



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

**FROM:** Phyllis D. Morris *Phyllis D. Morris*

**SUBJECT:** Proposed Amendment of Section 175.5 of the Regulations of the Commissioner of Education Relating to Defining Session Days and Counting Time Spent in Assessments Toward the Minimum Instructional Hour Requirement

**DATE:** September 1, 2022

**AUTHORIZATION(S):** *Don McG* *Betty*

### **SUMMARY**

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

Should the Board of Regents adopt the proposed amendment of section 175.5 of the Regulations of the Commissioner of Education relating to defining session days and counting time spent in assessments toward the minimum instructional hour requirement?

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

Review of policy.

#### **Proposed Handling**

The proposed amendment is submitted to the Full Board for adoption as a permanent rule at the September 2022 Regents meeting. A copy of the proposed amendment is attached (Attachment A).

#### **Procedural History**

The proposed amendment was presented to the P-12 Education Committee for discussion at the May 2022 Regents meeting. A Notice of Proposed Rule Making was published in the State Register on June 1, 2022, for a 60-day public comment period. Following publication in the State Register, the Department received no comments on

the proposed amendment. Therefore, an Assessment of Public Comment is not required and no changes to the proposed amendment are needed. A Notice of Adoption will be published in the State Register on September 28, 2022. Supporting materials are available upon request from the Secretary to the Board of Regents.

## **Background Information**

### **Definition of “Session Day”**

At its September 2018 meeting, the Board of Regents adopted an amendment to section 175.5 of the Commissioner’s regulations replacing the daily minimum instructional hour requirement with an aggregate annual requirement to provide school districts with flexibility when establishing their school calendars. Prior to adoption of the annual instructional requirement, a session day was one where the minimum daily hours of instruction were provided. Since this is unclear under the annual instructional hour paradigm, a new definition is necessary. The proposed amendment defines a day of session, for purposes of determining whether a public school has provided the minimum 180 days of instruction to receive State Aid, as a day when school is held and instruction is provided. It would further clarify that session may be held on any day during the school year under which attendance may be required pursuant to Education Law §3205(1)(c); that is, after September 1 of each year, exclusive of Saturdays and holidays pursuant to Education Law §3602(8), plus superintendents’ conference days.

### **Time Spent in Assessments**

Section 175.5(i) of the Commissioner’s regulations provides that time spent in Regents examinations, New York State assessments, and alternative and/or pathway assessments may be counted toward the aggregate annual instruction hour minimum. The proposed amendment clarifies that time spent in other assessments administered by certified teachers may be counted towards the aggregate annual instructional hour minimum, provided that all students are sitting for the assessment or provided instruction, and attendance is taken. This amendment formalizes the practice that local examinations and other assessments are part of a district’s instructional plan and should not be excluded from instructional time. Districts must provide instruction to all students not sitting for assessments or the district may not count this time toward the annual minimum instructional hour requirement, except in the case of grades 7-12 during Regents exams as previously provided for in paragraph (1) of subdivision (i) of this section.

## **Related Regents Items**

May 2022: [Proposed Amendment of Section 175.5 of the Regulations of the Commissioner of Education Relating to Defining Session Days and Counting Time Spent in Assessments Toward the Minimum Instructional Hour Requirement](https://www.regents.nysed.gov/common/regents/files/522p12d1.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/522p12d1.pdf>)

September 2018: [Proposed Amendment to Sections 175.2 and 175.5 of the Regulations](#)

[of the Commissioner of Education Relating to the Minimum Instruction Requirement for State Aid](https://www.regents.nysed.gov/common/regents/files/918p12a5.pdf)

(<https://www.regents.nysed.gov/common/regents/files/918p12a5.pdf>)

December 2017 [Proposed Amendment to Section 175.5 of the Regulations of the Commissioner of Education Relating to the Minimum Instruction Requirement for State Aid](http://www.regents.nysed.gov/common/regents/files/1217p12d2.pdf) (<http://www.regents.nysed.gov/common/regents/files/1217p12d2.pdf>)

**Recommendation**

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

VOTED: That section 175.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 28, 2022.

**Timetable for Implementation**

If adopted at the September 2022 meeting, the proposed amendment will become effective on September 28, 2022.

**Attachment A**

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, 3602, 3604, 3609-a of the Education Law.

1. Subdivision (b) of section 175.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(b) [Definition] Definitions.

(1) "Instructional hours" shall mean an hour or a fraction of an hour, during which students are receiving instruction from a certified teacher pursuant to Part 80 of this Title in an academic subject and/or periods of time during which students are engaged in supervised study activities, including completing homework and/or the review of homework. Instructional hours shall not include periods of time where instruction and/or supervised study time is not provided to students, such as lunch or recess.

(2) "Session day" shall mean a day when school is held and instruction is provided to students. This may be any day, excluding Saturdays and legal holidays pursuant to Education Law §3604(8), from the first day in which attendance may be required pursuant to Education Law §3205(1)(c) until the end of the school year, plus superintendents' conference days.

2. Subdivision (i) of section 175.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(i) Regents examinations and other [state] assessments.

(1) ...

(2) ...

(3) ...

(4) Other examinations and assessments. Time spent on session days where other assessments are administered may count toward the annual minimum instructional hour requirement provided such assessments are administered by a certified teacher, attendance is taken, and students not sitting for such assessments receive instruction during such time. Grade levels that are excused from instruction on such days may not have this time count toward the requirement.