



TO: The Honorable Members of the Board of Regents

FROM: William P. Murphy *William P. Murphy*

SUBJECT: Proposed Amendment of Section 80-5.3 of the Regulations of the Commissioner of Education Relating to Extending a Flexibility for Incidental Teaching

DATE: July 6, 2023

AUTHORIZATION(S): *John M. P. Bellotti*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of section 80-5.3 of the Regulations of the Commissioner of Education relating to extending a flexibility for incidental teaching?

Reason(s) for Consideration

Review of policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at its July 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

The proposed amendment was presented to the Higher Education Committee for recommendation to the Full Board for adoption as an emergency rule at the May 2023 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on May 31, 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 December 2020 meeting, the Board of Regents permanently adopted regulatory amendments to increase the amount of incidental teaching permitted in schools from up to five classroom hours a week to up to 10 classroom hours a week during the 2020-2021 school year in response to the COVID-19 pandemic. Through incidental teaching, certified teachers can teach a subject not covered by their certificate when no certified or qualified teachers are available after extensive and documented recruitment.

The Board of Regents permanently adopted regulatory amendments at its October 2021 and September 2022 meetings to extend the flexibility for incidental teaching to the 2021-2022 and 2022-2023 school years, respectively, to give districts another way to address staffing challenges.

The Department now proposes to extend the flexibility for incidental teaching again through the 2023-2024 school year. This proposal enables school districts to address their continuing teacher shortages by providing them with flexibility in making teaching assignments.

Related Regents Items

May 2023: [Proposed Amendment of Section 80-5.3 of the Regulations of the Commissioner of Education Relating to Extending a Flexibility for Incidental Teaching](https://www.regents.nysed.gov/sites/regents/files/523hea1revised.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/523hea1revised.pdf>)

September 2022: [Proposed Amendment of Sections 80-5.3 and 80-5.4 of the Regulations of the Commissioner of Education Relating to Extending Flexibilities for Incidental and Substitute Teaching](https://www.regents.nysed.gov/common/regents/files/522hea1.pdf)
(<https://www.regents.nysed.gov/common/regents/files/522hea1.pdf>)

October 2021: [Proposed Amendment to Sections 52.30, 63.9, 70.4, 74.6, 75.2, 75.5, 76.2, 79-9.3, 79-10.3, 79-11.3, 79-12.3, 80-5.3, 80-5.4, 83.5, 87.2, 87.5, 145-2.15, 155.17, 200.5, 200.6, and 279.15 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/1021brca7.pdf)
(<https://www.regents.nysed.gov/common/regents/files/1021brca7.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>)

Recommendation

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

VOTED: That section 80-5.3 of the Regulations of the Commissioner of Education be amended, as submitted, effective August 14, 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 continue allowing certified teachers to teach up to 10 classroom hours a week in a subject area not covered by their certificate for the 2023-2024 school year to address teacher shortages, and to ensure that the emergency action taken at the May 2023 meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the July 2023 Regents meeting, the emergency rule will become effective August 14, 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. 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. The opening paragraph of section 80-5.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

A superintendent of schools may assign a teacher to teach a subject not covered by such a teacher's certificate or license for a period not to exceed five classroom hours a week, and during the 2020-2021[, 2021-2022, and 2022-2023] through the 2023-2024 school years for a period not to exceed ten classroom hours a week, when no certified or qualified teacher is available after extensive and documented recruitment, and provided that approval of the commissioner is obtained in accordance with the following requirements:

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

At its December 2020 meeting, the Board of Regents permanently adopted regulatory amendments to increase the amount of incidental teaching permitted in schools from up to five classroom hours a week to up to 10 classroom hours a week during the 2020-2021 school year in response to the COVID-19 pandemic. Through incidental teaching, certified teachers can teach a subject not covered by their certificate when no certified or qualified teachers are available after extensive and documented recruitment.

The Board of Regents permanently adopted regulatory amendments at its October 2021 and May 2022 meetings to extend the flexibility for incidental teaching to the 2021-2022 and 2022-2023 school years, respectively, to give districts another way to address staffing challenges.

The Department now proposes to extend the flexibility for incidental teaching again through the 2023-2024 school year. This proposal enables school districts to address their continuing teacher shortages by providing them with flexibility in making teaching assignments.

The proposed amendment was presented to the Higher Education Committee for recommendation to the Full Board for adoption as an emergency rule at the May 2023 meeting of the Board of Regents. 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.

However, the emergency rule will expire on August 13, 2023. Therefore, a second emergency action is necessary at the July 2023 meeting for the preservation of the general welfare to continue allowing certified teachers to teach up to 10 classroom hours a week in a subject area not covered by their certificate for the 2023-2024 school year to address teacher shortages and to ensure that the emergency action taken at the May 2023 meeting remains continuously in effect.

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.