



**TO:** P-12 Education Committee

**FROM:** Kimberly Young Wilkins *Kimberly Young Wilkins*

**SUBJECT:** Proposed Amendment of Sections 100.4, 100.10 and 175.5 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis

**DATE:** March 10, 2021

**AUTHORIZATION(S):** *Tom M. G.* *John L. D'Agati* *Betty M.*

**SUMMARY**

**Issue for Decision**

Should the Board of Regents adopt the proposed amendment of sections 100.4, 100.10 and 175.5 of the Regulations of the Commissioner of Education relating to addressing the COVID-19 crisis?

**Reason(s) for Consideration**

Review of policy.

**Proposed Handling**

The proposed amendment will be presented to the P-12 Education Committee for discussion and to the Full Board for adoption as an emergency rule at its March 2021 meeting. A copy of the proposed rule is attached.

**Procedural History**

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on March 31, 2021. Supporting materials for the proposed rule are available upon request from the Secretary to the Board of Regents.

## **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. In response, the Department presented, and the Board of Regents voted to adopt, numerous emergency regulations to address issues resulting from interruptions caused by the COVID-19 crisis and to provide regulatory flexibility during the crisis. To address additional issues resulting from the interruptions caused by the COVID-19 crisis and to provide additional regulatory flexibility, the Department is proposing further emergency regulatory amendments as follows:

- Annual Home Instruction Assessment
  - At its May 2020 meeting, the Board of Regents adopted, as an emergency measure, amendments to the Commissioner's regulations providing an exemption to State assessment diploma requirements where students meet certain criteria due to the COVID-19 crisis. In order to provide flexibility during the COVID-19 crisis and to provide parity for students who receive home instruction, the Board adopted, as an emergency measure at its June 2020 meeting and as a permanent rule at its February 2021 meeting, amendments to section 100.10(h) of the Commissioner's regulations providing that for the 2019-2020 school year, students who receive home instruction are exempted from the annual assessment and alternative evaluation requirements where they otherwise achieve the learning outcomes in accordance with their individualized home instruction plan (IHIP).
  - At its March 2021 meeting, the Board of Regents will vote to adopt proposed regulatory amendments to extend the State assessment diploma requirements exemptions through the 2020-2021 school year due to the ongoing COVID-19 crisis. Therefore, the Department proposes to amend section 100.10(h)(2-a) of the Commissioner's regulations to extend the 2019-2020 home instruction annual assessment and alternative evaluation requirements exemption to the 2020-2021 school year to provide additional flexibility during the COVID-19 crisis and to provide parity to students receiving home instruction (Attachment A #1).
- Annual Instructional Hour Waiver
  - At its February meeting, the Board of Regents voted to permanently adopt amendments to section 175.5 of the Commissioner's regulations to provide that for the 2019-2020 and 2020-2021 school years, school districts may be eligible for a waiver of the annual instructional hour requirement if the school district is unable to meet such requirement due to an Executive Order(s) of the Governor pursuant to the State of emergency declared for the COVID-

19 crisis, or pursuant to Education Law §3604(8), or due to reopening procedures implemented as a result of the COVID-19 crisis, provided that the district meets certain prescribed requirements.

- The Department now proposes to amend section 175.5(n) of the Commissioner's regulations to remove the requirement that, in order to receive the waiver described above, school districts 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. Additionally, the Department proposes to make a technical correction to such section to replace the reference to Education Law §3604(8) with a reference to Education Law §3604(7) (Attachment A #2).
- Grade 8 acceleration for diploma credit
  - Due to the COVID-19 crisis, the Department has adopted emergency regulations amending section 100.5 of the Commissioner's regulations providing for an exemption for the diploma requirements associated with Regents examinations and other assessments. Additionally, the Department has adopted emergency regulations amending section 100.4 of the Commissioner's regulations providing that for the 2019-2020 school year, 2020 summer school session, 2020-2021 school year and 2021 summer school session, where a principal, in consultation with relevant faculty, determines that a student has met the standards assessed in the provided coursework leading to the checkpoint A locally developed world language test, the district may choose to waive the test requirement and grant such student one unit of credit. Therefore, the Department proposes to amend section 100.4(d) of the Commissioner's regulations to provide that credit for an accelerated course in grade 8 may be awarded where a student passes the course and has been exempted from the associated Regents examination and/or checkpoint A locally developed world language test. Additionally, section 100.4(d) is amended to remove outdated assessment references (Attachment A #3).

### **Related Regents Items**

April 2020: [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)  
(<https://www.regents.nysed.gov/common/regents/files/420bra6.pdf>)

May 2020: [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)  
(<https://www.regents.nysed.gov/common/regents/files/520bra9-REVISED.pdf>)

May 2020: [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)  
(<https://www.regents.nysed.gov/common/regents/files/520bra10.pdf>)

June 2020: [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)  
(<https://www.regents.nysed.gov/common/regents/files/620bra10.pdf>)

June 2020: [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)  
(<https://www.regents.nysed.gov/common/regents/files/620bra11.pdf>)

June 2020: [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)  
(<https://www.regents.nysed.gov/common/regents/files/620bra12.pdf>)

July 2020: [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/720bra7.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/720bra7.pdf>)

July 2020: [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/720bra5.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/720bra5.pdf>)

July 2020: [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, and 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/720brca13.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/720brca13.pdf>)

July 2020: [Proposed Amendments to Sections 80-5.3, 80-5.4, 100.1, 100.2, 100.5, 100.6, 100.10, 117.3, 136.3, 145-2.1, 151-1.3, 154-2.2, 154-2.3, and 200.4 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](#)  
(<https://www.regents.nysed.gov/common/regents/files/720bra8revised.pdf>)

September 2020: [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, 801.13, 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, 1542.3, 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/920bra6.pdf>)

September 2020: [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/920bra3.pdf>)

September 2020: [Proposed Amendments to Sections 80-5.3, 80-5.4, 100.1, 100.2, 100.5, 100.6, 100.10, 117.3, 136.3, 145-2.1, 151-1.3, 154-2.2, 154-2.3, 156.3, and 200.4 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](#)  
(<https://www.regents.nysed.gov/common/regents/files/920bra8.pdf>)

September 2020: [Proposed Amendments to Sections 52.21, 79-8.5, 100.5, and 154-2.3 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](#)  
(<https://www.regents.nysed.gov/common/regents/files/920bra7revised.pdf>)

September 2020: [Proposed Amendments to Sections 60.10, 80-1.2, 80-4.3, 804.4, 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/920brca3.pdf>)

October 2020: [Proposed Amendments to Sections 125.1, 135.4, and 52.21 of the Regulations of the Commissioner of Education and Section 30-3.2 of the Rules of the Board of Regents Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](#)  
(<https://www.regents.nysed.gov/common/regents/files/1020bra3.pdf>)

October 2020: [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/1020bra5revised.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1020bra5revised.pdf>)

October 2020: [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/1020bra4.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1020bra4.pdf>)

October 2020: [Proposed Amendments to Sections 80-5.3, 80-5.4, 100.1, 100.2, 100.5, 100.6, 100.10, 117.3, 136.3, 145-2.1, 151-1.3, 154-2.2, 154-2.3, 156.3, and 200.4 of the Regulations of the Commissioner of Education Relating to Addressing the COVID19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/1020brca5.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1020brca5.pdf>)

November 2020: [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 279.15 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/1120bra3.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1120bra3.pdf>)

November 2020: [Proposed Amendments to Sections 52.21, 79-8.5, 100.5, and 154-2.3 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/1120brca2.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1120brca2.pdf>)

December 2020: [Proposed Amendments to Sections 80-5.3, 80-5.4, 100.1, 100.2, 100.5, 100.6, 100.10, 117.3, 136.3, 145-2.1, 151-1.3, 154-2.2, 154-2.3, 156.3, and 200.4 of the Regulations of the Commissioner of Education Relating to Addressing the COVID19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/1220brca7.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1220brca7.pdf>)

December 2020: [Proposed Amendments to Sections 52.21, 79-8.5, 100.5, and 154-2.3 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/1220brca6.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1220brca6.pdf>)

December 2020: [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 the 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/1220bra4.pdf)

(<https://www.regents.nysed.gov/common/regents/files/1220bra4.pdf>)

December 2020: [Proposed Amendments to Sections 155.17\(f\) and 100.5\(a\) of the Regulations of the Commissioner of Education and Section 30-3.16 of the Rules of the Board of Regents Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/1220bra3.pdf)

(<https://www.regents.nysed.gov/common/regents/files/1220bra3.pdf>)

January 2021: [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, 801.13, 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, 1542.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and Addition of Section 279.15 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/121brca3.pdf)

(<https://www.regents.nysed.gov/common/regents/files/121brca3.pdf>)

February 2021: [Proposed Amendments to Sections 52.21, 80-3.14, and 80-3.7 of the Regulations of the Commissioner of Education and Section 30-1.2 of the Rules of the Board of Regents Relating to Providing Flexibility Relating to Student Teaching, Individual Evaluation Pathway to Certification, Accreditation, and the Computer Science Tenure Area and Statement of Continued Eligibility in Response to the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/221hea1.pdf)

(<https://www.regents.nysed.gov/common/regents/files/221hea1.pdf>)

February 2021: [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 the 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/221brca5.pdf)

(<https://www.regents.nysed.gov/common/regents/files/221brca5.pdf>)

February 2021: [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, 801.13, 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, 1542.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and Addition of Section 279.15 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/221brca6.pdf)

(<https://www.regents.nysed.gov/common/regents/files/221brca6.pdf>)

## **Recommendation**

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

VOTED: That sections 100.4, 100.10 and 175.5 of the Regulations of the Commissioner of Education be amended, as submitted, as an emergency measure, effective March 16, 2021, upon a finding by the Board of Regents that such action is necessary for the preservation of the public health and the general welfare in order to immediately provide flexibility for certain regulatory requirements in response to the COVID-19 crisis.

### **Timetable for Implementation**

If adopted as an emergency rule at the March 2021 Regents meeting, the proposed amendment will become effective as an emergency rule on March 16, 2021. It is anticipated that the proposed amendment will be presented for permanent adoption at the July 2021 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. Because the emergency action will expire before the June 2021 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the June 2021 Regents meeting. If adopted at the July 2021 meeting, the proposed amendment will become effective as a permanent rule on July 28, 2021.



**Attachment A**

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 209, 305, 1704, 3204, 3205, 3210, 3212, 3602, and 3604 of the Education Law.

1. Paragraph (2-a) of subdivision (h) of section 100.10 of the Regulations of the Commissioner of Education is amended to read as follow:

(2-a) Due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis, students shall be exempt from the annual assessment and alternative evaluation requirements of this subdivision for the 2019-20 and 2020-21 school [year] years where a student otherwise achieves the learning outcomes in accordance with their IHIP.

2. Paragraph (2) of subdivision (n) of section 175.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(2) For the 2019-20 and 2020-21 school years, notwithstanding any other provision of this section to the contrary, any school district may be eligible for a waiver from the annual instructional hour requirement set forth in subdivision (c) of this section if the district is unable to meet such requirement as a result of an Executive Order(s) of the Governor pursuant to the State of emergency declared for the COVID-19 crisis, or pursuant to Education Law § [3604(8)] 3604(7), as amended by Chapter 107 of the Laws of 2020, or reopening procedures implemented as a result of the COVID-19 crisis, provided that such district meets the requirements outlined in subparagraphs (i)[,] and (iii)[, and (iv)] of paragraph (1) of subdivision (m) of this section.

3. Subdivision (d) of section 100.4 of the Regulations of the Commissioner of Education is amended to read as follows:

(d) *Grade 8 acceleration for diploma credit.*

(1) Public school students in grade 8 shall have the opportunity to take high school courses in mathematics and in at least one of the following areas: English, social studies, languages other than English, art, music, career and technical education subjects or science courses.

(2) Credit may be awarded for an accelerated course only when at least one of the following conditions has been met:

(i) accelerated students attend classes in a high school with high school students and pass the course on the same basis as the high school students. Credit is awarded by the high school; or

(ii) the student passes the course and the associated [State proficiency examination] checkpoint A locally developed world language test or Regents examination, when available, provided, however that a student shall be awarded credit for an accelerated course where such student passes the course and has been exempted from the associated Regents examination pursuant to paragraph (iv) of subdivision (a) of section 100.5 of this Part or from the associated checkpoint A locally developed world language test pursuant to paragraph (5) of subdivision (d) of section 100.2 of this Part due to the COVID-19 crisis. The credit must be accepted as a transfer credit by all registered New York State high schools; or

(iii) in cases where no appropriate state assessment is available, the student passes a course in the middle, junior high or intermediate school that has been

approved for high school credit by the public school district superintendent(s), or his or her designee(s), or the district(s) where the middle, junior high or intermediate school and the high school are located.

(3) Such opportunity shall be provided subject to the following conditions:

(i) The superintendent, or his or her designee, shall determine whether a student has demonstrated readiness in each subject in which he or she asks to begin high school courses in the eighth grade leading to a diploma.

(ii) A student shall be awarded high school credit for such courses only if such student passes a Regents examination, a [second language proficiency examination when available] checkpoint A locally developed test, [or a career and technical education proficiency examination,] or, if no such examinations are available, a locally developed examination that establishes student performance at a high school level as determined by the principal, provided, however, that a student need not pass such an examination where the student has been exempted from a Regents examination pursuant to paragraph (iv) of subdivision (a) of section 100.5 of this Part or from a checkpoint A locally developed world language test pursuant to paragraph (5) of subdivision (d) of section 100.2 of this Part due to the COVID-19 crisis.

(4) Courses taken pursuant to this subdivision may be substituted for the appropriate requirements set forth in subdivision (c) of this section.

STATEMENT OF FACTS AND CIRCUMSTANCES  
WHICH NECESSITATE EMERGENCY 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. In response, the Department presented, and the Board of Regents adopted, numerous emergency regulations to address issues resulting from interruptions caused by the COVID-19 crisis and to provide regulatory flexibility during the crisis. To address additional issues resulting from the interruptions caused by the COVID-19 crisis and to provide additional regulatory flexibility, the Department is proposing further emergency regulatory amendments as follows:

- Annual Home Instruction Assessment
  - The Department proposes to amend section 100.10(h)(2-a) of the Commissioner's regulations to extend the 2019-2020 home instruction annual assessment and alternative evaluation requirements exemption to the 2020-2021 school year to provide additional flexibility during the COVID-19 crisis and to provide parity to students receiving home instruction.
- Annual Instructional Hour Waiver
  - The Department proposes to amend section 175.5(n) of the Commissioner's regulations to remove the requirement that, in order to receive the annual instructional hour waiver described in such section,

school districts 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. Additionally, the Department proposes to make a technical correction to such section to replace the reference to Education Law §3604(8) with a reference to Education Law §3604(7).

- Grade 8 acceleration for diploma credit
  - Due to the COVID-19 crisis, the Department has adopted emergency regulations amending section 100.5 of the Commissioner’s regulations providing for an exemption for the diploma requirements associated with Regents examinations and other assessments. Additionally, the Department has adopted emergency regulations amending section 100.4 of the Commissioner’s regulations providing that for the 2019-2020 school year, 2020 summer school session, 2020-2021 school year and 2021 summer school session, where a principal, in consultation with relevant faculty, determines that a student has met the standards assessed in the provided coursework leading to the checkpoint A locally developed world language test, the district may choose to waive the test requirement and grant such student one unit of credit. Therefore, the Department proposes to amend section 100.4(d) of the Commissioner’s regulations to provide that credit for an accelerated course in grade 8 may be awarded where a student passes the course and has been exempted from the associated Regents examination and/or checkpoint A locally developed world language test.

Additionally, section 100.4(d) is amended to remove outdated assessment references (Attachment A #3).

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendments could be presented for regular (nonemergency) adoption, after publication in the State Register and expiration of the 60-day public comment period required in sections 201(1) and (5) of the State Administrative Procedure Act (SAPA) is the July 2021 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the July meeting, would be July 28, 2021, the date the Notice of Adoption would be published in the State Register.

Therefore, because the COVID-19 crisis is presently affecting the State of New York, emergency action is necessary at the March 2021 meeting for the preservation of the public health and general welfare in order to immediately provide flexibility for certain regulatory requirements in response to the COVID-19 crisis.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the July 2021 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rule making. Because the emergency action will expire before the June 2021 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the June 2021 Regents meeting.