






TO: The Honorable Members of the Board of Regents

FROM: Betty A. Rosa 

SUBJECT: Proposed Amendment to Section 3.8(b) of the Rules of the Board of Regents to Designate Counsel as the Deputy Commissioner of Education as specified in Education Law §101, who, in the Absence or Disability of the Commissioner or when a vacancy exists in the Office of Commissioner, Shall Exercise and Perform the Functions, Power, and Duties of the Commissioner

DATE: March 26, 2020

AUTHORIZATION(S):  

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the proposed amendment to section 3.8(b) of the Rules of the Board or Regents to designate the Counsel as the Deputy Commissioner of Education as specified in Education Law section 101, who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, power, and duties of the Commissioner?

Reason for Consideration

Review of Policy.

Proposed Handling

The proposed amendment is being presented to the Full Board for permanent adoption at the April 2020 Regents meeting. A copy of the proposed rule is attached.

Procedural History

The proposed amendment was adopted by the Full Board as an emergency rule at the December 2019 meeting of the Board of Regents, effective January 6, 2020. A

Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on December 24, 2019. Because the December emergency action was set to expire on March 8, 2020, a second emergency action was necessary at the March 2020 Regents meeting, effective March 9, 2020, to ensure that the emergency rule remained continuously in effect until it could be permanently adopted at the April 2020 Regents meeting. Following the 60-day public comment period required under the State Administrative Procedure Act, the Department received no comments on the proposed amendment.

Background Information

The proposed amendment is necessary to conform the Regents Rules to changes in the internal organization of the State Education Department, regarding the current vacancy in the position of executive deputy commissioner. The amendment will designate the Counsel of the State Education Department as the deputy commissioner of education as specified in Education Law section 101, who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties of the Commissioner.

Related Regent's Items

December 2019: [Proposed Amendment to Section 3.8\(b\) of the Rules of the Board of Regents to Designate Counsel as the Deputy Commissioner of Education as specified in Education Law §101, who, in the Absence or Disability of the Commissioner or when a vacancy exists in the Office of Commissioner, Shall Exercise and Perform the Functions, Power, and Duties of the Commissioner](https://www.regents.nysed.gov/common/regents/files/1219brca7.pdf)

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March 2020: [Proposed Amendment to Section 3.8\(b\) of the Rules of the Board of Regents to Designate Counsel as the Deputy Commissioner of Education as specified in Education Law §101, who, in the Absence or Disability of the Commissioner or when a vacancy exists in the Office of Commissioner, Shall Exercise and Perform the Functions, Power, and Duties of the Commissioner](https://www.regents.nysed.gov/common/regents/files/320brca4.pdf)

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Recommendation

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

VOTED: That Section 3.8(b) of the Rules of the Board of Regents be amended, as submitted, effective April 22, 2020.

Timetable for Implementation

If adopted at the April 2020 Regents meeting, the proposed amendment will become effective April 22, 2020.

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS

Pursuant to Education Law section 101

1. Paragraph (b) of section 3.8 of the Rules of the Board of Regents is amended to read as follows:

(b) The [executive deputy commissioner] counsel shall be the deputy commissioner of education as specified in section 101 of the Education Law. In the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, the [executive deputy commissioner] counsel shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by statute and by rule of the Regents.