Paula Tibbitts

From: Anita Murphy <anita.murphy@neric.org>
Sent: Monday, July 13, 2020 10:10 AM
To: 2nd Patterson email address (pgreen6415@gmail.com); Aaron Bochniak - Schenectady City; Alicea, Jaime; Anibal Soler Jr (asoler@bataviacsd.org); Antonio Abitabile (aabitabile@lansingburgh.org); Brian Bailey - RCS; Brian Dunn - Middleburgh; Carl Mummenthey - Cobleskill-Richmondville; Carol Pallas - Schalmont; Cosimo Tangorra - Nisky; David Blanchard - Schoharie; David Perry - South Colonie; dcorr@ncolonie.org; Frank Macri - Voorheesville; Jack Etter (jetter@gccs.us); Jeffery Ziegler - Duanesburg; Jennifer Spring - Cohoes; jniedermeier@duanesburg.org; Jody Monroe - Bethlehem; Joseph Dragone; Joseph Kardash (jkardash@rcsd.k12.ny.us); Kaweeda Adams - Albany City; Kimberly Ross - Green Island; Lori Caplan - Watervliet; Lynne Wells; Marie Wiles - Guilderland; Maureen Long - Menands; Oliver Robinson - Shen; Patterson Green - Sharon Springs; Paul Padalino (ppadalino@kingstoncityschools.org); pmcgrath@bhbl.org; Rebecca Stone; Shannon Shine - Mohon; Slentz, Kenneth; sswartz@sgcsd.net; Tarkan Ceng (tceng@jeffersoncsd.org); Thomas Reardon - Schalmont; Tim Ryan; Timothy Mundell - BKW
Cc: Jennifer Bennett; Adrienne Leon; Lauren Gemmill; Mark Jones; Michael Doughty
Subject: SED materials on reopening
Attachments: 720bra8revised.pdf; 4. Regulatory Flexibility for the Reopening of Schools.pdf; 2. Recovering, Rebuilding, and Renewing the Spirit of Our Schools School Reopening Guidance.pdf; 1. BoR and NYSEDs Regional Task Force Meetings and Student Forum on School Reopening - Recovering, Rebuilding and Renewing the Spirit of Our Schools.pdf

Good morning,

Attached are the materials that the BOR is utilizing today on reopening. I am listening to the BOR meeting and will summarize the materials later today. I am also hearing that additional guidance will be out later this week. There seems to be a lot "missing" that we wanted to see and a lot that is going to be "district dependent" and many mandatory requirements but we will see how the day shakes out with the discussion. I will keep you posted.

Thank you,
Anita

NYS BOARD OF REGENTS AND STATE EDUCATION DEPARTMENT

REGIONAL TASK FORCE MEETINGS AND STUDENT FORUM ON SCHOOL REOPENING

RECOVERING, REBUILDING & RENEWING THE SPIRIT OF OUR SCHOOLS

June 15, 17, 22, 23 and 24, 2020

New York State
EDUCATION DEPARTMENT
Knowledge › Skill › Opportunity

THANK YOU!

Thank you to

Chancellor Rosa, Board of Regents Members, and Interim Commissioner Tahoe

for your leadership, support and participation in planning and conducting the School Reopening Regional Task Force Meetings and Student Forum!

THANK YOU!

The School Reopening Regional Task Force Meetings and Student Forum could not have taken place without the support of the

Region 2 Comprehensive Center

led by WestEd

THANK YOU!

SPECIAL THANK YOUS go to:

- our BOCES District Superintendents for their leadership and planning, for hosting the meetings, and so much more;
- Dr. Jack DeHovitz, our medical expert, and Natalie Walrond, our SEL expert, who took the time to share their expertise;
- to our SED senior managers and staff associates who acted as facilitators, notetakers, and reporters; and
- Lynne Wells, Project Manager, who coordinated everything!

THANK YOU!

THANK YOU to all the

Regional Task Force Meeting Participants and Student Forum Participants…

…for taking the time to share their expertise and diverse perspectives.

Their input is reflected throughout our guidance document.

SUMMARY OF PARTICIPATION

MEETING	NUMBER OF PARTICIPANTS *Registered - actual # may be different
Regional Meeting 1	356
Regional Meeting 2	409
Regional Meeting 3	387
Regional Meeting 4	379
Student Forum	123
TOTAL # OF PARTICIPANTS	1,654*

GOAL OF THE TASK FORCE

Goal:

The Task Force will provide the Board of Regents and the Education Department with thoughtful and inclusive input needed to develop the guidance and regulatory changes that will enable New York's school districts, charter schools, and non-public schools to safely open their schools.

GUIDING PRINCIPLES

1. The health, safety, and well-being of the children and adults is paramount.
2. Educational equity will be at the forefront of decision-making.
3. One size does not fit all. New York is a large state, in population and size. There is tremendous diversity among New York's people, geographic regions, and schools and school districts.
4. While it is important to provide districts with guidelines and policies, it is important as well to give them appropriate leeway to develop creative solutions to their unique challenges.
5. Districts will be enabled and encouraged to work directly with parents, teachers, administrators, and their local communities to develop and deliver workable solutions to their unique needs and succeed through a collective effort.
6. Planning for schools to reopen is not a one-time event. The Board and Department will continuously monitor the situation and provide updated guidance, policies, and regulatory changes as the situation requires.

AREAS OF FOCUS

The Regents and the Department will consider the following areas of focus as they develop the guidance and regulatory changes that will enable New York's school districts to safely open their schools.

- Health and Safety
- Transportation/ Facilities/Nutrition
- Teaching and Learning
- Digital Equity and Access
- Budget and Fiscal
- Social-Emotional Needs
- Special Education
- Bilingual Education/ MLL/ELL
- Staffing/Human Resources

GUIDING QUESTIONS

- What do you think are the greatest challenges that schools and school districts will face under each of the three instructional models: in person, remote, or a combination of the two?
- Can you provide us with concrete examples of creative solutions to challenging problems that could work in your school or district under each of the three schooling scenarios?
- Can you tell us how the Regents and Department can help eliminate any of the institutional, budgetary, and regulatory obstacles that stand in the way of your success?

CONCLUSION

Thank you!

Recovering, Rebuilding, and Renewing the Spirit of New York's Schools: Reopening Guidance

Presentation to the Board of Regents

July 13, 2020

New York State
EDUCATION DEPARTMENT
Knowledge › Skill › Opportunity

Development of the Guidance

Informed by five virtual regional educator and student forums, attended by over 1,000 parents, students, teachers, administrators, and stakeholders, representing New York's diversity.

The Region 2 Comprehensive Center, led by WestEd, provided a synthesis of the information gathered at the 4 Regional Task Force Meetings and the Student Forum.

P-12 program offices worked along with multiple SED program offices to develop draft guidance to best support students and schools.

Guidance is student centered; has equity and flexibility at the heart of the guidance.

Introduction to the Guidance

The 2020-2021 school year will be our time to recover, rebuild, and renew the spirit of New York's schools.

Working together, educators, students, parents and communities will continue to address this challenge with resiliency, tenacity, and grit.

This document is intended to provide guidance to local educational agencies (LEAs) as they plan to reopen their schools – whether instruction occurs in person, remotely, or in some combination of the two.

New York is a large and diverse state – so there will be no "one size fits all" model for reopening our schools.

New York State
EDUCATION DEPARTMENT
Knowledge › Skill › Opportunity

RECOVERING, REBUILDING, AND RENEWING:
THE SPIRIT OF NEW YORK'S SCHOOLS
REOPENING GUIDANCE

Table of Contents

- ✓ *Forward from the Chancellor*
- ✓ *Forward from the Commissioner*
- ✓ *Executive Summary*
- Table of Contents
- Introduction
- Communication/Family & Community Engagement
- Health and Safety
- Facilities
- Child Nutrition
- Transportation
- Social Emotional Well-Being
- School Schedules
- Budget and Fiscal Matters
- Attendance and Chronic Absenteeism
- Technology and Connectivity
- Teaching and Learning
- Special Education
- Bilingual Education and World Languages
- Staffing
- Glossary of Terms

Health and Safety

Focused on preventive actions in schools:

Health Checks

- schools must instruct staff to recognize signs and symptoms of illness in students and staff, and health screenings per DOH guidance.

Health Hygiene

- schools must instruct students and staff in proper hand and respiratory hygiene and provide necessary supplies.

Social Distancing

- schools must develop plans to maximize social distancing whenever possible.

Face Coverings and PPE

- requires students and staff to wear face coverings (or PPE based on job functions), per DOH guidance.

Management of ill persons

- requires persons with signs and symptoms of COVID-19 to be isolated until they can be sent home.

Cleaning and Disinfecting

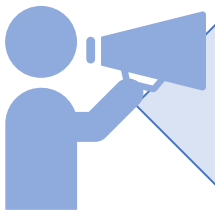
- reviews cleaning and disinfecting procedures for the school in accordance with CDC recommendations.

Nutrition

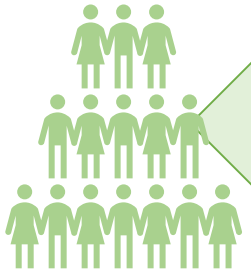
Include school food service directors in reopening plan discussions.	Provide all enrolled students access to school meals each school day. • Students in attendance at school • Students learning remotely	Address all applicable health and safety guidelines. • Update standard operating procedures	Ensure compliance with Child Nutrition Program requirements. • Election and utilization of USDA flexibility waivers	Communicate with families through multiple means in the languages spoken by families.

Social-Emotional Well-Being

Social emotional well-being must be schools' and districts' top priority in supporting school transitions, not at the expense of academics, but in order to create the mental, social, and emotional space for academic learning to occur.



Communicate social emotional well-being and learning as a priority and engage members of the school community in implementation efforts.



Identify or build a team to lead your implementation. Decide how students, staff, and family will contribute.

Consider a prolonged orientation or transition period to support the social and emotional well-being and resiliency before phasing in academic content.

Social-Emotional Well-Being

The district's school counseling/guidance program should be reviewed and revised to plan, develop, and implement a Multi-Tiered System of Supports (MTSS).

As part of an MTSS framework, SEL, mental health, and well-being supports offered at all levels should reflect school-wide implementation of effective, efficient, and evidence-based practices and strategies that all students can access.

Offer all staff opportunities to heal together, to build strong, mutually supportive relationships, and to process their own emotions, including bus drivers, cafeteria workers, office workers, nurses, pupil personnel services staff, and administrators.

Leverage Transformative SEL to support the work of adult anti-racism and anti-bias work.

Facilities

Promote social distancing while maintaining existing safety requirements that protect students from fire or other hazards:

Physical Footprint / Utilization of Space

- Districts may expand their physical footprint or change the way they utilize spaces.

Planning

- Many potential changes require that plans be submitted to NYSED's Office of Facilities Planning for fire/building code review. This includes leased space or temporary classroom units.

Fire and lockdown drills

- Must still be conducted – districts must plan to ensure that social distancing measures are considered.

Facilities

Ventilation

- Schools should continue to meet or exceed minimum ventilation requirements and may wish to consult with design professionals to increase ventilation and filtration.

Plumbing Facilities

- Maintain minimum fixture quantities, access to drinking water.

Operations & Procedures

- SED will expedite review of COVID-19 Projects.

Transportation

- ✓ The school bus is an extension of the classroom and services need to be provided to all with consistency and equity.

- ✓ Each district will need to develop its own plan, considering its own geography, community resources, and resident student needs.

Transportation: Mandatory Requirements

School Bus

- Regular Cleaning/Disinfecting

School Bus Staff

- Must be trained and supported

Routing Considerations

- Sharing, Municipal, Piggybacking, Parents, Students with Disabilities, Foster Care, Homeless, Nonpublic, and Charter School Students

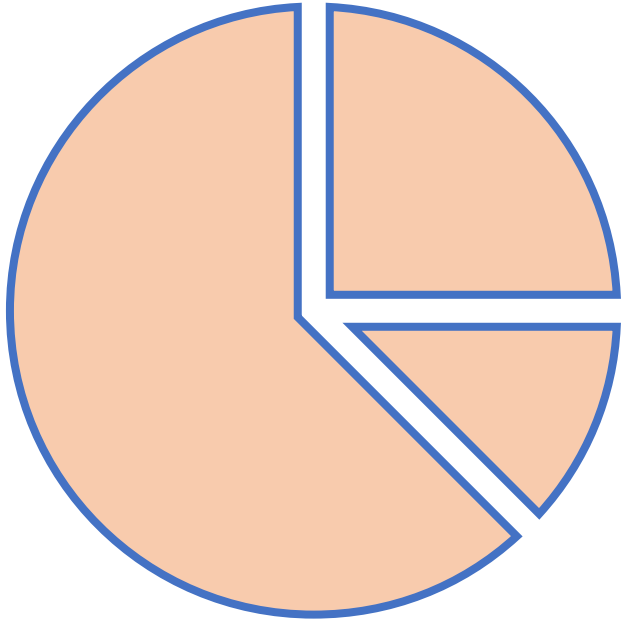
Student Riders

- Training to social distance at stops, at unloading times
- Wearing masks, per DOH guidance

School Site Loading/Unloading

- Safety, Separation, Staggered

Budget and Fiscal



All existing state aid reporting requirements and deadlines must be maintained.

The content of data submissions will largely remain consistent with past practice, except where modified by law, regulation, or executive order.

Attendance

Attendance for State Aid purposes

- Districts will continue to report attendance for state aid purposes through SAMS Form A, in accordance with the guidelines for instruction. Charter schools should continue to follow applicable guidance.

Attendance for instructional purposes

- Schools are responsible for developing a mechanism to collect and report daily teacher/student engagement or attendance regardless of the instructional setting.

Attendance for reporting purposes

- Attendance of any student of compulsory age, who resides in the district or is placed in another public school district, a charter school, or in an educational program outside the district, must be reported in SIRS.

Chronic Absenteeism

School policies and procedures must focus on the academic consequences of lost instructional time and address absences before students fall behind in school.

Critical for schools to use a variety of creative methods to reach out to students and their families who have not engaged in distance learning.

Before initiating Educational Neglect or PINS processes, schools and districts should collaborate with local Departments of Social Services.

School Schedules

Schools must create a comprehensive plan for a schedule that includes:

- In-person Instruction
- Remote Instruction
- Hybrid Instruction (in-person and remote)

Plans should be clearly communicated with as much advanced notice as practicable to students, families/caregivers, and staff.

Teaching and Learning: Mandatory Requirements

- Clear opportunities for equitable instruction for all students
- Maintain continuity of learning when using any of the three instructional models (in person, remote, hybrid)
- Standards-based instruction
- Substantive daily interaction (teacher to students and students to teacher)
- Clear communication plans between parents and schools

Teaching and Learning: Flexibility

- Flexible student/staff ratio requirements in Prekindergarten
- Extended time for Prekindergarten and Kindergarten screening to be completed
- Waiver allowing districts to convert UPK seats from full-day to half-day
- Flexibility with the 180 minutes per week Unit of Study requirement
- Flexibility in the delivery of Physical Education
- Allowance for a blend of hands-on and virtual science laboratory experiences
- When appropriate, schools may utilize remote or virtual work-based learning experiences for CTE and CDOS programs

Technology and Connectivity

Sufficient access to a computing device and high-speed broadband is essential for educational equity.

Districts and Schools **must**:

Have knowledge of the level of access all students and teachers have in their places of residence.

To the extent practicable, address the need to provide devices and internet access to students and teachers who currently do not have sufficient access.

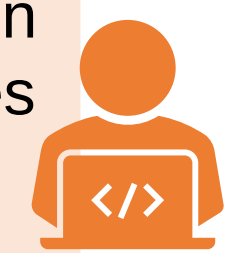
Provide multiple ways for students to participate in learning and demonstrate mastery of learning standards in remote/blended models.

Technology and Connectivity

Districts and schools **should provide**:

Instruction on using technology and IT support for students, teachers, and families.

Professional Development for teachers and leaders on designing effective online/remote learning experiences and best practices for instruction in online/remote settings.



Special Education: Mandatory Requirements

Provision of a Free Appropriate Public Education consistent with the need to protect the health and safety of students with disabilities and those providing special education and services

Meaningful parent engagement in the parent's preferred language or mode of communication regarding the provision of services to their child

Collaboration between the CSE/CPSE and program providers representing the variety of settings where students are served

Access to the necessary instructional and technological supports to meet the unique needs of students

Documentation of programs and services and communications with parents

Special Education: Recommended Elements

Consider in-person services a priority for high-needs students and preschool students with disabilities whenever possible; and

Consider contingency plans developed by the CSE/CPSE to address remote learning needs in the event of intermittent or extended school closures.

Bilingual Education and World Languages: Mandatory Requirements

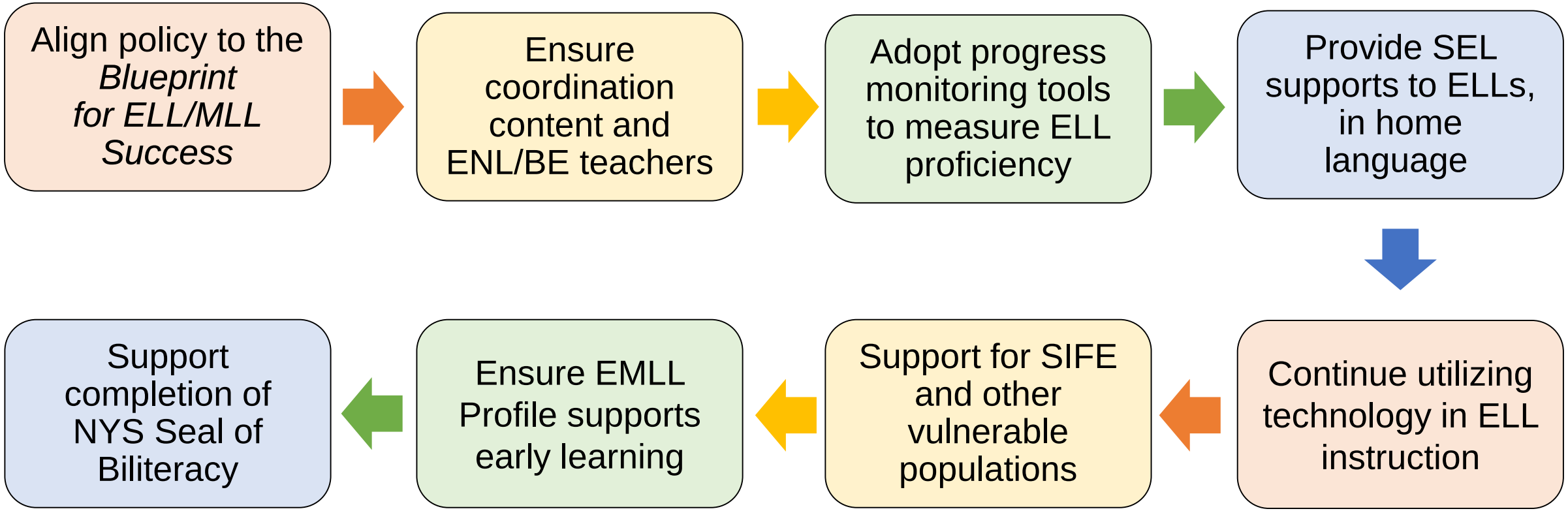
Communications and translations to parents/guardians must be in their preferred language and mode of communication.

Instructional Units of Study must be provided to all English Language Learners (ELLs) based on their most recently measured English Language Proficiency, including Former ELLs.

Update to the Identification timeline, including proposed regulatory change for newly enrolled students during COVID-19 closures as well as newly enrolled students within the first 20 school days of 2020-21 re-opening.

Professional learning opportunities for all teachers need to cover topics that support best practices and an equitable instruction for ELLs and help address the learning gaps caused by COVID-19 school closures.

Bilingual Education and World Languages: Considerations and Best Practices



Staffing and Human Resources

Among school-based factors, teaching and school leadership are the two greatest influences on student learning. As LEAs create their plans for the 2020-2021 school year, they:

- Must ensure that all teachers, school and district leaders, and pupil personnel service professionals hold a valid and appropriate certificate for their assignment.
- Can continue to utilize incidental teaching when determining how to staff their classrooms.
- Can also employ substitute teachers to address staffing needs for the allowable amount of days, given their qualifications and teaching assignment.
- Should work with educator preparation programs to identify appropriate ways in which student teachers can support classroom instruction.
- Should consider whether their currently approved APPR plans may need to be revised in order to be consistent with their plans for re-opening under an in-person, remote, or hybrid instructional model.

Guidance and Portal Timeline

Wednesday, July 15th — Dissemination

- Guidance will be ready for dissemination on Wednesday, July 15, 2020.

Friday, July 17th — Portal Opening

- The School Reopening Plan Portal will open on Friday, July 17, 2020.

Friday, July 31st — Submission Deadline

- School Reopening Plans must be submitted to the Portal by Friday, July 31, 2020.

Submitting Reopening Plans to the Portal

- All districts and schools are required to create Reopening Plans at the school level.
  - ✓ Plans should be posted on the LEA's public website.
  - ✓ Plans must contain mandatory elements outlined in NYSED's School Reopening Guidance Document.

- By July 31, 2020, districts and schools must provide to NYSED
  - ✓ Live, public links to reopening plans for every school under their responsibility.
  - ✓ Assurances that their plan contains all mandatory elements outlined in NYSED's Reopening Guidance Document.

Thank you!

Regulatory Flexibility for the Reopening of Schools

July 13, 2020

COVID-19 PANDEMIC

- As a result of the pandemic and the Governor's numerous Executive Orders, the Department adopted emergency regulations at the April, May, and June 2020 Board of Regents meeting to address the issues resulting from the interruptions caused by the COVID-19 crisis.
- The following emergency regulations relating to the COVID-19 crisis, previously adopted at the April, May, and June 2020 Regents meetings, are continued for the 2020-21 school year:

COVID-19 Regulations Continued Through 2020-21 School Year: Operations & Reporting Deadlines

- Waiver of instructional hour requirement (900/990 hour requirement) for the 180 day requirement for State aid purposes;
- Extension of the date required for adopting and publishing data security and privacy policies by educational agencies to October 1, 2020;
- Extension of deadline to complete child abuse in an educational setting training until September 30, 2020.

COVID-19 Regulations Continued Through 2020-21 School Year: Appeals

- Authorizes alternative service of 310 Appeals to the Commissioner;
- Extends Part 83 and Part 87 appeal filing timeframes;
- Expands the definition of prospective school employee for fingerprinting regulations to include employees who are not face to face;
- Allows State Review Officer to accept certain filings by electronic means.

COVID-19 Regulations Continued Through 2020-21 School Year: Charter Schools

- Excuses delays in required reporting by charter schools to public schools for the length of time of a school closure but no more than 30 days. When a delay is excused for a charter school, the regulations also permit the Commissioner to excuse a delay in payment by the public school;
- Allows charter school lotteries to be remote;
- Extends the deadline to conduct public hearings until September 30, 2020 for the formation of a new charter school, renewal of an existing charter school, or a charter school's request to revise its existing charter and allows the hearings to be conducted remotely.

COVID-19 Regulations Continued Through 2020-21 School Year: Professions

- Allows the Department to waive the continuous experience requirements for speech language pathology, audiology, and occupational therapy when continuous experience could not be obtained due to the pandemic;
- Allows the Department to accept CPA examination scores beyond the 18-month examination window exception due to pandemic related test center closures;
- Allows the Department to modify professional educational program requirements, to the extent authorized by law, for licensure (including field experience, practicums, etc.), if such requirements cannot be met due to the crisis;
- Allows the Department to accept alternative means to satisfy the in-person supervision experience requirements for licensed clinical social work, licensed master social work, mental health counseling, marriage and family counseling, creative arts therapy, and psychoanalysis, if such in-person supervision cannot be completed due to the pandemic;

COVID-19 Regulations Continued Through 2020-21 School Year: Professions (continued)

- Permits the Department, in its discretion, to renew limited permits in medicine for one additional 24-month period;
- Permits the Department, in its discretion, to accept alternative means to be used by dentists and dental hygienists to obtain and/or maintain the required CPR certification, in lieu of the in-person CPR course requirement;
- Permits the Department, in its discretion, to accept a lower number of live patient experiences and a specified number of Objective Structured Clinical Examinations for dentists and post-dental school residents seeking dental anesthesia certification.

COVID-19 Regulations Continued Through 2020-21 School Year: Curriculum and Instruction

- Extension of the application deadline for alternative high school equivalency preparation programs to be operated during the 2020-21 school year until, at the latest, 60 days after the expiration of applicable Executive Orders;
- Home instruction instructional day and/or hour requirement flexibility where a home instruction program is unable to provide such instructional days due to the State of emergency provided that such home instruction provided continuity of learning for the student;
- Provides exemptions from the sub-tests of the high school equivalency general comprehensive examination to provide flexibility during periods of test center closure.

COVID-19 Regulations Continued Through 2020-21 School Year: Special Education

- IHOs permitted to conduct special education due process hearings by video conference;
- Permit hearing officers to extend cases up to 60 days while schools are closed;
- Excludes days where schools are closed in 30-day timeline for preschool providers to make up missed services;
- Excludes days where schools are closed in 60-day timeline for arranging special education programs and services and 30-day timeline for arranging an approved nonpublic school placement.

COVID-19 Regulations Continued Through 2020-21 School Year: Accountability

- All schools identified as persistently struggling or struggling for the 2019-20 school year are to remain so identified for the 2020-21 school year and all schools that operated under a school district superintendent receiver in the 2019-20 school year are to continue to operate under a school district superintendent receiver in the 2020-21 school year;

COVID-19 Regulations Continued Through 2020-21 School Year: Accountability (continued)

- The Commissioner may, upon a finding of good cause for the 2019-20 through 2021-22 school years modify any timelines pertaining to notifications, plans, reports, or implementation of activities required by section 100.21 of the Commissioner's regulations.

COVID-19 Regulations Continued Through 2020-21 School Year: English Language Learners

- Excludes days where schools are ordered to close toward the timelines required for: English language learner identification process timeline, parental notification and information timeline, and the English as a New Language/Bilingual Education placement timeline.

COVID-19 Regulations Continued Through 2020-21 School Year: Higher Education

- Allows online DASA training;
- Extends the application deadline for Statement of Continued Eligibility and Limited Extension for special class special education teachers to June 30, 2021;
- Allows undergraduate or graduate level courses completed during the Fall 2020 term with a passing grade, or its equivalent, to count toward the content core or pedagogical core semester hour requirements for certification through the Individual Evaluation pathway;
- Extends the expiration date of the Initial certificate, Initial reissuance, Provisional certificate, and Provisional Renewal to January 31, 2021;
- Extends the expiration date of the Conditional Initial certificate to August 31, 2021;

COVID-19 Regulations Continued Through 2020-21 School Year: Higher Education (continued)

- Allows remote proctoring of Ability to Benefit (ATB) tests;
- Extends the expiration date of Teaching Assistant Level I certificates, Level I Renewals, Level II certificates, Pre-Professional certificates, and Pre-Professional Renewals to January 31, 2021;
- Allows teaching assistant experience gained while a candidate holds the Emergency COVID-19 Teaching Assistant certificate to satisfy the teaching experience requirement for the Teaching Assistant Level II, Level III, and Pre-Professional certificates;
- Allows emergency COVID-19 Teaching certificate to serve as a base certificate for certain certificate extensions and the severe or multiple disabilities annotation.

COVID-19 Pandemic and Reopening of Schools

- In addition to the regulations already discussed, the Department is proposing further regulatory changes to provide additional flexibility to the field and students during this crisis, to address anticipated issues resulting from the continued interruptions caused by the COVID-19 crisis and to prepare for the reopening of schools.

Curriculum & Instruction

- **Unit of Study**
  The definition of “Unit of study” is amended to provide that “equivalent” shall mean at least 180 minutes of instructional time per week for instruction delivered in a traditional face to face model, or through alternative instructional experiences, including but not limited to through digital technology or blended learning, that represents standards-based learning under the guidance and direction of an appropriately certified teacher. Instructional experiences shall include, but need not be limited to: meaningful and frequent interaction with an appropriately certified teacher; academic and other supports designed to meet the needs of the individual student; and instructional content that reflects consistent academic expectations as in-person instruction. Any alterative instructional experience must include meaningful feedback on student assignments and methods of tracking student engagement.

Curriculum & Instruction (continued)

- **Career Development and Occupational Studies (CDOS)**
  The Commissioner's regulations are amended to provide that the CDOS commencement credential may be awarded to students exiting school in the 2020-21 school year who are unable to complete all of the 54 hours of documented school supervised work-based learning experiences required and who otherwise meet all other requirements for such credential, where such schools are unable to provide students a certain portion of their scheduled work-based learning experience in the 2020-21 school year due to the COVID-19 crisis;

Curriculum & Instruction (continued)

- **Science Laboratory Experience**
  The Commissioner's regulations are amended to provide that for the 2020-21 school year as a result of the COVID-19 crisis the 1,200 minutes of lab experience may be met through a combination of hands-on and simulated laboratory experience;
- **Diagnostic Screening**
  The Commissioner's regulations are amended to provide that for the 2020-21 school year diagnostic screening for new entrants and students with low test scores shall be conducted as soon as practicable due to the COVID-19 crisis rather than by December 1st of the school year.

Early Learning

- **Staffing Ratios Flexibility**
  The Commissioner's regulations are amended to provide that due to the COVID-19 crisis, for the 2020-21 school year for school districts outside of NYC: for 3-year old students with a class size of 7 children or less, there must be one teacher assigned to each class; and for 4-year old students with a class size of 8 children or less, there must be one teacher assigned to each class. For the City School District of the City of New York, for 3-year old students with a class size of 10 children or less, there must be one teacher assigned to each class; and for 4-year old students with a class size of 12 children or less, there must be one teacher assigned to each class.

Academic Intervention Services

- **Academic Intervention Services Identification Process**
  The Commissioner's regulations are amended to provide that schools are not required to conduct the two-step identification prescribed for identification of students to receive AIS for the 2020-21 school year due to the cancelation of State assessments for the 2019-20 school year due to the COVID-19 crisis.

Health Screening Waiver

- **Health Screening Waiver**
  The Commissioner's regulations are amended to provide that hearing, vision, and scoliosis screenings required to be provided by public schools are waived for the 2020-21 school year due to the COVID-19 crisis, unless the screening is otherwise deemed necessary.

Home Instruction

- **Submission of Written Notice of Intention to Instruct at Home**
  The Commissioner's regulations are amended to provide that for the 2020-21 school year, the home instruction program deadline for submission of the written notice of intention to instruct at home is extended from July 1 until August 1, 2020 due to the COVID-19 crisis.

Pupil Transportation

- **School Bus Drill**
  The Commissioner's regulations are amended to provide that for the first school bus drill to be conducted during the first seven days of schools, such seven days shall exclude any days where school is closed pursuant to an Executive Order of the Governor for the COVID-19 crisis for the Fall term for 2020-21 school year.

Higher Education

- **Incidental Teaching**
  The Commissioner's regulations are amended to allow a superintendent of schools to assign certified teachers to teach a subject not covered by their certificate for a period not to exceed ten classroom hours a week, when no certified or qualified teachers are available after extensive and documented recruitment, during the 2020-21 school year due to the COVID-19 crisis;

Higher Education (continued)

- **Substitute Teaching**
  The Commissioner's regulations are amended to allow substitute teachers who do not hold a valid certificate and who are not working toward certification, but who hold a high school diploma or its equivalent, to be employed by the school district or BOCES beyond the 40-day limit, for up to an 90 days in extreme circumstances and for more than 90 days in rare circumstances, under specified conditions during the 2020-21 school year due to the COVID crisis;

Higher Education (continued)

- **Shorter Semester**
  The definitions of full-time and part-time student for Tuition Assistance Programs (TAP) is amended to provide that for the 2020-21 academic year, students shall be considered full-time and part-time where the student is unable to enroll in credit-bearing courses for at least 15 weeks for a semester due to the COVID-19 crisis, provided that such student is enrolled in such credit-bearing courses for a minimum of 12 weeks for a semester and still meets the semester hour requirements.

Special Education

Psychological Evaluations and Student Observations

- The Department proposes to amend regulations so that no individual psychological evaluation for an initial evaluation will be required if schools are closed per an Executive Order of the Governor and students are learning remotely, unless it is determined necessary by a school psychologist;

- The Department proposes to amend regulations so that if schools are closed per an Executive Order of the Governor and students are learning remotely, an observation will only be a required component for an initial evaluation, where determined appropriate by the Committee on Preschool Special Education or Committee on Special Education. Classroom observations would continue to be a required component of an initial evaluation for students suspected as having a learning disability.

English Language Learners

- **Identification of ELL Students with Inconsistent/Interrupted Formal Education**
  The Commissioner's regulations are amended to provide that day(s) during a school closure ordered pursuant to an Executive Order(s) of the Governor pursuant to a State of emergency for the COVID-19 crisis shall not count toward the calculation of less than 12 months for identifying English language learner (ELL) students with inconsistent/interrupted formal education;

English Language Learners (continued)

- **Individual Interviews for Identification of ELLs**
  Commissioner's regulations are amended to provide that the individual interview for the identification process to determine if a student is an English language learner is waived where a school district can document that video conferencing was used to remotely conduct an individual interview during a school closure ordered pursuant to an Executive Order(s) of the Governor pursuant to a State of emergency for the COVID-19 crisis. In such cases, qualified personnel will review the previously completed Home Language Questionnaire with the parent or person in parental relation;

English Language Learners (continued)

- **Review of ELL Determination Deadline**
  Commissioner's regulations are amended to provide that due to the COVID-19 crisis for the 2020-21 school year, the 45-day timeline for a school district to initiate a review of a determination made in the initial or reentry identification process for English language learners, after receipt of a written request, is extended to 65 days from the beginning of the 2020-21 school year for any student that was either newly enrolled during the COVID-19 closures in the 2019-20 school year, Summer 2020, or within the first 20 days of the 2020-21 school year;

English Language Learners (continued)

Process for Initial Enrollment or Reentry Identification and Parent Notification, Orientation, and Placement

- For the 2020-21 school year, the process for initial enrollment or reentry identification and parent notification, orientation, and placement shall be completed such that a student who was either newly enrolled during the COVID-19 closures in the 2019-20 school year, Summer 2020, or the first 20 days of the 2020-21 school year is placed in either a Bilingual Education or English as New Language program within 30 school days after commencement of the 2020-21 school year for school districts with 150 or more ELLs, or where ELLs comprise 10% or more of the district's population;
- School districts with 149 or fewer ELLs, or where ELLs constitute less than 10% of the district's population, may seek an exemption from the English language learner identification timeline for students who are newly enrolled during the COVID-19 closures in the 2019-20 school year, Summer 2020, or the first 20 days of the 2020-21 school year on a form and within a timeframe prescribed by the Commissioner; provided that such school demonstrates sufficient need for such exemption notwithstanding the size and percentage of its ELL population.

Questions?

TO: The Honorable Members of the Board of Regents

FROM: Shannon L. Tahoe

SUBJECT: 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 COVID-19 Crisis and the Reopening of Schools

DATE: July 10, 2020

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Board of Regents adopt the 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 COVID-19 crisis and the reopening of schools?

Reason for Consideration

Review of Policy.

Proposed Handling

The proposed amendment will be presented to the Full Board for adoption as an emergency rule at the July 2020 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rulemaking will be published on July 29, 2020. Supporting materials are available upon request to the Secretary to the Board of Regents. A copy of the proposed rule is included as Attachment A, and a Statement of Facts and Circumstances which necessitate emergency action is included as Attachment B.

Procedural History

Not applicable.

Background Information

Generally

On January 30, 2020, the World Health Organization designated the novel coronavirus, COVID-19, outbreak as a Public Health Emergency of International Concern. On March 7, 2020, the Governor of New York State declared a State disaster emergency for the entire State of New York pursuant to Executive Order 202. Subsequently, the Governor issued additional Executive Orders in response to the COVID-19 crisis, including orders directing the closure of schools for the remainder of the school year and summer school and directing nonessential work personnel to work from home. In response, the Department adopted emergency regulations at the April, May and June 2020 Board of Regents Meetings to address numerous issues resulting from the interruptions caused by the COVID-19 crisis. To address additional issues resulting from the interruptions caused by the COVID-19 crisis, and to plan for the reopening of schools the Department is proposing further emergency regulatory amendments as follows:

- Academic Intervention Services
    - Section 100.2(ee) of the Commissioner's regulations is amended to provide that schools are not required to conduct the two-step identification prescribed for identification of students to receive AIS for the 2020-21 school year due to the cancelation of State assessments for the 2019-20 school year due to the COVID-19 crisis (Attachment A#1).
- Home Instruction
    - Section 100.10(b) of the Commissioner's regulations is amended to provide that for the 2020-21 school year, the home instruction program deadline for submission of the written notice of intention to instruct at home is extended from July 1 until August 1, 2020 due to the COVID-19 crisis (Attachment A #2).
- Health Screening Waiver
    - Section 136.3(e) of the Commissioner's regulations is amended to provide that hearing, vision, and scoliosis screenings required to be provided by public schools are waived for the 2020-21 school year due to the COVID-19 crisis, unless the screening is otherwise deemed necessary (Attachment A #3).
- Curriculum and Instruction
    - Unit of Study: The definition of "Unit of study" in section 100.1(a) of the Commissioner's regulations is amended to provide that "equivalent" shall mean at least 180 minutes of instructional time per week for instruction delivered in a traditional face to face model or through alternative instructional experiences, including but not limited to through digital technology or blended learning, that represents standards-based learning under the guidance and direction of an appropriately certified teacher. Instructional experiences shall include, but not be limited to: meaningful and frequent interaction with an appropriately certified teacher; academic and other supports designed to meet the needs of the individual student and instructional content that reflects consistent academic expectations as in-person instruction. Any alternative instructional

experience must include meaningful feedback on-student assignments and methods of tracking student engagement. This amendment is necessary so that schools may plan for various types of instructional models, including hybrid models, because of contingencies that may make it impossible for a specific amount of face to face contact between teachers and students due to the COVID-19 crisis (Attachment A #4).

  - CDOS: Section 100.6(b) of the Commissioner's regulations is amended to provide that a career development and occupational studies (CDOS) commencement credential may be awarded to students exiting school in the 2020-2021 school year who are unable to complete all of the 54 hours of documented school supervised work-based learning experiences required and otherwise meet all other requirements for such credential, where such schools are unable to provide students a certain portion of their scheduled work-based learning experience in the 2020-2021 school year due to the COVID-19 crisis (Attachment A #5).
  - Science laboratory experience: Section 100.5(b) of the Commissioner's regulations is amended to provide that for the 2020-2021 school year as a result of the COVID-19 crisis the 1,200 minutes of lab experience may be met through a combination of hands-on and simulated laboratory experience (Attachment A #6).
  - Diagnostic screening: Section 117.3(b) of the Commissioner's regulations is amended to provide that for the 2020-21 school year diagnostic screening for new entrants and students with low test scores shall be conducted as soon as practicable due to the COVID-19 crisis rather than by December 1st of the school year (Attachment A #7).
- Special Education
  - Section 200.4(b) of the Commissioner's regulations is amended to provide that an individual psychological evaluation is only a required component for an initial evaluation when it is determined to be necessary by a school psychologist due to the COVID-19 crisis when schools are closed pursuant to an Executive Order of the Governor and students are learning remotely.
  - Additionally, such section is amended to require an observation of a student as a required component for an initial evaluation only when it is determined appropriate by the Committee on Preschool Special Education or Committee on Special Education due to the COVID-19 crisis when schools are closed pursuant to an Executive Order of the Governor and students are learning remotely.
  - Classroom observations would continue to be a required component of an initial evaluation for students suspected of having a learning disability (Attachment A #8).
- Higher Education
  - Incidental teaching: Section 80-5.3 of the Commissioner's regulations is amended to allow a superintendent of schools to assign certified teachers to teach a subject not covered by their certificate for a period not to exceed ten classroom hours a week, when no certified or qualified teachers are available after extensive and documented recruitment, during the time period of the State of emergency declared by the Governor

pursuant to an Executive Order for the COVID-19 crisis (Attachment A #9).

  - Substitute teacher: Section 80-5.4 of the Commissioner's regulations is amended to allow substitute teachers who do not hold a valid certificate and who are not working towards certification but who holds a high school diploma or its equivalent, to be employed by the school district or BOCES beyond the 40-day limit, for up to 90 days in extreme circumstances and for more than 90 days in rare circumstances, under specified conditions during the time period of the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis (Attachment A #10).
  - Shorter semester: The definitions of full-time and part-time student for Tuition Assistance Programs (TAP) in Section 145-2.1 of the Commissioner's regulations is amended to provide that for the 2020-21 academic year students shall be considered full-time and part-time where the student is unable to enroll in credit-bearing courses for at least 15 weeks for a semester due to the COVID-19 crisis, provided that such student is enrolled in such credit-bearing courses for a minimum of 12 weeks for a semester and still meets the semester hour requirements (Attachment A #11).

- Early Learning
  - Section 151-1.3(d) of the Commissioner's regulations is amended to provide that due to the COVID-19 crisis for the 2020-21 school year for school districts outside of NYC for 3-year old students, with a class size of 7 children or less there must be one teacher assigned to each class and for 4-year old students, with a class size of 8 children or less, there must be one teacher assigned to each class. For the City School District of the City of New York for 3-year old students, with a class size of 10 children or less, there must be one teacher assigned to each class and for 4-year old students, with a class size of 12 children or less there must be one teacher assigned to each class (Attachment A #12).
- English Language Learners
  - Section 154-2.2(y) of the Commissioner's regulations is amended to provide that day(s) during a school closure ordered pursuant to an Executive Order(s) of the Governor pursuant to a State of emergency for the COVID-19 crisis shall not count towards the calculation of less than twelve months for identifying English language learner (ELL) students with inconsistent/interrupted formal education (Attachment A #13).
  - Section 154-2.3(a)(2) of the Commissioner's regulations is amended to provide that the individual interview for the identification process to determine if a student is an English language learner is waived where a school district can document that video conferencing was used to remotely conduct an individual interview during a school closure ordered pursuant to an Executive Order(s) of the Governor pursuant to a State of emergency for the COVID-19 crisis. In such cases qualified personnel will

review the previously completed Home Language Questionnaire with the parent or person in parental relation (Attachment A #14)

- Section 154-2.3(b)of the Commissioner's regulations is amended to provided that due to the COVID-19 crisis for the 2020-2021 school year, the 45-day timeline for a school district to initiate a review of a determination made in the initial or reentry identification process for English language learners after receipt of a written request is extended to 65 days from the beginning of the 2020-2021 school year for any student that was either newly enrolled during the COVID-19 closures in the 2019-2020 school year, Summer 2020, or within the first 20 days of the 2020-2021 school year (Attachment A #15).
- Section 154-2.3(g) of the Commissioner's regulations is amended to provide that:
  - Due to the COVID-19 crisis for the 2020-2021 school year, the process for initial enrollment or reentry identification and parent notification, orientation, and placement shall be completed such that a student who was either newly enrolled during the COVID-19 closures in the 2019-2020 school year, Summer 2020, or the first 20 days of the 2020-2021 school year is placed in either a Bilingual Education or English as New Language program within 30 school days after commencement of the 2020-2021 school year for school districts with 150 or more ELLs, or where ELLs 10% or more of the district's population.
  - School districts with 149 or fewer ELLs or where ELLs constitute less than 10% of the district's population may seek an exemption from the English language learner identification timeline for students who are newly enrolled during the COVID-19 closures in the 2019-2020 school year, Summer 2020, or the first 20 days of the 2020-2021 school year on an application form in a timeframe prescribed by the Commissioner; provided that such school demonstrates sufficient need for such exemption notwithstanding the size and percentage of its ELL population (Attachment A #16).

- Pupil Transportation
  - Section 156.3(f) is amended to provide that for the first school bus drill to be conducted during the first seven days of schools, such seven days shall exclude any days where school is closed pursuant to an Executive Order of the Governor for the COVID-19 crisis for the Fall term for 2020-2021 school year (Attachment A #17).

Related Regents Items

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, 80-1.13, 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, 154-2.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and addition of Section 279.5 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis (https://www.regents.nysed.gov/common/regents/files/420bra6.pdf)

Proposed Amendments to Sections 52.21, 60.6, 61.19, 80-1.2, 80-3.7, 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19 and 151-1.3 and addition of Section 80-5.27 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis
(https://www.regents.nysed.gov/common/regents/files/520bra9-REVISED.pdf)

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, 80-1.13, 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, 154-2.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and addition of Section 279.5 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis
(https://www.regents.nysed.gov/common/regents/files/520bra10.pdf)

Proposed Amendments to Sections 60.10, 80-1.2, 80-4.3, 80-4.4, 80-5.6, 100.2, 100.5, 100.7, 100.10, 110.4, 119.4, 121.5, 135.4, 145-2.15 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis
(https://www.regents.nysed.gov/common/regents/files/620bra10.pdf)

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, 80-1.13, 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, 154-2.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and addition of Section 279.5 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis
(https://www.regents.nysed.gov/common/regents/files/620bra11.pdf)

Proposed Amendments to Sections 52.21, 60.6, 61.19, 80-1.2, 80-3.7, 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19 and 151-1.3 and addition of Section 80-5.27 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis
(https://www.regents.nysed.gov/common/regents/files/620bra12.pdf)

Recommendation

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

VOTED: That 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 be amended, as submitted, as an emergency measure, effective July 14, 2020, upon a finding by the Board of Regents that such action is necessary for the preservation of public health and the general welfare in order to immediately provide flexibility to certain regulatory requirements in response to the COVID-19 crisis and to plan for the reopening of schools.

Timetable for Implementation

If adopted as an emergency measure at the July 2020 Regents meeting, the proposed amendment will become effective as an emergency rule on July 14, 2020. It is anticipated that the proposed amendment will be presented for permanent adoption at

the October 2020 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the October 2020 meeting, the proposed rule will become effective on November 4, 2020. Because the emergency adoption will expire before the October 2020 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the September Regents meeting.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 209, 215, 305, 308, 309, 602, 661, 905, 1709, 2117, 2854, 3001, 3004, 3009, 3204, 3205, 3208, 3212, 3214, 3602, 3602-c, 3602-e, 3604, 3623, 3713, 4401, 4403, and 4410 of the Education Law.

1. Subparagraph (ii) of paragraph (2) of subdivision (ee) of section 100.2 is amended by adding a new clause (f) to read as follows:

(f) Notwithstanding any other provision of this subparagraph, schools shall not be required to conduct the two-step identification process prescribed in clauses (a) and (b) of this subparagraph for the 2020-21 school year due to the cancelation of State assessments for the 2019-20 school year due to the State of emergency declared by the Governor for the COVID-19 crisis. For all students who will be enrolled in grades 3 through 8 for the 2020-21 school year, schools shall make such identification based solely on the district-developed procedures prescribed in clauses (b), (d) and (e) of this subparagraph.

2. Subdivision (b) of section 100.10 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (4) to read as follows:

(4) For the 2020-21 school year, the written notice of intention to instruct at home required in paragraph (1) of this subdivision shall be due on August 1, 2020 due to the State of emergency declared by the Governor pursuant to an Executive Order(s) for the COVID-19 crisis.

3. Subdivision (e) of section 136.3 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (3) to read as follows:

(3) The hearing, vision, and scoliosis screenings required pursuant to paragraph (1) of this subdivision shall be waived for the 2020-21 school year due to the COVID-19 crisis, unless such screening has otherwise been deemed necessary.

4. Subdivision (a) of section 100.1 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) *Unit of study* means at least 180 minutes of instruction per week throughout the school year, or the equivalent. Equivalent shall mean at least 180 minutes of instructional time per week for instruction delivered in a traditional face to face model or through alternative instructional experiences, including but not limited to through digital technology or blended learning, that represents standards-based learning under the guidance and direction of an appropriately certified teacher. Instructional experiences shall include, but not be limited to: meaningful and frequent interaction with an appropriately certified teacher; academic and other supports designed to meet the needs of the individual student and instructional content that reflects consistent academic expectations as in-person instruction. Any alternative instructional experience must include meaningful feedback on-student assignments and methods of tracking student engagement.

5. Paragraph (3) of subdivision (b) of section 100.6 of the Regulations of the Commissioner of Education is amended by adding a new subparagraph (iv) to read as follows

(iv) Notwithstanding any other provision of this paragraph to the contrary, a career development and occupational studies commencement credential may be awarded to students exiting school in the 2020-2021 school year who are unable to complete all of the 54 hours of documented school supervised work-based learning

experiences required pursuant to subparagraph (ii) of this paragraph and otherwise meet all other requirements for such credential, where such schools are unable to provide students a certain portion of their scheduled work-based learning experience in the 2020-2021 school year due to the COVID-19 crisis.

6. Clause (d) of subparagraph (iv) of paragraph (7) of subdivision (b) of Section 100.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(d) Science, three units of credit and one of the Regents examinations in science or an approved alternative pursuant to section 100.2(f) of this Part. In order to qualify to take a Regents examination in any of the sciences a student must complete 1,200 minutes of actual hands-on (not simulated) laboratory experience with satisfactory documented laboratory reports, provided that, for students who attend educational programs administered pursuant to Education Law section 112 and Part 116 or 118 of this Title, and for all students during the 2020-2021 school year as a result of the COVID-19 crisis, the 1,200 minutes of laboratory experience may be met through a combination of hands-on and simulated laboratory experience. The 1,200 minutes of laboratory experience must be in addition to the required classroom instruction associated with earning a unit of credit.

7. Paragraph (3) of subdivision (b) of section 117.3 of the Regulations of the Commissioner of Education is amended to read as follows:

(3) in the case of new entrants, such screening shall be conducted prior to the school year, if possible, but no later than December 1st of the school year of entry, or within 15 days of transfer of a student into a New York State public school should the entry take place after December 1st of the school year; provided, however, that for the

2020-21 school year such screening shall be conducted as soon as practicable due to the COVID-19 crisis;

8. Paragraph (1) of subdivision (b) of section 200.4 of the Regulations of the Commissioner of Education is amended as follows:

(1) . . .

(i) . . .

(ii) an individual psychological evaluation, except when a school psychologist determines after an assessment of a school-age student, pursuant to paragraph (2) of this subdivision, that further evaluation is unnecessary, except that for the 2020-2021 school year, to allow for appropriate flexibility due to the unique circumstances that have arisen as a result of the COVID-19 crisis, no individual psychological evaluation shall be required if schools are closed pursuant to an Executive Order of the Governor and students are learning remotely, unless it is determined to be necessary by a school psychologist;

(iii) . . .

(iv) an observation of the student in the student's learning environment (including the regular classroom setting) or, in the case of a student of less than school-age or out of school, an environment appropriate for a student of that age, to document the student's academic performance and behavior in the areas of difficulty, except that, to allow for appropriate flexibility due to the unique circumstances that have arisen as a result of the COVID-19 crisis, during the 2020-21 school year if schools are closed pursuant to an Executive Order of the Governor and students are learning remotely an observation shall only be a required component of an initial evaluation where

determined appropriate by the committee, and as required under subparagraph (j)(1)(i) of this section; and

(v) . . .

(2) . . .

9. 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 due to the COVID-19 crisis during the 2020-2021 school year 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:

10. Subparagraph (ii) of paragraph (3) of subdivision (c) of section 80-5.4 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(ii) In extreme circumstances where there is an urgent need for a substitute teacher and the district has undertaken a good faith recruitment search for a properly certified candidate, and determined that there are no available certified teachers to perform the duties of such position, a substitute teacher, without a valid teaching certificate and who is not working towards certification but who holds a high school diploma or its equivalent, may be employed by the school district or board of cooperative educational services beyond the 40-day limit, for up to an additional 50 days (90 days total in a school year), if the district superintendent (for districts that are a component district of a board of cooperative educational services and boards of cooperative educational services) or the superintendent (for school districts that are not

a component district of a board of cooperative educational services) certifies that the district or board of cooperative educational services, as applicable, has conducted a good faith recruitment search and there are no available certified teachers that can perform the duties of such position. In rare circumstances, a district or BOCES may hire a substitute teacher beyond the 90 days, if a district superintendent or superintendent attests that a good faith recruitment search has been conducted and that there are still no available certified teachers who can perform the duties of such position and that a particular substitute teacher is needed to work with a specific class or group of students until the end of the school year. The provisions of this subparagraph shall be applicable [until June 30, 2018] during the 2020-2021 school year due to the COVID-19 crisis.

11. Subparagraphs (i) and (ii) of paragraph (1) of subdivision (a) of section 145-2.1 of the Regulations of the Commissioner of Education are amended to read as follows:

(i) For State student financial aid programs, except the supplemental tuition assistance program (STAP), full-time study, where required by law, shall mean enrollment in credit-bearing courses applicable to the students' program of study, for at least 12 semester hours for a semester of not less than 15 weeks or 100 calendar days, inclusive of examination periods; or eight semester hours a quarter; or, in programs not organized on a semester or quarter basis, 24 semester hours for an academic year of not more than 12 months or the equivalent, as determined by the commissioner. Provided, however, that for the 2020-2021 academic year, a student shall meet the definition of full-time study in accordance with this subparagraph where a student is unable to enroll in credit-bearing courses applicable to the student’s program of study for at least 15 weeks for a semester due to the COVID-19 crisis, provided that the

student is enrolled in such credit-bearing courses for a minimum of 12 weeks for a semester and otherwise meets the semester hour requirements prescribed in this subparagraph .

(ii) A student shall be considered full-time for a program organized on an academic-year basis only if the student has filed a plan of study with the institution for the entire academic year. Except as otherwise defined in paragraph (4) of this subdivision, part-time study, for general awards, other than tuition awards for veterans and tuition awards for part-time undergraduate students, and for academic performance awards, shall mean enrollment in credit-bearing courses applicable to the students' program, for at least 6, but less than 12, semester hours or the equivalent for a semester of not less than 15 weeks or 100 calendar days, inclusive of examination periods; or at least four, but less than eight, semester hours a quarter. Provided, however, that for the 2020-2021 academic year, a student shall meet the definition of part-time in accordance with this subparagraph where a student is unable to enroll in credit-bearing courses applicable to the student's program for at least 15 weeks for a semester due to the COVID-19 crisis, provided that the student is enrolled in such credit-bearing courses for a minimum of 12 weeks for a semester and meets the semester hour requirements prescribed in this subparagraph.

12. Subdivision (d) of section 151-1.3 of the Regulations of the Commissioner of Education is amended to read as follows

(d) Class size. (1) The maximum class size for a prekindergarten class is 20 children. For classes of up to 18 students, there must be one teacher and one paraprofessional assigned to each class. For classes of 19 or 20 students, there must be one teacher and two paraprofessionals assigned to each class.

(2) (i) Notwithstanding paragraph (1) of this subdivision, due to the COVID-19 crisis for the 2020-21 school year for school districts other than the City School District of the City of New York:

(a) for 3-year old students, with a class size of 7 children or less there must be one teacher assigned to each class; and

(b) for 4-year old students, with a class size of 8 children or less, there must be one teacher assigned to each class.

(ii) Notwithstanding paragraph (1) of this subdivision, due to the COVID-19 crisis for the 2020-21 school year the City School District of the City of New York:

(a) for 3-year old students, with a class size of 10 children or less, there must be one teacher assigned to each class; and

(b) for 4-year old students, with a class size of 12 children or less there must be one teacher assigned to each class.

13. Subdivision (y) of section 154-2.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(y) Students with Inconsistent/Interrupted Formal Education shall mean English Language Learners who have attended schools in the United States (the 50 States and the District of Columbia) for less than twelve months and who, upon initial enrollment in such schools are two or more years below grade level in literacy in their home language and/or two or more years below grade level in Math due to inconsistent or interrupted schooling prior to arrival in the United States (the 50 States and the District of Columbia). Day(s) during a school closure ordered pursuant to an Executive Order(s) of the Governor pursuant to a State of emergency for the COVID-19 crisis shall not count

towards the calculation of less than twelve months of attendance in United States schools prescribed in this subdivision.

14. Paragraph (2) of subdivision (a) of section 154-2.3 of the Regulations of the Commissioner of Education is amended to read as follows:

(2) Step 2: An individual interview with the student by qualified personnel in English and the student's home language, and a review of the student's abilities or work samples in reading and writing in English and the home language and math that are collected or generated during the interview, and for students reentering the New York State public school system, a review of prior experience in home language and/or English instruction, to determine if the student shall be administered the statewide English language proficiency identification assessment and to determine the student's grade level of literacy in their home language and grade level in math. The individual interview is waived in circumstances when the school district can document that video conferencing was used to remotely conduct an individual interview during a school closure ordered pursuant to an Executive Order(s) of the Governor pursuant to a State of emergency for the COVID-19 crisis. In such cases, qualified personnel as defined by Part 154-2.2(q) will review the previously completed Home Language Questionnaire with the parent or person in parental relation;

15. Subdivision (b) of section 154-2.3 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (9) to read as follows:

(9) Notwithstanding paragraph (8) of this subdivision, due to the COVID-19 crisis for the 2020-2021 school year, the 45 day school timeline prescribed in paragraph (1) of this subdivision shall be extended to 65 days from the beginning of the 2020-2021 school year for any student that was either newly enrolled during the COVID-19

closures in the 2019-2020 school year, Summer 2020 or within the first twenty (20) days of the 2020-2021 school year.

16. Subdivision (g) of section 154-2.3 of the Regulations of the Commissioner of Education is amended by adding two new paragraphs (3) and (4) to read as follows:

(3) Notwithstanding paragraph (1) of this subdivision, due to the COVID-19 crisis for the 2020-2021 school year, the process for initial enrollment or reentry identification and parent notification, orientation, and placement shall be completed such that a student who was either newly enrolled during the COVID-19 closures in the 2019-2020 school year, Summer 2020 or the first twenty (20) days of the 2020-2021 school year is placed in either a Bilingual Education or an English as a New Language program within thirty (30) school days after the commencement of the 2020-2021 school year for school districts with one hundred-fifty (150) or more ELLs, or where ELLs constitute ten percent (10%) or more of the district's population.

(4) School districts with one hundred forty-nine (149) or fewer ELLs, or where ELLs constitute less than ten percent (10%) of the district's population may seek an exemption from the timeline requirements of paragraph (1) of this subdivision for the newly enrolled students identified in paragraph (3) of this subdivision on an application form and in a timeframe prescribed by the commissioner; provided that such school demonstrates sufficient need for such exemption notwithstanding the size and percentage of its ELL population.

17. Paragraph (2) of subdivision (f) of section 156.3 of the Regulations of the Commissioner of Education is amended to read as follows:

(2) A minimum of three such drills shall be held on each school bus during the school year, the first to be conducted during the first seven days of school, provided,

however, that such seven days shall exclude any days where school is closed pursuant to an Executive Order of the Governor for the COVID-19 crisis for the Fall term for 2020-2021 school year, the second between November 1st and December 31st and the third between March 1st and April 30th.

Attachment B

STATEMENT OF FACTS AND CIRCUMSTANCE WHICH NECESSITATE EMERGECNY ACTION

On January 30, 2020, the World Health Organization designated the novel coronavirus, COVID-19, outbreak as a Public Health Emergency of International Concern. On March 7, 2020 the Governor of New York State declared a State disaster emergency for the entire State of New York pursuant to Executive Order 202. Subsequently, the Governor issued additional Executive Orders in response to the COVID-19 crisis including orders directing the closure of schools for the remainder of the school year and summer school and directing non-essential work personnel to work from home. In response the Department adopted emergency regulations at the April, May, and June 2020 Board of Regents Meetings to address numerous issues resulting from the interruptions caused by the COVID-19 crisis. To address additional issues resulting from the interruptions caused by the COVID-19 crisis and to prepare for the reopening of schools, it is necessary for the Department to adopt further regulatory amendments. The proposed amendments provide flexibility related to the following:

- Academic Intervention Services (AIS) determinations;
- Home instruction programs deadline for submission of the written notice of intention to instruct at home;
- School health screening waivers;
- Definition of the unity of study;
- Career development and occupational studies work-based learning experience hours;

- Science laboratory experience;
- Diagnostic screening for new school entrants;
- Psychological evaluations for students referred for being suspected of having a disability;
- Student observation for an initial evaluation of a student suspected of having a disability;
- Incidental teaching;
- Substitute teaching;
- Shorter semester for institutions of higher education;
- Class sizes for 3-year olds and 4-year olds;
- Process for initial enrollment, reentry identification and parent notification, orientation, and placement of English Language Learners (ELLs), identification of ELLs with inconsistent/interrupted formal education, and the timeline for review of ELLs identification;
- School us drills.

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (nonemergency) adoption, after publication in the State Register and expiration of the 60-day public comment period required in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), is the October 2020 Regents meeting. However, because the COVID-19 crisis is presently affecting the State of New York, emergency action is necessary for the preservation of public health and the general welfare in order to immediately provide flexibility for certain regulatory requirements in response to the COVID-19 crisis and to prepare for the reopening of schools.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the October 2020 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rule makings. However, since the emergency regulation will expire before the October meeting, it is anticipated that an additional emergency action will be presented for adoption at the September 2020 Regents meeting.