



TO: The Honorable the Members of the Board of Regents

FROM: Daniel Morton-Bentley

SUBJECT: 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

DATE: September 2, 2021

AUTHORIZATION(S):

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the 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?

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 its September 2021 meeting. A copy of the proposed amendment is attached (Attachment A), as well as a statement of facts and circumstances justifying emergency action (Attachment B).

Procedural History

The proposed amendment was presented to the Full Board for adoption as an emergency rule at the July 2021 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 28, 2021 for a 60-day public comment period. Because the July 2021 emergency action will expire on October 10, 2021, a second emergency action is necessary to

ensure the emergency rule remains continuously in effect until it can be permanently adopted at the October 2021 Regents meeting. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

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. In response, the Department presented, and the Board of Regents voted to adopt, numerous emergency regulations to address issues resulting from interruptions caused by the COVID-19 crisis and to provide regulatory flexibility during the crisis.

As of June 25, 2021, the state of emergency is no longer in effect. However, the COVID-19 crisis continues to affect the State of New York. Therefore, to address additional issues resulting from the interruptions caused by the COVID-19 crisis and to provide additional regulatory flexibility, the Department is proposing further emergency regulatory amendments as follows:

Higher Education:

Incidental Teaching:

At its December 2020 meeting, the Board of Regents permanently adopted regulatory amendments extending incidental teaching from up to five classroom hours a week to up to ten classroom hours a week during the 2020-2021 school year in response to the COVID-19 pandemic. This extension provided districts with additional flexibility in making teaching assignments, permitting certified teachers to teach a subject not covered by their certificate for up to ten classroom hours a week when no certified or qualified teachers are available after extensive and documented recruitment. The Department now proposes to extend incidental teaching from up to five classroom hours a week to up to ten classroom hours a week again during the 2021-2022 school year. This proposal continues to give districts another way to address staffing challenges exacerbated by the pandemic (Attachment A #1).

Substitute Teachers:

Also at its December 2020 meeting, the Board of Regents permanently adopted regulatory amendments allowing substitute teachers who did not hold a valid certificate and were not working towards certification, but held a high school diploma or its equivalent, to be employed by a school district or BOCES for more than 40 days during the 2020-2021 school year under the following circumstances in response to the pandemic:

- In extreme circumstances, these substitute teachers may be employed by the district or BOCES for up to an additional 50 days (90 days total in a school

year) if the district superintendent or the superintendent (for school districts that are not a component district of a BOCES) certifies that the district or BOCES, as applicable, has conducted a good faith recruitment search for a properly certified candidate and determined that 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 the 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 Department is proposing to permit this flexibility again for substitute teachers who do not hold a valid certificate and are not working towards certification, but hold a high school diploma or its equivalent, during the 2021-2022 school year. This proposed extension enables districts to continually address the teacher shortages exacerbated by the pandemic with substitute teachers, if needed, subject to the same conditions as were in place last year (Attachment A #2).

Special Education Teaching Assignments in Grades 7-12:

The Department has received feedback from the field suggesting that there has been a shortage of special education teachers who are certified to teach students with disabilities in grades 7-12 during the COVID-19 pandemic. The Department is therefore proposing to allow teachers who hold a valid certificate in Students With Disabilities (Grades 1-6), Students With Disabilities (Grades 5-9) generalist, or Students With Disabilities (Grades 5-9) content specialist to teach students with disabilities in grades 7-12 during the 2021-2022 school year, provided that they otherwise meet all certification requirements for the teaching assignment. If these teachers instruct students with disabilities in grades 7-12 during the 2021-2022 school year, and they seek Professional certification in the future in the same title as the special education certificate held, they would be able to have the experience gained during this year count toward the Professional certificate experience requirement.

This one-year flexibility would enable districts to fill hard-to-staff middle and high school special education teaching assignments with teachers who have a background in special education. With this proposal, special education teachers who hold the certificate titles listed above would be able to provide special education programs and services to students with disabilities in grades 7-12 through collaboration and consultation with general education teachers as integrated co-teachers, consultant teachers, and/or resource room teachers providing supplemental instruction. If they do not also hold subject area

certification in grades 7-12, they would not be able to teach a special class in grades 7-12 in a subject area (Attachment A #3)¹.

Ability-to-Benefit (ATB) Test:

At its September 2020 meeting, the Board of Regents permanently adopted amendments to section 145-2.15 of the Commissioner's regulations providing that where testing centers and institutions are unable to administer and proctor the ATB during the state of emergency declared by the Governor for the COVID-19 crisis, the test may be administered and proctored remotely in accordance with federal requirements. In order to continue to provide this flexibility beyond the expiration of the state of emergency for individuals impacted by the COVID-19 crisis, the Department proposes to remove the language tying such amendment to the state of emergency. ATB tests must still be administered and proctored in accordance with federal requirements (Attachment A #4).

P12:

Snow Day Reporting:

At its April 2021 meeting, the Board of Regents permanently adopted amendments to section 155.17(f) of the Commissioner's regulations to require notification from superintendents whenever a school's emergency plan or building-level school safety plan is activated that results in the closing of a school building in the district for snow emergency days during the 2020-2021 school year. Previously, such notification was not required for routine snow emergency days, however, due to the COVID-19 crisis, the State has shifted to allowing and/or requiring remote instruction by many districts.

In response, the Department offered a pilot program in 2020-2021 school year allowing school districts to shift to remote instruction for days that a district would have otherwise closed due to a snow emergency. The Department has extended this school day pilot program through the 2021-2022 school year; therefore, regulatory amendments are needed to continue requiring the reporting of snow emergency days to the Department in the 2021-2022 school year. The notification of these remote instruction snow days is necessary for the Department to review and evaluate the snow day pilot program for possible future extension (Attachment A #5).

¹ If districts choose to use this flexibility, they will need to carefully consider the qualifications and experience of these special education teachers in order to make appropriate middle and high school special education teaching assignments, as well as provide opportunities for these teachers to engage in targeted professional learning. The Department will issue guidance to remind districts of the elements of effective collaboration and consultation between special and general education teachers. Professional learning opportunities to support special and general education teachers are available through the [Office of Special Education Educational Partnership](#)

Special Education Due Process Hearings:

At its February 2021 meeting, the Board of Regents permanently adopted amendments to section 200.5(j)(5)(i) to allow impartial hearing officers to extend due process cases for up to 60 days rather than 30 days during the state of emergency declared for the COVID-19 crisis. The Department now proposes to extend this regulatory flexibility beyond the state of emergency to provide impartial hearing officers with continued flexibility as the COVID-19 crisis continues to affect witnesses', administrators', and parents' availability to partake in due process hearings (Attachment A #6).

Professions:

Continuous Experience:

At its February 2021 meeting, the Board of Regents permanently adopted amendments to sections 75.2, 75.5, and 76.2 of the Commissioner's regulations to allow the Department to excuse the continuous experience requirements for speech language pathology, audiology, and occupational therapy where such continuous experience could not be completed due to the state of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis. Since the state of emergency is no longer in effect, the Department proposes to amend such sections to remove language referencing the state of emergency in order to continue to provide the above flexibility for individuals impacted by the COVID-19 crisis (Attachment A #'s 7-10)

In-Person Supervision Experience Requirements:

Also at its February 2021 meeting, the Board of Regents permanently adopted amendments to Sections 74.6(c)(1)(v), 74.6(d)(1)(v), 79-9.3(c), 79-10.3(d), 79-11.3(c), and 79-12.3(c) of the Commissioner's regulations granting an exemption for in-person supervision experience requirements for licensed clinical social work, licensed master social work, mental health counseling, marriage and family counseling, creative arts therapy, and psychoanalysis where such in-person supervision could not be completed due to the state of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis. Again, because the state of emergency is no longer in effect, the Department proposes to amend such sections to remove language referencing the state of emergency in order to continue to provide the above flexibility for individuals impacted by the COVID-19 crisis (Attachment A #'s 11-16).

COVID-19 Vaccine Pharmacists Administration:

Chapter 110 of the Laws of 2020 (Chapter 110) amended the Education Law to authorize licensed pharmacists to immunize patients against COVID-19. Pharmacists may administer this immunization pursuant to either patient specific orders or non-patient specific orders. The proposed amendment conforms the Commissioner's regulations to Chapter 110 by adding the COVID-19 vaccine to

the list of immunizations licensed pharmacists are authorized to administer pursuant to section 63.9 of the Commissioner's regulations. As with other immunizations that pharmacists are authorized to administer (such as immunizations to prevent influenza, pneumococcal disease, acute herpes zoster, meningococcal disease, etc.) pharmacists must be certified by the Department following completion of a satisfactory training program to administer the COVID-19 vaccination (Attachment A #17).

Public Accounting Examination Timeframe:

Also at its February 2021 meeting, the Board of Regents permanently adopted amendments to section 70.4 of the Commissioner's regulations to allow the Department to accept passing examination scores from Public Accounting applicants that are outside the required 18-month examination window where such examinations could not be completed within 18 months due to the state of emergency declared by the Governor for the COVID-19 crisis. In order to continue this flexibility beyond the expiration of the state of emergency for individuals who continue to be impacted by the COVID-19 crisis, the Department now proposes to amend such section to remove the language linking such flexibility to the time period of the state of emergency (Attachment A #18).

Social Work Experience Requirements:

At its February 2021 meeting, the Board of Regents permanently adopted amendments to section 52.3 of the Commissioner's regulation to allow the Department to modify professional educational program requirements for professional licensure, to the extent authorized by law, if such requirements cannot be successfully completed due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

In order to continue this flexibility beyond the expiration of the state of emergency for the profession of Social Work, the Department proposes to amend section 52.30 of the Commissioner's regulations to permit the Department to modify, to the extent authorized by law, the field experience, practicums or other such experience requirements relative to registered programs for licensed master social work and licensed clinical social work recognized as leading to licensure in licensed master social work and licensed clinical social work for individuals impacted by the COVID-19 crisis (Attachment A #19).

Part 83 and Part 87 Appeals:

At its February 2021 meeting, the Board of Regents permanently adopted amendments to provide flexibility relating to Part 83 and Part 87 appeals and procedures:

- Section 83.5 was amended to permit the Commissioner to excuse the filing timeframes relating to appeals to the Commissioner of a hearing officer's determination of good moral character where such late filings are

due to the state of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis;

- Section 87.5 was amended to permit: (i) the Department to excuse late submissions relating to due process procedures for prospective employees' clearance for employment; and (ii) the Commissioner's designee to excuse late submissions relating to appeals of the Department's determination to deny prospective school employees' clearance for employment where such submissions are late due to the state of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis; and
- Section 87.2(k)(2) was amended to add to the definition of "prospective school employee" any individual who will reasonably be expected to provide services which involve online communication or interaction directly to students under the age of 21 during the period of a school closure ordered pursuant to an Executive Order of the Governor pursuant to a state of emergency for the COVID-19 crisis.

Since this flexibility was specifically linked to the time period of the state of emergency declared for the COVID-19 crisis, and this state of emergency has been lifted, additional amendments are needed to continue to provide this flexibility as COVID-19 continues to affect the State of New York. Therefore, the Department proposes to remove the language tying the above flexibility to the state of emergency (Attachment A #'s 20-23).

Office of State Review:

Finally, the Board of Regents permanently adopted a new section 279.15 of the Commissioner's regulations at its February 2021 meeting to provide that a State Review Officer may authorize certain filings through electronic means during the state of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

Since this flexibility was specifically linked to the time period of the state of emergency declared for the COVID-19 crisis, and this state of emergency has been lifted, additional amendments are needed to continue to provide this flexibility as COVID-19 continues to affect the State of New York. Therefore, the Department proposes to remove the language tying the above flexibility to the state of emergency (Attachment A #24).

Related Regent's Items

April 2020: [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>)

May 2020: [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>)

May 2020: [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>)

June 2020: [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>)

June 2020: [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>)

June 2020: [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>)

July 2020: [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>)

July 2020: [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>)

July 2020: [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>)

July 2020: [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>)

September 2020: [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 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/920bra6.pdf>)

September 2020: [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 COVID19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/920bra3.pdf>)

September 2020: [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](#)

(<https://www.regents.nysed.gov/common/regents/files/920bra8.pdf>)

September 2020: [Proposed Amendments to Sections 52.21, 79-8.5, 100.5, and 154-2.3 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/920bra7revised.pdf>)

September 2020: [Proposed Amendments to Sections 60.10, 80-1.2, 80-4.3, 804.4, 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/920brca3.pdf>)

October 2020: [Proposed Amendments to Sections 125.1, 135.4, and 52.21 of the Regulations of the Commissioner of Education and Section 30-3.2 of the Rules of the](#)

[Board of Regents Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](#)

(<https://www.regents.nysed.gov/common/regents/files/1020bra3.pdf>)

October 2020: [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/1020bra5revised.pdf>)

October 2020: [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/1020bra4.pdf>)

October 2020: [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 COVID19 Crisis and the Reopening of Schools](#)

(<https://www.regents.nysed.gov/common/regents/files/1020brca5.pdf>)

November 2020: [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 279.15 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/1120bra3.pdf>)

November 2020: [Proposed Amendments to Sections 52.21, 79-8.5, 100.5, and 154-2.3 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/1120brca2.pdf>)

December 2020: [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 COVID19 Crisis and the Reopening of Schools](#)

(<https://www.regents.nysed.gov/common/regents/files/1220brca7.pdf>)

December 2020: [Proposed Amendments to Sections 52.21, 79-8.5, 100.5, and 154-2.3 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/1220brca6.pdf>)

December 2020: [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 the 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/1220bra4.pdf)
(<https://www.regents.nysed.gov/common/regents/files/1220bra4.pdf>)

December 2020: [Proposed Amendments to Sections 155.17\(f\) and 100.5\(a\) of the Regulations of the Commissioner of Education and Section 30-3.16 of the Rules of the Board of Regents Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/1220bra3.pdf)
(<https://www.regents.nysed.gov/common/regents/files/1220bra3.pdf>)

January 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/121brca3.pdf)
(<https://www.regents.nysed.gov/common/regents/files/121brca3.pdf>)

February 2021: [Proposed Amendments to Sections 52.21, 80-3.14, and 80-3.7 of the Regulations of the Commissioner of Education and Section 30-1.2 of the Rules of the Board of Regents Relating to Providing Flexibility Relating to Student Teaching, Individual Evaluation Pathway to Certification, Accreditation, and the Computer Science Tenure Area and Statement of Continued Eligibility in Response to the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/221hea1.pdf)
(<https://www.regents.nysed.gov/common/regents/files/221hea1.pdf>)

February 2021: [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 the 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/221brca5.pdf)
(<https://www.regents.nysed.gov/common/regents/files/221brca5.pdf>)

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 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 the 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/321bra5_0.pdf)
(https://www.regents.nysed.gov/common/regents/files/321bra5_0.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)

March 2021: [Proposed Amendment to Sections 125.1, 135.4, and 52.21 of the Regulations of the Commissioner of Education and Section 30-3.2 of the Rules of the Board of Regents Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/321brca8.pdf)
(<https://www.regents.nysed.gov/common/regents/files/321brca8.pdf>)

April 2021: [Proposed Amendment to Sections 52.21, 80-3.14, and 80-3.7 of the Regulations of the Commissioner of Education and Section 30-1.2 of the Rules of the Board of Regents Relating to Providing Flexibility Relating to Student Teaching, Individual Evaluation Pathway to Certification, Accreditation, and the Computer Science Tenure Area and Statement of Continued Eligibility in Response to the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/4211brca5.pdf)
(<https://www.regents.nysed.gov/common/regents/files/4211brca5.pdf>)

April 2021: [Proposed Amendment to Sections 125.1, 135.4, and 52.21 of the Regulations of the Commissioner of Education and Section 30-3.2 of the Rules of the Board of Regents Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/4211brca8.pdf)
(<https://www.regents.nysed.gov/common/regents/files/4211brca8.pdf>)

April 2021: [Proposed Amendments to Sections 155.17\(f\) and 100.5\(a\) of the Regulations of the Commissioner of Education and Section 30-3.16 of the Rules of the Board of Regents Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/4211brca9.pdf)
(<https://www.regents.nysed.gov/common/regents/files/4211brca9.pdf>)

May 2021: [Proposed Amendment to Sections 100.2\(c\), 100.5\(h\), and 136.3 of the Regulations of the Commissioner of Education Relating to Providing Flexibility for Hands-only CPR Instruction, the New York State Seal of Biliteracy, and Health Examinations and Certificates in Response to the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/521p12a5.pdf)
(<https://www.regents.nysed.gov/common/regents/files/521p12a5.pdf>)

May 2021: [Proposed Amendment 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 the 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/521bra5.pdf)
(<https://www.regents.nysed.gov/common/regents/files/521bra5.pdf>)

June 2021: [Proposed Amendment 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 the 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/621bra4revised.pdf)
(<https://www.regents.nysed.gov/common/regents/files/621bra4revised.pdf>)

June 2021: [Proposed Amendment to Sections 52.21, 80-3.14, and 80-3.7 of the Regulations of the Commissioner of Education and Section 30-1.2 of the Rules of the Board of Regents Relating to Providing Flexibility Relating to Student Teaching, Individual Evaluation Pathway to Certification, Accreditation, and the Computer Science Tenure Area and Statement of Continued Eligibility in Response to the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/621brca8.pdf)
(<https://www.regents.nysed.gov/common/regents/files/621brca8.pdf>)

June 2021: [Proposed Amendment to 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/621brca13.pdf)
(<https://www.regents.nysed.gov/common/regents/files/621brca13.pdf>)

July 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/721bra4.pdf)
(<https://www.regents.nysed.gov/common/regents/files/721bra4.pdf>)

July 2021: [Proposed Amendment 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 the 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/721brca17.pdf)
(<https://www.regents.nysed.gov/common/regents/files/721brca17.pdf>)

July 2021: [Proposed Amendment to Sections 100.2\(c\), 100.5\(h\), and 136.3 of the Regulations of the Commissioner of Education Relating to Providing Flexibility for Hands-only CPR Instruction, the New York State Seal of Biliteracy, and Health Examinations and Certificates in Response to the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/721brca8.pdf)
(<https://www.regents.nysed.gov/common/regents/files/721brca8.pdf>)

Recommendation

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

VOTED: That 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, 279.15 of the Regulations of the Commissioner of Education be amended, as submitted, effective October 11, 2021, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare in order to immediately provide flexibility for certain regulatory requirements in response to the COVID-19 crisis and to ensure the emergency action at the July 2021 meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the September 2021 Regents meeting, the emergency rule will become effective October 11, 2021. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the

October 2021 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 October 2021 meeting, the proposed amendment will become effective on November 3, 2021.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 210, 212, 301, 305, 308, 311, 661, 1709, 2801-a, 3001, 3001-d, 3004, 3004-c, 3009, 3035, 4402, 4403, 4404, 4410, 6501, 6504, 6506, 6507, 6527, 6802, 6909, 7404, 7704, 7904, 7904-a, and 8206 of the Education Law and Chapter 110 of the Laws of 2020.

1. 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 and/or 2021-2022 school [year]years 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:

2. 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 during the 2020-2021 and 2021-2022 school [year]years due to the COVID-19 crisis.

3. A new subparagraph (i) shall be added to paragraph (4) of subdivision (b) of section 200.6 of the Regulations of the Commissioner of Education as follows:

(i) Notwithstanding the provisions of this paragraph, due to the COVID-19 crisis for the 2021-2022 school year, a teacher who holds a valid certificate in the classroom teaching service in students with disabilities (grades 1-6), students with disabilities (grades 5-9) generalist, or students with disabilities (grades 5-9) content specialist shall be considered appropriately certified to teach a student with a disability in grades 7-12, provided that they otherwise meet all certification requirements for the teaching assignment.

4. Subparagraph (iv) of paragraph (1) of subdivision (e) of section 145-2.15 of the Regulations of the Commissioner of Education is to read as follows:

(iv) where testing centers and institutions are unable to administer and proctor the test at such locations identified in subparagraphs (i), (ii), or (iii) of this subdivision due to the [State of emergency declared by the Governor pursuant to an Executive Order for the] COVID-19 crisis the test may be administered and proctored remotely provided such remote administration and proctoring is in accordance with federal requirements.

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

(f) *Reporting.* 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 districts within a supervisory district shall provide such notification through the 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 [year] 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.

6. Subparagraph (i) of paragraph (5) of subdivision (j) of section 200.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(i) An impartial hearing officer may grant specific extensions of time beyond the periods set out in this paragraph, in subparagraph (3)(iii) of this subdivision, or in section 200.16(h)(9) of this Part at the request of either the school district or the parent. The impartial hearing officer shall not solicit extension requests or grant extensions on his or

her own behalf or unilaterally issue extensions for any reason. Each extension shall be for no more than 30 days; except that [during the State of emergency declared by the Governor pursuant to an Executive Order(s) for the] due to the COVID-19 crisis, an extension may be granted beyond 30 days but no more than 60 days. Not more than one extension at a time may be granted. The reason for each extension must be documented in the hearing record.

7. Paragraph (2) of subdivision (b) of section 75.2 of the Regulations of the Commissioner of Education is amended to read as follow:

(2) Credit toward the experience requirement may be given for part-time employment accumulated at the rate of not less than 12 hours per week for continuous periods of not less than six months. The department may excuse the requirement that such experience be continuous where such continuous experience cannot be completed due to the [State of emergency declared by the Governor pursuant to an Executive Order for the] COVID-19 crisis.

8. Paragraph (2) of subdivision (a) of section 75.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(2) Credit toward the experience requirement may be given for part-time employment accumulated at the rate of not less than two days per week and consisting of not less than 15 hours per week for continuous periods of not less than six months. The department may excuse the requirement that such experience be continuous where such continuous experience cannot be completed due to the [State of emergency declared by the Governor pursuant to an Executive Order for the] COVID-19 crisis.

9. Subparagraph (ii) of paragraph (1) of subdivision (b) of section 75.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(ii) Credit. Credit toward the experience requirement may be given for part-time employment, accumulated at the rate of not less than 12 hours per week for continuous periods of not less than six months. The department may excuse the requirement that such experience be continuous where such continuous experience cannot be completed due to the [State of emergency declared by the Governor pursuant to an Executive Order for the] COVID-19 crisis.

10. Subdivision (b) of section 76.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(b) For candidates who have accumulated other than full-time supervised experience, part-time experience may be counted if it is obtained at the rate of at least two full days per week (minimum of 15 hours) and for continuous periods of not less than two months for an accumulated total of six months. The department may excuse the requirement that such experience be continuous where such continuous experience cannot be completed due to the [State of emergency declared by the Governor pursuant to an Executive Order for the] COVID-19 crisis.

11. Subparagraph (v) of paragraph (1) of subdivision (c) of section 74.6 of the Regulations of the Commissioner of Education is amended to read as follows:

(v) the supervisor provides at least one hundred hours of in-person individual or group clinical supervision, distributed appropriately over the period of the supervised experience. The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of this subparagraph that cannot be successfully completed due to the [State of emergency declared by the Governor pursuant to an Executive Order for the] COVID-19 crisis.

12. Subparagraph (v) of paragraph (1) of subdivision (d) of section 74.6 of the Regulations of the Commissioner of Education is amended to read as follows:

v. the supervisor provides at least two hours per month of in-person individual or group clinical supervision. The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of this subparagraph that cannot be successfully completed due to the [State of emergency declared by the Governor pursuant to an Executive Order for the] COVID-19 crisis.

13. Paragraph (3) of subdivision (c) of section 79-9.3 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (3) to read as follows to reads as follows:

(3) The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of paragraph (1) of this subdivision that cannot be successfully completed due to the [State of emergency declared by the Governor pursuant to an Executive Order for the] COVID-19 crisis.

14. Paragraph (3) of subdivision (d) of section 79-10.3 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (3) to read as follows:

(3) The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of paragraph (1) of this subdivision that cannot be successfully completed due to the [State of emergency declared by the Governor pursuant to an Executive Order for the] COVID-19 crisis.

15. Paragraph (3) of subdivision (c) of section 79-11.3 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (3) to read as follows:

(3) The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of this paragraph (1) of this subdivision that cannot be

successfully completed due to the [State of emergency declared by the Governor pursuant to an Executive Order for the] COVID-19 crisis[.].

16. Paragraph (3) of subdivision (c) of section 79-12.3 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (3) to read as follows:

(3) The Department, in its discretion, may accept alternative means to meet the In-person supervision requirements of paragraph (1) of this subdivision that cannot be successfully completed due to the [State of emergency declared by the Governor pursuant to an Executive Order for the] COVID-19 crisis.

17. Subparagraph (i) of paragraph (2) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education is amended to read as follows:

(i) patients 18 years of age or older, immunizing agents to prevent influenza, pneumococcal, acute herpes zoster, meningococcal, tetanus, diphtheria, COVID-19, or pertussis disease, pursuant to a patient specific order or a non-patient specific order; and

18. Paragraph (1) of subdivision (c) of section 70.4 of the Regulations of the Commissioner of Education is amended to read as follows:

(1) Extension requests. The Department may in its discretion provide an applicant with an extension to the retention period prescribed in paragraph (c) of this subdivision. An extension may be granted upon a finding by the Department of extenuating circumstances outside the applicant's control. The length of an extension shall be determined by the Department as it relates to the length of the extenuating circumstances experienced by the applicant. The Department may consult with the State Board for Public Accountancy on the appropriateness of granting extension requests. The [department] Department may accept passing examination scores that are outside the 18-month requirement where such examinations cannot be completed in the 18-month due to the

[State of emergency declared by the Governor pursuant to an Executive Order for the] COVID-19 crisis.

19. Paragraph (3) of subdivisions (a) and (b) of section 52.30 of the Regulations of the Commissioner of Education is amended to read as follows:

(3) include a field practicum of at least 900 clock hours in social work integrated with the curricular content prescribed in paragraph (2) of this subdivision. The Department, in its discretion, may modify the field experience, practicums or other such experience requirements set forth in this section, to the extent authorized by law, if such requirements cannot be successfully completed due to the COVID-19 crisis.

(3) include a field practicum of at least 900 clock hours in social work integrated with the curricular content prescribed in paragraph (2) of this subdivision. The Department, in its discretion, may modify the field experience, practicums or other such experience requirements set forth in this section, to the extent authorized by law if such requirements cannot be successfully completed due to the COVID-19 crisis.; and

20. Subdivision (d) of section 83.5 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (d) to read as follows:

(d) Notwithstanding any provision of this section to the contrary, the Commissioner may excuse late filings for any timeline prescribed in this section where such late filings are due to [the State of emergency declared by the Governor pursuant to an Executive Order(s) for] the COVID-19 crisis.

21. Subparagraph (x) of paragraph (4) of section 87.5 of the Regulations of the Commissioner of Education is amended by adding a new subparagraph (x) to read as follows:

(x) Notwithstanding any provision of this paragraph to the contrary, the Department may excuse the timeframes prescribed in this paragraph for submission of responses by prospective school employees where such late submissions are due to [the State of emergency declared by the Governor pursuant to an Executive Order(s) for] the COVID-19 crisis.

22. Paragraph (5) of section 87.5 of the Regulations of the Commissioner of Education is amended by adding a new subparagraph (v) to read as follows:

(v) Notwithstanding any provision of this paragraph to the contrary, the Commissioner's designee may excuse the timeframes prescribed in subparagraphs (i) and (ii) of this paragraph for submission of appeals and additional appeal papers by prospective school employees where such late submissions are due to [the State of emergency declared by the Governor pursuant to an Executive Order(s) for] the COVID-19 crisis.

23. 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 communication or interaction directly with such students [during the period of a school closure ordered pursuant to an Executive Order of the Governor pursuant to a State of emergency for the COVID-19 crisis]; and

24. Section 279.15 of the Regulations of the Commissioner of Education is amended to read as follows:

§ 279.15 [Pre-review conference] Electronic Submissions

Notwithstanding any other requirement of this Part, a State Review Officer may, in his or her discretion, authorize the filing of a party's pleading, memoranda of law, supporting documents, or the record of the proceedings before the impartial hearing officer through electronic means [during the State of emergency declared by the Governor pursuant to an Executive order for] where such filings cannot be timely made due to the COVID-19 crisis.

STATEMENT OF FACTS AND CIRCUMSTANCES 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. In response, the Department presented, and the Board of Regents voted to adopt, numerous emergency regulations to address issues resulting from interruptions caused by the COVID-19 crisis and to provide regulatory flexibility during the crisis.

As of June 25, 2021, the state of emergency is no longer in effect. However, the COVID-19 crisis continues to affect the State of New York. Therefore, to address additional issues resulting from the interruptions caused by the COVID-19 crisis and to provide additional regulatory flexibility, the Department is proposing further emergency regulatory amendments related to the following:

- Incidental teaching;
- Substitute teachers;
- Special education teaching assignments in grades 7-12;
- Ability-to-Benefit (ATB) test;
- Snow day reporting;
- Special Education due process hearings;
- Continuous experience requirements for speech language pathology, audiology, and occupational therapy;

- In person supervision experience requirements for licensed clinical social work, licensed master social work, mental health counseling, marriage and family counseling, creative arts therapy, and psychoanalysis;
- Authorizing licensed pharmacists to administer the COVID-19 vaccine;
- Examination timeframe requirements for Public Accounting applicants;
- Social work experience requirements;
- Part 83 and Part 87 appeals and procedures; and
- Office of State Review filings.

The proposed amendment was presented to the Full Board for adoption as an emergency rule at the July 2021 meeting of the Board of Regents, effective July 13, 2021. 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 October 2021 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the October meeting, would be November 3, 2021, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on October 10, 2021. Therefore, a second emergency action is necessary at the September 2021 meeting for the preservation of the general welfare and public health in order to immediately provide flexibility for certain regulatory requirements in response to the COVID-19 crisis and to ensure the emergency action taken at the July 2021 meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at its October 2021 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for State agency rule making.