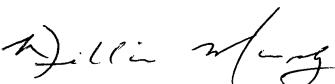




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

**TO:** Higher Education Committee

**FROM:** William P. Murphy 

**SUBJECT:** Proposed Amendment of Section 87.2(k) of the Regulations of the Commissioner of Education Relating to the Definition of Prospective School Employee

**DATE:** September 22, 2022

**AUTHORIZATION(S):** 

#### **SUMMARY**

#### **Issue for Discussion**

Should the Board of Regents adopt the proposed amendment of section 87.2(k) of the Regulations of the Commissioner of Education relating to the definition of prospective school employee?

#### **Reason(s) for Consideration**

Review of Policy.

#### **Proposed Handling**

The proposed amendment is presented to the Higher Education Committee for discussion at the October 2022 Regents meeting. A copy of the proposed rule is included (Attachment A).

#### **Procedural History**

A Notice of Proposed Rule Making will be published in the State Register on October 19, 2022, for a 60-day public comment period. Supporting materials are available upon request to the Secretary of the Board of Regents.

#### **Background Information**

Part 87 of the Commissioner's regulations require that prospective school employees of a covered school be fingerprinted and cleared for employment by the Department, after a criminal history record check, in order to be employed by the

covered school. At the October 2021 Regents meeting, the Board voted to adopt an amendment to the definition of “prospective school employee” in section 87.2(k) of the Commissioner’s regulations. This definition relates to school employees who will reasonably be expected by a covered school to provide services which involve direct contact with students under the age of 21. The October amendment added any individual who will reasonably be expected to provide services that involve online communication or interaction directly to students under the age of 21 to the definition of “prospective school employee”.

There have been questions from the field regarding whether this definition encompasses telephonic communication and interaction. While the Department’s position is that such communications are covered, to provide clarity, the Department proposes to amend the definition of “prospective school employee” to explicitly include individuals who will reasonably be expected by a covered school to provide services which involve any other form of direct communication or interaction with students under the age of 21 including, but not limited to communication or interaction via digital or audio-based technology. This proposed amendment makes clear that all forms of direct communication or interaction are included in this definition.

### **Related Regents Items**

October 2021: [Proposed Amendment to Sections 52.30, 63.9, 70.4, 74.6, 75.2, 75.5, 76.2, 79-9.3, 79-10.3, 79-11.3, 79-12.3, 80-5.3, 80-5.4, 83.5, 87.2, 87.5, 145-2.15, 155.17, 200.5, 200.6, and 279.15 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/1021brca7.pdf>)

### **Recommendation**

Not applicable.

### **Timetable for Implementation**

It is anticipated that the proposed amendment will be presented for permanent adoption at the February 2023 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 February 2023 meeting, the proposed amendment will become effective on March 1, 2023.

## AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 305, 3001-d, and 3035 of the Education Law.

Paragraph (2) of subdivision (k) of section 87.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(2) who will reasonably be expected by such covered school to provide services which involve direct contact, meaning in person, face-to-face communication or interaction, with students under the age of 21, or [online] any other form of communication or interaction directly with such students including, but not limited to communication or interaction via digital or audio-based technology; and