



**TO:** Higher Education Committee

**FROM:** William P. Murphy 

**SUBJECT:** Proposed Amendment of Section 80-2.1 of the Regulations of the Commissioner of Education Relating to the Deadline to Apply and Qualify for the Provisional School Counselor Certificate

**DATE:** April 6, 2023

**AUTHORIZATION(S):**



**SUMMARY**

**Issue for Decision**

Should the Board of Regents adopt the proposed amendment of section 80-2.1 of the Regulations of the Commissioner of Education relating to the deadline to apply and qualify for the Provisional School Counselor certificate?

**Reason(s) for Consideration**

Review of policy.

**Proposed Handling**

The proposed amendment is submitted to the Higher Education Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at its April 2023 meeting. A copy of the proposed amendment (Attachment A) and a Statement of Facts and Circumstances which necessitate emergency action (Attachment B) are attached.

**Procedural History**

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on May 3, 2023, for a 60-day public comment period. Supporting materials are available upon request from the Secretary to the Board of Regents.

## **Background Information**

At its May 2017 meeting, the Board of Regents adopted regulatory amendments establishing new Initial and Professional School Counselor certificates and the registration requirements for school counselor education programs that lead to these certificates. Institutions of higher education admitting new candidates for school counselor certification were required to register programs leading to Initial and Professional School Counselor certification by September 1, 2021. The Initial and Professional School Counselor certificates became available on February 2, 2023.

Candidates must have applied and qualified for the Provisional School Counselor certificate under the previous requirements prior to February 2, 2023 (8 NYCRR 80-2.1(a)(1)(iii)). On that date, the application for the Provisional School Counselor certificate and the ability for institutions to recommend candidates for this certificate were no longer available. Therefore, candidates who qualified for Provisional School Counselor certification prior to February 2, 2023, but did not apply for the certificate prior to this date would need to pursue the new Initial or Professional School Counselor certificate instead.

The coursework and clinical experience requirements for Provisional School Counselor certification and registered programs leading to this certificate were different from the coursework and clinical experience requirements for Initial and Professional School Counselor certification and registered programs leading to these certificates. As such, candidates who completed a registered program leading to Provisional School Counselor certification may not be eligible for an Initial or Professional School Counselor certificate through the individual evaluation pathway and may need to complete additional requirements.

The Department has learned of candidates who completed a registered program leading to Provisional School Counselor certification prior to February 2, 2023, but did not submit an application and pay the application fee for the certificate prior to this date or did not receive an institutional recommendation for certification by this date. To hold these candidates harmless, the Department is proposing to extend the date by which candidates who complete a New York State registered program leading to Provisional School Counselor certification would need to apply and qualify for this certificate to February 2, 2024.

The proposed amendment would provide appropriate flexibility for qualified candidates who completed a registered program leading to Provisional School Counselor certification, as well as candidates who may still be matriculating in this type of program but will complete it by February 2, 2024. This will ensure that these candidates can seamlessly obtain Provisional certification so that there will be a larger pool of candidates to provide school counselor services. School counselor services are of critical importance, particularly given their important role in working with children who are dealing with challenges stemming from the COVID-19 pandemic.

## **Related Regents Items**

September 2021: [Proposed Amendment to Sections 80-2.1 and 80-3.1 of the Regulations of the Commissioner of Education Relating to Permanent School Counselor Certificate Requirements](https://www.regents.nysed.gov/common/regents/files/921brca3.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/921brca3.pdf>)

July 2019: [Proposed Amendments to Sections 52.21, 80-2.1 80-3.1, 80-3.11, 80-3.12, and 80-5.23 and the Titles of Subparts 80- 2 and 80-3 of the Commissioner's Regulations Relating to School Counseling Program Registration, School Counselor Certification Requirements, and a One-Year Time Extension for Institutions of Higher Education to Meet the New Program Registration Requirements](http://www.regents.nysed.gov/common/regents/files/719brca1.pdf)  
(<http://www.regents.nysed.gov/common/regents/files/719brca1.pdf>)

May 2017: [Proposed Amendment of Sections 52.21, 100.2\(j\) and Part 80 of the Commissioner's Regulations Relating to School Counseling, Certification Requirements for School Counselors and Program Registration Requirements for School Counseling Preparation Programs](https://www.regents.nysed.gov/common/regents/files/517brca14.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/517brca14.pdf>)

## **Recommendation**

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

VOTED: That section 80-2.1 of the Regulations of the Commissioner of Education be amended, as submitted, effective April 18, 2023, as an emergency rule upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately extend the date by which candidates who completed a registered program leading to Provisional School Counselor certification would need to apply and qualify for this certificate to February 2, 2024.

## **Timetable for Implementation**

If adopted as an emergency rule at the April 2023 Regents meeting, the emergency rule will become effective April 18, 2023. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the September 2023 Regents meeting, after publication of the proposed amendment in the State Register and the expiration of the 60-day public comment period required under the State Administrative Procedure Act. Because the emergency action will expire before the September 2023 Regents meeting, it is anticipated that additional emergency actions will be presented for adoption at the June and September 2023 meetings. If adopted at the September 2023 meeting, the proposed amendment will become effective as a permanent rule on September 27, 2023.

**Attachment A**

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 305, 308, 3001, 3004, and 3009 of the Education Law.

1. Subparagraph (iii) of paragraph (1) of subdivision (a) of section 80-2.1 of the Regulations of the Commissioner of Education is amended to read as follows:

(iii) Candidates who apply and qualify for the provisional certificate in the title school counselor prior to February 2, 2023, shall be subject to the requirements of this Subpart. Candidates who do not meet these requirements shall be subject to the requirements of Subpart 80-3 of this Part, unless otherwise specifically prescribed in this Part. The requirement that the candidate must apply and qualify for the provisional certificate in the title school counselor prior to February 2, 2023, shall not apply to a candidate who has completed a program leading to such certificate registered pursuant to Part 52 of this Title. In that case, the candidate must apply and qualify for the certificate prior to February 2, 2024, to be subject to the requirements of this Subpart.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ACTION

At its May 2017 meeting, the Board of Regents adopted regulatory amendments establishing new Initial and Professional School Counselor certificates and the registration requirements for school counselor education programs that lead to these certificates. Institutions of higher education admitting new candidates for school counselor certification were required to register programs leading to Initial and Professional School Counselor certification by September 1, 2021. The Initial and Professional School Counselor certificates became available on February 2, 2023.

Candidates must have applied and qualified for the Provisional School Counselor certificate under the previous requirements prior to February 2, 2023 (8 NYCRR 80-2.1(a)(1)(iii)). On that date, the application for the Provisional School Counselor certificate and the ability for institutions to recommend candidates for this certificate was no longer available. Therefore, candidates who qualified for Provisional School Counselor certification prior to February 2, 2023, but did not apply for the certificate prior to this date would need to pursue the new Initial or Professional School Counselor certificate instead.

The coursework and clinical experience requirements for Provisional School Counselor certification and registered programs leading to this certificate were different from the coursework and clinical experience requirements for Initial and Professional School Counselor certification and registered programs leading to these certificates. As such, candidates who completed a registered program leading to Provisional School Counselor certification may not be eligible for an Initial or Professional School

Counselor certificate through the individual evaluation pathway and may need to complete additional requirements.

The Department has become aware of candidates who completed a registered program leading to Provisional School Counselor certification prior to February 2, 2023, but did not submit an application and pay the application fee for the certificate prior to this date or did not receive an institutional recommendation for certification by this date. To hold these candidates harmless, the Department is proposing to extend the date by which candidates who complete a registered program leading to Provisional School Counselor certification would need to apply and qualify for this certificate to February 2, 2024.

The proposed amendment would provide appropriate flexibility for qualified candidates who completed a registered program leading to Provisional School Counselor certification, as well as candidates who may still be matriculating in this type of program but will complete it by February 2, 2024. This will ensure that these candidates can seamlessly obtain Provisional certification so that there will be a larger pool of candidates to provide school counselor services. School counselor services are of critical importance, particularly given their important role in working with children who are dealing with challenges stemming from the COVID-19 pandemic.

Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (non-emergency) action after expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the September 2023 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule,

if adopted at the September meeting, would be September 27, 2023, the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the April 2023 meeting for the preservation of the general welfare to immediately extend the date by which candidates who completed a registered program leading to Provisional School Counselor certification would need to apply and qualify for this certificate to February 2, 2024.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at its September 2023 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for State agency rulemaking. However, since the emergency action will expire before the September 2023 Regents meeting, it is anticipated that an additional emergency actions will be presented for adoption at the June and September 2023 Regents meeting.