



TO: The Honorable Members of the Board of Regents

FROM: William P. Murphy *William Murphy*

SUBJECT: Proposed Amendment of Section 87.2(k) of the Regulations of the Commissioner of Education Relating to the Definition of Prospective School Employee

DATE: February 2, 2023

AUTHORIZATION(S): *Don McGreevey* *Bellotti*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of section 87.2(k) of the Regulations of the Commissioner of Education relating to the definition of prospective school employee?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

The proposed amendment is presented to the Full Board for adoption as a permanent rule at the February 2023 Regents meeting. A copy of the proposed rule is included (Attachment A).

Procedural History

The proposed amendment was presented to the Higher Education Committee for discussion at the October 2022 Regents meeting. A Notice of Proposed Rule Making was published in the State Register on October 19, 2022, for a 60-day public comment period. The Department received no comments on the proposed amendment after publication in the State Register. Therefore, an Assessment of Public Comment is not required and no changes to the proposed amendment are needed. A Notice of Adoption will be published in the State Register on March 1, 2023. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

Part 87 of the Commissioner's regulations requires that prospective school employees of a covered school be fingerprinted and cleared for employment by the Department, after a criminal history record check, in order to be employed by the covered school. At the October 2021 Regents meeting, the Board voted to adopt an amendment to the definition of "prospective school employee" in section 87.2(k) of the Commissioner's regulations. This definition relates to school employees who will reasonably be expected by a covered school to provide services which involve direct contact with students under the age of 21. The October 2021 amendment added any individual who will reasonably be expected to provide services that involve online communication or interaction directly to students under the age of 21 to the definition of "prospective school employee".

There have been questions from the field regarding whether this definition encompasses telephonic communication and interaction. While the Department's position is that such communications are covered, to provide clarity, the Department proposes to amend the definition of "prospective school employee" to explicitly include individuals who will reasonably be expected by a covered school to provide services which involve any other form of direct communication or interaction with students under the age of 21 including, but not limited to communication or interaction via digital or audio-based technology. This proposed amendment makes clear that all forms of direct communication or interaction are included in this definition.

Related Regents Items

October 2022: [Proposed Amendment of Section 87.2\(k\) of the Regulations of the Commissioner of Education Relating to the Definition of Prospective School Employee](https://www.regents.nysed.gov/common/regents/files/1022hed1.pdf) (https://www.regents.nysed.gov/common/regents/files/1022hed1.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)

Recommendation

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

VOTED: That section 87.2(k) of the Regulations of the Commissioner of Education be amended, as submitted, effective March 1, 2023.

Timetable for Implementation

If adopted at the February 2023 meeting, the proposed amendment will become effective on March 1, 2023.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 305, 3001-d, and 3035 of the Education Law.

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] any other form of communication or interaction directly with such students including, but not limited to communication or interaction via digital or audio-based technology; and