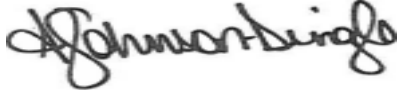





TO: P-12 Education Committee

FROM: Angelique Johnson-Dingle 

SUBJECT: Proposed Addition of Section 100.22 and Amendment of Section 200.6 of the Regulations of the Commissioner of Education Relating to Instruction Provided to Students in a Home, Hospital, or Institutional Setting Other Than a School (Homebound Instruction)

DATE: May 5, 2022

AUTHORIZATION(S): 

SUMMARY

Issue for Decision

Should the Board of Regents approve the proposed addition of section 100.22 and amendment of section 200.6 of the Regulations of the Commissioner of Education relating to the instruction provided to students in a home, hospital, or institutional setting other than a school (also referred to as Homebound Instruction)?

Reason(s) for Consideration

Review of policy.

Proposed Handling

The proposed amendment is presented to the P-12 Education Committee for discussion and for recommendation to the Full Board for adoption at the May 2022 Regents meeting. A copy of the proposed rule is included as Attachment A and a statement of facts and circumstances justifying emergency action is included as Attachment B.

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on June 1, 2022, for a 60-day public comment period and a Notice of Emergency Adoption will be published on July 20, 2022. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

Homebound instruction is an educational service provided by a school district to resident students (public and non-public) who are anticipated to be unable to attend school in person for at least ten days in a three-month period due to physical, mental, or emotional illness or injury. Homebound instruction ensures that students can continue learning and working towards mastery of learning standards while unable to attend school for a significant period of time for reasons beyond their control.

Currently, Commissioner's regulations only address instruction provided to students cared for in hospitals or other institutions which provide for the care, custody, and treatment of children, other than a school setting, pursuant to Education Law §3202(6) (8 NYCRR 175.21). This section of regulation pertains to average daily attendance and average daily membership for determination of state aid and establishes a minimum of 5 (elementary school level) or 10 (secondary level) hours of instruction per week.

For students with disabilities who are recommended for home, hospital, or institutional instruction by a committee on special education (CSE), section 200.6 of the Commissioner's regulations requires the same minimum hours for elementary and secondary levels as prescribed in section 175.21 of the Commissioner's regulations and reserves the determination of the instruction and related services to the CSE. There currently exists no instructional requirements for the general student population in need of such instruction, other than these stated minimums.

Throughout the 2021 -2022 school year, the State Education Department received numerous inquiries from parents and caregivers regarding the extent to which they could request or were entitled to receive, "homebound" instruction for students, including those who were immunocompromised. Schools also inquired as to how they should determine a student's eligibility for such instruction.

The proposed rule will give districts and parents or guardians clarity on the requirements for the application and provision of such instruction. The proposed rule will also establish, beginning with the 2023-2024 school year, increased minimum instructional requirements for students who are unable to attend school in person for at least ten days out of the next three months due to illness or injury that requires the student to remain at home or in a hospital or other institution for the treatment of children, other than a school.

Thus, the Department proposes to add a new section 100.22 to the Commissioner's regulations that:

- defines the terms tutor, school district of residence, and healthcare provider;
- requires medical verification from the student's treating healthcare provider as well as a request for home, hospital, or institutional instruction from a parent or guardian;
- establishes a time frame for review of the request, including the ability to appeal a denial thereof to a board of education;

- identifies minimum requirements for instruction to continue a student’s academic progress, including the development of an instructional plan in consultation with the parent or guardian and, where appropriate, the student; and
- effective July 1, 2023, increases the minimum instruction hours to at least 10 hours of instruction per week at the elementary level and at least 15 hours of instruction at the secondary level unless a lesser period is requested by the parent or guardian and supported by documentation submitted by a treating physician.

Additionally, the Department proposes to amend section 200.6 of the Commissioner’s regulations to provide that the amount of home, hospital and institutional instruction for students with disabilities conforms to the increased requirements of section 100.22.

Related Regents Items

June 2008: [Proposed Amendments to and Repeals of the Regulations of the Commissioner Relating to State Aid](https://www.regents.nysed.gov/meetings/2008/2008-06-27)

(<https://www.regents.nysed.gov/meetings/2008/2008-06-27>)

Recommendation

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

VOTED: That section 200.6 of the Commissioner’s regulations be amended and section 100.22 of the Regulations of the Commissioner of Education be added, as submitted, effective July 1, 2022, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to ensure that districts and parents or guardians receive clarity as to the circumstances under which “homebound” instruction may be requested and delivered for the upcoming school year.

Timetable for Implementation

If adopted as an emergency rule at the May 2022 Regents meeting, the emergency rule will become effective July 1, 2022. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the September 2022 Regents meeting, after the 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. If adopted at the September 2022 meeting, the proposed amendment will become effective on September 28, 2022.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 215, 305, 1604, 1709, 2503, 2554, 3202, 3204, and 3205 of the Education Law.

1. Part 100 of the Regulations of the Commissioner of Education, is amended by adding a new section 100.22 to read as follows:

§100.22 Instruction provided to students in a home, hospital, or institutional setting other than a school (homebound instruction).

(a) Purpose. The purpose of this section is to establish minimum instructional requirements that must be provided to students who are anticipated to be unable to attend school in person for at least ten days during a three month period due to illness or injury which requires the student to remain at home or in a hospital or other institution for the treatment of children, other than a school.

(b) Definitions. As used in this section:

(1) Remote instruction shall have the same meaning as defined in section 100.1(u) of this Part.

(2) Tutor means an individual with whom the school district of residence contracts to provide home, hospital, or institutional instruction pursuant to this section. Such tutor must hold a New York State teaching certificate pursuant to Part 80 of this Title. A tutor may include a teacher employed by a board of cooperative educational services (BOCES) that contracts with the school district of residence to provide such instruction pursuant to Education Law §1950.

(3) Instruction delivery plan means a written plan to continue the student's academic progress and to maintain a record of delivery of instructional services and student progress, in accordance with paragraph (1) of subdivision (e) of this section.

(4) School district of residence means the public school district within the State of New York where students legally reside with their parents or guardians.

(5) Treating health care provider means a person who is treating a student and is licensed or otherwise authorized to provide diagnosis pursuant to a profession enumerated in Title VIII of the Education Law.

(c) Responsibility for instruction.

(1) The board of education of the school district of residence shall provide instructional services to all resident students enrolled in a public or nonpublic school from kindergarten to age 21 when, due to a temporary or chronic physical, mental, emotional illness or injury, as documented by the student's treating healthcare provider, the student is unable to participate in their usual education setting.

(2) Such instruction may be provided by the district or by a tutor; provided, however, that for hospital and institutional instruction, such instruction may also be provided via contract with a school connected with such hospital or institution, or by contract with the local public school district in which such hospital or institution is located. Such contract shall be limited to the cost of educational services and shall not include maintenance or medical services.

(d) Request for instruction.

(1) When requesting home, hospital, or institutional instruction, the parent or guardian must submit a request to the school district of residence that includes written medical verification from the student's treating healthcare provider demonstrating the

student's anticipated inability to attend school in person for at least ten days during the next three months.

(2) The school district shall forward the request to the school's medical director, who shall review the need for home, hospital, or institutional instruction. Upon consent from the parent or guardian, the school's medical director may contact the student's treating healthcare provider to obtain additional information necessary regarding the student's health or mental health.

(3) The school district shall provide instructional services to the student within five school days after the school district receives notification of the student's medical condition or within five school days from the parent or guardian's request for home, hospital, or institutional instruction, whichever occurs first.

(4) The school district shall notify the parent or guardian regarding the medical director's approval or reason(s) for denial within five school days after receipt of written medical verification from the student's treating health care provider.

(5) The parent or guardian may appeal the medical director's denial to the school district's board of education within five school days of receipt thereof.

(6) Instructional services shall be provided during the timeframe prescribed in paragraph (3) of this subdivision while an appeal of a denial of home, hospital or institutional instruction is pending before the school district's board of education pursuant to paragraph (5) of this subdivision.

(e) Instructional requirements. Home, hospital, or institutional instruction, which may include remote instruction, shall meet the following minimum requirements:

(1) The school district, in consultation with the parent, guardian, and student, where appropriate, shall establish a written home, hospital, or institution instruction

delivery plan to continue the student's academic progress and to maintain a record of delivery of instructional services and student progress. The instruction delivery plan shall include, but not be limited to:

(i) the number of hours per week and hours per day that the student will receive instructional services;

(ii) the method by which instructional services will be delivered;

(iii) the location where instructional services will be provided, such as the home, hospital, or institution; and

(iv) an explanation of how the instructional services will enable the student to maintain academic progress.

(2) (i) Prior to July 1, 2023, the student shall receive instruction for the number of days and length of time necessary to continue the student's academic progress, which includes at a minimum:

(a) at the elementary school level, 5 hours of instruction per week. To the extent possible, at least one hour of instruction shall be provided each day.

(b) at the secondary school level, 10 hours of instruction per week. To the extent possible, at least two hours of instruction shall be provided daily.

(ii) On and after July 1, 2023, the student shall receive instruction for the number of days and length of time necessary to continue the student's academic progress, which includes at a minimum:

(a) at the elementary school level, 10 hours of instruction per week. To the extent possible, at least two hours of instruction shall be provided each day.

(b) at the secondary school level, 15 hours of instruction per week. To the extent possible, at least three hours of instruction shall be provided daily.

(3) Notwithstanding paragraph (2) of this subdivision, students may receive less than the required amount of instruction per week if requested by their parent(s) or guardian(s) and supported by documentation submitted by their treating healthcare provider. The district must ensure that the student is unable to receive the additional hours of instruction required by such paragraph and that the reason why the student is receiving less instruction is documented in the instruction delivery plan required pursuant to paragraph (1) of this subdivision. Under these circumstances, the district must ensure that the student's instruction delivery plan is reviewed regularly, but not less than once a month, to determine when the student's instructional hours may be increased; provided, however, that for purposes of determining average daily attendance pursuant to Education Law §3602(1)(d) and average daily membership pursuant to Education Law §3602(1)(l), a student must receive the minimum amount of instruction as prescribed in section 175.21 of this Chapter.

(4) The school district of residence shall maintain a record of the dates, amount, and type of instructional services the student received, including the teacher's name, subjects taught, and the location where the instructional services were provided.

(f) Students with disabilities. Notwithstanding the provisions of this section, students with disabilities who are recommended for home, hospital, or institutional instruction by the committee on special education pursuant to section 200.6(i) of this Chapter shall be provided instruction and related services as prescribed in such section.

2. Subdivision (i) of section 200.6 of the Regulations of the Commissioner of Education is amended to read as follows:

(i) Home and hospital instruction. Students with disabilities who are recommended for home and/or hospital instruction by the committee on special education shall be provided instruction and appropriate related services as determined and documented by the committee on special education in consideration of the student's unique needs. Home and hospital instruction shall only be recommended if such placement is in the least restrictive environment and must be provided for at least the number of days and length of time as provided in section 100.22(e)(2) of this Chapter.

[(1) a minimum of five hours per week at the elementary level, preferably one hour daily; or

(2) a minimum of 10 hours per week at the secondary level, preferably two hours daily].

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

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currently exists no instructional requirements for the general student population in need of such instruction, other than these stated minimums.

Throughout the 2021 -2022 school year, the State Education Department received numerous inquiries from parents and caregivers regarding the extent to which they could request or were entitled to receive, “homebound” instruction for students, including those who were immunocompromised. Schools also inquired as to how they should determine a student’s eligibility for such instruction.

The proposed rule will give districts and parents or guardians clarity on the requirements for the application and provision of such instruction. The proposed rule will also establish, beginning with the 2023-2024 school year, increased minimum instructional requirements for students who are unable to attend school in person for at least ten days out of the next three months due to illness or injury that requires the student to remain at home or in a hospital or other institution for the treatment of children, other than a school.

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Additionally, the Department proposes to amend section 200.6 of the Commissioner’s regulations to provide that the amount of home, hospital and institutional instruction for students with disabilities conforms to the increased requirements of section 100.22.

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 2022 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earlier effective date of the proposed rule, if adopted at the September meeting, would be September 28, 2022, the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the May meeting, effective July 1, 2022, for the preservation of the general welfare to ensure that districts and parents or guardians receive clarity as to the circumstances under which “homebound” instruction may be requested and delivered for the upcoming school year

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the September 2022 meeting, which is the first

scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rulemaking.