



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: August 31, 2023

AUTHORIZATION(S): *Don McGreevey* *Bellamy*

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 a permanent rule at its September 2023 meeting. A copy of the proposed amendment is attached (Attachment A).

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 its May 2023 meeting. 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.

Following publication in the State Register, the Department received two comments on the proposed amendment. An Assessment of Public Comment is included (Attachment B). No changes to the proposed amendment are recommended at this time.

A Notice of Adoption will be published in the State Register on September 27, 2023. 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 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.

Related Regents Items

July 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/723brca6.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/723brca6.pdf>)

May 2023: [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>)

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 September 27, 2023.

Timetable for Implementation

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:

ASSESSMENT OF PUBLIC COMMENT

Since publication of the Notice of Proposed Rule Making in the State Register on May 31, 2023, the State Education Department (Department) received the following comments on the proposed amendment:

1. COMMENT: A commenter believes the extension of the flexibility for incidental teaching will assist schools in addressing staffing shortages and support the Department's efforts to examine certification policies. Another commenter believes this extension of flexibility will assist schools in addressing staffing shortages and that it should continue for a ten-year period.

DEPARTMENT RESPONSE: These comments are supportive of the proposed rule; therefore, no changes are necessary.