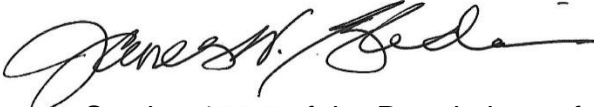






**TO:** The Honorable the Members of the Board of Regents

**FROM:** James N. Baldwin 

**SUBJECT:** 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

**DATE:** September 2, 2021

**AUTHORIZATION(S):**  

#### **SUMMARY**

#### **Issue for Decision (Consent)**

Should the Board of Regents adopt the 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?

#### **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 its September 2021 Regents meeting. A copy of the proposed amendment is attached (Attachment A).

#### **Procedural History**

The proposed amendment was presented to the P-12 Education Committee for discussion at its June 2021 meeting. A Notice of Proposed Rule Making was published in the State Register on June 23, 2021 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 required and no changes to the proposed amendment are needed. Supporting materials are available upon request from the Secretary to the Board of Regents.

## **Background Information**

At its February 2021 meeting, the Board of Regents permanently adopted amendments to section 175.5 of the Commissioner's regulations to provide that, for the 2019-2020 and 2020-2021 school years, 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, certain exigent circumstances described in Education Law §3604(7), or due to reopening procedures implemented as a result of the COVID-19 crisis.

Due to the ongoing pandemic and evolving guidelines from public health officials, the Department now proposes to amend section 175.5(n) of the Commissioner's regulations to extend the availability of these waivers through the 2021-2022 school year. Additionally, the Department proposes to make a technical correction to such section to replace the reference to subsection 8 of Education Law §3604, a typographical error, with a reference to subsection 7.

## **Related Regents Items**

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)

(<https://www.regents.nysed.gov/common/regents/files/221brca6.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](https://www.regents.nysed.gov/common/regents/files/321p12a7revised_0.pdf))

June 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/621p12d1.pdf)

(<https://www.regents.nysed.gov/common/regents/files/621p12d1.pdf>)

## **Recommendation**

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

VOTED: That section 175.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 29, 2021.

### **Timetable for Implementation**

If adopted at the September 2021 meeting, the proposed amendment will become effective on September 29, 2021.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 1704, 3602 and 3604 of the Education Law.

1. Subdivision (n) of section 175.5 of the Regulations of the Commissioner of Education are amended to read as follows:

(n) COVID-19 Executive Order(s) and Waivers [for the 2019-20 and 2020-21 school years].

(1) Any day that a school is closed in the 2019-20 school year and the 180-day requirement set forth in subdivision (c) of this section is waived pursuant to an Executive Order(s) of the Governor pursuant to the State of emergency for the COVID-19 crisis or pursuant to Education Law § 3604[(8)](7), as amended by Chapter 107 of the Laws of 2020, will satisfy the requirements for a waiver of the usually required reduction in monies payable to school districts under Education Law § 3604 in accordance with the terms of such Executive Order(s).

(2) For the 2019-20 [and], 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 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.