



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

**TO:** The Honorable the Members of the Board of Regents  
**FROM:** Richard J. Trautwein  
**SUBJECT:** June 2011 Regulatory Agenda  
**DATE:** June 10, 2011  
**AUTHORIZATION(S):**

## **Summary**

### Issue for Decision (Consent Agenda)

Should the Board of Regents approve the June 2011 Regulatory Agenda?

### Reason for Consideration

Required by State statute.

### Proposed Handling

Discussion and approval.

### Procedural History

N/A

## ***Background Information***

Section 202-d of the State Administrative Procedure Act (SAPA) requires that the State Education Department publish, each year, a regulatory agenda in the first January issue, and in the last June issue, of the State Register. The June 2011 regulatory agenda is a list and brief description of the subject matter of each rule the Department is considering proposing during the remainder of 2011, but has not yet submitted a Notice

of Proposed Rule Making. SAPA §202-d(2) provides that nothing in the statute precludes the Department from adopting a different rule from the one appearing in the regulatory agenda. If we do intend to adopt additional rules, the Department must indicate in the Notice of Proposed Rule Making that the rule was not under consideration when the regulatory agenda was submitted for publication. SAPA §202-d(2) also provides that nothing in the statute requires an agency to adopt a rule appearing in the regulatory agenda.

Recommendation

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

VOTED: That the June 2011 Regulatory Agenda for the State Education Department be approved, as submitted.

Timetable for Implementation

The June 2011 Regulatory Agenda will be published in the State Register on June 29, 2011.

Attachment A

STATE EDUCATION DEPARTMENT  
JUNE 2011 REGULATORY AGENDA

Pursuant to section 202-d of the State Administrative Procedure Act, the State Education Department presents its regulatory agenda for the remainder of calendar year 2011. All section and part references are to Title 8 of the New York Code of Rules and Regulations. The State Education Department reserves the right to add, delete or modify, without further notice, except as required by the State Administrative Procedure Act, any item or information presented herein as relating to the June 2011 Regulatory Agenda.

OFFICE OF P-12 EDUCATION

Amendment of section 100.2 of the Commissioner's Regulations relating to general school requirements. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 100.2 of the Commissioner's Regulations relating to accountability determinations and the school report card. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2(h) of the Commissioner's Regulations relating to availability of career and technical education and arts sequences. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2(j) of the Commissioner's Regulations relating to guidance programs. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2(p) of the Commissioner's Regulations to revise the method for determining Adequate Yearly Progress for graduation rate in order to conform with regulations promulgated by the United States Department of Education in October 2008. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2(x), relating to the education of homeless children. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2(gg) of the Commissioner's Regulations to revise and update provisions on Violent and Disruptive Incident Reporting (VADIR). A

regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4(b) of the Commissioner's Regulations relating to program requirements in grades five and six. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4(c) of the Commissioner's Regulations relating to unit of study requirements in grades seven and eight. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4(d) of the Commissioner's Regulations relating to grade eight acceleration for diploma credit. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4(h) of the Commissioner's Regulations relating to models for Middle Level Education. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.5(a), (b) and (c) of the Commissioner's Regulations relating to graduation and diploma requirements. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.5(a)(5)(i) of the Commissioner's Regulations relating to the State Assessment System. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.5(d) of the Commissioner's Regulations relating to Career and Technical Education programs. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 120.5 of the Commissioner's Regulations relating to persistently dangerous schools. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to Commissioner's Regulations relating to the instructional reporting and improvement system. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to Commissioner's Regulations relating to the Early Warning System and the use of standardized student-level attendance rules. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations to conform to and implement Chapter 101 of the Laws of 2010, relating to charter schools. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 119 of the Commissioner's regulations to add a section pertaining to residency determinations of students attending charter schools. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 119 of the Commissioner's Regulations to add a section pertaining to procedures relating to complaints brought pursuant to Education Law section 2855. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 119.1(e) of the Commissioner's Regulations relating to financing of charter schools. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Parts 100 and 200 of the Commissioner's Regulations to make certain technical amendments, including corrections to cross citations, as may be appropriate and to conform to possible changes made to federal regulations this year. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 136.3(e) of the Commissioner's Regulations, regarding hyperopia vision screening for new school entrants. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 144.11 of the Commissioner's Regulations to eliminate requirement that school districts have an Early Grade Class Size Reduction Plan. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 155.4(b)(2) of the Commissioner's Regulations to eliminate annual visual inspections. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 155.6 to eliminate school facilities report card. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 156.3(b)(5) of the Commissioner's Regulations to add flexibility for completing required semi-annual school bus driver refresher training programs. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 156.3 of the Commissioner's Regulations to eliminate requirements for anti-idling reports. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.2(b) of the Commissioner's Regulations relating to written policies for the declassification of students with disabilities, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.2(g) of the Commissioner's Regulations relating to special education space requirements plans, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.3(a) and (c) of the Commissioner's Regulations relating to the membership of the Committee on Special Education (CSE), Subcommittee on Special Education, and Committee on Preschool Special Education, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of sections 200.1(aa) and 200.4(b) of the Commissioner's Regulations relating to initial evaluations, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.4(i) of the Commissioner's Regulations relating to written notice upon graduation or aging out, as may be necessary to conform to

changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of sections 100.9 and 200.5 of the Commissioner's Regulations relating to high school individualized education program (IEP) diplomas. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.5(b) of the Commissioner's Regulations relating to parental consent for initial provision of special education services in a 12-month special service and/or program, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.5(c) of the Commissioner's Regulations relating to written notice to parents regarding CSE and Subcommittee meetings, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.5(j) of the Commissioner's Regulations relating to the statute of limitations for requesting an impartial hearing, as may be necessary to conform to changes to State statute, and to conform the timelines for due process hearings to federal regulations. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 200.7(d) of the Commissioner's Regulations relating to the approval of the Commissioner of Education in granting appointment of a student with a disability to a State-supported school, as may be necessary to conform to



changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.16 of the Commissioner's Regulations relating to the provision of services to preschool students with disabilities in an approved program as close as possible to the student's home, parent selection of a preschool evaluator, and the timeline to complete an initial evaluation of a preschool student suspected of having a disability, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above proposed amendments by contacting:

John B. King, Jr.

Senior Deputy Commissioner P-12

New York State Education Department

State Education Building, Room 125

89 Washington Avenue

Albany, New York 12234

(518) 474-3862

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OFFICE OF HIGHER EDUCATION

Amendment of section 27-1.1 of the Rules of the Board of Regents to clarify the criteria and processes needed to determine a student's financial eligibility for the Higher Education Opportunity Program. A rural area flexibility analysis may be required.

Amendment of section 80-4.3 and 80-5.18 of the Regulations of the Commissioner to provide more teacher certification flexibility under a limited certificate for certified teachers in grades 5 through 8, who are in the process of completing required coursework for a full certificate. A rural area flexibility analysis may be required.

Amendment of section 80-3.10 to clarify that the School District Leader certificate is the only certificate required for a Superintendent also performing the roles of principal or business official in small school districts. A rural area flexibility analysis may be required.

Amendment of Parts 80 and 83 of the Regulations of the Commissioner of Education regarding moral character hearings and regarding the applicability to coaches of moral character and background check requirements. A rural area flexibility analysis may be required.

Amendment of section 87.5 of the Regulations of the Commissioner of Education regarding due process procedures for criminal history record check for prospective school employees and applicants for certification. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 145 of the Regulations of the Commissioner of Education regarding transfer fund grants to school districts and regarding innovative compensation incentive funds to school districts. A rural area flexibility analysis may be required.

Amendment of section 145-2.1 of the Regulations of the Commissioner of Education to clarify the definitions of terms such as the length of a semester, the delineation of full-time, and the need for courses to be in support of a registered academic program. These definitions are used in the determinations of eligibility and awarding of funds under the Tuition Assistance Program. A rural area flexibility analysis may be required.

Amendment of section 145-2.2 of the Regulations of the Commissioner of Education to clarify the requirements and processes used in the administration of TAP funds to ensure that students receiving awards are using them in the pursuit of an approved program of study and to make the regulatory requirements clearer to financial aid officers in implementing the intent that students be assisted in completing their academic program. A rural area flexibility analysis may be required.

Amendment of section 145-2.4 of the Regulations of the Commissioner of Education to clarify the criteria and processes needed to determine a student's matriculation status and the need for the declaration of a major which is a registered academic program. A rural area flexibility analysis may be required.

Agency Representative

Information may be obtained, and written comments may be submitted, concerning the above proposed amendments by contacting:

Valerie Grey

Acting Deputy Commissioner for the Office of Higher Education

New York State Education Department

Office of Higher Education

Room 978, Education Building Annex

89 Washington Avenue

Albany, New York 12234

(518) 486-3633

[sroberson@nysed.mail.gov](mailto:sroberson@nysed.mail.gov)

## OFFICE OF THE PROFESSIONS

Amendment of Part 29 of the Regents Rules relating to the use of identification badges for certain professionals. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 29 of the Regents Rules relating to the reporting of convictions and disciplinary actions by licensed professionals. A rural area flexibility analysis may be required.

Amendment of Part 29 of the Regents Rules relating to definitions of unprofessional conduct in the public accountancy and certified public accountancy professions. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Parts 52 and 77 of the Commissioner's Regulations relating to the educational standards necessary for licensure in physical therapy. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 59 of the Commissioner's Regulations relating to the use of ID cards in lieu of registration certificates. A rural area flexibility analysis may be required.

Amendment of Part 60 of the Commissioner's Regulations relating to the professional study of medicine. A rural area flexibility analysis may be required.

Amendment of Part 60 of the Commissioner's Regulations relating to the standards and procedures to be applied in assessing applications by international medical schools for approval to place their students in long-term clinical clerkships in New York State.

Amendment of Part 61 of the Commissioner's Regulations relating dental anesthesia certification. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 62 of the Commissioner's Regulations relating to the requirements for continuing education for veterinarians and veterinary technicians. A rural area flexibility analysis may be required.

Amendment of Part 76 of the Commissioner's Regulations relating to the supervision of occupational therapy assistants. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 78 of the Regents Rules relating to the requirements for continuing education for massage therapists. A rural area flexibility analysis may be required.

Amendment of Subpart 79-5 of the Commissioner's Regulations relating to licensure requirements in midwifery. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above proposed amendments by contacting:

Valerie Grey

Chief Operating Officer

New York State Education Department

Office of the Professions

89 Washington Avenue

West Wing, Second Floor - Education Building

Albany, NY 12234

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#### OFFICE OF CULTURAL EDUCATION

Amendment of Part 90 of the Commissioner's Regulations, relating to the library and library system programs and services. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

#### Agency Representative

Information may be obtained, and written comments may be submitted, concerning the above proposed amendment by contacting:

Bernard A. Margolis

State Librarian and Assistant Commissioner for Libraries

New York State Education Department

New York State Library

Room 10C34

Albany, NY 12230

(518) 474-5930

[bmargolis@mail.nysed.gov](mailto:bmargolis@mail.nysed.gov)

Amendment of section 185.10 of the Commissioner's regulations relating to local government records management improvement fund grants, to establish criteria and procedures for the award of formula grants for records management improvement to county clerks and, in the city of New York, to the New York register or other officer or agency having custody of real property records and any officer or agency having custody of supreme court records. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 189.3 of the Commissioner's regulations relating to the Documentary Heritage program, to revise procedures for the award of grants and for the provision of field services. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to Part 188 of the Commissioner's Regulations related to state government archives and records management to update the agency fee list to match the current organizational structure of executive branch agencies and, in anticipation of passage of the Governors' Records Bill, to update and establish records and archival management policies and procedures relating to records of the governor, executive chamber, legislature, and the civil departments of state government. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above proposed amendments by contacting:

Christine Ward

Assistant Commissioner for the State Archives

9A49 Cultural Education Center

Albany, New York 12230

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#### OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES

Amendment to Parts 246 and 247 of the Commissioner's Regulations relating to the State vocational rehabilitation program operated pursuant to Title I of the Rehabilitation Act, as may be appropriate in order to conform to possible changes made if Congress reauthorizes that act this year. A regulatory flexibility analysis for local government and a rural flexibility analysis may be required.

#### Agency representative

Information may be obtained, and written comments may be submitted, concerning the above proposed amendment by contacting:

Frank Coco, CRC

Manager, VR Policy and Partnerships

Office of Adult Career and Continuing Education Services

New York State Education Department

Room 1603, One Commerce Plaza

Albany, New York 12234



(518) 486-3784

[fcoco@mail.nysed.gov](mailto:fcoco@mail.nysed.gov)

Amendment of section 100.7(a)(2) of the Regulations of the Commissioner of Education to provide for the opportunity for adult students to earn a New York State High School Equivalency Diploma upon satisfactory completion of an External Diploma Program approved by the Commissioner of Education. A regulatory flexibility analysis for local governments and a rural area flexibility analysis may be required.

Agency Representative

Information may be obtained, and written comments may be submitted, concerning the above proposed amendment by contacting:

Robert Purga, Supervisor

ACCES-Adult Education

99 Washington Avenue

One Commerce Plaza

Room 1622

Albany, New York 12234

Amendment of Part 126 of the Commissioner's Regulations to require specific loan disbursement schedules for tuition payments. The schedules will take into consideration amounts designated for cost of living while attending. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to initiate an Inspection of a newly licensed proprietary school within the first year of operation to

determine the level of compliance. Technical assistance will be used to assist with bringing the school into compliance, with consideration of the nature of the violations when determining if any sanctions should occur. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to change to "or UP TO double the documented amount from which the school benefited, whichever is greater." A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative

Information may be obtained, and written comments may be submitted, concerning the above proposed amendments by contacting:

Carole W. Yates, Director

Bureau of Proprietary School Supervision

One Commerce Plaza, Room 1613

Albany, NY 12234

(518) 474-3969

OFFICE OF STATE REVIEW

Amendment of section 279.1 of the Commissioner's Regulations, relating to the incorporation and clarification of definitions and other provisions, as relevant to state-level review of hearings for students with disabilities, that are currently referenced in Parts 275 and 276; deletion of references to parts 275 and 276; clarification of the jurisdiction of a state review officer and procedures regarding state review proceedings; and clarification regarding the authority of a state review officer to review manifestation

determinations. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.2 of the Commissioner's Regulations, relating to timelines for serving and filing a Notice of Intention to Seek Review; clarification of purpose of Notice of Intention to Seek review; clarification of timeframe in which to serve upon another party and file a Notice of Intention to Seek review; and addition of a notice of certification requirement. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.3 of the Commissioner's Regulations, relating to service of an answer. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.4 of the Commissioner's Regulations, relating to the initiation and scope of a review and the timeliness of an appeal, clarify sufficiency of content and time in which to serve the petition for review and memorandum of law upon the opposing party; procedures for filing a petition for review with the Office of State Review; and add disclosure of whether a related action or proceeding is pending in another forum. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.5 of the Commissioner's Regulations, relating to the content and service of an answer and supporting papers upon the opposing party and filing with the Office of State Review. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.6 of the Commissioner's Regulations, relating to additional pleadings and new matters raised in an answer. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.7 of the Commissioner's Regulations, relating to verification of pleadings. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.8 of the Commissioner's Regulations, relating to the table of authorities, clarification of the requirement that pleadings be signed consistent with 22 NYCRR 130-1.1a(a); and submission of electronic copies of pleadings and memoranda of law. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.9 of the Commissioner's Regulations, relating to content and submission of record; certification of record and clarification that 279.9 (b) refers to complete record. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.10 of the Commissioner's Regulations, relating to requests for extensions of time and length of extensions permitted; submission of additional evidence; clarification of effect of agreements to extend the time in which to initiate a review. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.11 of the Commissioner's Regulations, relating to calculating date of mailing and type of mail. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.12 of the Commissioner's Regulations, clarifying provisions relating to the finality of state review officer decisions. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.13 of the Commissioner's Regulations, relating to service of petition for review. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Addition of 279.15 of the Commissioner's Regulations, relating to definitions of terms in Part 279. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above proposed amendments by contacting:

Justyn P. Bates

Office of State Review

80 Wolf Road, 2nd Floor

Albany New York 12203

(518) 485-9373

OFFICE OF MANAGEMENT SERVICES

Amendment of section 119.1 of the Commissioner's regulations relating to school district payments to charter schools and procedures for requests for a State aid deduction upon nonpayment. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted,  
concerning the above-proposed amendment by contacting:

Burt Porter

Director of Education Finance

New York State Education Department

89 Washington Avenue

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(518) 486-2422