






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

**FROM:** Kimberly Young Wilkins 

**SUBJECT:** Proposed Amendment to Sections 100.2(c), 100.5(h), and 136.3 of the Regulations of the Commissioner of Education Relating to Providing Flexibility for Hands-only CPR Instruction, the New York State Seal of Biliteracy, and Health Examinations and Certificates in Response to the COVID-19 Crisis

**DATE:** April 29, 2021

**AUTHORIZATION(S):**  

### SUMMARY

#### Issue for Decision

Should the Board of Regents adopt the proposed amendment to sections 100.2(c), 100.5(h), and 136.3 of the Regulations of the Commissioner of Education relating to providing flexibility for hands-only CPR instruction, the New York State Seal of Biliteracy, and health examinations and certificates in response to the COVID-19 crisis?

#### Reason(s) for Consideration

Review of Policy.

#### Proposed Handling

The proposed amendment is presented to the P-12 Education Committee for discussion and to the Full Board for adoption as an emergency rule at its May 2021 meeting. A copy of the proposed rule is included (Attachment A), and a statement of facts and circumstances justifying emergency action is included (Attachment B).

#### Procedural History

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on May 26, 2021 for a 60-day public comment period. Supporting materials are available upon request to the Secretary of the Board of Regents.

## **Background Information**

### **Generally**

On January 30, 2020, the World Health Organization designated the novel coronavirus, COVID-19, outbreak as a Public Health Emergency of International Concern. On March 7, 2020, the Governor of New York State declared a State disaster emergency for the entire State of New York pursuant to Executive Order 202. In response, the Department presented, and the Board of Regents voted to adopt, numerous emergency regulations to address issues resulting from interruptions caused by the COVID-19 crisis and to provide regulatory flexibility during the crisis. To address additional issues resulting from the interruptions caused by the COVID-19 crisis and to provide additional regulatory flexibility, the Department is proposing further emergency regulatory amendments as follows:

#### Hands Only CPR

- At its September 2020 meeting, the Board of Regents permanently adopted amendments to section 100.2(c)(11) to provide an exemption to the requirement that senior high schools provide an opportunity to students to demonstrate the psychomotor skills necessary to perform hands-only compression CPR for the 2019-2020 school year due to schools being closed in response to the COVID-19 crisis.
- As schools have had varying levels of in-person instruction in the 2020-2021 school year, the Department is now proposing to extend such exemption to the 2020-2021 school year where schools were unable to provide such instruction as a result of providing remote or hybrid instruction during the COVID-19 crisis (Attachment A #1).

#### Seal of Biliteracy

- At its December 2020 meeting, the Board of Regents permanently adopted amendments to section 100.5(h)(4)(a) of the Commissioner's regulations to provide that students who were unable to take certain Regents exams due to COVID-19-related cancellations could nevertheless satisfy criteria for the New York State Seal of Biliteracy (NYSSB), provided that such students were exempted from the applicable (June or August 2020) Regents examinations in accordance with section 100.5(a)(5)(iv) of the Commissioner's regulations.
- Additionally, at its December 2020 and March 2021 meetings, the Board of Regents adopted emergency regulations extending the exemption from the diploma, credential, and endorsement requirements associated with the June and August 2020 administrations of Regents examinations to include the January, June, and August 2021 administrations of the Regents examinations. Therefore, the Department is now proposing to amend

section 100.5(h)(4)(a) of the Commissioner's regulations to extend the regulatory flexibility for the Regents exam requirements for the NYSSB to also include the January, June, and August 2021 administrations (Attachment A #2).

#### Health Examination and Certificates

- The Department proposes to amend section 136.3(b) and (c) of the Commissioner's regulations to provide that for the 2020-21 school year, where a student is required to obtain a health examination/health certificate in the requisite grade, but has been unable to do so due to the COVID-19 crisis, such student shall submit such health examination/health certificate by September 1, 2021 (Attachment A # 3).

#### **Related Regent's Items**

April 2020: [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, 80-1.13, 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, 154-2.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and addition of Section 279.5 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/420bra6.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/420bra6.pdf>)

May 2020: [Proposed Amendments to Sections 52.21, 60.6, 61.19, 80-1.2, 80-3.7, 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19 and 151-1.3 and addition of Section 80-5.27 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/520bra9-REVISED.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/520bra9-REVISED.pdf>)

May 2020: [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, 80-1.13, 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, 154-2.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and addition of Section 279.5 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/520bra10.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/520bra10.pdf>)

June 2020: [Proposed Amendments to Sections 60.10, 80-1.2, 80-4.3, 80-4.4, 80-5.6, 100.2, 100.5, 100.7, 100.10, 110.4, 119.4, 121.5, 135.4, 145-2.15 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/620bra10.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/620bra10.pdf>)

June 2020: [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, 80-1.13, 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, 154-2.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and addition of Section 279.5 to the](https://www.regents.nysed.gov/common/regents/files/520bra10.pdf)

[Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/620bra11.pdf>)

June 2020: [Proposed Amendments to Sections 52.21, 60.6, 61.19, 80-1.2, 80-3.7, 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19 and 151-1.3 and addition of Section 80-5.27 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/620bra12.pdf>)

July 2020: [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, 80-1.13, 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, 154-2.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and addition of Section 279.5 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/720bra7.pdf>)

July 2020: [Proposed Amendments to Sections 52.21, 60.6, 61.19, 80-1.2, 80-3.7, 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19 and 151-1.3 and addition of Section 80-5.27 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/720bra5.pdf>)

July 2020: [Proposed Amendments to Sections 60.10, 80-1.2, 80-4.3, 80-4.4, 80-5.6, 100.2, 100.5, 100.7, 100.10, 110.4, 119.4, 121.5, 135.4, and 145-2.15 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/720brca13.pdf>)

July 2020: [Proposed Amendments to Sections 80-5.3, 80-5.4, 100.1, 100.2, 100.5, 100.6, 100.10, 117.3, 136.3, 145-2.1, 151-1.3, 154-2.2, 154-2.3, and 200.4 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](#)

(<https://www.regents.nysed.gov/common/regents/files/720bra8revised.pdf>)

September 2020: [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 279.5 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/920bra6.pdf>)

September 2020: [Proposed Amendments to Sections 52.21, 60.6, 61.19, 80-1.2, 80-3.7, 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19 and 151-1.3 and addition of Section 80-5.27 to the Regulations of the Commissioner of Education Relating to Addressing the COVID19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/920bra3.pdf>)

September 2020: [Proposed Amendments to Sections 80-5.3, 80-5.4, 100.1, 100.2, 100.5, 100.6, 100.10, 117.3, 136.3, 145-2.1, 151-1.3, 154-2.2, 154-2.3, 156.3, and 200.4 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](#)

(<https://www.regents.nysed.gov/common/regents/files/920bra8.pdf>)

September 2020: [Proposed Amendments to Sections 52.21, 79-8.5, 100.5, and 154-2.3 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](#)

(<https://www.regents.nysed.gov/common/regents/files/920bra7revised.pdf>)

September 2020: [Proposed Amendments to Sections 60.10, 80-1.2, 80-4.3, 804.4, 80-5.6, 100.2, 100.5, 100.7, 100.10, 110.4, 119.4, 121.5, 135.4, 145-2.15 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/920brca3.pdf>)

October 2020: [Proposed Amendments to Sections 125.1, 135.4, and 52.21 of the Regulations of the Commissioner of Education and Section 30-3.2 of the Rules of the Board of Regents Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](#)

(<https://www.regents.nysed.gov/common/regents/files/1020bra3.pdf>)

October 2020: [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, 80-1.13, 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, 154-2.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and addition of Section 279.5 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/1020bra5revised.pdf>)

October 2020: [Proposed Amendments to Sections 52.21, 60.6, 61.19, 80-1.2, 80-3.7, 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19 and 151-1.3 and addition of Section 80-5.27 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/1020bra4.pdf>)

October 2020: [Proposed Amendments to Sections 80-5.3, 80-5.4, 100.1, 100.2, 100.5, 100.6, 100.10, 117.3, 136.3, 145-2.1, 151-1.3, 154-2.2, 154-2.3, 156.3, and 200.4 of the Regulations of the Commissioner of Education Relating to Addressing the COVID19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/1020brca5.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1020brca5.pdf>)

November 2020: [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, 80-1.13, 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, 154-2.3, 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/1120bra3.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1120bra3.pdf>)

November 2020: [Proposed Amendments to Sections 52.21, 79-8.5, 100.5, and 154-2.3 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/1120brca2.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1120brca2.pdf>)

December 2020: [Proposed Amendments to Sections 80-5.3, 80-5.4, 100.1, 100.2, 100.5, 100.6, 100.10, 117.3, 136.3, 145-2.1, 151-1.3, 154-2.2, 154-2.3, 156.3, and 200.4 of the Regulations of the Commissioner of Education Relating to Addressing the COVID19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/1220brca7.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1220brca7.pdf>)

December 2020: [Proposed Amendments to Sections 52.21, 79-8.5, 100.5, and 154-2.3 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/1220brca6.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1220brca6.pdf>)

December 2020: [Proposed Amendments to Sections 52.21, 60.6, 61.19, 80-1.2, 80-3.7, 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19 and 151-1.3 and the addition of Section 80-5.27 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/1220bra4.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1220bra4.pdf>)

December 2020: [Proposed Amendments to Sections 155.17\(f\) and 100.5\(a\) of the Regulations of the Commissioner of Education and Section 30-3.16 of the Rules of the Board of Regents Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/1220bra3.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1220bra3.pdf>)

January 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](https://www.regents.nysed.gov/common/regents/files/1220bra3.pdf)

[Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/121brca3.pdf>)

February 2021: [Proposed Amendments to Sections 52.21, 80-3.14, and 80-3.7 of the Regulations of the Commissioner of Education and Section 30-1.2 of the Rules of the Board of Regents Relating to Providing Flexibility Relating to Student Teaching, Individual Evaluation Pathway to Certification, Accreditation, and the Computer Science Tenure Area and Statement of Continued Eligibility in Response to the COVID-19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/221hea1.pdf>)

February 2021: [Proposed Amendments to Sections 52.21, 60.6, 61.19, 80-1.2, 80-3.7, 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19 and 151-1.3 and the addition of Section 80-5.27 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/221brca5.pdf>)

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>)

March 2021: [Proposed Amendment of Sections 52.21, 60.6, 61.19, 80-1.2, 80-3.7, 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19 and 151-1.3 and the addition of Section 80-5.27 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](#)

([https://www.regents.nysed.gov/common/regents/files/321bra5\\_0.pdf](https://www.regents.nysed.gov/common/regents/files/321bra5_0.pdf))

March 2021: [Proposed Amendment of Sections 100.4, 100.10 and 175.5 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](#)

([https://www.regents.nysed.gov/common/regents/files/321p12a7revised\\_0.pdf](https://www.regents.nysed.gov/common/regents/files/321p12a7revised_0.pdf))

March 2021: [Proposed Amendment to Sections 125.1, 135.4, and 52.21 of the Regulations of the Commissioner of Education and Section 30-3.2 of the Rules of the Board of Regents Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](#)

(<https://www.regents.nysed.gov/common/regents/files/321brca8.pdf>)

April 2021: [Proposed Amendment to Sections 52.21, 80-3.14, and 80-3.7 of the Regulations of the Commissioner of Education and Section 30-1.2 of the Rules of the Board of Regents Relating to Providing Flexibility Relating to Student Teaching, Individual](#)

[Evaluation Pathway to Certification, Accreditation, and the Computer Science Tenure Area and Statement of Continued Eligibility in Response to the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/4211brca5.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/4211brca5.pdf>)

April 2021: [Proposed Amendment to Sections 125.1, 135.4, and 52.21 of the Regulations of the Commissioner of Education and Section 30-3.2 of the Rules of the Board of Regents Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/4211brca8.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/4211brca8.pdf>)

April 2021: [Proposed Amendments to Sections 155.17\(f\) and 100.5\(a\) of the Regulations of the Commissioner of Education and Section 30-3.16 of the Rules of the Board of Regents Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/4211brca9.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/4211brca9.pdf>)

### **Recommendation**

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

VOTED: That sections 100.2(c), 100.5(h), and 136.3 of the Regulations of the Commissioner of Education be amended, as submitted, effective May 11, 2021, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare in order to immediately provide flexibility for certain regulatory requirements in response to the COVID-19 crisis.

### **Timetable for Implementation**

If adopted as an emergency rule at the May 2021 Regents meeting, the emergency rule will become effective May 11, 2021. It is anticipated that the proposed amendment will be presented for permanent adoption at the September 2021 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. Because the emergency action will expire before the September Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the July meeting. If adopted at the September meeting, the proposed amendment will become effective as a permanent rule on September 29, 2021.



**Attachment A**

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 209, 305, 308, 309, 804-c, and 815 of the Education Law.

1. Subparagraph (v) of paragraph (11) of subdivision (c) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(v) Notwithstanding the provisions of this subdivision, senior high schools shall be exempted from providing an opportunity to students to demonstrate the psychomotor skills necessary to perform hands-only compression cardiopulmonary resuscitation required by this paragraph:

(a) for the 2019-2020 school year where such schools were unable to provide such opportunity due to school closures ordered pursuant to an Executive Order of the Governor pursuant to a State of emergency for the COVID-19 crisis; and

(b) for the 2020-2021 school year where such schools were unable to provide such opportunity as a result of providing remote or hybrid instruction during the COVID-19 crisis.

2. Clause (a) of subparagraph (ii) of paragraph (4) of subdivision (h) of section 100.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) Area 1: Criteria for Demonstrating Proficiency in English.

(1) Students shall earn one point per item for achieving the following items:

(i) Score 75 or higher on the NYS Comprehensive English Regents Examination, or score 80 or higher on the NYS Regents Examination in English Language Arts (however, students in schools with an alternate pathway for graduation approved by the

Commissioner will be held to those schools' criteria), or students who have been exempted from the applicable Regents Examination in English Language Arts in the June 2020 or August 2020 Regents examination administration pursuant to subparagraph (vi) of paragraph (5) of subdivision (a) of this section, or English Language Learners (ELLs) score 75 or above on two Regents exams other than English, without translation, or ELLs have been exempted from two of the applicable Regents examinations in the June 2020[or], August 2020, January 2021, June 2021 or August 2021 Regents examination [administration as] administrations pursuant to subparagraph (vi) of paragraph (5) of subdivision (a) of this section[.];

(ii) ELLs earn an overall score of 290 on the New York State English as a Second Language Achievement Test (NYSESLAT) or who were identified in the 2019-2020 school year at the Transitioning or Expanding English Language Proficiency Level by the statewide English language proficiency identification assessment or the annual English language proficiency assessment and who earned credit in a course of study for English as a New Language or Bilingual Education in the 2019-2020 school year.

3. Paragraph (1) of subdivisions (b) and (c) of section 136.3 of the Regulations of the Commissioner of Education are amended to read as follows:

(1) Except in the city school district of the city of New York, it shall be the duty of the trustees and boards of education to require each student enrolled in the public school to have a satisfactory health examination conducted by a duly licensed physician, physician assistant or nurse practitioner, upon the student's entrance in such school at any grade level and for each student entering pre-kindergarten or kindergarten and in the 1st, 3rd, 5th, 7th, 9th and 11th grades. Such examination shall be acceptable for purposes

of this section if it is administered not more than 12 months prior to the commencement of the school year in which the examination is required, provided however, that for the 2020-2021 school year where a student is unable to obtain a health examination in the required grade pursuant to this paragraph due to the COVID-19 crisis, such student shall obtain such health examination by September 1, 2021.

(1) Health certificates. It shall be the duty of the trustees and boards of education to require that each student, within 30 days after his or her entrance into school and within 30 days after his or her entry into pre-kindergarten or kindergarten, 1st, 3rd, 5th, 7th, 9th and 11th grades, submit to the principal or the principal's designee a health certificate that meets the requirements of this paragraph, provided that no health certificate shall be required of a student for which an accommodation for religious beliefs is made pursuant to subdivision (f) of this section, provided further, however, that for the 2020-2021 school year where a student is unable to obtain a health certificate in the required grade pursuant to this paragraph due to the COVID-19 crisis, such student shall submit such health examination by September 1, 2021.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH  
NECESSITATE EMERGENCY ACTION

On January 30, 2020, the World Health Organization designated the novel coronavirus, COVID-19, outbreak as a Public Health Emergency of International Concern. On March 7, 2020, the Governor of New York State declared a State disaster emergency for the entire State of New York pursuant to Executive Order 202. In response, the Department presented, and the Board of Regents voted to adopt, numerous emergency regulations to address issues resulting from interruptions caused by the COVID-19 crisis and to provide regulatory flexibility during the crisis. To address additional issues resulting from the interruptions caused by the COVID-19 crisis and to provide additional regulatory flexibility, the Department is proposing further emergency regulatory amendments as follows:

- Hands Only CPR
  - At its September 2020 meeting, the Board of Regents permanently adopted amendments to section 100.2(c)(11) to provide an exemption to the requirement that senior high schools provide an opportunity to students to demonstrate the psychomotor skills necessary to perform hands-only compression CPR for the 2019-2020 school year due to schools being closed in response to the COVID-19 crisis.
  - As schools have had varying levels of in-person instruction in the 2020-2021 school year, the Department is now proposing to extend such exemption to the 2020-2021 school year where schools were unable to

provide such instruction as a result of providing remote or hybrid instruction during the COVID-19 crisis.

- Seal of Biliteracy
  - At its December 2020 meeting, the Board of Regents permanently adopted amendments to section 100.5(h)(4)(a) of the Commissioner’s regulations to provide that students who were unable to take applicable Regents exams due to COVID-19-related cancellations could nevertheless satisfy criteria for the New York State Seal of Biliteracy (NYSSB) that would have been met by the required June 2020 or August 2020 Regents exam(s), provided that such students have been exempted from the applicable Regents examinations in accordance with section 100.5(a)(5)(iv) of the Commissioner’s regulations.
  - Additionally, at its December 2020 and March 2021 meetings, the Board of Regents adopted emergency regulations extending the exemption from the diploma, credential, and endorsement requirements associated with Regents examinations to include the January, June, and August 2021 administration of the Regents examinations, respectively. Therefore, the Department is now proposing to amend section 100.5(h)(4)(a) of the Commissioner’s regulations to extend the regulatory flexibility for the Regents exam requirements for the NYSSB to also include the January, June, and August 2021 administrations.
- Health Examination and Certificates
  - The Department proposes to amend section 136.3(b) and (c) of the Commissioner’s regulations to provide that, for the 2020-21 school year,

where a student is required to obtain a health examination/health certificate in the requisite grade, but has been unable to do so due to the COVID-19 crisis, such student shall submit such health examination/health certificate by September 1, 2021.

Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) 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 2021 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 29, 2021, the date the Notice of Adoption would be published in the State Register.

Therefore, because the COVID-19 crisis is presently affecting the State of New York, emergency action is necessary at the May 2021 meeting for the preservation of the public health and general welfare in order to immediately provide flexibility for certain regulatory requirements in response to the COVID-19 crisis.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the September 2021 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rule making. However, since the emergency action will expire before the September 2021 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the July 2021 Regents meeting.