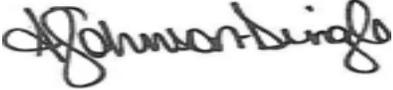




TO: The Honorable Members of the Board of Regents

FROM: Angelique Johnson-Dingle 

SUBJECT: Proposed Amendment of Sections 100.1, 155.17, and 175.5 of the Regulations of the Commissioner of Education Relating to Remote Instruction and its Delivery under Emergency Conditions

DATE: June 30, 2022

AUTHORIZATION(S): 

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendments of sections 100.1, 155.17, and 175.5 of the Regulations of the Commissioner of Education relating to remote instruction and its delivery under emergency conditions?

Reason(s) for Consideration

Review of policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at the July 2022 Regents meeting. A copy of the proposed amendment is included as (Attachment A) and a statement of facts and circumstances justifying emergency action is included as (Attachment B).

Procedural History

The proposed amendment was presented to the P-12 Education Committee for discussion at its April 2022 meeting. A Notice of Proposed Rule Making was published in the State Register on April 27, 2022, for a 60-day public comment period in accordance with the State Administrative Procedure Act (SAPA).

Emergency action is necessary at the July 2022 meeting to ensure the rule is effective

for the incoming 2022-2023 school year, before public comment may be assessed and the rule can be permanently adopted, likely at the September 2022 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on July 27, 2022. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

The Department previously authorized a “snow day pilot” program during the 2020-2021 and 2021-2022 school years. This program allowed school districts to deliver instruction remotely on days in which it would otherwise have closed due to an emergency. In the 2020-2021 school year, 126 districts reported utilizing this program. The greatest concentration of participating districts were in the Hudson Valley and Long Island regions. Higher need districts were less likely to use the pilot, but student density and the concentration of nonpublic students did not appear to play a role in a district’s likelihood of utilizing this flexibility. A map portraying this usage is provided in (Attachment C).

To give districts greater predictability, the Department proposes to amend section 175.5(e) of the Commissioner’s regulations to codify this flexibility. Districts that would otherwise close due to an emergency may provide remote instruction and count these instructional days towards the minimum requirements. Instruction must be provided to all students and be consistent with the definition of remote instruction, as explained below. In addition, beginning with the 2023-2024 school year, such instruction must be consistent with the school district’s emergency remote instruction plan described below.

Additionally, the Department proposes to amend section 155.17 of the Commissioner’s regulations to require that public schools, boards of cooperative educational services (BOCES) and county vocational education and extension boards amend their district-wide school safety plans to include plans for remote instruction beginning with the 2023-2024 school year. The public will have an opportunity to provide feedback on such plans for remote instruction prior to their adoption.¹ Such plans must include the methods by which public schools, BOCES and county vocational education and extension boards will ensure the availability of devices, internet access, provision of special education and related services for students with disabilities, and the expectations for time spent in different remote modalities. Additionally, such plans require that each chief executive officer of each educational agency located within a public school district report information on student access to computing devices and access to internet connectivity each year.

The proposed rule also clarifies that school districts may, but are not required to, report the activation of emergency plan or building-level school safety plans that result in the closing of a school building through the district superintendent.

Finally, the Department proposes additions to section 100.1 of the Commissioner’s regulations to define the term “remote instruction.” This definition identifies various ways in

¹ School districts must accept public comment at least 30 days prior to their adoption. Additionally, districts must convene at least one public hearing that allows for the participation of school personnel, parents, students and any other interested parties.

which remote instruction may be delivered—but which must include, in all situations, regular and substantive teacher-student interaction with an appropriately certified (or, for charter schools, qualified) teacher.

The Department anticipates proposing additional amendments to address emergency remote instruction provided to students in approved private schools for the education of students with disabilities, state-supported schools, state-operated schools, and approved preschool special education programs in the coming months.

Related Regents Items

February 2021: [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, 801.13, 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, 1542.3, 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/221brca6.pdf)

(<https://www.regents.nysed.gov/common/regents/files/221brca6.pdf>)

March 2021: [Proposed Amendment of Sections 100.4, 100.10 and 175.5 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/321p12a7revised_0.pdf)

(https://www.regents.nysed.gov/common/regents/files/321p12a7revised_0.pdf)

June 2021: [Proposed Amendment to Section 175.5 of the Regulations of the Commissioner of Education Relating to Extending the Instructional Hour COVID-19 Waiver to the 2021-2022 School Year](https://www.regents.nysed.gov/common/regents/files/621p12d1.pdf) (<https://www.regents.nysed.gov/common/regents/files/621p12d1.pdf>)

September 2021: [Proposed Amendment to Section 175.5 of the Regulations of the Commissioner of Education Relating to Extending the Instructional Hour COVID-19 Waiver to the 2021-2022 School Year](https://www.regents.nysed.gov/common/regents/files/921brca7.pdf)

(<https://www.regents.nysed.gov/common/regents/files/921brca7.pdf>)

April 2022: [Proposed Amendment of Sections 100.1, 155.17, and 175.5 of the Regulations of the Commissioner of Education Relating to Remote Instruction and its Delivery under Emergency Conditions](https://www.regents.nysed.gov/common/regents/files/422p12d1revised.pdf)

<https://www.regents.nysed.gov/common/regents/files/422p12d1revised.pdf>

Recommendation

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

VOTED: That sections 100.1, 155.17, and 175.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective July 12, 2022, 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 permit districts to provide remote instruction in the upcoming 2022-2023 school year on days they would otherwise close due to an emergency

and to count such instructional days towards minimum requirements and to identify the ways in which such remote instruction may be delivered.

Timetable for Implementation

If adopted as an emergency rule at the July 2022 Regents meeting, the emergency rule will become effective July 12, 2022. It is anticipated that the proposed amendment will be presented for permanent adoption at the September Regents meeting. If adopted at the September meeting, the proposed amendment will become effective as a permanent rule on September 28, 2022.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 215, 305, 308, 1704, 2801-a, 2854, 3602, 3604 of the Education Law.

1. Subdivision (e) of section 175.5 of the Regulations of the Commissioner of Education are amended to read as follows:

(e) Emergency conditions.

(1) Remote instruction due to emergency conditions. If a school district would otherwise close due to an emergency, including but not limited to, extraordinary adverse weather conditions, impairment of heating facilities, insufficiency of water supply, shortage of fuel, destruction of a school building, or a communicable disease outbreak, the school district may remain in session and provide remote instruction, as defined in section 100.1(u) of this Chapter, and beginning with the 2023-2024 school year such remote instruction shall be consistent with such school district's emergency remote instruction plan pursuant to section 155.17(c)(1)(xxi) of this Chapter. Instruction provided on these session days may be counted towards the annual hour requirement set forth in subdivision (c) of this section. The superintendent shall certify to the Department, on a form prescribed by the Commissioner, that an emergency condition existed on a previously scheduled session day and that such school district was in session and provided remote instruction on that day and indicate how many instructional hours were provided on such session day and, beginning with the 2023-2024 school year, certify that remote instruction was provided in accordance with the district's emergency remote instruction plan.

(2) Unscheduled school delays and early releases. Instructional hours that a school

district scheduled but did not execute, either because of a delay to the start of a school day or an early release, due to extraordinarily adverse weather conditions, impairment of heating facilities, insufficiency of water supply, shortage of fuel, destruction of a school building, or such other cause as may be found satisfactory by the Commissioner, may still be considered as instructional hours for State aid purposes for up to two instructional hours per session day, provided, however, that the superintendent shall certify to the Department, on a form prescribed by the Commissioner, that an extraordinary condition existed on a previously scheduled session day and that school was in session on that day.

2. Section 100.1 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (u) to read as follows:

(u) Remote instruction means instruction provided by an appropriately certified teacher, or in the case of a charter school an otherwise qualified teacher pursuant to Education Law §2854(3)(a-1), who is not in the same in-person physical location as the student(s) receiving the instruction, where there is regular and substantive daily interaction between the student and teacher.

(1) Remote instruction shall encompass synchronous instruction provided through digital video-based technology and may also include asynchronous instruction intended to complement synchronous instruction. Digital video-based technology includes online technology and videoconferencing technology.

(2) Remote instruction may encompass non-digital and audio-based asynchronous and/or synchronous instruction where such instruction is more appropriate for a student's educational needs.

(v) Non-digital and/or audio-based instruction means instruction accessed

synchronously and/or asynchronously through paper-based materials where the student to teacher interaction occurs via telephone or other audio platforms.

(w) Asynchronous instruction means instruction where students engage in learning without the direct presence (remote or in-person) of a teacher.

(x) Synchronous instruction means instruction where students engage in learning in the direct presence (remote or in-person) of a teacher in real time.

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

(a) Development of school safety plans. Every board of education of a school district, every board of cooperative educational services and county vocational education and extension board and the chancellor of the City School District of the City of New York shall adopt by July 1, 2001, and shall update by July 1st for the 2002-2003 through the 2015-2016 school years and shall update and adopt by September 1st for the 2016-2017 school year and each subsequent September 1st thereafter, a comprehensive district-wide school safety plan and building-level emergency response plans regarding crisis intervention and emergency response and management, and commencing with the 2023-2024 school year district-wide school safety plans shall include plans for the provision of remote instruction during any emergency school closure, provided that in the City School District of the City of New York, such plans shall be adopted by the chancellor of the city school district. Such plans shall be developed by a district-wide school safety team and a building-level emergency response team, as such terms are defined in subdivision (b) of this section, and shall be in a form developed by the commissioner in consultation with the Division of Criminal Justice Services, the superintendent of the State Police and any other appropriate State agencies. Each

district-wide school safety plan and building-level emergency response plan shall be reviewed by the appropriate school safety team on at least an annual basis, and updated as needed.

4. Paragraphs (3) and (13) of subdivision (b) of section 155.17 of the Regulations of the Commissioner of Education are amended to read as follows:

Section 100.2 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (pp) to read as follows:

(3) *Disaster* means occurrence or imminent threat of widespread or severe damage, illness, injury, or loss of life or property resulting from any natural or manmade causes, such as fire, flood, earthquake, hurricane, tornado, high water, landslide, mudslide, windstorm, wave action, epidemic, air contamination, drought, explosion, water contamination, chemical accident, communicable disease outbreak, war or civil disturbance.

(13) *District-wide school safety plan* means a comprehensive, multi-hazard school safety plan that covers all school buildings of the school district, BOCES or county vocational education and extension board, that addresses crisis intervention, emergency response and management, and commencing July 1, 2023, provision of remote instruction during an emergency school closure, at the district level and has the contents prescribed in paragraph (c)(1) of this section.

5. Subparagraphs (ix), (xviii) and (xx) of paragraph (1) of subdivision (c) of section 155.17 of the Regulations of the Commissioner of Education are amended and a new subparagraph (xxi) is added to read as follows:

(ix) policies and procedures for contacting parents, guardians or persons in parental relation to the students of the district in the event of a violent incident or an early dismissal or emergency school closure;

(xviii) in the case of a school district, except in a school district in a city having more than one million inhabitants, a system for informing all educational agencies within such school district of a disaster or emergency school closure;

(xx) ensure the development of protocols for responding to a declared state disaster emergency involving a communicable disease that are substantially consistent with the provisions of section 27-c of the Labor Law[.]; and

(xxi) beginning with the 2023-2024 school year and every school year thereafter, an emergency remote instruction plan. For purposes of this subparagraph remote instruction shall have the same meaning as defined in section 100.1(u) of this Chapter. Emergency remote instruction plans shall include:

(a) policies and procedures to ensure computing devices will be made available to students or other means by which students will participate in synchronous instruction and policies and procedures to ensure students receiving remote instruction under emergency conditions will access internet connectivity. Each chief executive officer of each educational agency located within a public school district shall survey students and parents and persons in parental relation to such students to obtain information on student access to computing devices and access to internet connectivity to inform the emergency remote instruction plan;

(c) expectations for school staff as to the proportion of time spent in synchronous and asynchronous instruction of students on days of remote instruction under emergency conditions with an expectation that asynchronous instruction is supplementary to synchronous instruction;

(d) a description of how instruction will occur for those students for whom remote instruction by digital technology is not available or appropriate;

(e) a description of how special education and related services will be provided to students with disabilities, as defined in section 200.1(zz) of this Chapter, and preschool students with disabilities, as defined in section 200.1(mm) of this Chapter, as applicable, in accordance with their individualized education programs to ensure the continued provision of a free appropriate public education; and

(f) for school districts that receive foundation aid, the estimated number of instructional hours the school district intends to claim for State aid purposes for each day spent in remote instruction due to emergency conditions pursuant to section 175.5 of this Chapter.

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

(f) *Reporting.* (1) 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] In addition, school districts within a supervisory district [shall] may provide such notification through the BOCES 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 and 2021-22 school years, districts shall provide such notification for snow emergency days, including those days converted to remote instruction under the 2020-21 and 2021-22 snow day pilot in accordance with the provisions of this subdivision.

(2) Beginning in the 2022-2023 school year, each chief executive officer shall report to the Commissioner, no later than June 30 of each school year, on a form and format

prescribed by the Commissioner, the results of the survey on student access to computing devices and access to internet connectivity required pursuant to subparagraph (xxi) of paragraph (1) of subdivision (c) of this section.

STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING
EMERGENCY ACTION

The Department previously authorized a “snow day pilot” program during the 2020-2021 and 2021-2022 school years. This program allowed school districts to deliver instruction remotely on days in which it would otherwise have closed due to an emergency. In the 2020-2021 school year, 126 districts reported utilizing this program. The greatest concentration of participating districts were in the Hudson Valley and Long Island regions. Higher need districts were less likely to use the pilot, but student density and the concentration of nonpublic students did not appear to play a role in a district’s likelihood of utilizing this flexibility. A map portraying this usage is provided in (Attachment B).

To give districts greater predictability, the Department proposes to amend section 175.5(e) of the Commissioner’s regulations to codify this flexibility. Districts that would otherwise close due to an emergency may provide remote instruction and count these instructional days towards the minimum requirements. Instruction must be provided to all students and be consistent with the definition of remote instruction, as explained below. In addition, beginning with the 2023-2024 school year, such instruction must be consistent with the school district’s emergency remote instruction plan described below.

Additionally, the Department proposes to amend section 155.17 of the Commissioner’s regulations to require that public schools, boards of cooperative educational services (BOCES) and county vocational education and extension boards amend their district-wide school safety plans to include plans for remote instruction beginning with the 2023-2024 school year. The public will have an opportunity to provide feedback on such plans for remote

instruction prior to their adoption.² Such plans must include the methods by which public schools, BOCES and county vocational education and extension boards will ensure the availability of devices, internet access, provision of special education and related services for students with disabilities, and the expectations for time spent in different remote modalities. Additionally, such plans require that each chief executive officer of each educational agency located within a public school district report information on student access to computing devices and access to internet connectivity each year.

The proposed rule also clarifies that school districts may, but are not required to, report the activation of emergency plan or building-level school safety plans that result in the closing of a school building through the district superintendent.

Finally, the Department proposes additions to section 100.1 of the Commissioner's regulations to define the term "remote instruction." This definition identifies various ways in which remote instruction may be delivered—but which must include, in all situations, regular and substantive teacher-student interaction with an appropriately certified (or, for charter schools, qualified) teacher.

The Department anticipates proposing additional amendments to address emergency remote instruction provided to students in approved private schools for the education of students with disabilities, state-supported schools, state-operated schools, and approved preschool special education programs in the coming months.

Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) action after expiration of the 60-day

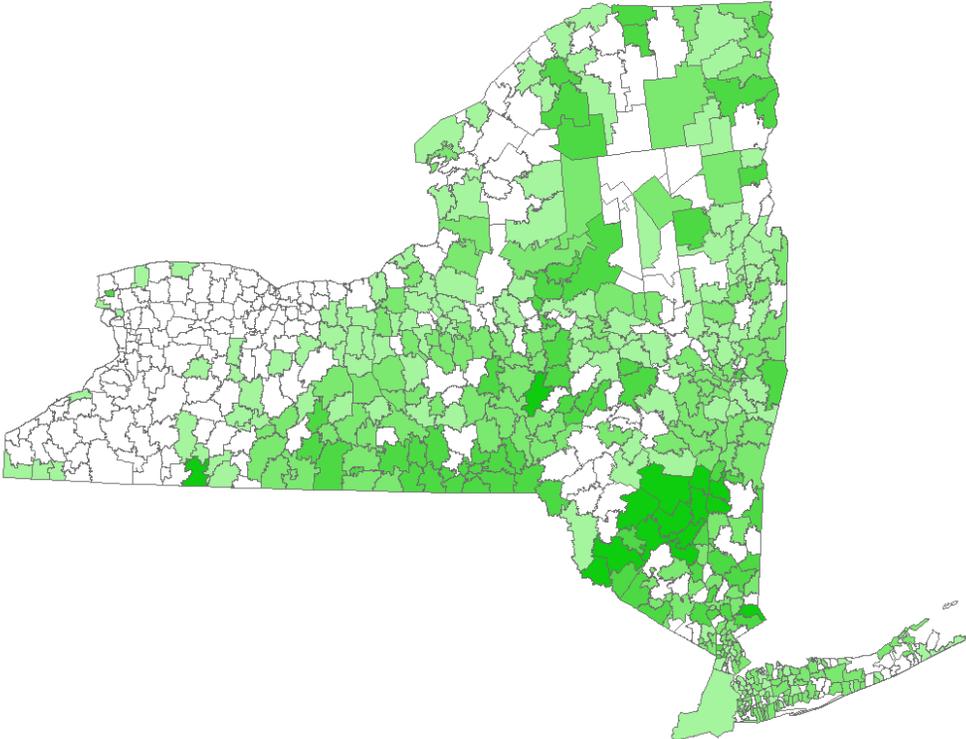
² School districts must accept public comment at least 30 days prior to their adoption. Additionally, districts must convene at least one public hearing that allows for the participation of school personnel, parents, students and any other interested parties.

public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) and assessment of public comment would be the September 2022 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the September 2022 meeting, would be September 28, 2022, the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the July 2022 meeting, effective July 12, 2022, for the preservation of the general welfare in order to permit districts to provide remote instruction in the upcoming 2022-2023 school year on days they would otherwise close due to an emergency and to count such instructional days towards minimum requirements and to identify the ways in which such remote instruction may be delivered.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the September 2022 meeting.

2020-2021 “Snow Days” as reported in the State Aid Management System
Both Closures and remote instructional days



2020-2021 Remote Instructional “Snow Days”
Darker Colors represent more days utilized

