






**TO:** The Honorable the Members of the Board of Regents

**FROM:** Lester W. Young, 

**SUBJECT:** Proposed Amendment to Section 3.8(b) of the Rules of the Board of Regents to Designate The Executive Deputy Commissioner 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:** April 29, 2021

**AUTHORIZATION(S):**  

## SUMMARY

### Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of section 3.8(b) of the Rules of the Board or Regents to designate the Executive Deputy Commissioner 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?

### Reason for Consideration

Review of Policy.

### Proposed Handling

The proposed amendment will be presented to the Full Board for adoption as a permanent rule at the May 2021 meeting of the Board of Regents. A copy of the proposed rule is attached (Attachment A).

## **Procedural History**

The proposed amendment was presented to the Board of Regents for adoption as an emergency rule at its January 2021 meeting. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on January 27, 2021 for a 60-day public comment period. Because the emergency action taken at the January meeting was set to expire on April 11, 2021 it was necessary to adopt a second emergency action at the March 2021 Regents meeting, effective April 12, 2021 to ensure that the emergency rule remained continuously in effect until it could be permanently adopted at the May 2021 Regents meeting. A Notice of Emergency Adoption was published in the State Register on April 28, 2021.

Following the 60-day public comment period required under the State Administrative Procedure Act, the Department receive no comments on the proposed amendment. Therefore, an Assessment of Public Comment is not required and no changes to the proposed amendment are needed. Supporting materials are available upon request to the Secretary to the Board of Regents.

## **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 filling of the position of Acting Executive Deputy Commissioner. The amendment will designate the Executive Deputy Commissioner of the State Education Department 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, powers and duties of the Commissioner.

## **Related Regent's Items**

July 2011: [Proposed Amendment to Section 3.8 of the Rules of the Board of Regents, Relating to the Duties of the Executive Deputy Commissioner](https://www.regents.nysed.gov/common/regents/files/documents/meetings/2011Meetings/July2011/711bra4.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/documents/meetings/2011Meetings/July2011/711bra4.pdf>)

October 2011: [Proposed Amendment to Section 3.8 of the Rules of the Board of Regents, Relating to the Duties of the Executive Deputy Commissioner](https://www.regents.nysed.gov/common/regents/files/documents/meetings/2011Meetings/October2011/1011bra4.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/documents/meetings/2011Meetings/October2011/1011bra4.pdf>)

December 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/1219brca7.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1219brca7.pdf>)

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)

(<https://www.regents.nysed.gov/common/regents/files/320brca4.pdf>)

April 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/420brca3.pdf)

(<https://www.regents.nysed.gov/common/regents/files/420brca3.pdf>)

January 2021: [Proposed Amendment to Section 3.8\(b\) of the Rules of the Board of Regents to Designate The Executive Deputy Commissioner 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/121bra4.pdf)

(<https://www.regents.nysed.gov/common/regents/files/121bra4.pdf>)

March 2021: [Proposed Amendment to Section 3.8\(b\) of the Rules of the Board of Regents to Designate The Executive Deputy Commissioner 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/321brca2.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 May 26, 2021.

### **Timetable for Implementation**

If adopted at the May 2021 meeting, the proposed amendment will become effective as a permanent rule on May 26, 2021.

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 [counsel] executive deputy commissioner 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 [counsel] executive deputy commissioner shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by statute and by rule of the Regents.