



TO: The Honorable Members of the Board of Regents

FROM: Daniel Morton-Bentley

SUBJECT: 2023 Regulatory Agenda

DATE: December 1, 2022

AUTHORIZATION(S):

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents approve the 2023 Regulatory Agenda?

Reason(s) for Consideration

Required by State statute.

Proposed Handling

The 2023 Regulatory Agenda will be presented to the Full Board for approval at the December 2022 Regents meeting. The 2023 Regulatory Agenda is attached (Attachment A).

Procedural History

Not applicable.

Background Information

Section 202-d of the State Administrative Procedure Act (SAPA) requires that the State Education Department publish, each year, a regulatory agenda in any January issue of the State Register. The 2023 Regulatory Agenda is a list and brief description of the subject matter of each rule the Department is considering proposing during 2023, but for which it has not yet submitted a Notice of Proposed Rule Making. The 2023 Regulatory Agenda is a planning document required under SAPA §202-d which is non-binding and does not commit the agency to adopt the listed regulations, nor does it preclude the agency from adopting regulations that are not on the list (SAPA §202-d [2]).

If SED seeks to adopt additional rules that were not included in the 2023 regulatory agenda, the Department must indicate in the Notice of Proposed Rule Making that the rule was not under consideration when the regulatory agenda was submitted for publication. Accordingly, Board of Regents approval of the Regulatory Agenda does not constitute approval of the listed regulations.

Related Regents Items

Not applicable.

Recommendation

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

VOTED: That the 2023 Regulatory Agenda for the State Education Department be approved, as submitted.

Timetable for Implementation

The 2023 Regulatory Agenda will be published in the State Register on January 4, 2023.

STATE EDUCATION DEPARTMENT

2023 REGULATORY AGENDA

Pursuant to section 202-d of the State Administrative Procedure Act, the State Education Department presents its regulatory agenda for calendar year 2023. All section and part references are to Title 8 of the New York Code of Rules and Regulations. The State Education Department reserves the right to add, delete or modify, without further notice, except as required by the State Administrative Procedure Act, any item or information presented herein as relating to the 2023 Regulatory Agenda.

OFFICE OF P-12 EDUCATION

Amendment of section 100.2(i) of the Regulations of the Commissioner of Education to allow the reporting of complaints about the use of corporal punishment by BOCES, district, or charter school personnel to be done once a year. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2(y)(3) of the Regulations of the Commissioner of Education to require that school districts, when notifying parents that students are not residents of the district, must, wherever practicable, specify which district they may be entitled to enroll in. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2(bb)(3) of the Regulations of the Commissioner of Education relating to special education data reporting requirements. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.5 (b) of the Regulations of the Commissioner of Education to allow districts to develop and implement Arts and Health coursework and curriculum without the approval of the State Education Department. A regulatory flexibility analysis for local government and a rural flexibility analysis may be required.

Amendment of section 100.3 of the Regulations of the Commissioner of Education relating to the PreK-4 Program requirements to reflect the adoption of the new and revised Learning Standards. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4 of the Regulations of the Commissioner of Education relating to program requirements in grades 5-6 to reflect the adoption of the new and revised Learning Standards. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendments of section 100.2(l) of the Regulations of the Commissioner of Education relating to school conduct and discipline to address the topics of progressive discipline, restorative practices, and equity in school discipline. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendments of section 100.5(d)(8) of the Regulations of the Commissioner of Education regarding requirements for the award of make-up credit to include educational programs administered or supervised by a state agency. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendments of section 100.5(d)(9) of the Regulations of the Commissioner of Education regarding requirements for independent study to include educational programs administered or supervised by a state agency. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.5(a), (b), and (c) of the Regulations of the Commissioner of Education relating to graduation and diploma requirements. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of sections 100.3, 100.4, and 100.5 of the Regulations of the Commissioner of Education to add Media Arts as a 5th Arts form addressed in the learning standards for the Arts. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.10 (h) of the Regulations of the Commissioner of Education to expand and/or modify the list of annual assessments to be utilized by home-instructed students. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.19 of the Regulations of the Commissioner of Education relating to (1) the new identification of schools as struggling schools or placing of schools under independent receivership; (2) receivership and persistently struggling schools/struggling schools; (3) the school intervention plan and independent receivers; and (4) the identification/designation of persistently struggling schools and/struggling school and independent receivership. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Addition of subdivisions (n) and (o) to section 100.21 of the Regulations of the Commissioner of Education relating to (1) the review of school and district performance, and the accountability status of public schools and districts; (2) definitions regarding school and district accountability designations; and (3) exit criteria. A regulatory

flexibility analysis for local government and a rural area flexibility analysis may be required.

Addition of section 100.23 to the Regulations of the Commissioner of Education relating to students in foster care. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 114.3 of the Regulations of the Commissioner of Education relating to bidding exemptions for direct purchasing to include a board of cooperative educational services. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 116.3 of the Regulations of the Commissioner of Education relating to length of school day. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 117 of the Regulations of the Commissioner of Education relating to diagnostic screening for students who are new entrants, or who have low test scores in reading or mathematics. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 119.1 of the Regulations of the Commissioner of Education relating to financing of charter schools to correct a citation and address statutory changes. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 119.1 of the Regulations of the Commissioner of Education to update the definition of aid attributable to students with disabilities and reflect the regulations around the calculation of tuition rates to make consistent with

existing law. A regulatory flexibility analysis for local government and a rural flexibility analysis may be required.

Amendment of section 119.4 of the Regulations of the Commissioner of Education relating to the location and timelines for charter school hearings. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 119.5 of the Regulations of the Commissioner of Education relating to charter school preferences. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 125 of the Regulations of the Commissioner of Education relating to the requirements for the voluntary registration of nonpublic nursery schools and kindergartens. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Addition of a new Part 131 to the Regulations of the Commissioner of Education relating to the requirements for a basic educational data system code for nonpublic school sites. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 135 of the Regulations of the Commissioner of Education to clarify the due process procedures relative to coaching licenses. A regulatory flexibility analysis and a rural area flexibility analysis may be required.

Amendment of section 144.11 of the Regulations of the Commissioner of Education to eliminate the requirement that school districts have an Early Grade Class Size Reduction Plan. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Subpart 151-1 of the Regulations of the Commissioner of Education to consolidate and update the provisions governing the Universal Prekindergarten Program, consistent with statutory amendments and program implementation. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 154-2.3(m) of the Regulations of the Commissioner of Education relating to the establishment of an alternate criteria for English language learners (ELL) who are also eligible to participate in the New York State Alternate Assessment to exit ELL status.

Amendment of section 155.12 of the Regulations of the Commissioner of Education relating to lease approval and building aid for leased school buildings and facilities by school districts. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 155.17 of the Regulations of the Commissioner of Education relating to annual training requirements for staff. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Repeal of section 155.22 of the Regulations of the Commissioner of Education relating to Qualified Zone Academy Bonds and Qualified School Construction Bonds. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 155.23 of the Regulations of the Commissioner of Education relating to multi-year cost allowance. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 156.7 of the Regulations of the Commissioner of Education to provide additional clarity for the calculation of the non-allowable pupil decimal that adjusts state transportation aid to exclude costs for students transported below aidable limits under current law. A regulatory flexibility analysis for local government and a rural flexibility analysis may be required.

Addition of section 175.14 of the Regulations of the Commissioner of Education Relating to the reimbursement for prekindergarten pupils under the McKinney-Vento Homeless Assistance Act.

Amendment of section 175.6 of the Regulations of the Commissioner of Education relating to the period of establishing enrollment. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.2 of the Regulations of the Commissioner of Education relating to least restrictive environment placements of students with disabilities. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.5(j) of the Regulations of the Commissioner of Education relating to the impartial due process hearing procedures, including the provisions relating to prehearing conferences, impartial hearing case extensions, and as may be necessary to conform to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.5(h) of the Regulations of the Commissioner of Education relating to special education mediation, including provisions relating to the immediate amendment of the IEP upon written agreement, and as may be necessary to

conform to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.5(l) of the Regulations of the Commissioner of Education relating to appeals of State complaint findings. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of sections 200.7 and 200.16 of the Regulations of the Commissioner of Education relating to preschool program approval for school districts, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural flexibility analysis may be required.

Amendment of section 200.7(b)(3) of the Regulations of the Commissioner of Education relating to the policy on school conduct and discipline required to be developed by private schools, State-operated schools and State-supported schools. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.9 of the Regulations of the Commissioner of Education relating to tuition rates for approved special class integrated setting programs. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.16(i) of the Regulations of the Commissioner of Education relating to preschool continuum of services and preschool inclusion in early childhood programs. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.21(b) of the Regulations of the Commissioner of Education relating to procedures for the suspension or revocation of impartial hearing

officer certification. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.22 of the Regulations of the Commissioner of Education as may be necessary to conform to Chapter 516 of the Laws of 2022. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 3.16(c)(1) of the Rules of the Board of Regents to update delegation of authority with respect to the approval of changes to certain charter school revisions. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 3.17(a)(3) of the Rules of the Board of Regents to update the revocation proceeding and to allow the Board of Regents to appoint a representative to hear oral arguments on behalf of the Board of Regents and to make a determination in regard to such oral argument. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 3.17(a)(3) of the Rules of the Board of Regents to update the revocation proceeding to revoke the certificate of incorporation after the assets of the education corporations have been discharged. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning any of the above-proposed amendments by contacting:

Angelique Johnson-Dingle

Deputy Commissioner for P12 Instructional Support

New York State Education Department

Room 400, 55 Hanson Place,

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Jason Harmon

Deputy Commissioner for P-12 Operational Support

New York State Education Department

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89 Washington Avenue

Albany, New York 12234

(518) 486-1707

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OFFICE OF HIGHER EDUCATION

Amendment of section 50.1 of the Regulations of the Commissioner of Education to include a definition of a remedial course and a compensatory course as needed under sections 6451 and 6452 of the Education Law. A rural area flexibility analysis and regulatory flexibility analysis may be required.

Amendment of Parts 50 and 52 of the Regulations of the Commissioner of Education concerning registration of undergraduate and graduate postsecondary curricula. A rural area flexibility analysis and regulatory flexibility analysis may be required.

Amendment of Parts 50 and 54 of the Regulations of the Commissioner of Education to amend the definitions and procedures related to off-campus instruction

and locations. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 3.56 of the Rules of the Board of Regents concerning consent of the Board of Regents to operation in New York by institutions of higher education operating outside of New York to revise the definition of program, to clarify the terms concerning approval of additional programs, and to clarify the terms concerning the submission of new applications. A rural area flexibility analysis and regulatory flexibility analysis may be required.

Repeal of Part 4 of the Rules of the Board of Regents regarding Regents Accreditation. The New York State Board of Regents and Commissioner of Education's recognition by the United States Department of Education as an accrediting agency expires on May 9, 2023. A rural area flexibility analysis and regulatory flexibility analysis may be required.

Amendment of section 52.2(f) of the Regulations of the Commissioner of Education specifying the academic content of a transcript prepared by an institution of higher education. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 145-2.1(a)(iii) of the Regulations of the Commissioner of Education to provide a definition of remedial course(s). A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 145-2.2 of the Regulations of the Commissioner of Education to provide a definition of the term "the recognized equivalent of such certificate" as found in Education Law §661(4)(f) for the purposes of determining

eligibility for the NYS Tuition Assistance Program. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 145-2.15(b)(2) of the Regulations of the Commissioner of Education to clarify the federally approved ability to benefit test administration for the purposes of the NYS Tuition Assistance Program. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 152-1.2 of the Regulations of the Commissioner of Education to insert language concerning remedial, developmental, and compensatory courses. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning any of the above-proposed amendments by contacting:

William P. Murphy

Deputy Commissioner for Higher Education

New York State Education Department

Office of Higher Education

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89 Washington Avenue

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(518) 4402-3620

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OFFICE OF THE PROFESSIONS

Amendment of Part 64 of the Regulations of the Commissioner of Education relating to implementing statutory provisions that permit a registered professional nurse to execute a standing order for newborn care in a hospital established under Public Health Law §2803-v, as provided in that section.

Amendment of sections 52.43 and 77.1 of the Regulations of the Commissioner of Education relating to the education requirements for licensure as a physical therapist to conform the education requirements for licensure as a physical therapist to national standards.

Amendment of Part 77 of the Regulations of the Commissioner of Education relating to implementing statutory amendments that update the physical therapy profession from certification to licensure.

Amendment of Part 29 of the Regents Rules relating to definitions of unprofessional conduct in the professions of “clinical laboratory technologist”, “cytotechnologist”, “certified clinical laboratory technician”, “certified histological technician” and “histotechnologist”.

Amendment of Parts 52 and 79 of the Regulations of the Commissioner of Education that update the requirements for licensure as a clinical laboratory technologist, cytotechnologist, certified clinical laboratory technician and certified histological technician.

Amendment of Part 79 of the Regulations of the Commissioner of Education relating to implementing statutory provisions that establish the profession of “histotechnologist.”

Amendment of Part 29 of the Regents Rules relating to the definitions of unprofessional conduct in the profession of public accountancy.

Amendment of Part 70.9 of the Regulations of the Commissioner of Education that update the continuing education in the profession of public accountancy.

Amendment of section 61.2 of the Regulations of the Commissioner of Education relating to the licensing examination for dentists to replace Parts I and II of the National Board Examination in dentistry with the Integrated National Board Dental Examination (INDBE).

Amendment of Part 66 of the Regulations of the Commissioner of Education relating to implementing statutory regarding the use of oral medications by optometrists.

Proposed addition of section 29.20 to the Regents Rules and amendment of sections 52.44 and 52.45 and Subparts 79-17 and 79-18 of the Regulations of the Commissioner of Education relating to implementing statutory provisions regarding the licensure and practice of licensed behavior analysts and certified behavior analyst assistants to align New York standards to national standards.

Proposed amendment of section 29.15 of the Regents Rules and sections 79-9.6, 79-10.6, and 79-12.6 of the Regulations of the Commissioner of Education relating to implementing statutory provisions regarding setting forth the requirements by which mental health counselors, marriage, and family therapists, and psychoanalysts may earn the diagnostic privilege.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning any of the above-proposed amendments by contacting:

Sarah S. Benson

Deputy Commissioner for the Professions

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OFFICE OF CULTURAL EDUCATION

Amendment of Part 90 of the Regulations of the Commissioner of Education, relating to the library and library system programs and services. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above proposed amendment by contacting:

Lauren Moore
Assistant Commissioner for Libraries and State Librarian
New York State Education Department
New York State Library
Room 10C34
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(518) 474-5930

statelibrarian@nysed.gov

Amendment of Part 188 of the Regulations of the Commissioner of Education relating to state government archives and records management to update the annual

fees for storage of records in a records center facility. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above proposed amendments by contacting:

Tom Ruller

Assistant Commissioner for the State Archives

New York State Education Department

Room 9B52 Cultural Education Center

Albany, New York 12230

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recmgmt@nysed.gov

OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES (ACCES)

Amendment to Part 126 of the Regulations of the Commissioner of Education related to the alternative educational and curriculum standards for non-occupational courses. A regulatory flexibility analysis for local government and a rural flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of any of the above rules by contacting:

Ceylane Meyers-Ruff

Assistant Commissioner

Office of Adult Career and Continuing Education Services

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89 Washington Avenue
Albany, New York 12234
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ACCESDeputy@nysed.gov

OFFICE OF MANAGEMENT SERVICES

Amendment of Part 156 of the Regulations of the Commissioner of Education relating to aid on bus purchases and timeliness of contracts. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning any of the above-proposed amendments by contacting:

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This regulatory agenda for the State Education Department was prepared and submitted by:

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