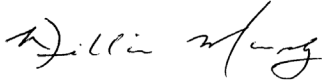





TO: The Honorable Members of the Board of Regents

FROM: William P. Murphy 

SUBJECT: Proposed Amendment of Section 80-2.1 of the Regulations of the Commissioner of Education Relating to the Deadline to Apply and Qualify for the Provisional School Counselor Certificate

DATE: August 31, 2023

AUTHORIZATION(S): 

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of section 80-2.1 of the Regulations of the Commissioner of Education relating to the deadline to apply and qualify for the Provisional School Counselor certificate?

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 September 2023 meeting. An additional emergency action is also necessary at the September meeting to ensure that the emergency action taken at the June 2023 meeting remains continuously in effect until the effective date of its adoption as a permanent rule. A copy of the proposed rule (Attachment A) and statement of facts and circumstances which necessitate emergency action is included (Attachment B).

Procedural History

The proposed amendment was presented to the Higher Education Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at the April 2023 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on May 3, 2023, for a 60-day

public comment period. Supporting materials are available upon request from the Secretary to the Board of Regents.

Because the April emergency action was set to expire on July 16, 2023, a second emergency action was necessary at the June 2023 meeting to ensure the emergency rule remained continuously in effect until it could be permanently adopted at the September 2023 Regents meeting. A Notice of Emergency Adoption was published in the State Register on August 2, 2023.

Because the June 2023 emergency action is set to expire on September 14, 2023, a third emergency action is necessary at the September 2023 meeting to ensure the emergency action taken at the June meeting remains continuously in effect until the effective date of its adoption as a permanent rule on September 27, 2023.

Following the 60-day public comment period required under the State Administrative Procedure Act, 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. Notices of Adoption and Emergency Adoption will be published in the State Register on September 27, 2023. Supporting materials are available upon request from the Secretary of the Board of Regents.

Background Information

At its May 2017 meeting, the Board of Regents adopted regulatory amendments establishing new Initial and Professional School Counselor certificates and the registration requirements for school counselor education programs that lead to these certificates. Institutions of higher education admitting new candidates for school counselor certification were required to register programs leading to Initial and Professional School Counselor certification by September 1, 2021. The Initial and Professional School Counselor certificates became available on February 2, 2023.

Candidates must have applied and qualified for the Provisional School Counselor certificate under the previous requirements prior to February 2, 2023 (8 NYCRR 80-2.1(a)(1)(iii)). On that date, the application for the Provisional School Counselor certificate and the ability for institutions to recommend candidates for this certificate was no longer available. Therefore, candidates who qualified for Provisional School Counselor certification prior to February 2, 2023, but did not apply for the certificate prior to this date would need to pursue the new Initial or Professional School Counselor certificate instead.

The coursework and clinical experience requirements for Provisional School Counselor certification and registered programs leading to this certificate were different from the coursework and clinical experience requirements for Initial and Professional School Counselor certification and registered programs leading to these certificates. As such, candidates who completed a registered program leading to Provisional School Counselor certification may not be eligible for an Initial or Professional School Counselor

certificate through the individual evaluation pathway and may need to complete additional requirements.

The Department has learned of candidates who completed a registered program leading to Provisional School Counselor certification prior to February 2, 2023, but did not submit an application and pay the application fee for the certificate prior to this date or did not receive an institutional recommendation for certification by this date. To hold these candidates harmless, the Department is proposing to extend the date by which candidates who complete a New York State registered program leading to Provisional School Counselor certification would need to apply and qualify for this certificate to February 2, 2024.

The proposed amendment would provide appropriate flexibility for qualified candidates who completed a registered program leading to Provisional School Counselor certification, as well as candidates who may still be matriculating in this type of program but will complete it by February 2, 2024. This will ensure that these candidates can seamlessly obtain Provisional certification so that there will be a larger pool of candidates to provide school counselor services. School counselor services are of critical importance, particularly given their important role in working with children who are dealing with challenges stemming from the COVID-19 pandemic.

Related Regents Items

June 2023: [Proposed Amendment of Section 80-2.1 of the Regulations of the Commissioner of Education Relating to the Deadline to Apply and Qualify for the Provisional School Counselor Certificate](#)

(<https://www.regents.nysed.gov/sites/regents/files/623brca5.pdf>)

April 2023: [Proposed Amendment of Section 80-2.1 of the Regulations of the Commissioner of Education Relating to the Deadline to Apply and Qualify for the Provisional School Counselor Certificate](#)

(<https://www.regents.nysed.gov/sites/regents/files/423hea1.pdf>)

September 2021: [Proposed Amendment to Sections 80-2.1 and 80-3.1 of the Regulations of the Commissioner of Education Relating to Permanent School Counselor Certificate Requirements](#)

(<https://www.regents.nysed.gov/common/regents/files/921brca3.pdf>)

July 2019: [Proposed Amendments to Sections 52.21, 80-2.1, 80-3.1, 80-3.11, 80-3.12, and 80-5.23 and the Titles of Subparts 80- 2 and 80-3 of the Commissioner's Regulations Relating to School Counseling Program Registration, School Counselor Certification Requirements, and a One-Year Time Extension for Institutions of Higher Education to Meet the New Program Registration Requirements](#)

(<http://www.regents.nysed.gov/common/regents/files/719brca1.pdf>)

May 2017: [Proposed Amendment of Sections 52.21, 100.2\(j\) and Part 80 of the Commissioner's Regulations Relating to School Counseling, Certification Requirements for School Counselors and Program Registration Requirements for School Counseling Preparation Programs](https://www.regents.nysed.gov/common/regents/files/517brca14.pdf)

(<https://www.regents.nysed.gov/common/regents/files/517brca14.pdf>)

Recommendation

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

VOTED: That section 80-2.1 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 15, 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 immediately extend the date by which candidates who completed a registered program leading to Provisional School Counselor certification would need to apply and qualify for this certificate to February 2, 2024, and to ensure that the emergency action taken at the June 2023 meeting remains continuously in effect.

VOTED: That section 80-2.1 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 27, 2023.

Timetable for Implementation

If adopted at the September 2023 meeting, the emergency rule will become effective September 15, 2023, and 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. Subparagraph (iii) of paragraph (1) of subdivision (a) of section 80-2.1 of the Regulations of the Commissioner of Education is amended to read as follows:

(iii) Candidates who apply and qualify for the provisional certificate in the title school counselor prior to February 2, 2023, shall be subject to the requirements of this Subpart. Candidates who do not meet these requirements shall be subject to the requirements of Subpart 80-3 of this Part, unless otherwise specifically prescribed in this Part. The requirement that the candidate must apply and qualify for the provisional certificate in the title school counselor prior to February 2, 2023, shall not apply to a candidate who has completed a program leading to such certificate registered pursuant to Part 52 of this Title. In that case, the candidate must apply and qualify for the certificate prior to February 2, 2024, to be subject to the requirements of this Subpart.

STATEMENT OF FACTS AND CIRCUMSTANCES THAT NECESSITATE
EMERGENCY ACTION

At its May 2017 meeting, the Board of Regents adopted regulatory amendments establishing new Initial and Professional School Counselor certificates and the registration requirements for school counselor education programs that lead to these certificates. Institutions of higher education admitting new candidates for school counselor certification were required to register programs leading to Initial and Professional School Counselor certification by September 1, 2021. The Initial and Professional School Counselor certificates became available on February 2, 2023.

Candidates must have applied and qualified for the Provisional School Counselor certificate under the previous requirements prior to February 2, 2023 (8 NYCRR 80-2.1(a)(1)(iii)). On that date, the application for the Provisional School Counselor certificate and the ability for institutions to recommend candidates for this certificate was no longer available. Therefore, candidates who qualified for Provisional School Counselor certification prior to February 2, 2023, but did not apply for the certificate prior to this date would need to pursue the new Initial or Professional School Counselor certificate instead.

The coursework and clinical experience requirements for Provisional School Counselor certification and registered programs leading to this certificate were different from the coursework and clinical experience requirements for Initial and Professional School Counselor certification and registered programs leading to these certificates. As such, candidates who completed a registered program leading to Provisional School Counselor certification may not be eligible for an Initial or Professional School

Counselor certificate through the individual evaluation pathway and may need to complete additional requirements.

The Department has become aware of candidates who completed a registered program leading to Provisional School Counselor certification prior to February 2, 2023, but did not submit an application and pay the application fee for the certificate prior to this date or did not receive an institutional recommendation for certification by this date. To hold these candidates harmless, the Department is proposing to extend the date by which candidates who complete a registered program leading to Provisional School Counselor certification would need to apply and qualify for this certificate to February 2, 2024.

The proposed amendment would provide appropriate flexibility for qualified candidates who completed a registered program leading to Provisional School Counselor certification, as well as candidates who may still be matriculating in this type of program but will complete it by February 2, 2024. This will ensure that these candidates can seamlessly obtain Provisional certification so that there will be a larger pool of candidates to provide school counselor services. School counselor services are of critical importance, particularly given their important role in working with children who are dealing with challenges stemming from the COVID-19 pandemic.

The proposed amendment was presented to the Higher Education Committee for recommendation to the Full Board for adoption as an emergency rule at the April 2023 meeting of the Board of Regents. Because the April 2023 emergency action was set to expire on July 16, 2023, a second emergency action was necessary at the June 2023

meeting, effective July 17, 2023, to ensure the emergency rule remained continuously in effect until it could be permanently adopted.

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 September 14, 2023. Therefore, a third emergency action is necessary at the September 2023 meeting for the preservation of the general welfare to immediately extend the date by which candidates who completed a registered program leading to Provisional School Counselor certification would need to apply and qualify for this certificate to February 2, 2024, and to ensure that the emergency action taken at the June 2023 meeting remains continuously in effect.

The proposed rule is also being presented to the Board of Regents for adoption as a permanent rule at the September 2023 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rule-making.