


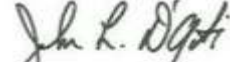



TO: The Honorable the Members of the Board of Regents

FROM: Aaron M. Baldwin 

SUBJECT: 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

DATE: September 3, 2020

AUTHORIZATION(S):  

SUMMARY

Issue for Decision

Should the Board of Regents adopt the 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?

Reason for Consideration

Review of Policy.

Proposed Handling

The revised proposed amendment will be presented to the Full Board for adoption as an emergency rule at its September 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

The proposed amendment was presented to the Full Board for adoption as an emergency rule at its July 2020 meeting, effective July 14, 2020. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 29, 2020. To date, the Department has not received any comments on the proposed rule; however, **the Department is proposing to revise the proposed amendment to provide**

clarification relating to the regulatory flexibility provided for diagnostic screening and to conform such amendment to reopening guidance issued by the Department.

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 school year and summer school and directing nonessential work personnel to work from home. In response, the Department adopted emergency regulations at the April, May, and June 2020 Board of Regents meetings to address numerous issues resulting from the interruptions caused by the COVID-19 crisis. To address additional issues resulting from the interruptions caused by the COVID-19 crisis and to plan for the reopening of schools, the Department is proposing further emergency regulatory amendments as follows:

- Academic Intervention Services
 - Section 100.2(ee) of the Commissioner’s regulations is amended to provide that schools are not required to conduct the two-step identification prescribed for identification of students to receive AIS for the 2020-2021 school year due to the cancelation of State assessments for the 2019-2020 school year due to the COVID-19 crisis (Attachment A#1).
- Home Instruction
 - Section 100.10(b) of the Commissioner’s regulations is amended to provide that for the 2020-21 school year, the home instruction program deadline for submission of the written notice of intention to instruct at home is extended from July 1 until August 1, 2020 due to the COVID-19 crisis (Attachment A #2).
- Health Screening Waiver
 - Section 136.3(e) of the Commissioner’s regulations is amended to provide that hearing, vision, and scoliosis screenings required to be provided by public schools are waived for the 2020-21 school year due to the COVID-19 crisis, unless the screening is otherwise deemed necessary (Attachment A #3).
- Curriculum and Instruction
 - Unit of Study: The definition of “Unit of study” in section 100.1(a) of the Commissioner’s regulations is amended to provide that “equivalent” shall mean at least 180 minutes of instructional time per week for instruction delivered in a traditional face-to-face model or through alternative instructional

experiences, including, but not limited to, through digital technology or blended learning that represents standards-based learning under the guidance and direction of an appropriately certified teacher. Instructional experiences shall include, but not be limited to meaningful and frequent interaction with an appropriately certified teacher; academic and other supports designed to meet the needs of the individual student and instructional content that reflects consistent academic expectations as in-person instruction. Any alternative instructional experience must include meaningful feedback on student assignments and methods of tracking student engagement. This amendment is necessary so that schools may plan for various types of instructional models, including hybrid models, because of contingencies that may make it impossible for a specific amount of face-to-face contact between teachers and students due to the COVID-19 crisis (Attachment A #4).

- CDOS: Section 100.6(b) of the Commissioner's regulations is amended to provide that a career development and occupational studies (CDOS) commencement credential may be awarded to students exiting school in the 2020-2021 school year who are unable to complete all of the 54 hours of documented school supervised work-based learning experiences required and otherwise meet all other requirements for such credential, where such schools are unable to provide students a certain portion of their scheduled work-based learning experience in the 2020-2021 school year due to the COVID-19 crisis (Attachment A #5).
- Science laboratory experience: Section 100.5(b) of the Commissioner's regulations is amended to provide that, for the 2020-2021 school year as a result of the COVID-19 crisis, the 1,200 minutes of lab experience may be met through a combination of hands-on and simulated laboratory experience (Attachment A #6).
- Diagnostic screening: Section 117.3(b) of the Commissioner's regulations is amended to provide that, for the 2020-2021 school year, diagnostic screening for new entrants and students with low test scores shall be conducted as soon as practicable due to the COVID-19 crisis rather than by December 1 of the school year (Attachment A #7).
- Special Education
 - Section 200.4(b) of the Commissioner's regulations is amended to provide that an individual psychological evaluation is only a required component for an initial evaluation when it is determined to be necessary by a school psychologist due to the COVID-19 crisis when schools are closed pursuant to an Executive Order of the Governor and students are learning remotely.
 - Additionally, such section is amended to require an observation of a student as a required component for an initial evaluation only when it is determined appropriate by the Committee on Preschool Special Education or Committee on Special Education due to the COVID-19 crisis when schools are closed pursuant to an Executive Order of the Governor and students are learning remotely.

- Classroom observations would continue to be a required component of an initial evaluation for students suspected of having a learning disability (Attachment A #8).
- Higher Education
 - Incidental teaching: Section 80-5.3 of the Commissioner's regulations is amended to allow a superintendent of schools to assign certified teachers to teach a subject not covered by their certificate for a period not to exceed ten classroom hours a week, when no certified or qualified teachers are available after extensive and documented recruitment, during the time period of the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis (Attachment A #9).
 - Substitute teacher: Section 80-5.4 of the Commissioner's regulations is amended to allow substitute teachers who do not hold a valid certificate and who are not working toward certification but who hold a high school diploma or its equivalent, to be employed by the school district or BOCES beyond the 40-day limit, for up to 90 days in extreme circumstances and for more than 90 days in rare circumstances, under specified conditions during the time period of the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis (Attachment A #10).
 - Shorter semester: The definitions of full-time and part-time student for Tuition Assistance Programs (TAP) in section 145-2.1 of the Commissioner's regulations is amended to provide that, for the 2020-2021 academic year, students shall be considered full time and part time where the student is unable to enroll in credit-bearing courses for at least 15 weeks for a semester due to the COVID-19 crisis, provided that such student is enrolled in such credit-bearing courses for a minimum of 12 weeks for a semester and still meets the semester hour requirements (Attachment A #11).
- Early Learning
 - Section 151-1.3(d) of the Commissioner's regulations is amended to provide that, due to the COVID-19 crisis for the 2020-2021 school year, for school districts outside of NYC for 3-year old students, with a class size of 7 children or less there must be one teacher assigned to each class and for 4-year old students, with a class size of 8 children or less, there must be one teacher assigned to each class. For the City School District of the City of New York for 3-year old students, with a class size of 10 children or less, there must be one teacher assigned to each class and for 4-year old students, with a class size of 12 children or less there must be one teacher assigned to each class (Attachment A #12).
- Bilingual Education
 - Section 154-2.2(y) of the Commissioner's regulations is amended to provide that day(s) during a school closure ordered pursuant to an Executive Order(s)

of the Governor pursuant to a State of emergency for the COVID-19 crisis shall not count toward the calculation of less than 12 months for identifying English language learner (ELL) students with inconsistent/interrupted formal education (Attachment A #13).

- Section 154-2.3(a)(2) of the Commissioner's regulations is amended to provide that the individual interview for the identification process to determine if a student is an English language learner is waived where a school district can document that video conferencing was used to remotely conduct an individual interview during a school closure ordered pursuant to an Executive Order(s) of the Governor pursuant to a State of emergency for the COVID-19 crisis. In such cases, qualified personnel will review the previously completed Home Language Questionnaire with the parent or person in parental relation (Attachment A #14).
- Section 154-2.3(b) of the Commissioner's regulations is amended to provide that, due to the COVID-19 crisis for the 2020-2021 school year, the 45-day timeline for a school district to initiate a review of a determination made in the initial or reentry identification process for English language learners after receipt of a written request is extended to 65 days from the beginning of the 2020-2021 school year for any student that was either newly enrolled during the COVID-19 closures in the 2019-2020 school year, summer 2020, or within the first 20 days of the 2020-2021 school year (Attachment A #15).
- Section 154-2.3(g) of the Commissioner's regulations is amended to provide that:
 - Due to the COVID-19 crisis for the 2020-2021 school year, the process for initial enrollment or reentry identification and parent notification, orientation, and placement shall be completed such that a student who was either newly enrolled during the COVID-19 closures in the 2019-2020 school year, summer 2020, or the first 20 days of the 2020-2021 school year is placed in either a Bilingual Education or English as New Language program within 30 school days after commencement of the 2020-2021 school year for school districts with 150 or more ELLs, or where ELLs are 10 percent or more of the district's population.
 - School districts with 149 or fewer ELLs or where ELLs constitute less than 10 percent of the district's population may seek an exemption from the English language learner identification timeline for students who are newly enrolled during the COVID-19 closures in the 2019-2020 school year, summer 2020, or the first 20 days of the 2020-2021 school year on an application form in a timeframe prescribed by the Commissioner; provided that such school demonstrates sufficient need for such exemption notwithstanding the size and percentage of its ELL population (Attachment A #16).
- Pupil Transportation
 - Section 156.3(f) is amended to provide that for the first school bus drill to be conducted during the first seven days of school, such seven days shall exclude any days where school is closed pursuant to an Executive Order of the

Governor for the COVID-19 crisis for the fall term for the 2020-2021 school year (Attachment A #17).

Proposed Revisions

The Department is proposing to revise the proposed rule to provide clarification for the amendments made to section 117.3(b) of the Commissioner's regulations relating to diagnostic screenings. To conform the proposed rule to reopening guidance issued by the Department, such amendment is revised to clarify that, for the 2020-2021 school year, due to the COVID-19 crisis, diagnostic screening for students who transfer after December 1, 2020 into a New York State public school from a district outside of New York State or who transfer from a district within New York State and the student has no screening record, shall have a diagnostic screening conducted as soon as practicable (Attachment A #7).

Related Regents Items

[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>)

[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>)

[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>)

[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>)

[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>)

[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>)

[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>)

[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>)

[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>)

[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>)

Recommendation

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

VOTED: That 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 be amended, as submitted, as an emergency measure, effective October 12, 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 and to plan for the reopening of schools and to ensure the emergency action taken at the July 2020 Regents meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency measure at the September 2020 Regents meeting, the proposed amendment will become effective as an emergency rule on September 15, 2020. It is anticipated that the proposed amendment will be presented for permanent adoption at the December 2020 Regents meeting, after publication of the proposed amendment in the

State Register and expiration of the 45-day public comment period required under the State Administrative Procedure Act for revised rule makings. If adopted at the December 2020 meeting, the proposed rule will become effective on December 30, 2020. Because the emergency adoption will expire before the December 2020 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the October Regents meeting.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 209, 215, 305, 308, 309, 602, 661, 905, 1709, 2117, 2854, 3001, 3004, 3009, 3204, 3205, 3208, 3212, 3214, 3602, 3602-c, 3602-e, 3604, 3623, 3713, 4401, 4403, and 4410 of the Education Law.

1. Subparagraph (ii) of paragraph (2) of subdivision (ee) of section 100.2 is amended by adding a new clause (f) to read as follows:

(f) Notwithstanding any other provision of this subparagraph, schools shall not be required to conduct the two-step identification process prescribed in clauses (a) and (b) of this subparagraph for the 2020-21 school year due to the cancelation of State assessments for the 2019-20 school year due to the State of emergency declared by the Governor for the COVID-19 crisis. For all students who will be enrolled in grades 3 through 8 for the 2020-21 school year, schools shall make such identification based solely on the district-developed procedures prescribed in clauses (b), (d) and (e) of this subparagraph.

2. Subdivision (b) of section 100.10 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (4) to read as follows:

(4) For the 2020-21 school year, the written notice of intention to instruct at home required in paragraph (1) of this subdivision shall be due on August 1, 2020 due to the State of emergency declared by the Governor pursuant to an Executive Order(s) for the COVID-19 crisis.

3. Subdivision (e) of section 136.3 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (3) to read as follows:

(3) The hearing, vision, and scoliosis screenings required pursuant to paragraph (1) of this subdivision shall be waived for the 2020-21 school year due to the COVID-19 crisis, unless such screening has otherwise been deemed necessary.

4. Subdivision (a) of section 100.1 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) *Unit of study* means at least 180 minutes of instruction per week throughout the school year, or the equivalent. Equivalent shall mean at least 180 minutes of instructional time per week for instruction delivered in a traditional face to face model or through alternative instructional experiences, including but not limited to through digital technology or blended learning, that represents standards-based learning under the guidance and direction of an appropriately certified teacher. Instructional experiences shall include, but not be limited to: meaningful and frequent interaction with an appropriately certified teacher; academic and other supports designed to meet the needs of the individual student and instructional content that reflects consistent academic expectations as in-person instruction. Any alternative instructional experience must include meaningful feedback on student assignments and methods of tracking student engagement.

5. Paragraph (3) of subdivision (b) of section 100.6 of the Regulations of the Commissioner of Education is amended by adding a new subparagraph (iv) to read as follows

(iv) Notwithstanding any other provision of this paragraph to the contrary, a career development and occupational studies commencement credential may be awarded to students exiting school in the 2020-2021 school year who are unable to complete all of the 54 hours of documented school supervised work-based learning experiences required

pursuant to subparagraph (ii) of this paragraph and otherwise meet all other requirements for such credential, where such schools are unable to provide students a certain portion of their scheduled work-based learning experience in the 2020-2021 school year due to the COVID-19 crisis.

6. Clause (d) of subparagraph (iv) of paragraph (7) of subdivision (b) of Section 100.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(d) Science, three units of credit and one of the Regents examinations in science or an approved alternative pursuant to section 100.2(f) of this Part. In order to qualify to take a Regents examination in any of the sciences a student must complete 1,200 minutes of actual hands-on (not simulated) laboratory experience with satisfactory documented laboratory reports, provided that, for students who attend educational programs administered pursuant to Education Law section 112 and Part 116 or 118 of this Title, and for all students during the 2020-2021 school year as a result of the COVID-19 crisis, the 1,200 minutes of laboratory experience may be met through a combination of hands-on and simulated laboratory experience. The 1,200 minutes of laboratory experience must be in addition to the required classroom instruction associated with earning a unit of credit.

7. Paragraph (3) of subdivision (b) of section 117.3 of the Regulations of the Commissioner of Education is amended to read as follows:

(3) in the case of new entrants, such screening shall be conducted prior to the school year, if possible, but no later than December 1st of the school year of entry, or within 15 days of transfer of a student into a New York State public school should the entry take place after December 1st of the school year; provided, however, that for the 2020-2021 school year, due to the COVID-19 crisis such screening for a student who transfers

after December 1, 2020 into a New York State public school from a district outside New York State, or from a district within New York State and such student has no screening record, shall be conducted as soon as practicable;

8. Paragraph (1) of subdivision (b) of section 200.4 of the Regulations of the Commissioner of Education is amended as follows:

(1) . . .

(i) . . .

(ii) an individual psychological evaluation, except when a school psychologist determines after an assessment of a school-age student, pursuant to paragraph (2) of this subdivision, that further evaluation is unnecessary, except that for the 2020-2021 school year, to allow for appropriate flexibility due to the unique circumstances that have arisen as a result of the COVID-19 crisis, no individual psychological evaluation shall be required if schools are closed pursuant to an Executive Order of the Governor and students are learning remotely, unless it is determined to be necessary by a school psychologist;

(iii) . . .

(iv) an observation of the student in the student's learning environment (including the regular classroom setting) or, in the case of a student of less than school-age or out of school, an environment appropriate for a student of that age, to document the student's academic performance and behavior in the areas of difficulty, except that, to allow for appropriate flexibility due to the unique circumstances that have arisen as a result of the COVID-19 crisis, during the 2020-21 school year if schools are closed pursuant to an Executive Order of the Governor and students are learning remotely an observation shall

only be a required component of an initial evaluation where determined appropriate by the committee, and as required under subparagraph (j)(1)(i) of this section; and

(v) . . .

(2) . . .

9. The opening paragraph of section 80-5.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

A superintendent of schools may assign a teacher to teach a subject not covered by such a teacher's certificate or license for a period not to exceed five classroom hours a week, and due to the COVID-19 crisis during the 2020-2021 school year for a period not to exceed ten classroom hours a week, when no certified or qualified teacher is available after extensive and documented recruitment, and provided that approval of the commissioner is obtained in accordance with the following requirements:

10. Subparagraph (ii) of paragraph (3) of subdivision (c) of section 80-5.4 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(ii) In extreme circumstances where there is an urgent need for a substitute teacher and the district has undertaken a good faith recruitment search for a properly certified candidate, and determined that there are no available certified teachers to perform the duties of such position, a substitute teacher, without a valid teaching certificate and who is not working towards certification but who holds a high school diploma or its equivalent, may be employed by the school district or board of cooperative educational services beyond the 40-day limit, for up to an additional 50 days (90 days total in a school year), if the district superintendent (for districts that are a component district of a board of cooperative educational services and boards of cooperative educational services) or the

superintendent (for school districts that are not a component district of a board of cooperative educational services) certifies that the district or board of cooperative educational services, as applicable, has conducted a good faith recruitment search and there are no available certified teachers that can perform the duties of such position. In rare circumstances, a district or BOCES may hire a substitute teacher beyond the 90 days, if a district superintendent or superintendent attests that a good faith recruitment search has been conducted and that there are still no available certified teachers who can perform the duties of such position and that a particular substitute teacher is needed to work with a specific class or group of students until the end of the school year. The provisions of this subparagraph shall be applicable [until June 30, 2018] during the 2020-2021 school year due to the COVID-19 crisis.

11. Subparagraphs (i) and (ii) of paragraph (1) of subdivision (a) of section 145-2.1 of the Regulations of the Commissioner of Education are amended to read as follows:

(i) For State student financial aid programs, except the supplemental tuition assistance program (STAP), full-time study, where required by law, shall mean enrollment in credit-bearing courses applicable to the students' program of study, for at least 12 semester hours for a semester of not less than 15 weeks or 100 calendar days, inclusive of examination periods; or eight semester hours a quarter; or, in programs not organized on a semester or quarter basis, 24 semester hours for an academic year of not more than 12 months or the equivalent, as determined by the commissioner. Provided, however, that for the 2020-2021 academic year, a student shall meet the definition of full-time study in accordance with this subparagraph where a student is unable to enroll in credit-bearing courses applicable to the student's program of study for at least 15 weeks for a semester

due to the COVID-19 crisis, provided that the student is enrolled in such credit-bearing courses for a minimum of 12 weeks for a semester and otherwise meets the semester hour requirements prescribed in this subparagraph .

(ii) A student shall be considered full-time for a program organized on an academic-year basis only if the student has filed a plan of study with the institution for the entire academic year. Except as otherwise defined in paragraph (4) of this subdivision, part-time study, for general awards, other than tuition awards for veterans and tuition awards for part-time undergraduate students, and for academic performance awards, shall mean enrollment in credit-bearing courses applicable to the students' program, for at least 6, but less than 12, semester hours or the equivalent for a semester of not less than 15 weeks or 100 calendar days, inclusive of examination periods; or at least four, but less than eight, semester hours a quarter. Provided, however, that for the 2020-2021 academic year, a student shall meet the definition of part-time in accordance with this subparagraph where a student is unable to enroll in credit-bearing courses applicable to the student's program for at least 15 weeks for a semester due to the COVID-19 crisis, provided that the student is enrolled in such credit-bearing courses for a minimum of 12 weeks for a semester and meets the semester hour requirements prescribed in this subparagraph.

12. Subdivision (d) of section 151-1.3 of the Regulations of the Commissioner of Education is amended to read as follows

(d) Class size. (1) The maximum class size for a prekindergarten class is 20 children. For classes of up to 18 students, there must be one teacher and one paraprofessional assigned to each class. For classes of 19 or 20 students, there must be one teacher and two paraprofessionals assigned to each class.

(2) (i) Notwithstanding paragraph (1) of this subdivision, due to the COVID-19 crisis for the 2020-21 school year for school districts other than the City School District of the City of New York:

(a) for 3-year old students, with a class size of 7 children or less there must be one teacher assigned to each class; and

(b) for 4-year old students, with a class size of 8 children or less, there must be one teacher assigned to each class.

(ii) Notwithstanding paragraph (1) of this subdivision, due to the COVID-19 crisis for the 2020-21 school year the City School District of the City of New York:

(a) for 3-year old students, with a class size of 10 children or less, there must be one teacher assigned to each class; and

(b) for 4-year old students, with a class size of 12 children or less there must be one teacher assigned to each class.

13. Subdivision (y) of section 154-2.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(y) Students with Inconsistent/Interrupted Formal Education shall mean English Language Learners who have attended schools in the United States (the 50 States and the District of Columbia) for less than twelve months and who, upon initial enrollment in such schools are two or more years below grade level in literacy in their home language and/or two or more years below grade level in Math due to inconsistent or interrupted schooling prior to arrival in the United States (the 50 States and the District of Columbia). Day(s) during a school closure ordered pursuant to an Executive Order(s) of the Governor pursuant to a State of emergency for the COVID-19 crisis shall not count towards the

calculation of less than twelve months of attendance in United States schools prescribed in this subdivision.

14. Paragraph (2) of subdivision (a) of section 154-2.3 of the Regulations of the Commissioner of Education is amended to read as follows:

(2) Step 2: An individual interview with the student by qualified personnel in English and the student's home language, and a review of the student's abilities or work samples in reading and writing in English and the home language and math that are collected or generated during the interview, and for students reentering the New York State public school system, a review of prior experience in home language and/or English instruction, to determine if the student shall be administered the statewide English language proficiency identification assessment and to determine the student's grade level of literacy in their home language and grade level in math. The individual interview is waived in circumstances when the school district can document that video conferencing was used to remotely conduct an individual interview during a school closure ordered pursuant to an Executive Order(s) of the Governor pursuant to a State of emergency for the COVID-19 crisis. In such cases, qualified personnel as defined by Part 154-2.2(q) will review the previously completed Home Language Questionnaire with the parent or person in parental relation;

15. Subdivision (b) of section 154-2.3 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (9) to read as follows:

(9) Notwithstanding paragraph (8) of this subdivision, due to the COVID-19 crisis for the 2020-2021 school year, the 45 day school timeline prescribed in paragraph (1) of this subdivision shall be extended to 65 days from the beginning of the 2020-2021 school year

for any student that was either newly enrolled during the COVID-19 closures in the 2019-2020 school year, Summer 2020 or within the first twenty (20) days of the 2020-2021 school year.

16. Subdivision (g) of section 154-2.3 of the Regulations of the Commissioner of Education is amended by adding two new paragraphs (3) and (4) to read as follows:

(3) Notwithstanding paragraph (1) of this subdivision, due to the COVID-19 crisis for the 2020-2021 school year, the process for initial enrollment or reentry identification and parent notification, orientation, and placement shall be completed such that a student who was either newly enrolled during the COVID-19 closures in the 2019-2020 school year, Summer 2020 or the first twenty (20) days of the 2020-2021 school year is placed in either a Bilingual Education or an English as a New Language program within thirty (30) school days after the commencement of the 2020-2021 school year for school districts with one hundred-fifty (150) or more ELLs, or where ELLs constitute ten percent (10%) or more of the district's population.

(4) School districts with one hundred forty-nine (149) or fewer ELLs, or where ELLs constitute less than ten percent (10%) of the district's population may seek an exemption from the timeline requirements of paragraph (1) of this subdivision for the newly enrolled students identified in paragraph (3) of this subdivision on an application form and in a timeframe prescribed by the commissioner; provided that such school demonstrates sufficient need for such exemption notwithstanding the size and percentage of its ELL population.

17. Paragraph (2) of subdivision (f) of section 156.3 of the Regulations of the Commissioner of Education is amended to read as follows:

(2) A minimum of three such drills shall be held on each school bus during the school year, the first to be conducted during the first seven days of school, provided, however, that such seven days shall exclude any days where school is closed pursuant to an Executive Order of the Governor for the COVID-19 crisis for the Fall term for 2020-2021 school year, the second between November 1st and December 31st and the third between March 1st and April 30th.

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 school year and summer school and directing nonessential work personnel to work from home. In response, the Department adopted emergency regulations at the April, May, June, and July 2020 Board of Regents meetings to address numerous issues resulting from the interruptions caused by the COVID-19 crisis. The Department presented this proposed amendment to the Full Board for adoption as an emergency action at its July 2020 meeting, effective July 14, 2020 to address additional issues resulting from the interruptions caused by the COVID-19 crisis and to prepare for the reopening of schools. The Department is proposing to revise the proposed emergency regulation to provide clarification relating to the regulatory flexibility provided for diagnostic screening and to align such amendment to reopening guidance issued by the Department. The proposed amendments provide flexibility related to the following:

- Academic Intervention Services (AIS) determinations;
- Home instruction programs deadline for submission of the written notice of intention to instruct at home;

- School health screening waivers;
- Definition of the unity of study;
- Career development and occupational studies work-based learning experience hours;
- Science laboratory experience;
- Diagnostic screening for new school entrants;
- Psychological evaluations for students referred for being suspected of having a disability;
- Student observation for an initial evaluation of a student suspected of having a disability;
- Incidental teaching;
- Substitute teaching;
- Shorter semester for institutions of higher education;
- Class sizes for 3-year olds and 4-year olds;
- Process for initial enrollment, reentry identification and parent notification, orientation, and placement of English Language Learners (ELLs), identification of ELLs with inconsistent/interrupted formal education, and the timeline for review of ELLs identification; and
- School bus drills.

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 45-day public comment period required in the State Administrative Procedure Act (SAPA) section 201(4-a), is the

December 2020 Regents meeting. However, because the COVID-19 crisis is presently affecting the State of New York, a fourth emergency action is necessary for the preservation of public health and the general welfare in order to immediately 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 December 2020 Regents meeting, which is the first scheduled meeting after the 45-day public comment period prescribed in SAPA for State agency rule makings. However, since the emergency regulation will expire before the December meeting, it is anticipated that an additional emergency action will be presented for adoption at the October 2020 Regents meeting.