



**TO:** The Honorable Members of the Board of Regents

**FROM:** Betty A. Rosa 

**SUBJECT:** 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

**DATE:** February 24, 2020

**AUTHORIZATION(S):**  

## SUMMARY

### Issue for Decision (Consent Agenda)

Should the Board of Regents adopt, as a second emergency action, the proposed amendment of section 3.8(b) of the Rules of the Board or Regents to designate the Counsel as the Deputy Commissioner of Education as specified in Education Law section 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 March 2020 meeting of the Board of Regents. Supporting materials are available upon request to the Secretary to the Board of Regents. A copy of the proposed rule and a statement of facts and circumstances justifying the emergency action are attached.

## **Procedural History**

The proposed amendment was adopted by the Full Board as an emergency rule at the December 2019 meeting of the Board of Regents, effective January 6, 2020. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on December 24, 2019. No comments have been received to date. Because the December emergency action will expire on March 8, 2020, a second emergency action is necessary to ensure that the emergency rule remains continuously in effect until it can be permanently adopted at the April 2020 Regents meeting and take effect as a permanent rule.

## **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 current vacancy in the position of executive deputy commissioner. The amendment will designate the Counsel of the State Education Department as the deputy commissioner of education as specified in Education Law section 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**

[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>)

## **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, March 9, 2020, 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 immediately 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 Counsel 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 Counsel as the deputy commissioner of education under Education Law section 101 and to ensure that the emergency adoption taken at the December Regents meeting remains in effect until the proposed rule can be permanently adopted.

### **Timetable for Implementation**

If adopted as the March 2020 Regents meeting, the emergency rule will become effective March 9, 2020. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the April 2020 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.

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 [executive deputy commissioner] counsel 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 [executive deputy commissioner] counsel 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 is currently vacant. The proposed amendment removes provisions relating to the executive deputy commissioner and designates the Counsel as the deputy commissioner of education as specified in Education Law section 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.

The proposed amendment was presented to the Full Board for adoption as an emergency action at the December 2019 meeting of the Board of Regents, effective January 6, 2020. Since 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 April 2020 Regents meeting, and the earliest an adoption at such meeting could be made effective would be April 22, 2020.

The December emergency rule will expire on March 8, 2020, therefore a second emergency action is necessary at the March 2020 Regents meeting 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 Counsel is able to immediately carry out her duties and responsibilities relating to the Counsel's designation as the deputy commissioner of education under Education Law section 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 April 2020 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by the State Administrative Procedure Act.