



TO: The Honorable Members of the Board of Regents

FROM: T. Andrew Brown 

SUBJECT: Proposed Amendment to Section 3.8(b) of the Rules of the Board of Regents to Designate The Executive Deputy Commissioner as the Deputy Commissioner of Education as specified in Education Law §101, who, in the Absence or Disability of the Commissioner or when a vacancy exists in the Office of Commissioner, Shall Exercise and Perform the Functions, Power, and Duties of the Commissioner

DATE: December 29, 2020

AUTHORIZATION(S): 

SUMMARY

Issue for Decision

Should the Board of Regents adopt the proposed amendment of Section 3.8(b) of the Rules of the Board or Regents to designate the Executive Deputy Commissioner as the Deputy Commissioner of Education as specified in Education Law §101, who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, power, and duties of the Commissioner?

Reason for Consideration

Review of Policy.

Proposed Handling

The proposed amendment will be presented to the Full Board for adoption as an emergency rule at the January 2021 meeting of the Board of Regents. A copy of the proposed rule is attached (Attachment A), as well as a statement of facts and circumstances justifying emergency action (Attachment B).

Procedural History

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on January 27, 2021. Supporting materials are available upon request to the Secretary to the Board of Regents.

Background Information

The proposed amendment is necessary to conform the Regents Rules to changes in the internal organization of the State Education Department, regarding the filling of the position of Acting Executive Deputy Commissioner. The amendment will designate the Executive Deputy Commissioner of the State Education Department as the Deputy Commissioner of Education as specified in Education Law §101, who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties of the Commissioner.

Related Regent's Items

July 2011: [Proposed Amendment to Section 3.8 of the Rules of the Board of Regents, Relating to the Duties of the Executive Deputy Commissioner](https://www.regents.nysed.gov/common/regents/files/documents/meetings/2011Meetings/July2011/711bra4.pdf)
(<https://www.regents.nysed.gov/common/regents/files/documents/meetings/2011Meetings/July2011/711bra4.pdf>)

October 2011: [Proposed Amendment to Section 3.8 of the Rules of the Board of Regents, Relating to the Duties of the Executive Deputy Commissioner](https://www.regents.nysed.gov/common/regents/files/documents/meetings/2011Meetings/October2011/1011bra4.pdf)
(<https://www.regents.nysed.gov/common/regents/files/documents/meetings/2011Meetings/October2011/1011bra4.pdf>)

December 2020: [Proposed Amendment to Section 3.8\(b\) of the Rules of the Board of Regents to Designate Counsel as the Deputy Commissioner of Education as specified in Education Law §101, who, in the Absence or Disability of the Commissioner or when a vacancy exists in the Office of Commissioner, Shall Exercise and Perform the Functions, Power, and Duties of the Commissioner](https://www.regents.nysed.gov/common/regents/files/1219brca7.pdf)
(<https://www.regents.nysed.gov/common/regents/files/1219brca7.pdf>)

March 2020: [Proposed Amendment to Section 3.8\(b\) of the Rules of the Board of Regents to Designate Counsel as the Deputy Commissioner of Education as specified in Education Law §101, who, in the Absence or Disability of the Commissioner or when a vacancy exists in the Office of Commissioner, Shall Exercise and Perform the Functions, Power, and Duties of the Commissioner](https://www.regents.nysed.gov/common/regents/files/320brca4.pdf)
(<https://www.regents.nysed.gov/common/regents/files/320brca4.pdf>)

April 2020: [Proposed Amendment to Section 3.8\(B\) of the Rules of the Board of Regents to Designate Counsel as the Deputy Commissioner of Education as Specified in Education Law §101, who, in the Absence or Disability of the Commissioner or When a](#)

[Vacancy Exists in the Office of Commissioner, Shall Exercise and Perform the Functions, Power, and Duties of the Commissioner](https://www.regents.nysed.gov/common/regents/files/420brca3.pdf)

(<https://www.regents.nysed.gov/common/regents/files/420brca3.pdf>)

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That Section 3.8(b) of the Rules of the Board of Regents be amended, as submitted, effective January 12, 2021, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to ensure that the Rules of the Board of Regents are immediately brought into conformance with changes in the Department's internal organization so as to ensure that in the absence or disability of the Commissioner or when a vacancy exists in the Office of Commissioner, the Executive Deputy Commissioner of the State Education Department may carry out his or her duties and responsibilities in a timely and efficient manner, including those relating to designation of the Executive Deputy Commissioner as the Deputy Commissioner of Education under Education Law §101.

Timetable for Implementation

If adopted as an emergency rule at the January 2021 Regents meeting, the emergency rule will become effective January 12, 2021. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the May 2021 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. Because the emergency action will expire before the May 2021 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the March Regents meeting. If adopted at the May 2021 meeting, the proposed amendment will become effective as a permanent rule on May 26, 2021.

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS

Pursuant to Education Law section 101

1. Paragraph (b) of section 3.8 of the Rules of the Board of Regents is amended to read as follows:

(b) The [counsel] executive deputy commissioner shall be the deputy commissioner of education as specified in section 101 of the Education Law. In the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, the [counsel] executive deputy commissioner shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by statute and by rule of the Regents.

STATEMENT OF FACTS AND CIRCUMSTANCES
WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment is necessary to conform the Rules of the Board of Regents to changes made in the internal organization of the State Education Department since the position of executive deputy commissioner has been filled. The proposed amendment removes provisions relating to the Counsel and designates the Executive Deputy Commissioner as the Deputy Commissioner of Education as specified in Education Law §101, who in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties of the Commissioner.

Because the Board of Regents meets at fixed intervals, the earlier the proposed amendment could be adopted by regular (non-emergency) action, pursuant to the requirements of the State Administrative Procedure Act- including publication in the State Register and expiration of a 60-day public comment period, is the May 2021 Regents meeting, and the earliest an adoption at such meeting could be made effective would be May 26, 2021.

The recommended action is being proposed as an emergency measure because such action is necessary for the preservation of the general welfare in order to ensure that the Rules of the Board of Regents are immediately brought into conformance with changes in the Department's internal organization, so as to ensure that the Executive Deputy Commissioner is able to immediately carry out her duties and responsibilities relating to the Executive Deputy Commissioners' designation as the Deputy Commissioner of Education under Education Law §101, including the ability to exercise

and perform the functions, powers and duties of the Commissioner in his or her absence or disability, or if a vacancy exists in the office of the Commissioner.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the May 2021 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by the State Administrative Procedure Act. However, since the emergency regulation will expire before the May 2021 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the March 2021 Regents meeting.