



**TO:** P-12 Education Committee

**FROM:** Kimberly Young Wilkins *Kimberly Young Wilkins*

**SUBJECT:** Proposed Amendment of Section 125.1(d) of the Regulations of the Commissioner of Education Relating to the Annual Visitation of Voluntarily Registered Nursery Schools and Kindergartens

**DATE:** November 4, 2021

**AUTHORIZATION(S):**

*Don M. P.* *Betty M.*

**SUMMARY**

**Issue for Decision**

Should the Board of Regents adopt the proposed amendment of section 125.1(d) of the Regulations of the Commissioner of Education relating to the annual visitation of voluntarily registered nursery schools and kindergartens?

**Reason(s) for Consideration**

Review of Policy.

**Proposed Handling**

The proposed amendment is presented to the P-12 Education Committee and to the Full Board for adoption as an emergency rule at its November 2021 meeting. A copy of the proposed rule is included as (Attachment A) and a statement of facts and circumstances justifying 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 1, 2021 for a 60-day public comment period. Supporting materials are available upon request to the Secretary of the Board of Regents.

**Background Information**

At its February 2021 meeting, the Board of Regents permanently adopted amendments to Section 125.1 of the Commissioner's regulations providing that

Department staff must conduct mandatory visitations to voluntarily registered nursery schools and kindergartens “as soon as practicable” if prevented from doing so in the 2019-2020 or 2020-2021 school year(s) due to the COVID-19 crisis. Ordinarily, these inspections are required annually (8 NYCRR 125.1[c]). The Department extended the registration of nursery schools and kindergartens whose registration was up for renewal that did not have on-site visits in the 2019-2020 and/or 2020-2021 school years due to COVID-19.

The Department now proposes to amend section 125.1(d) of the Commissioner’s regulations to extend this flexibility to the 2021-2022 school year due to the ongoing challenges of the COVID-19 crisis. Again, the Department will extend registrations for voluntarily registered nursery schools and kindergartens whose registration is up for renewal, and who do not have an on-site visit in the 2021-2022 school year.

### **Related Regent’s 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>)

### **Recommendation**

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

VOTED: That section 125.1(d) of the Regulations of the Commissioner of Education be amended, as submitted, effective November 16, 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 and public health to continue to provide flexibility for the annual visitation of voluntarily registered nursery schools and kindergartens during the 2021-2022 school year due to the COVID-19 crisis.

### **Timetable for Implementation**

If adopted as an emergency rule at the November 2021 Regents meeting, the emergency rule will become effective November 16, 2021. It is anticipated that the proposed amendment will be presented for permanent adoption at the March 2022 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 March Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the January 2022 meeting. If adopted at the March meeting, the proposed amendment will become effective as a permanent rule on March 30, 2022.

**Attachment A**

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 210, 3602, and 3602-e of the Education Law.

1. Subdivision (d) of section 125.1 of the Regulations of the Commissioner of Education is amended to read as follows:

(d) Where Department staff are unable to conduct an annual visit in accordance with subdivision (c) of this section in the 2019-2020, [or] 2020-2021, or 2021-2022 school [year] year(s) due to the COVID-19 crisis, Department staff shall conduct such visit as soon as practicable.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ACTION

At its February 2021, the Board of Regents permanently adopted amendments to Section 125.1 of the Commissioner's regulations providing that, where Department staff are unable to conduct an annual visit of voluntarily registered nursery schools and kindergartens, as required by subdivision (c) of such section in the 2019-2020 or 2020-2021 school years, due to the COVID-19 crisis, Department staff must conduct such visit "as soon as practicable." The Department extended the registration of nursery schools and kindergartens whose registration was up for renewal that did not have on-site visits in the 2019-2020 and/or 2020-2021 school years due to COVID-19.

The Department now proposes amend section 125.1(d) of the Commissioner's regulations to extend this flexibility for the annual on-site visitation of voluntarily registered nursery schools and kindergartens to the 2021-2022 school year due to the ongoing challenges of the COVID-19 crisis. Again, the Department will extend registrations for voluntarily registered nursery schools and kindergartens whose registration is up for renewal, and who do not have an on-site visit in the 2021-2022 school year.

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 public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the March 2022 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earlier effective date of the proposed rule, if adopted at the March meeting, would be March 30, 2022, the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the November 2021 meeting for the preservation of the general welfare and public health in order to continue to provide flexibility for the annual visitation of voluntarily registered nursery schools and kindergartens during the 2021-2022 school year due to the COVID-19 crisis.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the March 2022 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rule making. However, since the emergency action will expire before the March Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the January 2022 Regents meeting.