



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

TO: The Honorable Members of the Board of Regents

FROM: Phyllis D. Morris *Phyllis D. Morris*

SUBJECT: Proposed Amendment of Subdivision (n) of Section 175.5 of the Regulations of the Commissioner of Education Relating to Extending the Instructional Hour COVID-19 Waiver to the 2022-2023 School Year

DATE: June 30, 2022

AUTHORIZATION(S): *Don McGreevey Betty Little*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of subdivision (n) of section 175.5 of the Regulations of the Commissioner of Education relating to extending the instructional hour COVID-19 waiver to the 2022-2023 school year?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as a permanent rule at the July 2022 Regents 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 discussion at the March 2022 meeting of the Board of Regents. A Notice of Proposed Rule Making was published in the State Register on March 30, 2022, for a 60-day public comment period. Following publication in the State Register, the Department received no comments on the proposed amendment. Therefore, an Assessment of Public Comment is not included and no changes to the proposed amendment are

recommended at this time. A Notice of Adoption will be published in the State Register on July 27, 2022. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

At its September 2021 meeting, the Board of Regents voted to permanently adopt amendments to section 175.5 of the Commissioner's regulations to provide that, for the 2021-2022 school year, school districts may be eligible for a waiver of the annual instructional hour requirement if they are unable to meet such requirement due to an Executive Order(s) of the Governor pursuant to the state of emergency declared for the COVID-19 crisis, or pursuant to Education Law §3604(7), or due to reopening procedures implemented as a result of the COVID-19 crisis, so long as the district meets certain prescribed requirements.

Due to the ongoing pandemic and shifting guidelines from public health officials, the Department now proposes to amend section 175.5(n) of the Commissioner's regulations to extend waivers from aid penalties for districts unable to meet the instructional hour requirement as a result of the COVID-19 crisis through the 2022-2023 school year. To be eligible for the waiver, superintendents must certify the cause of the inability to meet this requirement and explain why the district is unable to make up the required hours.

Related Regents Items

March 2022: [Proposed Amendment of Subdivision \(n\) of Section 175.5 of the Regulations of the Commissioner of Education Relating to Extending the Instructional Hour COVID-19 Waiver to the 2022-2023 School Year](https://www.regents.nysed.gov/common/regents/files/322p12d2.pdf)
(<https://www.regents.nysed.gov/common/regents/files/322p12d2.pdf>)

September 2021: [Proposed Amendment to Section 175.5 of the Regulations of the Commissioner of Education Relating to Extending the Instructional Hour COVID-19 Waiver to the 2021-2022 School Year](https://www.regents.nysed.gov/common/regents/files/921brca7.pdf)
(<https://www.regents.nysed.gov/common/regents/files/921brca7.pdf>)

Recommendation

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

VOTED: That subdivision (n) of section 175.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective July 27, 2022.

Timetable for Implementation

If adopted at the July 2022 meeting, the proposed amendment will become effective on July 27, 2022.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, 3602, 3604, 3609-a of the Education Law.

(n) COVID-19 Executive Order(s) and Waivers.

(1) ...

(2) For the 2019-20, 2020-21, and 2021-22 school years, notwithstanding any other provision of this section to the contrary, any school district may be eligible for a waiver from the annual instructional hour requirement set forth in subdivision (c) of this section if the district is unable to meet such requirement as a result of an Executive Order(s) of the Governor pursuant to the [State] state of emergency declared for the COVID-19 crisis, [or] pursuant to Education Law § 3604(7), as amended by Chapter 107 of the Laws of 2020, or reopening procedures implemented as a result of the COVID-19 crisis, provided that such district meets the requirements outlined in subparagraphs (i) and (iii) of paragraph (1) of subdivision (m) of this section.

(3) For the 2022-23 school year, notwithstanding any other provision of this section, any school district may be eligible for a waiver from the short session deduction set forth in subdivision (j) of this section if the district is unable to meet the annual instructional hour requirement set forth in subdivision (c) of this section as a result of the COVID-19 crisis, provided that:

(i) the school district must be in session for at least 180 days in each school year, which shall include superintendents' conference days authorized under this section; and

(ii) the superintendent shall certify to the Department, on a form prescribed by the Commissioner, the specific cause of the district's inability to meet such requirement and an explanation as to why the district was unable to make up the required hours.