




TO: The Honorable Members of the Board of Regents

FROM: Shannon L. Tahoe

SUBJECT: 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

DATE: June 3, 2020

AUTHORIZATION(S):  *Shannon L. Tahoe*

SUMMARY

Issue for Decision

Should the Board of Regents adopt the 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?

Reason for Consideration

Review of Policy.

Proposed Handling

The revised proposed amendment will be presented to the Full Board for adoption as an emergency rule at the June 2020 meeting of the Board of Regents. 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

A Notice of Proposed Rule Making was published in the State Register on May 20, 2020. To date the Department has received two comments on the proposed regulation

(Assessment of Public Comment is included as Attachment C). The Department has determined that no revisions are necessary in response to public comment at this time. The Department, however, has revised the proposed amendment to provide clarification and additional flexibility relating to the Emergency COVID-19 certificate. A Notice of Emergency Adoption and Revised Rule Making will be published in the State Register on June 24, 2020. Supporting materials are available

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 and directing nonessential work personnel to work from home. In response, the Department adopted emergency regulations at the April 2020 Board of Regents Meeting 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, the Department is proposing further emergency regulatory amendments as follows:

- Professions
 - Section 60.6 is amended to permit the Department, at its discretion, to renew limited permits in medicine for one additional 24-month period (Attachment A #1)
 - Section 61.19(b) is amended to permit the Department to accept alternative means to be used by dentists and dental hygienists to obtain and/or maintain the required certification in cardiopulmonary resuscitation other than through an in-person course during the COVID-19 crisis (Attachment A #2).
- Receivership
 - Section 100.19 is amended to provide that: (1) the Commissioner shall not use 2019-20 school year results to newly identify any schools as struggling, place any schools under independent receivership, or remove the designation of any schools as struggling or persistently struggling; (2) all schools identified as persistently struggling or struggling schools for the 2019-20 school year shall 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 shall continue to operate under a school district superintendent receiver in the 2020-21 school year; and (3) the Commissioner may, upon a finding of good cause, modify for the 2019-20 through 2021-22 school years any timelines pertaining to notifications, plans, reports, or implementation of activities required by such section, except for any timelines prescribed by law (Attachment A #3).

- Higher Education
 - Section 80-3.7 is amended to allow any undergraduate or graduate level course completed during the spring, summer, or fall 2020 terms 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. The passing grade, or its equivalent, must be in accordance with the pass/fail grading policy, or its equivalent, at the institution of higher education (e.g., credit/no credit, pass/fail, satisfactory/unsatisfactory policy) (Attachment A #4).
 - Section 80-1.2(b) is amended to extend the expiration date of the Initial certificate, Initial Reissuance, Provisional certificate, and Provisional Renewal from August 31, 2020 to January 31, 2021 to provide candidates with the time needed to work in schools and complete the requirements for the Professional or Permanent certificate. Additionally, such section is amended to extend the expiration date of the Conditional Initial certificate from August 31, 2020 to August 31, 2021 to provide candidates with the time needed to complete the edTPA, which requires working with students. An additional year gives candidates the time to establish a relationship with students, teach lessons and assess student learning, and prepare the edTPA submission once classroom routines are more consistent after the COVID-19 crisis (Attachment A #5).
 - Section 80-5.27 is added to create an Emergency COVID-19 certificate for candidates seeking certain certificates and extensions because there is limited test center availability and schools have been closed pursuant to Executive Order(s) of the Governor due to the COVID-19 crisis. This certificate would be valid for one year and could be renewed one time for an additional year with letter(s) of recommendation from school, district, and/or BOCES administrators. Candidates must apply for the certificate or extension on or before September 1, 2020. They must also apply for the Emergency COVID-19 certificate, in the same certificate title as the certificate or extension applied for, on or before September 1, 2020. To earn the Emergency COVID-19 certificate, candidates must have completed all requirements for the certificate or extension applied for, other than the examination requirement(s), on or before September 1, 2020 (Attachment A # 6).
 - Section 52.21(c) is amended to exempt school district leader (SDL) and school business leader (SDBL) candidates from taking and passing the SDL and SDBL assessment, respectively, for program completion and for the institutional recommendation for the Professional certificate, if they completed all program requirements except the assessment requirement during the Fall 2019, Winter 2020, Spring 2020, or Summer 2020 terms. The exemption enables these candidates to complete their program while there is limited test center availability due to the COVID-19 crisis and receive institutional recommendation for Professional certification, which would be needed to pursue the proposed Emergency COVID-19 certificate. The candidates would need to take and pass the SDL and SDBL

assessment to earn Professional SDL and SDBL certification, respectively (Attachment A #'s 7 and 9).

- Section 52.21(c) is also amended to exempt candidates admitted to Transitional D programs leading to school district leader certification from taking and passing the SDL assessment for the institutional recommendation for the Transitional D certificate, if they completed all requirements for admitted candidates except the assessment requirement on or before September 1, 2020. The exemption enables Transitional D candidates to receive institutional recommendation for Transitional D certification while there is limited test center availability due to the COVID-19 crisis, which would be needed to pursue the proposed Emergency COVID-19 certificate. The candidates would need to take and pass the SDL assessment to earn Transitional D certification (Attachment A #8).
- Early Learning
 - Section 151-1.3(b) is amended to waive the requirement that school districts must annually monitor and track prekindergarten program effectiveness for the 2019-2020 school year and to waive the annual report of the percentage of prekindergarten children making significant gains for the 2019-2020 school year (Attachment A #10).
- Alternative High School Equivalency Program (“AHSEP”)
 - Section 100.7 is amended to provide an extension to the June 30 application deadline for alternative high school equivalency preparation programs to be operated during the 2020-2021 school year (Attachment A #11).
- Curriculum and Instruction
 - Section 100.1 is amended to provide that a unit of credit may be earned where a student has not completed a unit of study due to the COVID-19 crisis but has otherwise achieved the standards assessed in the provided coursework (Attachment A #12);
 - Sections 100.2 and 100.5 are amended to provide an exemption to the Regents examination, pathway assessment, alternative assessment, technical assessment, and locally developed test requirements during the COVID-19 crisis so that students are still able to meet their diploma requirements since the June 2020 and August 2020 Regents examinations have been canceled. (Attachment A #'s 13 and 15-21);
 - Section 100.4 is amended to make a technical citation correction (Attachment A #14);
 - Section 100.6 is amended to exempt students from the requirements for the career development and occupational studies commencement credential (“CDOS”) provided that the student is otherwise eligible to exit from high school and has otherwise demonstrated knowledge and skills relating to the CDOS learning standards (Attachment A #22); and

- Section 100.7 is amended to provide an exemption from the sub-tests of the general comprehensive examination requirements for a high school equivalency diploma where students meet certain criteria (Attachment A #23).

Proposed Revisions

In order to provide additional flexibility for regulatory requirements relating to the Emergency COVID-19 certificate, the Department is proposing to revise the proposed amendments made to section 80-5.27 (Attachment A #6) establishing the Emergency COVID-19 certificate as follows:

- The amendment is revised to add certificate titles for the Emergency COVID-19 certificate and clarify that the application date for the Emergency COVID-19 certificate is on or before September 1, 2020.
- Additionally, the amendment is revised to expand the options for earning the Emergency COVID-19 certificate to candidates who applied for certain extensions and annotations and hold an appropriate valid emergency COVID-19 base certificate at the time of the application evaluation.

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

Recommendation

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

VOTED: That Sections 52.21, 60.6, 61.19(b), 80-3.7, 80-1.2(b), 151-1.3(b), 100.1, 100.2, 100.4, 100.5, 100.6, 100.7, 100.19 and 151-1.3 be amended and a new section 80-5.27 be added, as submitted, as an emergency measure, effective June 9, 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.

Timetable for Implementation

If adopted as an emergency measure at the June 2020 Regents meeting, the proposed amendment will become effective as an emergency rule on June 9, 2020. It is anticipated that the proposed amendment will be presented for permanent adoption at the September 2020 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. If adopted at the September 2020 meeting, the proposed rule will become effective on September 30, 2020. Because the emergency adoption will expire before the September 2020 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the July Regents meeting.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 209, 210, 211-f, 214, 215, 305, 3001, 3004, 3009, 3204, 3205, 3602, 3602-e, 3602-ee, 6525, and 6611 of the Education Law and sections 1111(b)(2), 1111(c)(4), and 1111(d)(2) of the Every Student Succeeds Act of 2015, 20 U.S.C. sections 6301 et seq. (Public Law 114-95, 129 STAT. 1802).

1. Section 60.6 of the Regulations of the Commissioner of Education is amended to read as follows:

§ 60.6 Limited permits.

For renewal of a limited permit in medicine the department may accept satisfactory evidence of personal or family illness or extenuating circumstances preventing the candidate from taking the licensing examination, or satisfactory performance on a significant part of the New York State licensing examination in medicine, provided that such permit shall not be renewed for more than 24 months. Due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis, the Department, in its discretion, may renew such limited permit for an additional 24 months.

2. Subdivision (b) of section 61.19 of the Regulations of the Commissioner of Education is amended to read as follows:

(b) Cardiopulmonary resuscitation certification providers approved by the department shall include the American Heart Association, the American Red Cross, the National Safety Council and the American Safety and Health Institute. The Department may also approve other providers determined by the Department to offer substantially

similar content to courses offered to professionals by such organizations and to have a similar renewal period. Online courses are not acceptable; all courses taken to meet this requirement shall be taken in person. Provided, however, that the Department, in its discretion, may accept alternative means to meet the in person course requirement of this subdivision if such requirement cannot be met due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis. Such coursework shall include, but need not be limited to, content in the following:

- (1) scene survey;
- (2) patient assessment;
- (3) one and two rescuer cardiopulmonary resuscitation;
- (4) mouth-to-mouth resuscitation;
- (5) mouth-to-mask resuscitation;
- (6) conscious choking;
- (7) unconscious choking;
- (8) bag-valve-mask resuscitation;
- (9) recovery position;
- (10) automated external defibrillator use;
- (11) infection control matters;
- (12) recognizing a heart attack; and
- (13) cardiopulmonary resuscitation and automated external defibrillator

scenarios.

3. Section 100.19 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (m) to read as follows:

(m) Applicability.

(1) Notwithstanding any other provision of this section the Commissioner shall not use 2019-20 school year results to newly identify any schools as struggling, place any schools under independent receivership, or remove the designation of any schools as struggling or persistently struggling.

(2) Notwithstanding any other provision of this section, all schools identified as persistently struggling or struggling schools for the 2019-20 school year shall remain so identified for the 2020-21 school year and all schools that, pursuant to subdivision (a) of this section, operated under a school district superintendent receiver in the 2019-20 school year shall continue to operate under a school district superintendent receiver in the 2020-21 school year.

(3) Notwithstanding any other provision of this section, the Commissioner may upon a finding of good cause modify for the 2019-20 through 2021-22 school years any timelines pertaining to notifications, plans, reports, or implementation of activities required by this section, except for any timelines prescribed by law.

4. The opening paragraph of Section 80-3.7 of the Regulations of the Commissioner of Education shall be amended to read as follows:

This section prescribes requirements for meeting the education requirements for classroom teaching certificates through individual evaluation. Candidates who apply for any of the certificates in the classroom teaching service as described herein may continue to meet the education requirements for classroom teaching certificates through individual evaluation. Candidates with a graduate degree in science, technology, engineering or mathematics who apply for an initial teaching certificate under subclause (a)(3)(ii)(c)(3) of this section may continue to meet the education requirements for classroom teaching certificates through individual evaluation after May 1, 2014. The

candidate must have achieved a 2.5 cumulative grade point average or its equivalent in the program or programs leading to any degree used to meet the requirements for a certificate under this section. In addition, a candidate must have achieved at least a C or its equivalent in any undergraduate level course and at least a B- or its equivalent in any graduate level course, or, in response to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis candidates may achieve a passing grade or its equivalent in any undergraduate or graduate level course completed during the Spring, Summer, or Fall 2020 terms, in accordance with the pass/fail grading policy or its equivalent at the institution of higher education (e.g., credit/no credit, pass/fail, satisfactory/unsatisfactory policy), in lieu of achieving at least a C or its equivalent in any undergraduate level course and at least a B- or its equivalent in any graduate level course, in order for the semester hours associated with that course to be credited toward meeting the content core or pedagogical core semester hour requirements for a certificate under this section. All other requirements for the certificate, including but not limited to, examination and/or experience requirements, as prescribed in this Part, must also be met.

5. Paragraphs (7) and (8) of subdivision (b) of section 80-1.2 of the Regulations of the Commissioner of Education shall be added to read as follows:

(7) The commissioner shall extend the expiration date of the initial certificate, initial reissuance, provisional certificate, and provisional renewal from August 31, 2020 to January 31, 2021 in response to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

(8) The commissioner shall extend the expiration date of the conditional initial certificate from August 31, 2020 to August 31, 2021 in response to the State of

emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

6. The Regulations of the Commissioner of Education is amended by adding a new section 80-5.27 to read as follows:

80-5.27 Emergency COVID-19 certificate for candidates seeking certain certificates, extensions, and annotations.

(a) Purpose. The purpose of the emergency COVID-19 certificate is to authorize a candidate who was adversely impacted by the COVID-19 crisis, and is seeking a certain certificate, extension, or annotation in a specific certificate title, to teach for a limited period of time.

(b) Limitations. The emergency COVID-19 certificate in a specific certificate title shall be valid for one year from its effective date and may be renewed once for a period not to exceed one year from the expiration date of such certificate, provided that the candidate meets the renewal requirements in subdivision (d) of this section.

(c) Requirements. To be eligible for an emergency COVID-19 certificate, the candidate shall:

(1) Apply for one of the following certificates, extensions, or annotations on or before September 1, 2020: the American sign language extension, coordinator of work-based learning programs for career awareness extension, coordinator of work-based learning programs for career development extension, bilingual education extension, gifted education extension, grade level extensions to teach students with disabilities, initial or professional certificate in the classroom teaching service that has examination requirement(s), initial or professional certificate in the educational leadership service that has examination requirement(s), initial reissuance, language other than English –

early childhood education and childhood education extension, teaching assistant certificate that has examination requirement(s), school administrator and supervisor provisional renewal, severe or multiple disabilities annotation, specific subject in a special class in grades 7-12 limited extension, subject in grades 5-6 extension, subject in grades 7-9 extension, subject in grades 5-9 or 7-12 for students with disabilities extension, supplementary certificate that has examination requirement(s), supplementary bilingual education extension, transitional A certificate through the Option B pathway, transitional B certificate, transitional C certificate, or transitional D certificate;

(2) Apply for the emergency COVID-19 certificate in such certificate title applied for pursuant to paragraph (1) of this subdivision on or before September 1, 2020; and

(3) (i) for certificates that require examination(s), met all requirements for such certificate applied for pursuant to paragraph (1) of this subdivision other than the examination requirement(s), on or before September 1, 2020; or

(ii) for extensions that require examination(s), either:

(a) met all requirements for such extension applied for pursuant to paragraph (1) of this subdivision, other than the examination requirement(s), on or before September 1, 2020; or

(b) met all requirements for such extension applied for pursuant to paragraph (1) of this subdivision, other than the base certificate requirement, on or before September 1, 2020, and hold an appropriate valid emergency COVID-19 base certificate at the time of the application evaluation; or

(c) met all requirements for such extension applied for pursuant to paragraph (1) of this subdivision, other than the examination requirement(s) and base certificate

requirement, on or before September 1, 2020, and hold an appropriate valid emergency COVID-19 base certificate at the time of the application evaluation; or

(iii) for extensions or annotations that do not require examination(s), met all requirements for such extension or annotation applied for pursuant to paragraph (1) of this subdivision other than the base certificate requirement, on or before September 1, 2020, and hold an appropriate valid emergency COVID-19 base certificate at the time of the application evaluation;

(4) For the emergency COVID-19 American sign language extension and the emergency COVID-19 specific subject in a special class in grades 7-12 limited extension, a candidate shall only be issued either such extension if they meet the requirements of clause (b) of subparagraph (ii) of Paragraph (3) of this section.

(d) Renewal of certificate. To be eligible for a renewal of the emergency COVID-19 certificate, the candidate shall meet the following requirements:

(1) The candidate shall have met the emergency COVID-19 certificate requirements pursuant to paragraph (3) of subdivision (c) of this section prior to the expiration date of the first issuance of the emergency COVID-19 certificate; and

(2) The candidate shall submit a recommendation for the emergency COVID-19 certificate renewal from a principal and a recommendation from the superintendent in the school district in which the candidate is employed, or a recommendation for the emergency COVID-19 certificate renewal from the board of cooperative educational services district superintendent in the board of cooperative educational services in which the candidate is employed.

7. Clause (c) of subparagraph (vi) of paragraph (3) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education is amended to read as follows:

(c) Candidates shall have completed successfully the New York State assessment for school district leadership, except that the candidate shall be exempt from such assessment for program completion and for the institutional recommendation for the professional certificate in response to the time period of the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis, if the candidate completed all program requirements other than the assessment requirement during the Fall 2019, Winter 2020, Spring 2020, or Summer 2020 terms. The requirement of achieving a satisfactory level of performance on the New York State assessment for school district leadership shall be waived if the candidate completes the registered program prior to the availability of such New York State assessment. The department shall determine the date on which such assessment is available and required.

8. Subclause (3) of clause (a) of subparagraph (iii) of paragraph (4) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(3) State assessment. Candidates shall pass the New York State assessment for school district leadership, [provided that such assessment is available at the time the candidate applies and upon application qualifies for the transitional D certificate. The department shall determine the date on which such assessment is available and required.]except that the candidate shall be exempt from such assessment for the institutional recommendation for the transitional D certificate in response to the time

period of the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis, if the candidate completed all requirements for admitted candidates other than the assessment requirement on or before September 1, 2020.

9. Clause (c) of subparagraph (vi) of paragraph (5) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education is amended to read as follows:

(c) Candidates shall successfully complete the New York State assessment for school district business leadership, except that the candidate shall be exempt from such assessment for program completion and for the institutional recommendation for the professional certificate in response to the time period of the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis, if the candidate completed all program requirements other than the assessment requirement during the Fall 2019, Winter 2020, Spring 2020, or Summer 2020 terms. The requirement of achieving a satisfactory level of performance on the New York State assessment for school district business leadership shall be waived if the candidate completes the registered program prior to the availability of such New York State assessment. The department shall determine the date on which such assessment is available and required.

10. Paragraphs (2) and (3) of subdivision (b) of section 151-1.3 of the Regulations of the Commissioner of Education are amended to read as follows:

(2) School districts shall use the results of such assessments to annually monitor and track prekindergarten program effectiveness. A program shall be considered effective if the enrolled children demonstrate significant gains, as determined by the commissioner, in language, cognitive and social skills. Provided, however, that for the

2019-2020 school year school districts shall not be required to monitor and track prekindergarten program effectiveness due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

(3) Beginning in the 2008-2009 school year, school districts shall report annually, in a manner and timeline prescribed by the commissioner, the percentage of prekindergarten children making significant gains, as determined by the commissioner, in language, cognitive and social skills. The data shall be made part of school performance reports to parents and/or guardians of preschool children and the public. Provided, however, that for the 2019-2020 school year, school districts shall not be required to report such data or make such data part of school performance reports due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

11. Section 100.7 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (j) to read as follows:

(j) Notwithstanding paragraph (3) of subdivision (h) of this section, for alternative high school equivalency preparation programs to be operated during the 2020-2021 school year, the application to obtain approval of the department to operate such programs shall be submitted as soon as practicable but no later than 60 days after expiration of an Executive Order of the Governor declaring a State of emergency for the COVID-19 crisis.

12. Paragraph (1) of subdivision (b) of Section 100.1 of the Regulations of the Commissioner of Education is amended to read as follows:

(1) the mastery of the learning outcomes set forth in a New York State-developed or locally developed syllabus for a given high school subject, after a student has had the

opportunity to complete a unit of study in the given subject matter area, except that during the 2019-20 school year in those instances when a school is unable to provide a full unit of study due to closure of schools pursuant to an Executive Order(s) of the Governor pursuant to the State of emergency for the COVID-19 crisis, students shall earn a unit of credit if they have otherwise achieved the standards assessed in the provided coursework; or

13. Paragraph (5) of subdivision (d) of Section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(5) Beginning in the 2010-2011 school year, students enrolled in grades eight or earlier may be granted one unit of credit by successfully completing two units of study in a language other than English and passing a locally developed test, both of which are aligned to the checkpoint A learning standards for languages other than English, which has been approved for high school credit by the public school district superintendent or the chief administrative officer of a registered charter or nonpublic high school provided, however, that for the 2019-2020 school year and for the August 2020 summer school session due to the COVID-19 crisis, 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 test, the district may choose to waive the test requirement and grant such student one unit of credit. Where the test requirement has been waived no score shall be recorded on a student's transcript or permanent record for such test.

14. Paragraph (2) of subdivision (e) of Section 100.4 of the Regulations of the Commissioner of Education is amended to read as follows:

(2) Beginning with the 1998-99 school year, the mathematics intermediate assessment shall be administered in grade 8. Beginning with the 2005-2006 school year, mathematics assessments shall be administered in grades 7 and 8, provided that [for the 2013-2014 and 2014-2015], beginning with the 2020-21 school [years] year, students who attend grade 7 or 8 may take a Regents examination in mathematics in lieu of or in addition to the grade 7 or 8 mathematics assessment, in accordance with [section 100.18(b)(14)] clause (b)(1)(xvi)(c) of Section 100.21 of this Part.

15. Paragraph (5) of subdivision (a) of Section 100.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(5) State assessment system.

(i) Except as otherwise provided in clause (f) of this subparagraph and subparagraphs (ii), (iii) and (iv) of this paragraph, all students shall demonstrate attainment of the New York State learning standards:

(a) . . .

(b) . . .

(c) . . .

(d) . . .

(e) . . .

(f) Requirements for pathway assessments:

(1) Except as provided in paragraph (d)(11) of this section, students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma pursuant to this section in June 2015 and thereafter must meet the requirements of clauses (a), (b), (c), (d) and (e) of this subparagraph and also pass any one of the following assessments:

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(vi) . . .

(vii) Notwithstanding any other provisions of this clause, due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis a student shall be exempted from the pathway assessment requirements of this clause and shall not have a score recorded on their transcript or permanent record for such assessment if:

(a) The student was enrolled in a course of study leading to a pathway assessment in the 2019-2020 school year and will have earned credit in such course of study by the end of the 2019-2020 school year or the student was enrolled in a course of student leading to a pathway assessment in the 2020 summer school session and will have earned credit in such course of study at the end of such session;

(b) The student was previously enrolled in a course of study leading to a pathway assessment, has achieved the applicable course credit, and was intending to take the assessment in June 2020 or August 2020 to achieve a passing score;

(c) The student during or prior to the 2019-20 school year had been identified as English Language Learner pursuant to Part 154 of this Title whose home language is a language that is tested by a pathway assessment in a language other than English approved by the commissioner in accordance with section 100.2(mm) of this Part, or a student who was deemed qualified by the principal in consultation with relevant faculty,

and such student was intending to take in June 2020 or August 2020 a pathway assessment in a language other than English approved by the commissioner in accordance with section 100.2(mm) of this Part to achieve a passing score; or

(d) A student who was deemed qualified by the principal in consultation with relevant faculty in the use of American Sign Language (ASL) who was intending in June or August 2020 to take the pathway assessment in ASL to achieve a passing score.

(ii) Alternative assessments, approved by the commissioner pursuant to section 100.2(f) of this Part, may be used in place of the State assessments, provided, however, that due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis, a student shall be exempted from such alternative assessment and shall not have a score recorded on their transcript or permanent record for such assessment if:

(a) The student is currently enrolled in in a course of study leading to an alternate assessment approved by the commissioner pursuant to section 100.2(f) of this Part in the 2019-2020 school year and by the end of the 2019-2020 school year or during the 2020 summer school session will have earned credit in such course of study; or

(b) The student was previously enrolled in a course of study leading to an alternate assessment approved by the commissioner pursuant to section 100.2(f) of this Part, has earned credit in such course of study, and has not yet passed the alternate assessment but was intending to take the assessment in June or August 2020 to achieve a passing score.

(iii) . . .

(iv) . . .

(v) . . .

(vi) Notwithstanding any other provision of this section, due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis:

(a) For purposes of meeting the diploma requirements of this subdivision, students shall be deemed to have demonstrated attainment of the applicable New York learning standards in English, mathematics, science, United States history and government, and global history and geography and shall be exempt from the applicable Regents examination requirements in the June or August 2020 Regents examination administration if such students:

(1) were enrolled in a course of study during the 2019-2020 school year or in the August 2020 summer session that was intended to culminate in the student's participation in a June or August 2020 Regents examination and the student earned credit in such course of study by the scheduled date of the June 2020 or August Regents examination;

(2) were in grade 7 during the 2019-20 school year, were enrolled in a course of study leading to a Regents examination, and have met the standards assessed in the provided coursework;

(3) were enrolled in a course of study during the 2019-2020 school year that was intended to culminate in a Regents examination but failed to earn credit for such course of study by the end of the school year and the student subsequently returns for summer instruction and receives such credit in a 2020 summer school program pursuant to clause (b) of subparagraph (iv) of paragraph (8) of subdivision (d) of this section; or

(4) were previously enrolled and earned credit in a course of study prior to the 2019-2020 school year that culminated in the associated Regents examination, the

student has not yet passed the associated Regents examination, and the student demonstrated the intent to participate in the associated Regents examination in June or August 2020 in order to achieve a passing score.

(b) For purposes of meeting diploma requirements contained in paragraphs (1), (2), and (4) of subdivision (g) of this section, students who have demonstrated attainment of applicable New York learning standards in accordance with clause (a) of this subparagraph shall be exempt from the associated Regents examination requirements for such diploma.

(c) For purposes of earning a Regents diploma with advanced designation pursuant to subparagraph (v) of paragraph (7) of subdivision (b) of this section, students who have demonstrated attainment of applicable New York learning standards in accordance with clause (a) of this subparagraph shall be exempted from the associated Regents examination requirements that were cancelled in the June 2020 examination administration.

(vii) The transcript and permanent record of students who have been deemed to have demonstrated attainment of the applicable New York learning standards and exempted from a State assessment pursuant to this paragraph shall indicate that the student has meet the assessment requirement and shall not have a score recorded for such assessment.

16. Subparagraph (ii) of paragraph (7) of subdivision (b) of Section 100.5 of the Regulations of the Commissioner of Education is amended by adding a new clause (c) to read as follows:

(c) Notwithstanding the provisions of clauses (a) and (b) of this subparagraph, Regents examination requirements that have been exempted pursuant to subparagraph

(vi) of paragraph (5) of subdivision (a) of this section shall not be considered in the calculation to determine whether such student has achieved an average of 90 percent for purposes of awarding a Regents diploma with an honors endorsement.

17. 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, 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, except that the 1,200 minutes of laboratory experience is not required for a student to be exempted from a Regents examination pursuant to subparagraph (vi) of paragraph (5) of subdivision (a) of this section.

18. Clause (c) of subparagraph (v) of paragraph (7) of subdivision (b) of Section 100.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(c) two additional units in a language other than English for a total of three units and the Regents comprehensive assessment in that language when available. In those languages for which no Regents comprehensive assessment is available, a locally

developed test, which is aligned to the checkpoint B learning standards for languages other than English, may be administered, provided, however, that due to the COVID-19 crisis districts may exempt students from passing a locally developed test where a student has earned three units of credit in a language other than English by the end of the 2019-20 school year. Where a student has been exempted from a locally developed test no score shall be recorded on the student's transcript or permanent record for such test. A student identified as having a disability that adversely affects the ability to learn a language may be excused from the language other than English requirement set forth in this subparagraph if such student's individualized education program indicates that such requirement is not appropriate to the student's special educational needs. Such a student need not have a sequence in a language other than English but must meet the requirements for the total number of credits required for a diploma. Students completing a five-unit sequence in career and technical education or the arts (visual arts, music, dance, and theatre) are not required to complete the additional two units of the language other than English requirement for the Regents diploma with advanced designation but must still meet the requirements for the total number of units of credit.

19. Subparagraph (x) of paragraph (7) of subdivision (b) of Section 100.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(x) Students who first enter grade nine in September 2009 and thereafter who complete all coursework and testing requirements for the Regents diploma with advanced designation in mathematics and/or science, and who pass, with a score of 85 or better, three commencement level Regents examinations in mathematics and/or three commencement level Regents examinations in science, will earn a Regents diploma with advanced designation, with an annotation on the diploma that denotes

mastery in mathematics and/or science, as applicable, except that students who pass, with a score of 85 or better two commencement level Regents examinations in mathematics and/or science and who have been exempted from a third Regents examination in math and/or science due to the COVID-19 crisis pursuant to subparagraph (vi) of paragraph (5) of subdivision (a) of this section, will earn a Regents diploma with advanced designation, with an annotation on the diploma that denotes mastery in mathematics and/or science as applicable.

20. Subclause (2) of clause (b) of subparagraph (ii) of paragraph (6) of subdivision (d) of Section 100.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(2) a technical assessment, except that for the 2019-20 school year, due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis, students who have earned the applicable credits in an approved career and technical education program pursuant to subparagraph (iv) of this paragraph intended to prepare a student for a technical assessment shall be exempted from such technical assessment and shall not have such assessment recorded on their transcript or permanent record.

21. The opening paragraph 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:

(iv) Earning a Regents diploma. Students first entering grade nine in September 2001 and thereafter shall meet the commencement level New York State learning standards by successfully completing 22 units of credit and five New York State assessments distributed as specified in clauses (a) through (k) of this subparagraph.

Provided, however, that for the 2019-2020 school year 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 passing the five New York State assessments or approved alternatives specified in clauses (a) through (k) of this subparagraph if they meet the exemption requirements prescribed in subparagraphs (i), (ii) or (vi) of paragraph (5) of subdivision (a) of this section. After passing the required New York State assessment or approved alternative in mathematics, science, and English language arts, the remaining units of credit required in that discipline may be in specialized courses. A specialized course is a course that meets the requirements of a unit of credit as defined in section 100.1(a) of this Part and the New York State commencement level learning standards as established by the commissioner. A specialized course develops the subject in greater depth and/or breadth and/or may be interdisciplinary. Successful completion of one unit of study in an interdisciplinary specialized course may be awarded only one unit of credit but may be used to meet the distribution requirements in more than one subject. In a public high school, an interdisciplinary specialized course shall be taught by a teacher certified in at least one of the subjects.

22. Subdivision (b) of Section 100.6 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (10) to read as follows:

(10) Notwithstanding the provisions of this subdivision, due to the State of emergency declared by the Governor pursuant to an Executive order for the COVID-19 crisis districts and nonpublic schools may award to students who were enrolled in high school during the 2019-20 school year but have not met all of the requirements of this subdivision, including taking and receiving a satisfactory passing score on an approved

work-readiness assessment, the New York State career development and occupational studies commencement credential, provided that the student is otherwise eligible to exit from high school and the school principal, in consultation with relevant faculty, has determined that the student has otherwise demonstrated knowledge and skills relating to the commencement level career development occupational studies learning standards.

23. Subdivision (a) of section 100.7 of the Regulations of the Commissioner is amended by adding a new paragraph (3) to read as follows:

(3) Notwithstanding any other provision of this section, due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis, a candidate for a high school equivalency diploma shall be exempt from a sub-test or sub-tests of the general comprehensive examination requirements of subclauses (a) and (b) of clause (i) of paragraph (2) of this subdivision where:

(i) pursuant to section 100.5(a)(5) of this Part, such candidate has been exempted from or passed the corresponding Regents examination or other examination approved by the commissioner pursuant to section 100.2(f) or (mm) of this Part for such sub-test or sub-tests; or

(ii) such candidate is enrolled in either an alternative high school equivalency preparation program in accordance with subdivision (h) of this section or an adult education program during the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis during such time that the general comprehensive exam is not available; and

(a) has previously taken and passed a combination of at least three Regents examinations and/or sub-tests of any general comprehensive examination under subclauses (a) and (b) of clause (i) of paragraph (2) of this subdivision; and

(b) for the remaining two sub-tests, the student achieves a passing grade in the corresponding approved high school equivalency classes with standards based curriculum and applicable assessments.

STATEMENT OF FACTS AND CIRCUMSTANCE 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. Subsequently, the Governor issued additional Executive Orders in response to the COVID-19 crisis including orders directing the closure of schools and directing non-essential work personnel to work from home. In response the Department adopted emergency regulations at the April and May 2020 Board of Regents Meeting to address numerous issues resulting from the interruptions caused by the COVID-19 crisis. The proposed amendments provide flexibility related to the following:

- Renewal of limited permits in medicine;
- In-person CPR course certification requirements for dentists and dental hygienists;
- The takeover and restructuring of struggling and persistently struggling schools;
- Teacher certification through the Individual Evaluation pathway;
- Expiration dates of the Initial certificate, Initial Reissuance, Provisional certificate, Provisional Renewal, and Conditional Initial certificate for teacher candidates;
- Emergency COVID-19 teaching certificates;
- School district leader and school business leader assessments;

- Annual monitoring and tracking of prekindergarten program effectiveness and the annual report of the percentage of prekindergarten children making significant gains;
- Application deadline for alternative high school equivalency preparation programs;
- Unit of study requirements;
- Regents examinations, pathway assessments, alternative assessments, technical assessments, and locally developed test requirements for a diploma;
- NYS career and development and occupational studies commencement credential; and
- General comprehensive examination requirements for a high school equivalency diploma.

The Department has made revisions to the proposed emergency regulation to provide clarification and additional flexibility relating to the Emergency COVID-19 certificate. 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 45-day public comment period required in the State Administrative Procedure Act (SAPA) section 201(4-a) , is the September 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.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 2020 Regents meeting, which is the first scheduled meeting after the 45-day public comment period prescribed in SAPA for State agency rule makings. However, since the emergency regulation will expire before the September meeting, it is anticipated that an additional emergency action will be presented for adoption at the July 2020 Regents meetings.

ASSESSMENT OF PUBLIC COMMENT

1. COMMENT: Commenter expressed concern with the proposed Section 80-5.27 that creates the Emergency COVID-19 certificate, and the proposed edTPA safety net for eligible candidates who are enrolled in New York State registered programs in the Spring and/or Summer 2020 terms, enabling them to take the Assessment of Teaching Skills-Written (ATS-W) in lieu of the edTPA. Commenter noted that there are limited testing centers and it is unfair and unsafe for candidates to take certification exams now or for the next 12 months due to COVID-19. It is unfair because candidates who took certification exams prior to COVID-19 did not take them with masks and gloves on, while candidates now will be taking them with masks and gloves on in stressful conditions. It is unsafe due to hazardous travel, protests, and no assurance that testing centers will comply with physical distancing and provide clean environments. Commenter worries about possible litigation for the Department and Pearson in the instance that a candidate falls ill with COVID-19 as a result of taking a test.

Commenter described that candidates are fearing that they may be forced to accept a “second class” Emergency COVID-19 certificate and are seeking certification from neighboring states. Commenter requests that the Department honor its original commitment in its guidance dated March 30, 2020 to exempt Spring 2020 student teachers and candidates in similar clinical experiences from all certification exams and recommends that the Department exempt all New York State teacher candidates from all certification exams until all testing centers can be safely accessed.

DEPARTMENT RESPONSE: The proposed Emergency COVID-19 certificate would give candidates an opportunity to work in New York State public schools or

districts for one year while taking and passing the required exam(s) for the certificate or extension sought. With this one-year emergency certificate, candidates would not need to take certification exams immediately and could take them at a later date. Eligible candidates can also apply for a one-time, one-year renewal of the emergency certificate.

The Department recognizes that the COVID-19 crisis is a very stressful time for candidates. The emergency certificate was designed to reduce stress by shifting the timetable for taking and passing certification exams. However, the candidates would continue to be held to the same standards for becoming an educator, similar to candidates who were not adversely impacted, or will not be adversely impacted, by COVID-19. This certificate also honors the work by many candidates who have already passed one or more exams and/or completed a substantial portion of the edTPA this spring, allowing this work to satisfy the exam requirement(s) for the certificate or extension sought.

The emergency certificate also enables candidates other than those enrolled in New York State registered educator preparation programs to earn New York State certification, such as out-of-state candidates and candidates who apply for certification through the Individual Evaluation pathway. As such, this certificate provides an equitable option for certification for all candidates who were adversely impacted by COVID-19. The Emergency COVID-19 certificate is also consistent with emergency or temporary certificates that are being offered in other states in response to the COVID-19 crisis.

2. COMMENT: Commenter writes regarding the testing situation for teacher candidates in the New York City area where testing centers are not open and notes that

the proposed Section 80-5.27 that creates the Emergency COVID-19 certificate seems to conflict with Governor Cuomo's "New York on Pause" directive. Commenter is concerned for the health and safety of candidates who will be taking tests with gloves and masks on in test centers that do not lend themselves to physical distancing or an anxiety-free mindset, and questions if the test results will be fair, valid, or reliable. Commenter wonders if the Department has considered potential lawsuits should candidates become sick with COVID-19 due to testing requirements. Commenter indicates that many candidates are looking at certification in other states where there are more considerate accommodations, which is a loss for New York State. Commenter requests that the Department honor its original commitment in its guidance dated March 30, 2020 to exempt Spring 2020 student teachers and candidates in similar clinical experiences from all certification exams as school building candidates have been exempted.

DEPARTMENT RESPONSE: Please see the Department Response to Comment #1. In addition, for clarification, school building leader candidates are not exempted from certification exams for the Initial or Professional School Building Leader certificate or for the School Building Leader Initial Reissuance. However, certain school building leader candidates who have not taken and passed their certification exams may be eligible for the Emergency COVID-19 School Building Leader certificate.