






TO: The Honorable the Members of the Board of Regents

FROM: Daniel Morton-Bentley 

SUBJECT: Proposed Amendments to Sections 155.17(f) and 100.5(a) of the Regulations of the Commissioner of Education and Section 30-3.16 of the Rules of the Board of Regents Relating to Addressing the COVID-19 Crisis

DATE: December 3, 2020

AUTHORIZATION(S):  
SUMMARY

Issue for Decision

Should the Board of Regents adopt the proposed amendments to Sections 155.17(f) and 100.5(a) of the Regulations of the Commissioner of Education and Section 30-3.16 of the Rules of the Board of Regents relating to addressing the COVID-19 crisis?

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 its December 2020 meeting. A copy of the proposed rule is included as Attachment A, and a Statement of Facts and Circumstances which necessitate emergency action is included as Attachment B.

Procedural History

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on December 30, 2020. Supporting materials are available upon request to the Secretary to the Board of Regents.

Background Information

Generally

On January 30, 2020, the World Health Organization designated the novel coronavirus, COVID-19, outbreak as a Public Health Emergency of International Concern. On March 7, 2020, the Governor of New York State declared a State disaster emergency for the entire State of New York pursuant to Executive Order 202. Subsequently, the Governor issued additional Executive Orders in response to the COVID-19 crisis, including orders directing the closure of schools for the remainder of the 2019-2020 school year and 2020 summer school except for extended school year (ESY) services. The Governor of New York announced that schools across the State were permitted to open in the fall and required all school districts to submit reopening plans to the Department and the Department of Health. In response, the Department adopted emergency regulations at the April, May, June, July, September, October, and November 2020 Board of Regents meetings to address numerous issues resulting from the interruptions caused by the COVID-19 crisis and to plan for the reopening of schools. To address additional issues resulting from the interruptions caused by the COVID-19 crisis, the Department is proposing further emergency regulatory amendments as follows:

- APPR Variances
 - To provide flexibility for Annual Professional Performance Review (APPR) variance application timeframes, the Department is proposing to amend section 30-3.16 of the Rules of the Board of Regents to provide that upon a finding by the Commissioner of extraordinary circumstances, variance applications approved after December 1 of a school year may be implemented in that school year (Attachment A #1).
- Snow Day Reporting
 - Section 155.17(f) of the Commissioner's regulations requires superintendents to notify the Commissioner as soon as possible whenever a school's emergency plan or building-level school safety plan is activated that results in the closing of a school building in the district, and to provide any information the Commissioner requires. However, this section provides that such information need not be provided for routine snow emergency days. Due to the COVID-19 crisis, the State has shifted to allowing and/or requiring remote instruction by many districts. In light of this, the Department is offering a one-year pilot program to allow school districts to shift to remote instruction for days that a district would have otherwise closed due to a snow emergency. The notification of these remote instruction snow days is necessary for the Department to review and evaluate the snow day pilot program for possible future extension (Attachment A #2).
- Declination
 - At the September 2020 meeting of the Board of Regents, the Department permanently adopted amendments to section 100.5(a)(5) of the Commissioner's regulations to provide that parents and persons in parental relation of

students scheduled to graduate in January, June, or August of 2020 who were exempted from a graduation assessment requirement be given the opportunity to decline such exemption. With the cancellation of the January 2021 Regents examination, the Department is proposing to amend this provision to also provide parents and persons in parental relation of students scheduled to graduate in January, June, or August of 2021 who have been exempted from a graduation assessment requirement the opportunity to decline such exemption. Additionally, the proposed amendments extend the time period required by schools to give parents or persons in parental relation notification of the option to decline such exemption from 10 calendar days to 30 calendar days (Attachment A # 3).

Related Regents Items

April 2020: [Proposed Amendments to Sections 52.3, 52.21, 57-4.5, 70.4, 74.6, 75.2, 75.5, 76.2, 79-9.3, 79-10.3, 79-11.3, 79-12.3, 80-1.13, 80-1.5, 80-3.15, 80-4.3, 83.5, 87.2, 87.5, 100.2, 100.4, 100.5, 100.6, 100.10, 100.21, 119.1, 119.5, 125.1, 151-1.4, 154-2.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and addition of Section 279.5 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/420bra6.pdf)
(<https://www.regents.nysed.gov/common/regents/files/420bra6.pdf>)

May 2020: [Proposed Amendments to Sections 52.21, 60.6, 61.19, 80-1.2, 80-3.7, 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19 and 151-1.3 and addition of Section 80-5.27 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/520bra9-REVISED.pdf)
(<https://www.regents.nysed.gov/common/regents/files/520bra9-REVISED.pdf>)

May 2020: [Proposed Amendments to Sections 52.3, 52.21, 57-4.5, 70.4, 74.6, 75.2, 75.5, 76.2, 79-9.3, 79-10.3, 79-11.3, 79-12.3, 80-1.13, 80-1.5, 80-3.15, 80-4.3, 83.5, 87.2, 87.5, 100.2, 100.4, 100.5, 100.6, 100.10, 100.21, 119.1, 119.5, 125.1, 151-1.4, 154-2.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and addition of Section 279.5 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/520bra10.pdf)
(<https://www.regents.nysed.gov/common/regents/files/520bra10.pdf>)

June 2020: [Proposed Amendments to Sections 60.10, 80-1.2, 80-4.3, 80-4.4, 80-5.6, 100.2, 100.5, 100.7, 100.10, 110.4, 119.4, 121.5, 135.4, 145-2.15 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/620bra10.pdf)
(<https://www.regents.nysed.gov/common/regents/files/620bra10.pdf>)

June 2020: [Proposed Amendments to Sections 52.3, 52.21, 57-4.5, 70.4, 74.6, 75.2, 75.5, 76.2, 79-9.3, 79-10.3, 79-11.3, 79-12.3, 80-1.13, 80-1.5, 80-3.15, 80-4.3, 83.5, 87.2, 87.5, 100.2, 100.4, 100.5, 100.6, 100.10, 100.21, 119.1, 119.5, 125.1, 151-1.4, 154-2.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and addition of Section 279.5 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/620bra11.pdf)
(<https://www.regents.nysed.gov/common/regents/files/620bra11.pdf>)

June 2020: [Proposed Amendments to Sections 52.21, 60.6, 61.19, 80-1.2, 80-3.7, 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19 and 151-1.3 and addition of Section 80-5.27 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/620bra12.pdf)
(<https://www.regents.nysed.gov/common/regents/files/620bra12.pdf>)

July 2020: [Proposed Amendments to Sections 52.3, 52.21, 57-4.5, 70.4, 74.6, 75.2, 75.5, 76.2, 79-9.3, 79-10.3, 79-11.3, 79-12.3, 80-1.13, 80-1.5, 80-3.15, 80-4.3, 83.5, 87.2, 87.5, 100.2, 100.4, 100.5, 100.6, 100.10, 100.21, 119.1, 119.5, 125.1, 151-1.4, 154-2.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and addition of Section 279.5 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/720bra7.pdf)
(<https://www.regents.nysed.gov/common/regents/files/720bra7.pdf>)

July 2020: [Proposed Amendments to Sections 52.21, 60.6, 61.19, 80-1.2, 80-3.7, 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19 and 151-1.3 and addition of Section 80-5.27 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/720bra5.pdf)
(<https://www.regents.nysed.gov/common/regents/files/720bra5.pdf>)

July 2020: [Proposed Amendments to Sections 60.10, 80-1.2, 80-4.3, 80-4.4, 80-5.6, 100.2, 100.5, 100.7, 100.10, 110.4, 119.4, 121.5, 135.4, and 145-2.15 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/720brca13.pdf)
(<https://www.regents.nysed.gov/common/regents/files/720brca13.pdf>)

July 2020: [Proposed Amendments to Sections 80-5.3, 80-5.4, 100.1, 100.2, 100.5, 100.6, 100.10, 117.3, 136.3, 145-2.1, 151-1.3, 154-2.2, 154-2.3, and 200.4 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/720bra8revised.pdf)
(<https://www.regents.nysed.gov/common/regents/files/720bra8revised.pdf>)

September 2020: [Proposed Amendments to Sections 52.3, 52.21, 57-4.5, 70.4, 74.6, 75.2, 75.5, 76.2, 79-9.3, 79-10.3, 79-11.3, 79-12.3, 80-1.13, 80-1.5, 80-3.15, 80-4.3, 83.5, 87.2, 87.5, 100.2, 100.4, 100.5, 100.6, 100.10, 100.21, 119.1, 119.5, 125.1, 151-1.4, 154-2.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and addition of Section 279.5 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/920bra6.pdf)
(<https://www.regents.nysed.gov/common/regents/files/920bra6.pdf>)

September 2020: [Proposed Amendments to Sections 52.21, 60.6, 61.19, 80-1.2, 80-3.7, 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19 and 151-1.3 and addition of Section 80-5.27 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/920bra3.pdf)
(<https://www.regents.nysed.gov/common/regents/files/920bra3.pdf>)

September 2020: [Proposed Amendments to Sections 80-5.3, 80-5.4, 100.1, 100.2, 100.5, 100.6, 100.10, 117.3, 136.3, 145-2.1, 151-1.3, 154-2.2, 154-2.3, 156.3, and 200.4 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/920bra8.pdf)
(<https://www.regents.nysed.gov/common/regents/files/920bra8.pdf>)

September 2020: [Proposed Amendments to Sections 52.21, 79-8.5, 100.5, and 154-2.3 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/920bra7revised.pdf)
(<https://www.regents.nysed.gov/common/regents/files/920bra7revised.pdf>)

September 2020: [Proposed Amendments to Sections 60.10, 80-1.2, 80-4.3, 804.4, 80-5.6, 100.2, 100.5, 100.7, 100.10, 110.4, 119.4, 121.5, 135.4, 145-2.15 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/920brca3.pdf)
(<https://www.regents.nysed.gov/common/regents/files/920brca3.pdf>)

October 2020: [Proposed Amendments to Sections 125.1, 135.4, and 52.21 of the Regulations of the Commissioner of Education and Section 30-3.2 of the Rules of the Board of Regents Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/1020bra3.pdf)
(<https://www.regents.nysed.gov/common/regents/files/1020bra3.pdf>)

October 2020: [Proposed Amendments to Sections 52.3, 52.21, 57-4.5, 70.4, 74.6, 75.2, 75.5, 76.2, 79-9.3, 79-10.3, 79-11.3, 79-12.3, 80-1.13, 80-1.5, 80-3.15, 80-4.3, 83.5, 87.2, 87.5, 100.2, 100.4, 100.5, 100.6, 100.10, 100.21, 119.1, 119.5, 125.1, 151-1.4, 154-2.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and addition of Section 279.5 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/1020bra5revised.pdf)
(<https://www.regents.nysed.gov/common/regents/files/1020bra5revised.pdf>)

October 2020: [Proposed Amendments to Sections 52.21, 60.6, 61.19, 80-1.2, 80-3.7, 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19 and 151-1.3 and addition of Section 80-5.27 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/1020bra4.pdf)
(<https://www.regents.nysed.gov/common/regents/files/1020bra4.pdf>)

October 2020: [Proposed Amendments to Sections 80-5.3, 80-5.4, 100.1, 100.2, 100.5, 100.6, 100.10, 117.3, 136.3, 145-2.1, 151-1.3, 154-2.2, 154-2.3, 156.3, and 200.4 of the Regulations of the Commissioner of Education Relating to Addressing the COVID19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/1020brca5.pdf)
(<https://www.regents.nysed.gov/common/regents/files/1020brca5.pdf>)

November 2020: [Proposed Amendments to Sections 52.3, 52.21, 57-4.5, 70.4, 74.6, 75.2, 75.5, 76.2, 79-9.3, 79-10.3, 79-11.3, 79-12.3, 80-1.13, 80-1.5, 80-3.15, 80-4.3, 83.5, 87.2, 87.5, 100.2, 100.4, 100.5, 100.6, 100.10, 100.21, 119.1, 119.5, 125.1, 151-1.4, 154-2.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and Addition of Section 279.15 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/1120bra3.pdf)

(<https://www.regents.nysed.gov/common/regents/files/1120bra3.pdf>)

November 2020: [Proposed Amendments to Sections 52.21, 79-8.5, 100.5, and 154-2.3 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/1120brca2.pdf)

(<https://www.regents.nysed.gov/common/regents/files/1120brca2.pdf>)

Recommendation

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

VOTED: That Sections 155.17(f) and 100.5(a) of the Regulations of the Commissioner of Education and Section 30-3.16 of the Rules of the Board of Regents be amended, as submitted, as an emergency measure, effective December 15, 2020, upon a finding by the Board of Regents that such action is necessary for the preservation of public health and the general welfare in order to immediately provide flexibility to certain regulatory requirements in response to the COVID-19 crisis.

Timetable for Implementation

If adopted as an emergency measure at the December 2020 Regents meeting, the proposed amendment will become effective as an emergency rule on December 15, 2020. It is anticipated that the proposed amendment will be presented for permanent adoption at the April 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. If adopted at the April 2021 meeting, the proposed rule will become effective on April 28, 2021. Because the emergency adoption will expire before the April 2021 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the February Regents meeting.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 209, 215, 305, 803, 2801-a, 3009, 3012-d, 3204, and 3205 of the Education Law.

1. Subdivision (d) of section 30-3.16 of the Rules of the Board of Regents is amended by adding a new paragraph (4) to read as follows:

(4) Notwithstanding the timeframes contained in paragraphs (1) and (2) of this subdivision, upon a finding by the commissioner of extraordinary circumstances, variance applications approved after December 1 of a school year may be implemented in that school year.

2. Subdivision (f) of section 155.17 of the Regulations of the Commissioner of Education is amended to read as follows:

(f) *Reporting.* Each superintendent shall notify the commissioner as soon as possible whenever the emergency plan or building-level school safety plan is activated and results in the closing of a school building in the district, and shall provide such information as the commissioner may require in a manner prescribed by the commissioner. School districts within a supervisory district shall provide such notification through the district superintendent, who shall be responsible for notifying the commissioner. Such information need not be provided for routine snow emergency days. Provided, however, that for the 2020-21 school year, districts shall provide such notification for snow emergency days, including those days converted to remote instruction under the 2020-21 snow day pilot in accordance with the provisions of this subdivision.

3. Subparagraph (viii) of paragraph (5) of subdivision (a) of section 100.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(viii)(a) Notwithstanding subparagraph (vii) of this paragraph, no entry shall be recorded on the transcript or permanent record of a student in the event that a parent or person in a parental relation declines the exemption to the graduation assessment requirement(s) in accordance with clause (b) of this subparagraph.

(b) For the 2019-20 school year, at least 10 calendar days and for the 2020-21 school year, at least 30 calendar days prior to the date on a which a student shall receive a high school diploma, the superintendent, or school principal of a charter school, or chief administrative officer of a registered nonpublic high school shall send notification by letter and also [be]by email and text, if available, to the parents or persons in parental relation of all students scheduled to graduate in June or August of 2020 or January, June or August of 2021 who have been exempted from a graduation assessment requirement pursuant to this section or paragraph (10) of subdivision (d) of section 100.6 of this title. Such notification shall be sent in English and translated, when appropriate, into the recipient's native language or mode of communication.

(c) ...

(d) ...

(e) ...

(f) ...

STATEMENT OF FACTS AND CIRCUMSTANCE WHICH NECESSITATE EMERGENCY
ACTION

On January 30, 2020, the World Health Organization designated the novel coronavirus, COVID-19, outbreak as a Public Health Emergency of International Concern. On March 7, 2020, the Governor of New York State declared a State disaster emergency for the entire State of New York pursuant to Executive Order 202. Subsequently, the Governor issued additional Executive Orders in response to the COVID-19 crisis, including orders directing the closure of schools for the remainder of the 2019-2020 school year and 2020 summer school except for extended school year (ESY) services. The Governor of New York announced that schools across the State were permitted to open in the fall and required all school districts to submit reopening plans to the Department and the Department of Health. In response, the Department adopted emergency regulations at the April, May, June, July, September, October, and November 2020 Board of Regents meetings to address numerous issues resulting from the interruptions caused by the COVID-19 crisis and to plan for the reopening of schools. To address additional issues resulting from the interruptions caused by the COVID-19 crisis, it is necessary for the Department to adopt further regulatory amendments related to the following:

- APPR variance timeframes;
- Snow emergency day reporting; and
- Declination of exemptions for graduation assessment requirements.

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (nonemergency) adoption, after publication in the State Register and expiration of the 60-day public comment period required

in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), is the April 2021 Regents meeting. However, because the COVID-19 crisis is presently affecting the State of New York, emergency action is necessary for the preservation of public health and the general welfare in order to immediately address issues arising from the COVID-19 crisis and to provide flexibility for certain regulatory requirements in response to the COVID-19 crisis.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the April 2021 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rule makings. However, since the emergency regulation will expire before the April meeting, it is anticipated that an additional emergency action will be presented for adoption at the February 2021 Regents meeting.