



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: Elizabeth R. Berlin

SUBJECT: Proposed Amendment to Section 175.5 of the Regulations of the Commissioner of Education Providing for a Waiver for Up to Four School Years (2018-2019, 2019-2020, 2020-2021 and/or 2021-2022) for Certain School Districts That Cannot Meet the Minimum Instructional Hours Because of Safety and/or Scheduling Issues

DATE: November 1, 2019

AUTHORIZATION(S): *Sharam L. Tabea* *Elizabeth R. Berlin*

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the proposed amendment to §175.5 of the Commissioner's Regulations to authorize the Commissioner to provide a waiver for up to four school years (2018-2019, 2019-2020, 2020-2021 and/or 2021-2022) for certain school districts that cannot meet the minimum instructional hours because of safety and/or scheduling issues?

Reason(s) for Consideration

Review of policy.

Proposed Handling

The proposed amendment is presented to the P-12 Education Committee for recommendation and to the Full Board for adoption as a third emergency measure at the November 2019 meeting of the Board of Regents. A copy of the proposed rule and a statement of facts and circumstances justifying the emergency action are attached.

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Procedural History

A Notice of Emergency Adoption and Proposed Rulemaking was published in the State Register on July 31, 2019. Following the 60-day public comment period, the Department received one comment on the proposed amendment. An assessment of public comment is included as Attachment C. A second Notice of Emergency Adoption was published in the State Register on October 23, 2019. Supporting materials are available upon request to the Board of Regents.

Background Information

At its December 2017 meeting, the Department proposed an amendment to the regulation to eliminate the current daily minimum instructional hour requirement and replace it with an aggregate yearly requirement (i.e., 900/990 hours over 180 days for full-day kindergarten through grade six and grades seven through twelve, respectively), to provide school districts with additional flexibility when establishing their school calendars. The Board of Regents adopted the revised proposed regulation as a permanent rule at the September 2018 meeting.

Concerns have been raised by a small number of school districts that have indicated that due to safety issues and/or other scheduling challenges, they are unable to meet the minimum annual instructional hour requirements, the proposed amendment allows such school districts to apply to the Commissioner by November 15, 2019 for a waiver for up to four school years (2018-2019, 2019-2020, 2020-2021 and/or 2021-2022 school years); provided that such school district meets the following requirements:

- the school district must be in session for at least 180 school days in each school year, which shall include superintendent's conference days authorized under this section;
- the school district must attest that the annual instructional hours for the 2018-2019 and 2019-2020 school years will be at least equal to the annual instructional hours provided in the 2017-2018 school year and that in each subsequent year of the waiver the school district will demonstrate that the total number of its schools that are in compliance with the instructional hour requirements will increase annually by increments of no less than one-third (e.g. 33% of all schools in 2020-2021, 66% in 2021-2022, resulting in 100% compliance in 2022-2023);
- the school district must describe the safety and/or scheduling challenges that prevented the school district from complying with such requirements; and
- the school district must provide a plan to the Commissioner as to how it will comply with the instructional hour requirement in the 2022-2023 school year for all schools in the district.

The proposed amendment also provides that the Commissioner will post a list of school districts with approved waivers for the 2018-2019, 2019-2020, 2020-2021 and/or 2021-2022 school years on the Department's website and that all claims submitted by school districts for the payment of State aid for the 2019-2020 school year and thereafter shall include the total number of instructional hours, non-instructional hours, and session

days for each grade level in each school within the school district, and a completed calendar worksheet in a format prescribed by the commissioner for each such school within the school district.

During the waiver period, Department staff will work with school districts to identify and address any emerging issues, particularly those related to safety.

Related Regents Items

[December 2017](http://www.regents.nysed.gov/common/regents/files/1217p12d2.pdf) <http://www.regents.nysed.gov/common/regents/files/1217p12d2.pdf>

[April 2018](http://www.regents.nysed.gov/common/regents/files/418p12a5revised.pdf) <http://www.regents.nysed.gov/common/regents/files/418p12a5revised.pdf>

[June 2018](http://www.regents.nysed.gov/common/regents/files/618p12a4.pdf) <http://www.regents.nysed.gov/common/regents/files/618p12a4.pdf>

[September 2018](http://www.regents.nysed.gov/common/regents/files/918p12a5.pdf) <http://www.regents.nysed.gov/common/regents/files/918p12a5.pdf>

[July 2019](http://www.regents.nysed.gov/common/regents/files/719p12a5.pdf) <http://www.regents.nysed.gov/common/regents/files/719p12a5.pdf>

[October 2019](https://www.regents.nysed.gov/common/regents/files/1019brca9revised.pdf)

<https://www.regents.nysed.gov/common/regents/files/1019brca9revised.pdf>

Recommendation

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

VOTED: That section 175.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective December 7, 2019, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to provide schools districts with notice that if they cannot meet the minimum instructional requirements due to safety and/or scheduling issues they can apply to the Commissioner for a single waiver for up to four years of such requirements by November 15, 2019 and to ensure that the emergency rule adopted at the October 2019 meeting remains in effect until it can be adopted as a permanent rule.

Timetable for Implementation

If adopted at the November 2019 meeting, the proposed amendment will become effective as an emergency rule on December 7, 2019. It is anticipated that the proposed amendment will be adopted as a permanent rule at the December 2019 Regents meeting.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 305, 3602 and 3609-a.

New subdivisions (k) and (l) shall be added to section 175.5 of the Regulations of the Commissioner of Education to read as follows:

(k) All claims submitted by school districts in accordance with section 175.10 of this Part for the payment of State aid for the 2019-2020 school year and thereafter shall include the total number of instructional hours, non-instructional hours, and session days for each grade level in each school within the school district, and a completed calendar worksheet in a format prescribed by the commissioner for each such school within the school district.

(l) (1) Notwithstanding any other provision of this section to the contrary, certain school districts that have demonstrated a safety issue and/or other scheduling challenges that prevented them from complying with the annual instructional hour requirement set forth in subdivision (c) of this section in the 2018-2019 school year may apply to the Commissioner by November 15, 2019 for a single waiver for up to four school years from such requirement for the 2018-2019, 2019-2020, 2020-2021 and/or 2021-2022 school years; provided that such school district meets the following requirements:

(i) the school district must be in session for at least 180 school days in each school year, which shall include superintendent's conference days authorized under this section;

(ii) the school district must attest that the annual instructional hours for the 2018-2019 and 2019-2020 school years will be at least equal to the annual instructional hours

provided in the 2017-2018 school year and that for the 2020-2021 and 2021-2022 school years the school district will demonstrate that the total number of its schools that are in compliance with the instructional hour requirements will increase annually by increments of no less than one-third, resulting in full compliance in the 2022-2023 school year;

(iii) the school district must describe the safety and/or scheduling challenges that prevented the school district from complying with such requirements; and

(iv) the school district must provide a plan to the Commissioner as to how it will comply with the instructional hour requirement in the 2022-2023 school year for all schools in the district.

(2) The Commissioner will post a list of school districts with approved waivers for the 2018-2019, 2019-2020, 2020-2021 and/or 2021-2022 school years on the Department's website.

8 NYCRR §175.5

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The proposed amendment is necessary for the preservation of the general welfare to provide schools districts with notice that if they cannot meet the minimum instructional requirements due to safety and/or scheduling issues they can apply to the Commissioner for a single waiver for up to four school years of such requirements by November 15, 2019.

A first emergency rule was adopted at the July meeting and expired on October 13, 2019. A second emergency rule was adopted at the October meeting which will expire on December 6, 2019. A third emergency action at the November meeting is necessary to preserve the general welfare and to ensure that the proposed amendment will remain in effect until it can be permanently adopted at the December 2019 Regents meeting and to ensure that school districts are on notice that they must apply for the waiver by November 15, 2019.

ASSESSMENT OF PUBLIC COMMENT

COMMENT: Commenter continues to object to the Department's determination that passing time and homeroom may not count toward the annual instructional time hourly requirement.

RESPONSE: The comment is outside the scope of the proposed amendment and therefore, no response is necessary.

COMMENT: The commenter states that the waiver process contained in the emergency regulations is overly burdensome and requires school districts to notify the Department that they failed to comply with the instructional requirements in 2018-2019. The commenter requests a more streamlined process where school districts would attest that the district will be unable to fully comply with the new instructional time regulations due to safety or scheduling issues and the district promises to be in full compliance with the regulations by the 2022-2023 school year and that districts will meet the 180 day statutory requirement and that instructional hours during the waiver period will not be fewer than that provided in the 2017-2018 school year. A district that completes this attestation would receive an automatic waiver until 2022-23.

RESPONSE: The Department has considered the comment and believes that the current waiver process is streamlined and consistent with the regulatory requirements. Therefore, no change is warranted.