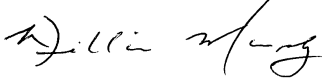





TO: The Honorable Members of the Board of Regents

FROM: William P. Murphy 

SUBJECT: Proposed Amendment of Section 80-5.3 of the Regulations of the Commissioner of Education Relating to Extending the Flexibility for Incidental Teaching

DATE: September 25, 2025

AUTHORIZATION(S): 

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of section 80-5.3 of the Regulations of the Commissioner of Education relating to extending the flexibility for incidental teaching?

Reason for Consideration

Review of policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at the October 2025 Regents meeting. A copy of the proposed rule (Attachment A) and a statement of facts and circumstances which necessitate emergency action (Attachment B) are attached.

Procedural History

The proposed amendment was presented to the Higher Education Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at the July 2025 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 30, 2025, for a 60-day public comment period.

Because the July 2025 emergency action will expire on October 12, 2025, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the November 2025 Regents meeting. If adopted, a Notice of Emergency Adoption will be published in the State Register on October 29, 2025. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

At its December 2020, October 2021, September 2022, September 2023, and November 2024 meetings, the Board of Regents permanently adopted regulatory amendments to increase the amount of incidental teaching permitted in schools from up to five classroom hours a week to up to 10 classroom hours a week during the 2020-2021, 2021-2022, 2022-2023, 2023-2024, and 2024-2025 school years, respectively. This amendment helped school districts address staffing challenges related to and exacerbated by the COVID-19 pandemic. Through incidental teaching, certified teachers can teach a subject not covered by their certificate when the school district determines that no certified or qualified teachers are available. The school district must engage in extensive and documented recruitment efforts prior to making such a determination.

The Department now proposes to extend the flexibility for incidental teaching again through the 2025-2026 school year. This proposal will enable school districts to address ongoing staffing challenges by providing them with flexibility in making teaching assignments. Extending this flexibility for one additional school year will also provide time for the Department and Board of Regents to consider further reforms to the teacher and school leader certification process, one goal of which is to increase the supply of available and qualified educators.

Related Regents Items

[July 2025: Proposed Amendment of Section 80-5.3 of the Regulations of the Commissioner of Education Relating to Extending the Flexibility for Incidental Teaching](https://www.regents.nysed.gov/sites/regents/files/725hea1.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/725hea1.pdf>)

[November 2024: Proposed Amendment of Section 80-5.3 of the Regulations of the Commissioner of Education Relating to Extending the Flexibility for Incidental Teaching](https://www.regents.nysed.gov/sites/regents/files/1124brca5.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/1124brca5.pdf>)

[September 2023: Proposed Amendment of Section 80-5.3 of the Regulations of the Commissioner of Education Relating to Extending a Flexibility for Incidental Teaching](https://www.regents.nysed.gov/sites/regents/files/923brca4.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/923brca4.pdf>)

[September 2022: Proposed Amendment of Sections 80-5.3 and 80-5.4 of the Regulations of the Commissioner of Education Relating to Extending Flexibilities for Incidental and Substitute Teaching](https://www.regents.nysed.gov/sites/regents/files/922brca3.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/922brca3.pdf>)

[October 2021: Proposed Amendment to Sections 52.30, 63.9, 70.4, 74.6, 75.2, 75.5, 76.2, 79-9.3, 79-10.3, 79-11.3, 79-12.3, 80-5.3, 80-5.4, 83.5, 87.2, 87.5, 145-2.15, 155.17, 200.5, 200.6, and 279.15 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/1021brca7.pdf)
(<https://www.regents.nysed.gov/common/regents/files/1021brca7.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 COVID-19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/1220brca7.pdf)
(<https://www.regents.nysed.gov/common/regents/files/1220brca7.pdf>)

Recommendation

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

VOTED: That section 80-5.3 of the Regulations of the Commissioner of Education be amended, as submitted, effective October 13, 2025, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to continue allowing certified teachers to teach up to 10 classroom hours a week in a subject area not covered by their certificate for the 2025-2026 school year and to ensure that the emergency action taken at the July 2025 meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the October 2025 Regents meeting, the emergency rule will become effective on October 13, 2025. It is anticipated that the proposed amendment will be presented for permanent adoption at the November 2025 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 November 2025 meeting, the proposed amendment will become effective as a permanent rule on November 19, 2025.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 305, 308, 3001, 3004, and 3009 of the Education Law.

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 during the 2020-2021 through the [2024-2025] 2025-2026 school 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:

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

At its December 2020 meeting, the Board of Regents permanently adopted regulatory amendments to increase the amount of incidental teaching permitted in schools from up to five classroom hours a week to up to 10 classroom hours a week during the 2020-2021 school year in response to the COVID-19 pandemic. Through incidental teaching, certified teachers can teach a subject not covered by their certificate when no certified or qualified teachers are available after extensive and documented recruitment.

The Board of Regents permanently adopted regulatory amendments at its October 2021, September 2022, September 2023, and November 2024 meetings to extend the flexibility for incidental teaching from the 2021-2022 through the 2024-2025 school years, respectively, to give districts another way to address staffing challenges. The Department now proposes to extend the flexibility for incidental teaching again through the 2025-2026 school year. This proposal enables school districts to address their continuing staffing challenges by providing them with flexibility in making teaching assignments.

The proposed amendment was presented to the Higher Education Committee for recommendation to the Full Board for adoption as an emergency rule at the July 2025 meeting of the Board of Regents, effective July 15, 2025. 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 November 2025 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earlier effective date of the proposed rule, if adopted at the November 2025 meeting, would be November 19, 2025, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on October 12, 2025. Therefore, a second emergency action is necessary at the October 2025 meeting, effective October 13, 2025 for the preservation of the general welfare to continue allowing certified teachers to teach up to 10 classroom hours a week in a subject area not covered by their certificate for the 2025-2026 school year and to ensure that the emergency action taken at the July 2025 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 the November 2025 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rule making.