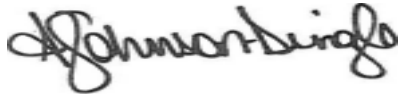





THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents

FROM: Angelique Johnson-Dingle 

SUBJECT: Proposed Amendment of Section 125.1 of the Regulations of the Commissioner of Education Relating to the Annual Visitation of Voluntarily Registered Nursery Schools and Kindergartens

DATE: March 31, 2022

AUTHORIZATION(S): 

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of section 125.1 of the Regulations of the Commissioner of Education relating to the annual visitation of voluntarily registered nursery schools and kindergartens?

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 its April 2022 meeting. A copy of the proposed rule is included as (Attachment A).

Procedural History

The proposed amendment was presented to the P-12 Education Committee for recommendation to the Full Board for adoption as an emergency rule at the November 2021 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on December 1, 2021 for a 60-day public comment period.

At the January 2022 Regents meeting, a revised proposed rule was presented to the P-12 Education Committee for recommendation to the Full Board for adoption as an emergency rule. A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on January 26, 2022 for a 45-day public comment

period. An additional emergency action was taken at the February 2022 Regents meeting to ensure the rule remained continuously in effect until it could be permanently adopted at the April 2022 Regents meeting. A Notice of Emergency Adoption was published in the State Register on March 30, 2022.

Following publication of the revised rule in the State Register, the Department received no comments on the proposed amendment. 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 April 27, 2022. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

At its February 2021 meeting, the Board of Regents permanently adopted amendments to section 125.1 of the Commissioner's regulations providing that Department staff must conduct mandatory visitations to voluntarily registered nursery schools and kindergartens "as soon as practicable" if prevented from doing so in the 2019-2020 or 2020-2021 school year(s) due to the COVID-19 crisis. Ordinarily, these inspections are required annually (8 NYCRR 125.1[c]). The Department extended the registration of nursery schools and kindergartens whose registration was up for renewal that did not have on-site visits in the 2019-2020 and/or 2020-2021 school years due to COVID-19.

Initial Proposed Amendment and Proposed Revisions

At its November 2021 meeting, the Board of Regents adopted emergency amendments to section 125.1(d) of the Commissioner's regulations extending the above flexibility to the 2021-2022 school year due to the ongoing challenges of the COVID-19 crisis. However, the proposed amendment inadvertently omitted corresponding amendments to section 125.1(e) of the Commissioner's regulations regarding extension of such schools' registration.

Therefore, at its January 2022 meeting, the Board of Regents took emergency action to adopt revisions to the proposed rule to include an amendment to section 125.1(e) of the Commissioner's regulations, extending the registration of nursery schools and kindergartens whose registration was up for renewal that did not have on-site visits in the 2019-2020, 2020-2021, or 2021-2022 school years due to COVID-19. Additionally, the revised proposed rule provides that such registration shall be up for renewal in the 2022-2023 school year.

Related Regents Items

February 2021: [Proposed Amendments to Sections 52.3, 52.21, 57-4.5, 70.4, 74.6, 75.2, 75.5, 76.2, 79-9.3, 79-10.3, 79-11.3, 79-12.3, 801.13, 80-1.5, 80-3.15, 80-4.3, 83.5, 87.2, 87.5, 100.2, 100.4, 100.5, 100.6, 100.10, 100.21, 119.1, 119.5, 125.1, 151-1.4, 1542.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and Addition of Section 279.15 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/221brca6.pdf>)

November 2021: [Proposed Amendment of Section 125.1\(d\) of the Regulations of the Commissioner of Education Relating to the Annual Visitation of Voluntarily Registered Nursery Schools and Kindergartens](#)

(<https://www.regents.nysed.gov/common/regents/files/1121p12a2.pdf>)

January 2022: [Proposed Amendment of Section 125.1 of the Regulations of the Commissioner of Education Relating to the Annual Visitation of Voluntarily Registered Nursery Schools and Kindergartens](#)

(<https://www.regents.nysed.gov/common/regents/files/122p12a1.pdf>)

February 2022: [Proposed Amendment of Section 125.1 of the Regulations of the Commissioner of Education Relating to the Annual Visitation of Voluntarily Registered Nursery Schools and Kindergarten](#)

(<https://www.regents.nysed.gov/common/regents/files/222brca3.pdf>)

Recommendation

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

VOTED: That section 125.1 of the Regulations of the Commissioner of Education be amended, as submitted, effective April 27, 2022.

Timetable for Implementation

If adopted at the April meeting, the proposed amendment will become effective as a permanent rule on April 27, 2022.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 210, 3602, and 3602-e of the Education Law.

1. Subdivisions (d) and (e) of section 125.1 of the Regulations of the Commissioner of Education is amended to read as follows:

(d) Where Department staff are unable to conduct an annual visit in accordance with subdivision (c) of this section in the 2019-2020, [or] 2020-2021, or 2021-2022 school [year] year(s) due to the COVID-19 crisis, Department staff shall conduct such visit as soon as practicable.

(e) Notwithstanding subdivision (b) of this section, any voluntarily registered school whose registration expires in the 2019-2020, [or] 2020-2021, or 2021-2022 school year, and does not receive a required on-site visit from Department staff due to the COVID-19 crisis pursuant to subdivision (d) of this section, shall have such registration extended, subject to revocation for cause, and such registration shall be up for renewal in the [2021-2022] 2022-2023 school year.