

Regulatory Flexibility for the Reopening of Schools

July 13, 2020



COVID-19 PANDEMIC

- As a result of the pandemic and the Governor's numerous Executive Orders, the Department adopted emergency regulations at the April, May, and June 2020 Board of Regents meeting to address the issues resulting from the interruptions caused by the COVID-19 crisis.
- The following emergency regulations relating to the COVID-19 crisis, previously adopted at the April, May, and June 2020 Regents meetings, are continued for the 2020-21 school year:

COVID-19 Regulations Continued Through 2020-21 School Year: Operations & Reporting Deadlines

- Waiver of instructional hour requirement (900/990 hour requirement) for the 180 day requirement for State aid purposes;
- Extension of the date required for adopting and publishing data security and privacy policies by educational agencies to October 1, 2020;
- Extension of deadline to complete child abuse in an educational setting training until September 30, 2020.

COVID-19 Regulations Continued Through 2020-21 School Year: Appeals

- Authorizes alternative service of 310 Appeals to the Commissioner;
- Extends Part 83 and Part 87 appeal filing timeframes;
- Expands the definition of prospective school employee for fingerprinting regulations to include employees who are not face to face;
- Allows State Review Officer to accept certain filings by electronic means.

COVID-19 Regulations Continued Through 2020-21 School Year: Charter Schools

- Excuses delays in required reporting by charter schools to public schools for the length of time of a school closure but no more than 30 days. When a delay is excused for a charter school, the regulations also permit the Commissioner to excuse a delay in payment by the public school;
- Allows charter school lotteries to be remote;
- Extends the deadline to conduct public hearings until September 30, 2020 for the formation of a new charter school, renewal of an existing charter school, or a charter school's request to revise its existing charter and allows the hearings to be conducted remotely.

COVID-19 Regulations Continued Through 2020-21 School Year: Professions

- Allows the Department to waive the continuous experience requirements for speech language pathology, audiology, and occupational therapy when continuous experience could not be obtained due to the pandemic;
- Allows the Department to accept CPA examination scores beyond the 18-month examination window exception due to pandemic related test center closures;
- Allows the Department to modify professional educational program requirements, to the extent authorized by law, for licensure (including field experience, practicums, etc.), if such requirements cannot be met due to the crisis;
- Allows the Department to accept alternative means to satisfy the 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, if such in-person supervision cannot be completed due to the pandemic;

COVID-19 Regulations Continued Through 2020-21 School Year: Professions (continued)

- Permits the Department, in its discretion, to renew limited permits in medicine for one additional 24-month period;
- Permits the Department, in its discretion, to accept alternative means to be used by dentists and dental hygienists to obtain and/or maintain the required CPR certification, in lieu of the in-person CPR course requirement;
- Permits the Department, in its discretion, to accept a lower number of live patient experiences and a specified number of Objective Structured Clinical Examinations for dentists and post-dental school residents seeking dental anesthesia certification.

COVID-19 Regulations Continued Through 2020-21 School Year: Curriculum and Instruction

- Extension of the application deadline for alternative high school equivalency preparation programs to be operated during the 2020-21 school year until, at the latest, 60 days after the expiration of applicable Executive Orders;
- Home instruction instructional day and/or hour requirement flexibility where a home instruction program is unable to provide such instructional days due to the State of emergency provided that such home instruction provided continuity of learning for the student;
- Provides exemptions from the sub-tests of the high school equivalency general comprehensive examination to provide flexibility during periods of test center closure.

COVID-19 Regulations Continued Through 2020-21 School Year: Special Education

- IHOs permitted to conduct special education due process hearings by video conference;
- Permit hearing officers to extend cases up to 60 days while schools are closed;
- Excludes days where schools are closed in 30-day timeline for preschool providers to make up missed services;
- Excludes days where schools are closed in 60-day timeline for arranging special education programs and services and 30-day timeline for arranging an approved nonpublic school placement.

COVID-19 Regulations Continued Through 2020-21 School Year: Accountability

- All schools identified as persistently struggling or struggling for the 2019-20 school year are to remain so identified for the 2020-21 school year and all schools that operated under a school district superintendent receiver in the 2019-20 school year are to continue to operate under a school district superintendent receiver in the 2020-21 school year;

COVID-19 Regulations Continued Through 2020-21 School Year: Accountability (continued)

- The Commissioner may, upon a finding of good cause for the 2019-20 through 2021-22 school years modify any timelines pertaining to notifications, plans, reports, or implementation of activities required by section 100.21 of the Commissioner's regulations.

COVID-19 Regulations Continued Through 2020-21 School Year: English Language Learners

- Excludes days where schools are ordered to close toward the timelines required for: English language learner identification process timeline, parental notification and information timeline, and the English as a New Language/Bilingual Education placement timeline.

COVID-19 Regulations Continued Through 2020-21 School Year: Higher Education

- Allows online DASA training;
- Extends the application deadline for Statement of Continued Eligibility and Limited Extension for special class special education teachers to June 30, 2021;
- Allows undergraduate or graduate level courses completed during the Fall 2020 term with a passing grade, or its equivalent, to count toward the content core or pedagogical core semester hour requirements for certification through the Individual Evaluation pathway;
- Extends the expiration date of the Initial certificate, Initial reissuance, Provisional certificate, and Provisional Renewal to January 31, 2021;
- Extends the expiration date of the Conditional Initial certificate to August 31, 2021;

COVID-19 Regulations Continued Through 2020-21 School Year: Higher Education (continued)

- Allows remote proctoring of Ability to Benefit (ATB) tests;
- Extends the expiration date of Teaching Assistant Level I certificates, Level I Renewals, Level II certificates, Pre-Professional certificates, and Pre-Professional Renewals to January 31, 2021;
- Allows teaching assistant experience gained while a candidate holds the Emergency COVID-19 Teaching Assistant certificate to satisfy the teaching experience requirement for the Teaching Assistant Level II, Level III, and Pre-Professional certificates;
- Allows emergency COVID-19 Teaching certificate to serve as a base certificate for certain certificate extensions and the severe or multiple disabilities annotation.

COVID-19 Pandemic and Reopening of Schools

- In addition to the regulations already discussed, the Department is proposing further regulatory changes to provide additional flexibility to the field and students during this crisis, to address anticipated issues resulting from the continued interruptions caused by the COVID-19 crisis and to prepare for the reopening of schools.

Curriculum & Instruction

- **Unit of Study**

The definition of “Unit of study” is amended to provide that “equivalent” shall mean at least 180 minutes of instructional time per week for instruction delivered in a traditional face to face model, or through alternative instructional experiences, including but not limited to through digital technology or blended learning, that represents standards-based learning under the guidance and direction of an appropriately certified teacher. Instructional experiences shall include, but need not be limited to: meaningful and frequent interaction with an appropriately certified teacher; academic and other supports designed to meet the needs of the individual student; and instructional content that reflects consistent academic expectations as in-person instruction. Any alternative instructional experience must include meaningful feedback on student assignments and methods of tracking student engagement.

Curriculum & Instruction (continued)

- **Career Development and Occupational Studies (CDOS)**

The Commissioner's regulations are amended to provide that the CDOS commencement credential may be awarded to students exiting school in the 2020-21 school year who are unable to complete all of the 54 hours of documented school supervised work-based learning experiences required and who otherwise meet all other requirements for such credential, where such schools are unable to provide students a certain portion of their scheduled work-based learning experience in the 2020-21 school year due to the COVID-19 crisis;

Curriculum & Instruction (continued)

- **Science Laboratory Experience**

The Commissioner's regulations are amended to provide that for the 2020-21 school year as a result of the COVID-19 crisis the 1,200 minutes of lab experience may be met through a combination of hands-on and simulated laboratory experience;

- **Diagnostic Screening**

The Commissioner's regulations are amended to provide that for the 2020-21 school year diagnostic screening for new entrants and students with low test scores shall be conducted as soon as practicable due to the COVID-19 crisis rather than by December 1st of the school year.

Early Learning

- **Staffing Ratios Flexibility**

The Commissioner's regulations are amended to provide that due to the COVID-19 crisis, for the 2020-21 school year for school districts outside of NYC: for 3-year old students with a class size of 7 children or less, there must be one teacher assigned to each class; and for 4-year old students with a class size of 8 children or less, there must be one teacher assigned to each class. For the City School District of the City of New York, for 3-year old students with a class size of 10 children or less, there must be one teacher assigned to each class; and for 4-year old students with a class size of 12 children or less, there must be one teacher assigned to each class.

Academic Intervention Services

- **Academic Intervention Services Identification Process**

The Commissioner's regulations are amended to provide that schools are not required to conduct the two-step identification prescribed for identification of students to receive AIS for the 2020-21 school year due to the cancelation of State assessments for the 2019-20 school year due to the COVID-19 crisis.

Health Screening Waiver

- **Health Screening Waiver**

The Commissioner's regulations are amended to provide that hearing, vision, and scoliosis screenings required to be provided by public schools are waived for the 2020-21 school year due to the COVID-19 crisis, unless the screening is otherwise deemed necessary.

Home Instruction

- **Submission of Written Notice of Intention to Instruct at Home**

The Commissioner's regulations are amended to provide that for the 2020-21 school year, the home instruction program deadline for submission of the written notice of intention to instruct at home is extended from July 1 until August 1, 2020 due to the COVID-19 crisis.

Pupil Transportation

- **School Bus Drill**

The Commissioner's regulations are amended to provide that for the first school bus drill to be conducted during the first seven days of schools, such seven days shall exclude any days where school is closed pursuant to an Executive Order of the Governor for the COVID-19 crisis for the Fall term for 2020-21 school year.

Higher Education

- **Incidental Teaching**

The Commissioner's regulations are amended to allow a superintendent of schools to assign certified teachers to teach a subject not covered by their certificate for a period not to exceed ten classroom hours a week, when no certified or qualified teachers are available after extensive and documented recruitment, during the 2020-21 school year due to the COVID-19 crisis;

Higher Education (continued)

- **Substitute Teaching**

The Commissioner's regulations are amended to allow substitute teachers who do not hold a valid certificate and who are not working toward certification, but who hold a high school diploma or its equivalent, to be employed by the school district or BOCES beyond the 40-day limit, for up to an 90 days in extreme circumstances and for more than 90 days in rare circumstances, under specified conditions during the 2020-21 school year due to the COVID crisis;

Higher Education (continued)

- **Shorter Semester**

The definitions of full-time and part-time student for Tuition Assistance Programs (TAP) is amended to provide that for the 2020-21 academic year, students shall be considered full-time and part-time where the student is unable to enroll in credit-bearing courses for at least 15 weeks for a semester due to the COVID-19 crisis, provided that such student is enrolled in such credit-bearing courses for a minimum of 12 weeks for a semester and still meets the semester hour requirements.

Special Education

Psychological Evaluations and Student Observations

- The Department proposes to amend regulations so that no individual psychological evaluation for an initial evaluation will be required if schools are closed per an Executive Order of the Governor and students are learning remotely, unless it is determined necessary by a school psychologist;
- The Department proposes to amend regulations so that if schools are closed per an Executive Order of the Governor and students are learning remotely, an observation will only be a required component for an initial evaluation, where determined appropriate by the Committee on Preschool Special Education or Committee on Special Education. Classroom observations would continue to be a required component of an initial evaluation for students suspected as having a learning disability.

English Language Learners

- **Identification of ELL Students with Inconsistent/Interrupted Formal Education**

The Commissioner's regulations are amended to provide that day(s) during a school closure ordered pursuant to an Executive Order(s) of the Governor pursuant to a State of emergency for the COVID-19 crisis shall not count toward the calculation of less than 12 months for identifying English language learner (ELL) students with inconsistent/interrupted formal education;

English Language Learners (continued)

- **Individual Interviews for Identification of ELLs**

Commissioner's regulations are amended to provide that the individual interview for the identification process to determine if a student is an English language learner is waived where a school district can document that video conferencing was used to remotely conduct an individual interview during a school closure ordered pursuant to an Executive Order(s) of the Governor pursuant to a State of emergency for the COVID-19 crisis. In such cases, qualified personnel will review the previously completed Home Language Questionnaire with the parent or person in parental relation;

English Language Learners (continued)

- **Review of ELL Determination Deadline**

Commissioner's regulations are amended to provide that due to the COVID-19 crisis for the 2020-21 school year, the 45-day timeline for a school district to initiate a review of a determination made in the initial or reentry identification process for English language learners, after receipt of a written request, is extended to 65 days from the beginning of the 2020-21 school year for any student that was either newly enrolled during the COVID-19 closures in the 2019-20 school year, Summer 2020, or within the first 20 days of the 2020-21 school year;

English Language Learners (continued)

Process for Initial Enrollment or Reentry Identification and Parent Notification, Orientation, and Placement

- For the 2020-21 school year, the process for initial enrollment or reentry identification and parent notification, orientation, and placement shall be completed such that a student who was either newly enrolled during the COVID-19 closures in the 2019-20 school year, Summer 2020, or the first 20 days of the 2020-21 school year is placed in either a Bilingual Education or English as New Language program within 30 school days after commencement of the 2020-21 school year for school districts with 150 or more ELLs, or where ELLs comprise 10% or more of the district's population;
- School districts with 149 or fewer ELLs, or where ELLs constitute less than 10% of the district's population, may seek an exemption from the English language learner identification timeline for students who are newly enrolled during the COVID-19 closures in the 2019-20 school year, Summer 2020, or the first 20 days of the 2020-21 school year on a form and within a timeframe prescribed by the Commissioner; provided that such school demonstrates sufficient need for such exemption notwithstanding the size and percentage of its ELL population.

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Questions?