



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

**TO:** P-12 Education Committee

**FROM:** John B. King, Jr.

**SUBJECT:** Proposed addition of Section 100.5(d)(10) of the Regulations of the Commissioner of Education, relating to Credit for Online and Blended Coursework

**DATE:** June 7, 2011

**AUTHORIZATION(S):**

### **SUMMARY**

#### **Issue for Decision**

Should the Board of Regents add a new section 100.5(d)(10) of the Commissioner's Regulations to prescribe requirements for earning credit for online or a combination of online and classroom-based (blended) coursework?

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

Implementation of Policy.

#### **Proposed Handling**

The proposed amendment will be submitted to the P-12 Education Committee for recommendation and to the Full Board for action at the June 2011 Regents meeting.

#### **Procedural History**

The proposed amendment was discussed by the P-12 Education Committee at the February Regents meeting. Issues relating to online and blended coursework were also discussed at the December 2010 and January 2011 Regents meetings.

#### **Background Information**

Digital and Internet-connected technologies have increased access to a rich variety of educational opportunities, in the form of online content and instruction, for schools and students across New York State. These educational opportunities have resulted in a number of questions from school districts and educational organizations,

and a need for the New York State Education Department (NYSED) to provide alternative pathways for school districts to provide students with opportunities to earn course credit through online instruction and content.

A policy for awarding units of credit to students for their completion of online and blended courses is intended to provide guidance to public school districts and Boards of Cooperative Educational Services (BOCES) interested in offering new learning opportunities for students through online instruction. NYSED recognizes that concepts such as *virtual learning*, *distance learning*, *online instruction*, *online courses*, and *online learning* may have multiple meanings, which may evolve and change with the development of new technologies. This policy serves as an initial foundation for school districts and BOCES to develop, implement, and evaluate online and blended courses as alternative pathways for student completion of general education and diploma requirements.

The proposed rule requires school districts, registered nonpublic schools and charter schools that choose to provide their students with instruction by means of online or blended coursework to ensure that the courses:

- are aligned with the applicable New York State learning standards for the subject area in which instruction is provided;
- provide for documentation of student mastery of the learning outcomes for such subjects, including passing the Regents examination in the subject and/or other assessment in the subject if required for earning a diploma;
- provide for instruction by or under the direction and/or supervision of a certified teacher (if instruction is to be provided by a school district, BOCES, or pursuant to a shared service agreement),<sup>1</sup> or of a teacher of the subject area in which instruction is to be provided (in the case of a registered nonpublic school or charter school);
- include regular and substantive interaction between the student and the teacher providing direction and/or supervision; and
- satisfy the unit of study and unit of credit requirements in section 100.1(a) and (b) of the Commissioner's Regulations.

According to section 100.1(a) of the Commissioner's Regulations, a unit of study "means at least 180 minutes of instruction per week throughout the school year, or the equivalent." To determine whether an online or blended course provides students with

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<sup>1</sup> In NYS school districts, core instruction must be delivered by the district's certified teachers. School districts lack the authority to contract with an independent contractor to provide core instructional services through the employees of that independent contractor except where specifically authorized by statute or regulation, or where contracting is necessary to carry out duties imposed on the school district by State or federal law. Contracting out cannot be used as a vehicle for avoiding the tenure laws or the requirements that teachers be duly certified. NYSED has issued guidance on contracts for instruction (dated June 2, 2010), which is available at:<http://www.p12.nysed.gov/resources/contractsforinstruction/home.html>.

instruction that is equivalent to that received through 180 minutes of traditional classroom instruction, the principal must evaluate all course components (including, but not limited to, its curriculum, alignment to relevant New York State Learning Standards, instructional strategies and requirements, formative and summative assessments, professional development for teachers, and general delivery and revision processes). While Commissioner's Regulations for completing a unit of study (8 NYCRR § 100.1 [a]) and earning a unit of credit (8 NYCRR § 100.1 [b]) refer to the amount of instruction to which students are entitled, the regulations do not limit or confine instruction solely to classroom-based instruction. As a result, instruction may be delivered in multiple ways and through multiple media that best meet the needs of the students, so long as such modes and media are under the direction of a certified teacher in that subject area and accountable to the district providing instruction, and so long as all applicable requirements are met. The mastery of learning outcomes, as determined by the principal, is based on an evaluation of an online or blended course as an equivalent mode of instruction.

Pursuant to §100.5(b)(7)(iv)(d) of the Commissioner's regulations, 1,200 minutes of actual hands-on (not simulated) laboratory experience with satisfactory documented laboratory reports is required in order for students to qualify to take a Regents examination in any of the sciences. However, due to the increasing availability of high-quality virtual laboratory experiences, the Department will engage the field in statewide discussion regarding alternative approaches to this requirement. Alternative approaches in time (e.g., 800 minutes of hands-on and 400 minutes of virtual or blended laboratory experience) and/or content (allowing for high-quality virtual labs) may be considered.

Since publication of the proposed rule in the March 2, 2011 State Register, nonsubstantial revisions were made for purposes of clarification, as follows:

- In the definitions of "online course" and "blended course" in 100.5(d)(10)(i)(a) and (b), respectively, the term "unit of study" was replaced with "subject" as a more appropriate descriptive term. In addition, the phrase "any combination of classroom-based and digital and/or Internet-connected media" was replaced by the phrase "a combination of classroom-based and digital and/or Internet-connected media."
- In section 100.5(d)(10)(ii)(a), the term "unit of study" was replaced with the more appropriate descriptive term "an online or blended course" and the phrase "including passing the Regents examination in the subject or other assessment required for graduation, if applicable" was replaced with the more appropriate descriptive phrase "including passing the Regents examination in the subject and/or other assessment in the subject if required for earning a diploma."
- Similarly, In section 100.5(d)(10)(ii)(b)(2), the phrase "including passing the Regents examination in the subject or other assessment required for graduation, if applicable" was replaced with the more appropriate descriptive phrase "including passing the Regents examination in the subject and/or other assessment in the subject if required for earning a diploma."

- In section 100.5(d)(10)(ii)(b)(3)(i), the phrase "a certified teacher from the school district" was replaced with the more appropriately descriptive phrase "a certified teacher from the school district in which the student is enrolled."

A Notice of Proposed Rule Making was published in the State Register on March 2, 2011. An Assessment of Public Comment is attached. Supporting materials are available on request from the Secretary to the Board of Regents.

### Recommendation

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

VOTED: That paragraph (10) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education be added, as submitted, effective July 15, 2011.

### Timetable for Implementation

If adopted by the Board of Regents at their June meeting, the proposed amendment will take effect on July 15, 2011.

Attachment A

## AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 209, 305, 308, 309 and 3204 of the Education Law.

Paragraph (10) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is added, effective July 15, 2011, as follows:

(10) Credit for Online and Blended Courses.

(i) Definitions. For purposes of this paragraph:

(a) Online course means instruction in a specific subject consisting of teacher-to-student, student-to-student and/or student-to-content interactions that occur solely through digital and/or Internet-connected media.

(b) Blended course means instruction in a specific subject consisting of teacher-to-student, student-to-student and/or student-to-content interactions that occur through a combination of classroom-based and digital and/or Internet-connected media.

(c) Certified teacher means a teacher who holds a New York State teaching certificate in the subject area in which instruction is provided.

(ii) A school district, a charter school or a registered nonpublic school may provide its students with an opportunity to earn units of credit towards a Regents diploma through online and/or blended course study, pursuant to the following:

(a) To receive credit, the student shall successfully complete an online or blended course and demonstrate mastery of the learning outcomes for the subject, including passing the Regents examination in the subject and/or other assessment in the subject if required for earning a diploma.

(b) The school district, registered nonpublic school or charter school shall ensure that:

(1) courses are aligned with the applicable New York State Learning Standards for the subject area;

(2) courses provide for documentation of student mastery of the learning outcomes for such subjects, including passing the Regents examination in the subject and/or other assessment in the subject if required for earning a diploma;

(3) instruction is provided by or under the direction and/or supervision of:

(i) a certified teacher from the school district in which the student is enrolled; or

(ii) a certified teacher from a board of cooperative educational services (BOCES)

that contracts with the school district to provide instruction in the subject area where authorized pursuant to Education Law §1950; or

(iii) a certified teacher from a school district who provides instruction in the subject area under a shared service agreement; or

(iv) in the case of a registered nonpublic school, a teacher of the subject area from a registered nonpublic school; or

(v) in the case of a charter school, a teacher of the subject area from a charter school.

(4) courses include regular and substantive interaction between the student and the teacher providing direction and/or supervision pursuant to subclause (3) of this clause; and

(5) instruction satisfies the unit of study and unit of credit requirements in section 100.1(a) and (b) of this Part.

PROPOSED ADDITION OF SECTION 100.5(d)(9) OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION, PURSUANT TO SECTIONS 101, 207, 208, 209, 305, 308, 309 AND 3204 OF THE EDUCATION LAW, RELATING TO ONLINE AND BLENDED COURSE CREDIT

#### ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on March 2, 2011, the State Education Department received the following comments:

1. COMMENT:

The rule's requirement that online courses be monitored by a content area teacher will restrict the ability to offer online coursework for purposes of earning

Regents diploma credit, because small schools cannot spare content areas teachers for this purpose. Instead, a district should be able to hire one teacher to monitor and coach a small group of students taking online courses.

**DEPARTMENT RESPONSE:**

The rule allows flexibility for certified teachers to use Internet and other computer-based resources to meet the individual instructional needs of their students. While the rule clearly requires that online/blended instruction be provided by or under the direction and/or supervision of New York State certified teachers in the subject area, if the teacher delivering the instruction via online or digital means is certified in the subject area then the school may provide for student supervision in any manner it deems appropriate consistent with applicable laws and regulations. If, however, the online interaction does not include a teacher certified in the subject area, then there must be a certified teacher assigned to direct and/or supervise the study. In order to ensure an appropriate and effective educational experience for students, the provision of any online/blended coursework must be predicated on the essential instructional role of a teacher who is employed by the school district, BOCES, non-public or charter school, and is highly qualified in the specific subject area, where applicable.

**2. COMMENT:**

For purposes of offering credit recovery in the summer, a student who has taken a traditional course during the school year should be allowed to take an online course monitored by school district staff, not necessarily a content area teacher.

**DEPARTMENT RESPONSE:**

The rule does not address credit recovery. However, the provisions in Commissioner's Regulation section 100.5(d)(8) are applicable to programs for making up incomplete or failed course credit, which may occur as part of a summer school

program (8 NYCRR §100.5[d][8][iv][b]) and may include online study (8 NYCRR §100.5[d][8][iv][d]). Section §100.5(d)(8)(ii)(c) requires that a make-up credit program ensure that equivalent, intensive instruction in the subject area is provided under the direction and/or supervision of a certified teacher.

### 3. COMMENT:

The rule limits the ability to offer the best resources and coursework to students, and reduces flexibility regarding supervision of on-line learning. The delivery system in the rule is not cost effective. To require courses be provided or supervised by a State-certified teacher severely limits the ability of students to take Advanced Placement (AP®) courses.

### DEPARTMENT RESPONSE:

Students would be able to take the AP® courses consistent with the rule insofar as instruction is provided by or under the direction or supervision of a certified teacher in the subject area, and from the school district, provided there is regular and substantive interaction between the student and the teacher. The rule allows the direction and/or supervision to be provided in a variety of formats. If the teacher delivering the online content is not certified in the subject area, then the school district must provide the student with a supervising teacher who does hold such certification. This is necessary to ensure that the student has adequate support to be successful in the online course.

### 4. COMMENT:

Education Law §1950 should be amended to permit BOCES to work with State agencies so that they may take advantage of online/blended courses offered through BOCES.

### DEPARTMENT RESPONSE:



The rule addresses the need for increased flexibility to provide online/blended coursework in the context of registered public and nonpublic high schools and charter schools. Amendments to Education Law §1950 are beyond the scope of the rule.

5. COMMENT:

The rule is unclear as to whether traditional seat time requirements apply.

DEPARTMENT RESPONSE:

Section 100.5(d)(10)(ii)(b)(5) requires that online instruction satisfy the unit of study and unit of credit requirements in Commissioner's Regulation section 100.1(a) and (b), respectively.

According to section 100.1(a), a unit of study “means at least 180 minutes of instruction per week throughout the school year, or the equivalent.” To determine whether an online/blended course provides students with instruction that is equivalent to that received through 180 minutes of traditional classroom instruction, the principal must evaluate all course components (including, but not limited to, its curriculum, alignment to relevant State learning standards, instructional strategies and requirements, formative and summative assessments, professional development for teachers, and general delivery and revision processes). While Commissioner’s regulations for completing a unit of study and earning a unit of credit refer to the amount of instruction to which students are entitled, the regulations do not limit or confine instruction solely to classroom-based instruction. As a result, instruction may be delivered in multiple ways and through multiple media that best meet the needs of the students, so long as such modes and media are under the direction of a certified teacher in that subject area and accountable to the district providing instruction, and so long as all applicable requirements are met. The mastery of learning outcomes, as determined by the

principal, is based on an evaluation of the online/blended course as an equivalent mode of instruction.

6. COMMENT:

New York should provide for free Cyber schools similar to other states.

DEPARTMENT RESPONSE:

The creation of fully online schools in New York is beyond the scope of the rule, which addresses the need for increased flexibility in online and blended learning within the context of registered public and nonpublic schools as well as charter schools.

7. COMMENT:

Support was expressed for the requirement that online/blended instruction be provided by or under the direction and/or supervision of State-certified teachers, but it was recommended language be added to provide for collaborative engagement of teachers in the planning, development and implementation of online/blended programs, and to provide that coursework be implemented consistent with any collective bargaining obligation required by Civil Service Law Article 14.

DEPARTMENT RESPONSE:

The Department does not believe these changes are necessary. The rule provides for the essential role of the certified teacher in the specific subject area, employed by a school district or BOCES, and of the teacher of the subject area in a registered nonpublic or charter school. Provision of online/blended learning opportunities must be consistent with all applicable provisions of the Education Law, Commissioner's regulations and Civil Service Law Article 14.

8. COMMENT:

The rule requires online/blended courses to include "regular and substantive interaction between the student and the teachers providing direction and/or

supervision." It is suggested that the term "regular" be replaced with "frequent" in order to support more timely and meaningful pedagogical oversight. The rule should be revised to clarify and the intent regarding such "interaction," particularly in meeting the unit of study and unit of credit requirements.

#### DEPARTMENT RESPONSE:

The Department believes the term "regular" is sufficient to describe the minimum amount of substantive interaction between the student and the teacher in this context. More specific minimum qualifiers may detract from the rule's flexibility to create new learning environments that meet student needs using online/blended coursework.

#### 9. COMMENT:

Based on the input of an external advisory group of key stakeholders, the Department should develop guidance to provide programmatic standards for online/blended course, ensuring, for example, that curriculum requirements and State learning standards are maintained in online/blended coursework, appropriate measures are used to determine student mastery of learning outcomes, and safeguards are established for verifying completion of coursework by the student receiving the units of credit. The guidance should also provide school districts/BOCES with much needed direction in the use of commercial vendors of online and blended coursework. Concern was expressed that some school districts/BOCES are already using commercially available courses without any consistent State-wide oversight or quality content assurance and that, in some cases, courses extend into the questionable practice of providing core instructional services. In the January 28, 2011 memorandum from the Senior Deputy Commissioner P-12 Education to the Regents P-12 Education Committee, in connection with the Committee's discussion of the proposed rule at the February 7-8 Regents meeting, it was noted that "[s]chool districts lack the authority to

contract with an independent contractor to provide core instructional services through the employees of that independent contractor except where specifically authorized by statute or regulation, or where contracting is necessary to carry out duties imposed on the school district by State or federal law. Contracting out cannot be used as a vehicle for avoiding the tenure laws or the requirements that teachers be duly certified."

Department guidance should also address the critical need for the identification and provision of appropriate professional development, particularly in light of the new teacher evaluation requirements established in Chapter 103 of the Laws of 2010.

**DEPARTMENT RESPONSE:**

The Department intends to issue guidance after adoption of the rule, to be developed in consultation with relevant stakeholders. As part of the Regents Reform Agenda, and as a component of the State's Race to the Top plan, the Department is also developing guidance regarding the use of vendors for online and blended course models, including guidance and support to address the critical need for professional development to assist teachers and principals in developing pedagogical considerations, creating and developing effective learning environments, and using technology in the provision of online and blended courses.

Also, a June 2, 2010 Department memorandum provides guidance for school administrators regarding contracts for instruction and is available at:

<http://www.p12.nysed.gov/resources/contractsforinstruction>.

**11.COMMENT:**

While it would be beneficial for students to have the opportunity to earn credit through online courses, given the current fiscal situation of most districts it will be virtually impossible to vet all of the possible courses available to determine if they are aligned with applicable State learning standards. Additionally, it will require staff to

determine if the course provides documentation of mastery, instruction satisfying credit and regular and substantive interaction between the student and the teacher. If a teacher is expected to develop such course, additional funding is necessary. It was suggested that the Department provide a list of approved online courses for course credit that meet the Department's requirements.

#### DEPARTMENT RESPONSE:

The International Association of K-12 Online Learning (iNACOL) recommends that "online and blended courses need not be developed from scratch, but that many already exist that meet State Standards and are accredited by recognized organizations. These resources have been developed by State, private, business, and independent organizations. At least initially, collaborating and sharing these options may be more cost-effective and practical for school systems than developing online instruction in house." Additionally, a school district would not need to vet or align all possible course, but only the ones they choose to use. The Department is currently developing a program to disseminate commencement-level ("high school") online courses for State-wide use. These courses would be used by school districts, charter schools, and registered nonpublic schools for instruction, leading to credit for students who successfully complete them, delivered online or through other electronic means. The Department is also developing a program to implement sustained, ongoing, systems-building professional development, technical assistance, and follow-up support around online and blended courses and instruction ("virtual learning") State-wide.

#### 12. COMMENT:

Establishing online coursework is an excellent idea and will offer options for schools and families with circumstances that would require this educational flexibility. However, it is hoped that this will include elementary and junior high schools as well.

## DEPARTEMENT RESPONSE:

The comment is beyond the scope of the rule making, which is intended to provide opportunities for students to earn units of credit towards earning a high school diploma. Accordingly, only students who are in grades nine through twelve or who are in a grade eight acceleration for diploma credit program may earn units of credit towards a high school diploma. Nevertheless, the Department acknowledges the value of online/blended coursework and, as new research is conducted and published, it may consider providing online/blended course opportunities to elementary and middle school students in a future rule making.