoration” shall mean the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period.
- “Salvage” shall mean the process of keeping original or historic finishes/building components/furnishings in place, or to remove and reinstall in the same place, or to remove and reinstall in an appropriate alternative location.
- "State and National Register" and "Historic Resources" shall mean any building, structure, object, site or landscape feature that meets the criteria for inclusion in the State and National Registers of Historic Places.
- "Undertaking" shall mean a project involving work on a building or site funded in whole or in part under the direct or indirect jurisdiction of the Department, including those carried out with SED financial assistance; and those requiring a SED permit, license or approval.