



**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:** Daniel Morton-Bentley  
**SUBJECT:** 2021 Regulatory Agenda  
**DATE:** December 3, 2020

**AUTHORIZATION(S):**

**SUMMARY**

**Issue for Decision (Consent)**

Should the Board of Regents approve the 2021 Regulatory Agenda?

**Reason(s) for Consideration**

Required by State statute.

**Proposed Handling**

The 2021 Regulatory Agenda will be presented to the Full Board for approval at the December 2020 Regents meeting.

**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 any January issue of the State Register. The 2021 Regulatory Agenda is a list and brief description of the subject matter of each rule the Department is considering proposing during 2021, but for which it has not yet submitted a Notice of Proposed Rule Making. SAPA §202-d(2) provides that nothing in the statute requires an agency to adopt a rule appearing in the regulatory agenda, or precludes an agency from adopting a rule which has not appeared in the regulatory agenda or from adopting a different rule from the one appearing in the regulatory agenda. If we do seek to adopt additional rules that were not included in the 2021 regulatory agenda, 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.

The 2021 Regulatory Agenda is a planning document required under SAPA §202-d and provides notice to the public on regulations that the agency knows it may propose in 2021. It is non-binding and does not commit the agency to adopting the listed regulations, nor does it preclude the agency from adopting regulations that are not on the list. Accordingly, Board of Regents approval of the Regulatory Agenda does not constitute approval of the listed regulations.

### **Recommendation**

VOTED: That the 2021 Regulatory Agenda for the State Education Department be approved, as submitted.

### **Timetable for Implementation**

The 2021 Regulatory Agenda will be published in the State Register on January 6, 2021.

STATE EDUCATION DEPARTMENT  
2021 REGULATORY AGENDA

Pursuant to section 202-d of the State Administrative Procedure Act, the State Education Department presents its regulatory agenda for calendar year 2021. 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 2021 Regulatory Agenda.

OFFICE OF P-12 EDUCATION

Amendment of section 100.2(i) of the Commissioner's Regulations to allow the reporting of complaints about the use of corporal punishment by BOCES, district or charter school personnel to be done once a year. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 100.2 (y)(3) to require that school districts, when notifying parents that students are not residents of the district, must, wherever practicable, specify which district they may be entitled to enroll in. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to Section 100.5 (b) to allow districts to develop and implement Arts and Health coursework and curriculum without the approval of the State Education Department. A regulatory flexibility analysis for local government and a rural flexibility analysis may be required.

Amendment of section 100.3 of the Commissioner's Regulations relating to the PreK-4 Program requirements to reflect the adoption of the new and revised Learning Standards. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4 of the Commissioner's Regulations relating to program requirements in grades 5-6 to reflect the adoption of the new and revised Learning Standards. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendments to section 100.2(l) of the Commissioner's Regulations relating to school conduct and discipline to address the topics of progressive discipline, restorative practices, and equity in school discipline. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendments to section 100.5(d)(8) regarding requirements for the award of make-up credit to include educational programs administered or supervised by a state agency. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendments to section 100.5(d)(9) regarding requirements for independent study to include educational programs administered or supervised by a state agency. 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 100.5(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 to section 100.10 (h) of the Commissioner's Regulations to expand and/or modify the list of annual assessments to be utilized by home instructed students. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Addition of section 100.22 of the Commissioner's Regulations relating to students in foster care. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 114.3 of the Commissioner's Regulations related to bidding exemptions for direct purchasing to include a board of cooperative educational services. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 117 of the Commissioner's Regulations relating to diagnostic screening for students who are new entrants, or who have low test scores in reading or mathematics. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 119.1 of the Commissioner's Regulations relating to financing of charter schools to correct a citation and address statutory changes. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 119.4 of the Commissioner's Regulations relating to the location and timelines for charter school hearings. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 119.5 of the Commissioner's Regulations relating to charter school preferences. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Addition of a new Part 123 of the Regulations of the Commissioner of Education relating to the requirements for a basic educational data system code for nonpublic school sites. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 125 of the Commissioner's Regulations relating to the requirements for the voluntary registration of nonpublic nursery schools and kindergartens. 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 the 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 Subpart 151-1 of the Commissioner's Regulations to consolidate and update the provisions governing the Universal Prekindergarten Program, consistent with statutory amendments and program implementation. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 155.12 of the Regulations of the Commissioner of Education relating to lease approval and building aid for leased school buildings and facilities by school districts. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 155.17 of the Regulations of the Commissioner of Education relating to annual training requirements for staff. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Repeal of section 155.22 of the Regulations of the Commissioner of Education relating to Qualified Zone Academy Bonds and Qualified School Construction Bonds. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 155.23 of the Regulations of the Commissioner of Education relating to multi-year cost allowance. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Addition of Section 175.14 of the Commissioner's Regulations Relating to the reimbursement for prekindergarten pupils under the McKinney-Vento Homeless Assistance Act

Amendment of sections 200.1(x), 200.5(j) and 200.16(h) of the Commissioner's Regulations relating to the impartial due process hearing procedures, including the provisions relating to prehearing conferences and impartial hearing officer qualifications and impartiality, and as may be necessary to conform to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.2 of the Regulations of the Commissioner of Education relating to least restrictive environment placements of students with disabilities. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of 200.5(l) of the Regulations of the Commissioner of Education relating to appeals of State complaint findings. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of sections 200.7 and 200.16 of the Commissioner's Regulations relating to preschool program approval for school districts, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural flexibility analysis may be required.

Amendment of sections 200.7(b) and 200.13 of the Commissioner's Regulations relating to length of school day. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Section 200.9 of the Commissioner's Regulations relating to tuition rates for approved special class integrated setting programs. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.16(i) of the Commissioner's Regulations relating to preschool continuum of services and preschool inclusion in early childhood programs. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.



Amendment of section 200.21(b) of the Commissioner's Regulations relating to procedures for the suspension or revocation of impartial hearing officer certification. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 3.16(c)(1) of the Rules of the Board of Regents to update delegation of authority with respect to the approval of changes to certain charter school revisions. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 3.17(a)(3) of the Rules of the Board of Regents to update the revocation proceeding and to allow the Board of Regents to appoint a representative to hear oral arguments on behalf of the Board of Regents and to make a determination in regard to such oral argument. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 3.17(a)(3) of the Rules of the Board of Regents to update the revocation proceeding to revoke the certificate of incorporation after the assets of the education corporations have been discharged. 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 any of the above proposed amendments by contacting:

Kimberly Young Wilkins

Deputy Commissioner for P12 Instructional Support

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## OFFICE OF HIGHER EDUCATION

Amendment of section 50.1 of the Commissioner's Regulations to include a definition of a remedial course and a compensatory course as needed under sections 6451 and 6452 of the Education Law. A rural area flexibility analysis and regulatory flexibility analysis may be required.

Amendment of Parts 50 and 52 of the Commissioner's Regulations concerning registration of undergraduate and graduate postsecondary curricula. A rural area flexibility analysis and regulatory flexibility analysis may be required.

Amendment of Parts 52 and 80 of the Commissioner's Regulations to require all prospective teachers to complete coursework on English Language Learner instructional needs, co-teaching strategies, and integrating language and content instruction for English Language Learners. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 53 of the Commissioner's Regulations concerning information for students and prospective students. A rural area flexibility analysis and regulatory flexibility analysis may be required.

Amendment of section 50.1(l) of the Commissioner's Regulations to revise the definition of "university." A rural area flexibility analysis and regulatory flexibility analysis may be required.

Amendment of Part 4 of the Rules of the Board of Regents concerning voluntary institutional accreditation for Title IV purposes, to align with federal requirements. A rural area flexibility analysis and regulatory flexibility analysis may be required.

Amendment of section 3.12(e) of the Rules of the Board of Regents concerning the composition of the institutional accreditation appeals board. A rural area flexibility analysis and regulatory flexibility analysis may be required.

Amendment of section 3.56 of the Rules of the Board of Regents concerning consent of the Board of Regents to operation in New York by institutions of higher education operating outside of New York to revise the definition of program, to clarify the terms concerning approval of additional programs, and to clarify the terms concerning the submission of new applications. A rural area flexibility analysis and regulatory flexibility analysis may be required.

Amendment of section 49-2 of the Commissioner's Regulations concerning approval of out-of-state post-secondary institutions to offer distance education to New York State residents to revise provisions concerning financial responsibility index score, waiver of eligibility requirements, and the timeframe by which an institution that has been disapproved, may reapply to the department. A rural area flexibility analysis and regulatory flexibility analysis may be required.

Amendment of section 52.2(f) of the Commissioner's Regulations specifying the academic content of a transcript prepared by an institution of higher education. A

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

Amendment of sections 52.21 and 80-3.7 of the Commissioner's Regulations relating to the content core requirement for the computer science certificate in teacher preparation programs and the individual evaluation pathway to certification. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 80-5.5 of the Commissioner's Regulations relating to the employment of retired employees and eligibility for section 211 waivers. A regulatory flexibility analysis and a rural flexibility analysis may be required.

Amendment of Part 135 of the Commissioner's Regulations to clarify the due process procedures relative to coaching licenses. A regulatory flexibility analysis and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations section 145-2.1(a)(iii) to provide a definition of remedial course(s). A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations section 145-2.2 to provide a definition of the term "the recognized equivalent of such certificate" as found in Education Law section 661(4)(f) for the purposes of determining eligibility for the NYS Tuition Assistance Program. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations section 145-2.15(b)(3) to clarify and establish jurisdiction over a student at the time of the completion of secondary

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

Amendment of Commissioner's Regulations section 145-2.15(b)(2) to clarify the federally approved ability to benefit test administration for the purposes of the NYS Tuition Assistance Program. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations section 152-1.2 to insert language concerning remedial, developmental, and compensatory courses. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations Section 152-1.1 to amend applications to clarify that each application shall include the provision of a summer program that shall occur at the beginning of the program year and to update obsolete processes and language. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations Section 153-3.4 to amend funding to clarify how the foster youth college success initiative funding awarded can be used. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations Part 50 and Part 54 to amend the definitions and procedures related to off-campus instruction and locations. 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 any of the above proposed amendments by contacting:

William P. Murphy

Deputy Commissioner for Higher Education

New York State Education Department

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#### OFFICE OF THE PROFESSIONS

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 Section 3.57 of the Regents Rules relating to the conferral of the degree of doctor of medicine (M.D.) by the Board of Regents to update the outdated regulation. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Parts 52-13 70 of the Commissioner's Regulations relating to the definitions of public accountancy, mandatory peer review program for firms, professional

education and experience requirements for licensure, the registration of curricula for accountancy, and continuing education requirements in the profession of public accountancy. 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 definitions of unprofessional conduct in the new profession of “registered pharmacy technicians” and special provisions for this profession. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 63 of the Commissioner’s Regulations to add a new profession entitled “registered pharmacy technicians,” to establish educational and other licensure requirements for registered pharmacy technicians and to protect the title “registered pharmacy technician.” A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment to section 52.14 and 73.1 of the Commissioner’s Regulations relating to the preprofessional educational admission requirements for colleges of chiropractic. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 70 of the Commissioner’s Regulations relating to the definitions of public accountancy and continuing education requirements in the profession of public accountancy. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 64 of the Commissioner’s Regulations relating to implementing statutory provisions that permit a registered professional nurse to execute

a standing order for newborn care in a hospital established under Public Health Law §2803-v, as provided in that section.

Amendment of Parts 52, 68.4, 68.6(a.) of the Commissioner's Regulations relating to implementing statutory provisions that update the education requirements for licensure as a land surveyor. 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 any of the above proposed amendments by contacting:

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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:

Lauren Moore

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

Amendment of Part 188 of the Commissioner's Regulations related to state government archives and records management to update the annual fees for storage of records in a records center facility. 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 any of the above proposed amendments by contacting:

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#### OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES (ACCES)

Amendments to Part 126 of the Commissioner's Regulations related to annual data collection and reporting, annual financial reporting, and standards for fiscal responsibility for Licensed Private Career Schools and for-profit English as Second Language schools licensed under this part. 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 modification or continuation of any of the above rules by contacting:

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## OFFICE OF MANAGEMENT SERVICES

Amendment of Parts 275 and 276 of the Commissioner's Regulations relating to appeals to the Commissioner. A regulatory flexibility analysis and/or a rural area flexibility analysis may be required.

### Agency Representative:

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