



**TO:** The Honorable the Members of the Board of Regents

**FROM:** William P. Murphy *William Murphy*

**SUBJECT:** Proposed Amendment of Section 80-1.8 of the Regulations of the Commissioner of Education Relating to the Requirements for the Reissuance of an Initial Certificate

**DATE:** March 3, 2022

**AUTHORIZATION(S):** *Donna Bell*

### **SUMMARY**

#### **Issue for Decision (Consent)**

Should the Board of Regents adopt the proposed amendment of section 80-1.8 of the Regulations of the Commissioner of Education relating to the requirements for the reissuance of an Initial certificate?

#### **Reason(s) for Consideration**

Review of policy.

#### **Proposed Handling**

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at its March 2022 meeting. A copy of the proposed amendment is attached (Attachment A), as well as a statement of facts and circumstances justifying emergency action (Attachment B).

#### **Procedural History**

The proposed amendment was presented to the Higher Education Committee for discussion at its December 2021 meeting and a Notice of Proposed Rule Making was published in the State Register on December 29, 2021, for a 60-day public comment period. A revised proposed amendment was presented to the Higher Education Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at its January 2022 meeting. A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on January 26, 2022 for a 45-day public comment period.

Because the January emergency action will expire on April 10, 2022, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the April 2022 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on April 27, 2022. Supporting materials are available upon request from the Secretary to the Board of Regents.

### **Background Information**

The Initial certificate is an entry-level certificate for classroom teachers and school building leaders and is valid for five years. Initial certificate holders are expected to progress to a Professional certificate within the five-year period by completing all of the requirements for Professional certification. One of these requirements is the completion of three years of experience (or its equivalent). Some candidates, however, are unable to complete this requirement within the time frame.

The reissuance of an Initial certificate is available for classroom teachers and school building leaders who have not been able to complete at least three years of acceptable experience (or its equivalent) for the Professional certificate and is valid for five years. The two requirements for the reissuance are (8 NYCRR 80-1.8(a)):

- Pass the certification exam(s) in the area(s) required for the certificate sought, which must be taken within one year before or after the application date of the Initial Reissuance.
- Complete 50 clock hours of acceptable continuing teacher and leader education (CTLE) and/or professional learning within one year before or after the application date of the Initial Reissuance.

The requirement of 50 clock hours of CTLE and/or professional learning has proved to be an impediment to obtaining the reissuance of the Initial certificate in two respects. First, candidates who hold a valid or expired Initial certificate are not required to complete CTLE required by section 3006-a of the Education Law. Second, candidates with an expired Initial certificate do not have access to the same CTLE and professional learning opportunities as educators who are currently employed by school districts or Boards of Cooperative Educational Services (BOCES). Districts and BOCES provide opportunities for educators to complete professional learning, including CTLE, as part of their professional learning plans. Thus, candidates with an expired Initial certificate may need to seek other ways to complete CTLE or professional learning for the reissuance of their Initial certificate.

The Department is therefore proposing to remove the requirement that these candidates complete 50 clock hours of CTLE and/or professional learning to obtain a reissuance of their Initial certificate. These candidates would still be required to demonstrate current content knowledge by passing the certification exam(s) in the area(s) required for the certificate sought.

In addition, the Department is proposing to add the school counselor assessment to the list of acceptable assessments that candidates must pass and take within one year before or after the application date of the Initial Reissuance. This assessment needs to be added because individuals who receive the Initial School Counselor certificate on or after February 2, 2023 would take this assessment for the reissuance of their Initial certificate.

### **Proposed Revisions Presented at the January 2022 Regents Meeting**

At its December 2021 meeting, the Board of Regents permanently adopted regulatory amendments extending the validity period of the Emergency COVID-19 certificate from one year to two years. This extension gives candidates two years to take and pass the exams required for the certificate sought. Therefore, classroom teachers and school building leaders who obtain the Emergency COVID-19 Initial Reissuance certificate have two years to take and pass the certification exam(s) in the area(s) required for the reissuance of their Initial certificate. However, section 80-1.8 of the Commissioner's regulations only provides candidates one year before or after the submission of their application for the reissuance of the Initial certificate to take such certification exam(s).

The Department has learned that some candidates who received the Emergency COVID-19 Initial Reissuance certificate took the certification exam(s) in the area(s) required for the certificate sought more than one year after they submitted their application for the Initial Reissuance, but during the two-year validity period of their Emergency COVID-19 certificate.

To hold these candidates harmless, the Department is proposing to amend section 80-1.8 of the Commissioner's regulations to allow candidates to take the certification exam(s) in the area(s) required for the certificate sought during the validity period of the Emergency COVID-19 certificate, provided the Emergency COVID-19 certificate is held in the same certificate title of the reissuance sought. This proposal enables these candidates to take the required exam(s) during the full two-year validity period of the Emergency COVID-19 certificate.

### **Related Regents Items**

January 2022: [Proposed Amendment to Section 80-1.8 of the Regulations of the Commissioner of Education Relating to the Requirements for the Reissuance of an Initial Certificate](#)

(<https://www.regents.nysed.gov/common/regents/files/122hea2.pdf>)

December 2021: [Proposed Amendment 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/1221brca4.pdf>)

December 2021: [Proposed Amendment to Section 80-1.8 of the Regulations of the Commissioner of Education Relating to the Requirements for the Reissuance of an Initial Certificate](#)

(<https://www.regents.nysed.gov/common/regents/files/1221hed1.pdf>)

December 2019: [Proposed Amendments to Sections 52.21, 57-2, 75.8, 80-1, 80-2, 80-3, 80-5, 80-6, 90.18, 100.2, 100.13, 100.15, 100.17, 100.19, 151-1, 154-2, and 200.2 of the Regulations of the Commissioner of Education and 30-1, 30-2, and 30-3 of the Rules of the Board of Regents Relating to Professional Development Plans and Other Related Requirements for School Districts and BOCES](#)

(<https://www.regents.nysed.gov/common/regents/files/1219brca3.pdf>)

July 2019: [Proposed Amendments to Sections 52.21, 80-2.1, 80-3.1, 80-3.11, 80-3.12 and 80-5.23 and the Titles of Subparts 80- 2 and 80-3 of the Commissioner's Regulations Relating to School Counseling Program Registration, School Counselor Certification Requirements, and a One-Year Time Extension for Institutions of Higher Education to Meet the New Program Registration Requirements](#)

(<http://www.regents.nysed.gov/common/regents/files/719brca1.pdf>)

May 2017: [Proposed Amendment of Sections 52.21, 100.2\(j\) and Part 80 of the Commissioner's Regulations Relating to School Counseling, Certification Requirements for School Counselors and Program Registration Requirements for School Counseling Preparation Programs](#)

(<https://www.regents.nysed.gov/common/regents/files/517brca14.pdf>)

April 2017: [Proposed Amendment of Sections 80-1.8 and 80-5.18 of the Commissioner's Regulations Related to the Requirements for the Reissuance of an Expired Initial Certificate and Requirements for a Supplementary Certificate](#)

([https://www.regents.nysed.gov/common/regents/files/417brca1\\_0.pdf](https://www.regents.nysed.gov/common/regents/files/417brca1_0.pdf))

January 2013: [Proposed Amendments to the Regulations of the Commissioner of Education Relating to Renewals of Provisional Certificates and Reissuances of Initial Certificates](#)

(<https://www.regents.nysed.gov/common/regents/files/113hea2%5B1%5D.pdf>)

### **Recommendation**

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

VOTED: That section 80-1.8 of the Regulations of the Commissioner of Education be amended, as submitted, as an emergency measure, effective April 11, 2022, upon a finding by the Board of Regents that such action is necessary for the preservation of general welfare to immediately allow candidates to take the exam(s) required for the reissuance of their Initial certificate during the validity period of their Emergency COVID-19 certificate until the proposed rule can be permanently adopted

and to ensure that the emergency action taken at the January 2022 meeting remains continuously in effect.

### **Timetable for Implementation**

If adopted as an emergency rule at the March 2022 Regents meeting, the proposed rule will become effective April 11, 2022. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the April 2022 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 45-day public comment period required under the State Administrative Procedure Act for revised rule makings. If adopted at the April 2022 meeting, the proposed amendment will become effective on April 27, 2022.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 14, 101, 207, 208, 305, 308, 3001, 3004 and 3009 of the Education Law.

1. Subdivision (a) of section 80-1.8 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(a) The holder of an initial certificate whose certificate has expired and who has not successfully completed three school years of [teaching] experience, or its equivalent, as is required for a professional certificate, shall be reissued an initial certificate on one occasion only, for a period of five years from the date of reissuance.

(1) Candidates applying for a reissuance shall [meet the requirements in the following paragraphs:

(i) The candidate shall have successfully completed 50 clock hours of acceptable continuing teacher and leader education (CTLE), professional learning (PL), and/or a combination thereof. Such PL and/or CTLE shall be completed within one year prior to the department's receipt of a completed application or within one year after the department's receipt of such completed application for the reissuance of the initial certificate. The definition of acceptable PL and the measurement of PL study shall be that defined in section 100.2(dd) of this Title and the definition of acceptable CTLE and the measurement of CTLE shall be that prescribed in Subpart 80-6 of this Part.

(ii) The candidate shall] submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination content specialty test(s) in the area required for the certificate sought[ or, where applicable], the

New York State assessment [for school building leadership] required for a certificate as a school building leader, or the New York State assessment required for a certificate as a school counselor, which shall be taken within one year prior to or one year after the department's receipt of a completed application [or within one year after the department's receipt of such completed application] for the reissuance of the initial certificate or during the validity period of the Emergency COVID-19 certificate, provided such certificate is held in the same certificate title of the reissuance sought.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ACTION

At its December 2021 meeting, the Board of Regents permanently adopted regulatory amendments extending the validity period of the Emergency COVID-19 certificate from one year to two years. This extension gives candidates two years to take and pass the exams required for the certificate sought. Therefore, classroom teachers and school building leaders who obtain the Emergency COVID-19 Initial Reissuance certificate have two years to take and pass the certification exam(s) in the area(s) required for the reissuance of their Initial certificate. However, section 80-1.8 of the Commissioner's regulations only provides candidates one year before or after the submission of their application for the reissuance of the Initial certificate to take such certification exam(s).

The Department has learned that some candidates who received the Emergency COVID-19 Initial Reissuance certificate took the certification exam(s) in the area(s) required for the certificate sought more than one year after they submitted their application for the Initial Reissuance, but during the two-year validity period of their Emergency COVID-19 certificate.

To hold these candidates harmless, the Department is proposing to amend section 80-1.8 of the Commissioner's regulations to allow candidates to take the certification exam(s) in the area(s) required for the certificate sought during the validity period of the Emergency COVID-19 certificate, provided the Emergency COVID-19 certificate is held in the same certificate title of the reissuance sought. This proposal



enables these candidates to take the required exam(s) during the full two-year validity period of the Emergency COVID-19 certificate.

The revised proposed amendment was presented to the Higher Education Committee for recommendation to the Full Board for adoption as an emergency rule at the January 2022 meeting of the Board of Regents, effective January 11, 2021. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) action after expiration of the 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the April 2022 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the April meeting, would be April 27, 2022, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on April 10, 2022. Therefore, a second emergency action is necessary at the March 2022 meeting for the preservation of the general welfare to immediately allow candidates to take the exam(s) required for the reissuance of their Initial certificate during the validity period of their Emergency COVID-19 certificate, and to ensure that the emergency action taken at the January 2022 meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at its April 2022 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by SAPA for State agency rule making.