TO: The Honorable Members of the Board of Regents

FROM: Shannon L. Tahoe

SUBJECT: 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

DATE: April 4, 2020

AUTHORIZATION(S): Shannon L Tahoe

SUMMARY

Issue for Decision

Should the Board of Regents adopt the 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?

Reason for Consideration

Review of Policy.

Proposed Handling

The proposed amendment will be presented to the Full Board for adoption as an emergency rule at the April 2020 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rulemaking will be published on April 22, 2020. 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

Not applicable.

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, directing non-essential work personnel to work from home, and directing non-essential gatherings of individuals of any size for any reason to be canceled or postponed. Therefore, it is necessary for the Department to adopt emergency regulations to address numerous issues resulting from the interruptions caused by the COVID-19 crisis. The proposed revisions are as follows:

- State Aid

  A new subdivision (l) is added to section 175.5 to permit public school districts, public schools and charter schools to operate for less than 180 days during the 10 month school year for any school day that is closed pursuant to an Executive Order for the COVID-19 crisis and waived from the 180-day requirement pursuant to the terms of such Executive Order(s).
  - The amendment also permits missed instructional hours for any day that a school is closed and the 180-day requirement is waived pursuant to the terms Executive Order(s) of the Governor pursuant to the state of emergency for the COVID-19 crisis to count towards the minimum annual instructional hour requirements set forth in such section (Attachment A #1).

- 310 Appeals to the Commissioner
  - Section 275.8 is amended to permit service of pleadings and supporting papers for appeals to the Commissioner pursuant to Education Law §310 by alternative means during the time period of any movement restrictions or school closures directed by the Governor pursuant to an Executive Order during the COVID-19 crisis (Attachment A #2).

- Charter Schools
  - Section 119.1(c)(1) is amended to permit the Commissioner to excuse delays in required reporting by charter schools to public schools for the length of time of a school closure ordered pursuant to an Executive Order of the Governor pursuant to a State of emergency for the COVID-19 crisis, provided such delay does not exceed 30 days. When there is a delay in reporting by a charter school, section 119.1(d) is also amended to permit the Commissioner to excuse any delay in payment by a public school to a

charter school, provided such delay does not exceed 30 days (Attachment A #'s 3-4).
    - Section 119.5(b) is amended to require charter schools to provide notice on their website of the date, time and place of lotteries for the random selection process for charter school student applicants if such lottery is provided during a school closure ordered pursuant to an Executive Order of the Governor pursuant to a State of emergency for the COVID-19 crisis. Additionally, subdivision (c) of such section is amended to permit such lotteries to be held remotely, provided that the public has the opportunity to view or listen and such lottery is recorded and later transcribed (Attachment A #5).

- Early Learning
    - Section 151-1.4(a) is amended to permit prekindergarten programs to operate for less than the 180-day and 90-day requirements where such programs were scheduled to operate, but the school where such program operates is closed pursuant to an Executive Order of the Governor pursuant to the State of emergency for the COVID-19 crisis (Attachment A #6).
    - Section 125.1 is amended to permit Department staff who are unable to conduct their annual visit of nonpublic nursery schools and kindergartens as required by paragraph(c) of such section because they are closed pursuant to an Executive Order of the Governor pursuant to the State of emergency for the COVID-19 crisis, to conduct such annual visit as soon as practicable when they reopen (Attachment A #7).

- Home Instruction
    - Section 100.10(h) is amended to provide that an alternative form of evaluation, in lieu of an annual assessment, shall be permitted for all grades in 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 (Attachment A #8).

- Professions
    - Sections 75.2, 75.5, and 76.2 are amended to allow the Department to excuse the continuous experience requirements for speech language pathology, audiology, and occupational therapy where such continuous experience cannot be completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis (Attachment A #9-12).
    - Section 70.4 is amended to allow the Department to accept passing examination scores from Public Accounting applicants that are outside the required 18 month examination window where such examinations cannot be completed within 18 months due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis (Attachment A #13).
    - Sections 52.3 is amended to allow the Department to modify professional educational program requirements for licensure, to the extent authorized by law, if such requirements cannot be successfully completed due to the State

of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis (Attachment A #14).

- Sections 74.6(c)(1)(v), 74.6(d)(1)(v), 79-9.3(c), 79-10.3(d), 79-11.3(c), and 79-12.3(c) of the Commissioner's regulations are amended to grant an exemption for in person supervision experience requirements for licensed clinical social work, licensed master social work, mental health counseling, marriage and family counseling, creative arts therapy, and psychoanalysis if such in person supervision cannot be completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis (Attachment A #15-20).

- Part 83 and Part 87 Appeals
  - Section 83.5 is amended to permit the Commissioner to excuse the filing timeframes prescribed in such section relating to appeals to the Commissioner of a hearing officer's determination of good moral character where such late filings are due to the State of emergency declared by the Governor pursuant to the an Executive Order for the COVID-19 crisis (Attachment A #21).
  - Section 87.5 is amended to permit: (i) the Department to excuse late submissions relating to due process procedures for prospective employees' clearance for employment; and (ii) the Commissioner's designee to excuse late submissions relating to appeals of the Department's determination to deny prospective school employees' clearance for employment where such submissions are late due to the State of emergency declared by the Governor pursuant to the an Executive Order for the COVID-19 crisis (Attachment A #'s 22 and 23).
  - Section 87.2(k)(2) is amended to add to the definition of "prospective school employee" any individual who will reasonably be expected to provide services which involve online communication or interaction directly to students under the age of 21 during the period of a school closure ordered pursuant to an Executive Order of the Governor pursuant to a State of emergency for the COVID-19 crisis (Attachment A #24).

- Special Education
  - Sections 200.7(b)(5) and 200.20(a)(6) are amended to ensure that State approved private schools, State operated schools, Special Act School Districts, State supported schools and preschools to operate for less than 180 days during the 10 month school year for any school day that is closed pursuant to an Executive Order for the COVID-19 crisis and waived from the 180-day requirement pursuant to the terms of such Executive Order(s) (Attachment A #'s 25 and 26).
  - Section 200.5(j)(3)(xii) is amended to allow impartial hearing officers to conduct special education due process hearings by video conference during the COVID-19 crisis (Attachment A #'s 27 and 28).
  - Section 200.5(j)(5)(i) is amended to allow hearing officers to extend cases up to 60 days rather than 30 days while schools are closed pursuant to an Executive order issued by the Governor pursuant to a State of Emergency for COVID-19. This allows Impartial Hearing Officers better flexibility while

school witnesses, administrators and parents are unavailable to partake in due process hearings (Attachment #29).
    - Section 200.20(b)(6) requires preschool providers to make-up missed services within 30 days of the missed session. The proposed amendment will not include days that the school is closed pursuant to an Executive Order of the Governor issued pursuant to a State of emergency for the COVID-19 crisis (Attachment A #30).
    - Sections 200.4(d) and 200.4(e)(1) are amended to extend the time period to arrange for special education programs and services to be provided to a student with a disability from 60 school days of receipt of consent to evaluate so that the 60 days will not include any days(s) that such school is closed pursuant to an Executive order issued by the Governor pursuant to a State of emergency for COVID-19. As well, 30 school days will be extended for arranging an approved non-public school placement (Attachment A #'s 31 and 32).

- Office of State Review
    - A new section 279.15 is added to provide that a State Review Officer may authorize certain filings through electronic means during the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis (Attachment A #33).

- Bilingual Education
    - Section 154-2.3(a)(5), (b), (f)(3), and (g)(1) are amended to not include any day(s) where a school is closed pursuant to an Executive Order of the Governor pursuant to a State of emergency for the COVID-19 crisis to count towards the following timelines in such section: English language learner identification process timeline; parental notification and information timeline, and the English as a New Language/Bilingual Education placement timeline (Attachment A #34-37).
    - Section 154-2.3(h) is amended to provide an exemption to students from the unit of study requirements where a student is unable to meet such requirements due to schools being closed pursuant to an Executive Order of the Governor pursuant to the State of emergency for the COVID-19 crisis and where such student otherwise achieves the learning outcomes for such course of study (Attachment A #38).
    - Section 154-2.3(l) is amended to provide that for the 2019-2020 school year, there will be no English language learner annual assessment due to such assessment being suspended as result of the COVID-19 crisis (Attachment A #39).

- Curriculum and Instruction
    - Sections 100.2(d)(1), 100.4(c), 100.5, and 100.6(b)(3)(iii) are amended to provide an exemption to students from the unit of study requirements where a student is unable to meet such requirements due to schools being closed pursuant to an Executive Order of the Governor pursuant to the State of emergency for the COVID-19 crisis and where such student otherwise

achieves the learning outcomes of such portion of unity of study completed (Attachment A #'s 40-43).

- Higher Education
  - Sections 52.21, 57-4.5 and 80-1.13 are amended to permit the Dignity for All Students Act (DASA) training to be conducted entirely online during the time period of the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis (Attachment A #'s 44-51).
  - Section 80-1.5(1)(c) is amended to create an edTPA safety net for candidates in registered educator preparation programs (EPPs) whose student teaching or similar clinical experience in spring of 2020 was impacted by COVID-19, holding them harmless. These candidates would be able to take and pass either the ATS-W or edTPA. Eligible candidates who choose to take the edTPA but do not pass it, could take and pass the ATS-W, or pursue the edTPA Multiple Measures Review Process (MMRP), if they qualify (Attachment A #52).
  - Section 80-3.15 is amended to extend the SOCE application deadline from June 30, 2020 to June 30, 2021 so that school districts have time to identify staff who are eligible for the SOCE, inform them about the application process and any supports provided, and submit the materials needed for applications since school districts are losing time during the COVID-19 crisis as the SOCE deadline approaches (Attachment A #53).
  - For the SOCE and limited extension, special education teachers must complete their satisfactory full-time teaching experience, while being considered Highly Qualified through passing a HOUSSE rubric in the subject area, prior to June 30, 2020. The Department is proposing to amend section 80-4.3 to extend the time period by which the experience must be completed to June 30, 2021, giving teachers the opportunity to gain more full-time satisfactory teaching experience for the SOCE or limited extension as they are losing time to do so during the COVID-19 crisis (Attachment A #54).

- Accountability
  - The federal government has approved the Department's application for a one-year waiver from provisions of the Every Student Succeeds Act (ESSA) pertaining to State assessments and school and district accountability determinations due to the unique circumstances that have arisen as a result of the COVOID-19 crisis. Therefore, the Department is proposing to amend section 100.21 to provide that the Commissioner shall not conduct a review of school and district performance using 2019-2020 school year result, the accountability status of public schools and districts for the 2020-2021 school year shall be the same as for the 2019-2020 school year, and the 2018-2019 school year results shall be used in any instance for which 2019-2020 school year results would have been used as part of the process of making 2021-2022 school year accountability determinations. Additionally, the Commissioner may, upon a finding of good cause, modify for the 2019-2020 through 2021-2022 school years any timelines pertaining to notifications,

plans, reports, or implementation of activities required by such section (Attachment A #'s 55-61).

Related Regent's Items

Not Applicable.

Recommendation

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

VOTED: That 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 be amended and Section 275.8 be added, as submitted, as an emergency measure, effective April 7, 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 April 2020 Regents meeting, the proposed amendment will become effective as an emergency rule on April 7, 2020. It is anticipated that the proposed amendment will be presented for permanent adoption at the July 2020 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. If adopted at the July 2020 meeting, the proposed rule will become effective on July 29, 2020. Because the emergency adoption will expire before the July 2020 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the June Regents meeting.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 112, 207, 208, 215, 301, 305, 310, 311, 1704, 1709, 2117, 2651, 2852, 2854, 2856, 3001, 3001-d, 3003, 3004, 3004-c, 3009, 3035, 3204, 3205, 3210, 3212, 3214, 3602, 3602-c, 3602-e, 3604, 3713, 4402, 4403, 4404, 4410, 6501, 6504, 6506, 6507, 7404, 7904, 7904-a and 8206 of the Education Law.

1. A new subdivision (l) is added to section 175.5 of the Regulations of the Commissioner of Education as follows:

(l) COVID-19 Executive Order(s).

(1) Any day that a school is closed and the 180-day requirement set forth in subdivision (c) is waived pursuant to an Executive Order(s) of the Governor pursuant to the State of emergency for the COVID-19 crisis will satisfy the requirements for a waiver of the usually required reduction in monies payable to school districts and charter schools under Education Law section 3604 in accordance with the terms of such Executive Order(s).

(2) Missed instructional hours for any day that a school is closed and the 180-day requirement is waived pursuant to paragraph (1) of this subdivision shall count towards the minimum annual instructional hour requirements set forth in subdivision (c) of this section.

2. Section 275.8 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (f) to read as follows:

(f) Alternative service during the time period of any movement restrictions or school closures directed by the Governor pursuant to an Executive Order during the COVID-19 crisis. Notwithstanding subdivision (a) of this section, when personal service

cannot be made due to school closures or movement restrictions directed by the Governor pursuant to an Executive Order during the COVID-19 crisis, a party may serve pleadings and supporting papers by the following alternative means: (1) by mailing the petition, notice of petition and all supporting papers by first class mail in an envelope bearing the legend “APPEAL TO THE COMMISSIONER OF EDUCATION” (in capitalized letters) to an individual respondent at his or her last known residence or place of business, or in the case of a school district, to the attention of the district clerk and superintendent of schools, or, in the case of a board of cooperative educational services, to the attention of the district superintendent and the board; and (2) on the same date as the mailing, emailing the petition, notice of petition and all supporting papers under the subject heading “APPEAL TO THE COMMISSIONER OF EDUCATION” (in capitalized letters) to such person, or in the case of a school district, to both the district clerk and superintendent of schools, or, in the case of a board of cooperative educational services, to the district superintendent and the board. Service shall be deemed complete upon the completion of both steps identified above. Proof of service shall thereafter be filed with the Department as set forth in section 275.9 of this Part.

3. Paragraph (1) of subdivision (c) of section 119.1 of the Regulations of the Commissioner of Education is amended to read as follows:

(1) No later than 30 days prior to the first business day of July, September, November, January, March and May, each charter school shall report to each public school district with resident pupils attending the charter school and to the department an updated estimate of the enrollment of students attending the charter school in the current school year who are residents of such public school district and any reduced

amounts per pupil that shall be payable to the charter school for such students pursuant to subdivision one of section 2856 of the Education Law that has been established pursuant to an agreement between the charter school and the charter school entity as set forth in the charter, provided that, for the 1999-2000 school year, no report shall be required 30 days prior to the first business day of July. For each student with a disability attending such charter school, such report shall also indicate the level of special programs or services to be provided directly or indirectly to such student by the charter school and an estimated annual cost to be incurred by the charter school in providing such special programs or services. The Commissioner may excuse any delay in reporting under this paragraph for the length of time of a school closure ordered pursuant to an Executive Order of the Governor pursuant to a State of emergency for the COVID-19 crisis, however, such delay shall not exceed 30 days from such reporting deadline.

4. Subdivision (d) of section 119.1 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (6) to read as follows:

(6) If there is a delay in reporting pursuant to paragraph 1 of this section, the Commissioner shall excuse any delay in payments required under this subdivision for the length of time of a school closure ordered pursuant to an Executive Order of the Governor pursuant to a State of emergency for the COVID-19 crisis, however, such delay shall not exceed 30 days from such payment deadline.

5. Subdivisions (b) and (c) of section 119.5 of the Regulations of the Commissioner of Education are amended to read as follows:

(b) Notice. The charter school shall provide public notice of the date, time and place of the lottery, consistent with Public Officers Law section 104 and if such lottery is

provided during a school closure ordered pursuant to an Executive Order of the Governor pursuant to a State of emergency for the COVID-19 crisis, such notice shall also be posted on the charter school's website.

(c) Procedures for conducting lottery.

(1) …

(2) The lottery shall be held in a space that is open and accessible to the public and capable of accommodating the reasonably anticipated number of attendees. If the reasonably anticipated attendance exceeds capacity, separate grade level lotteries may be held in separate locations provided that each lottery is publicized in a manner consistent with the requirements of Public Officers Law section 104. Nothing herein shall be construed to require or exclude attendance at the lottery by parents, persons in parental relationships, guardians and/or students participating in the admissions process. Consistent with Executive Order No. 202.1, if such lottery occurs during a school closure ordered pursuant to an Executive Order of the Governor for the COVID-19 crisis, such lottery may be held remotely by conference call or similar service, provided that the public has the opportunity to view or listen and such lottery is recorded and later transcribed.

(3) …

(4) …

6. Subdivision (a) of section 151-1.4 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) Programs may be either full-day or half-day and must operate five days per week a minimum of 180 days per year; except that districts implementing programs for the first time or expansion classes in other districts may operate a minimum of 90 days,

provided that in such instances the aid per prekindergarten pupil shall be reduced by 1/180 th for each day less than 180 days that such program or expansion class is in session, except that the commissioner may disregard such reduction for any deficiency that may be disregarded in computing total foundation aid pursuant to Education Law section 3604(7) or (8), provided further that any day that a is closed and the 180-day requirement is waived pursuant to an Executive Order(s) of the Governor pursuant to the State of emergency for the COVID-19 crisis, shall be waived from the 180-day and 90-day requirements set forth in this subdivision in accordance with the terms of such Executive Order(s).

7. Section 125.1 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (d) to read as follows:

(d) Where Department staff are unable to conduct an annual visit in accordance with subdivision (c) of this section because a school is closed pursuant to an Executive Order(s) of the Governor pursuant to the State of emergency for the COVID-19 crisis, Department staff shall conduct such visit as soon as practicable when such school reopens.

8. Subdivision (h) of section 100.10 of the Regulations of the Commissioner of Education is amended by adding a new paragraph 2-a to read as follow:

(2-a) Notwithstanding paragraph (2) of this subdivision, an alternative form of evaluation consisting of a written narrative prepared by a person specified in subparagraph (iii) of paragraph (2) of this subdivision shall be permitted for all grades in the 2019-20 school year due to the State of emergency declared by the Governor pursuant to an Executive Order(s) for the COVID-19 crisis.

9. Paragraph (2) of subdivision (b) of section 75.2 of the Regulations of the Commissioner of Education is amended to read as follow:

(2) Credit toward the experience requirement may be given for part-time employment accumulated at the rate of not less than 12 hours per week for continuous periods of not less than six months. The department may excuse the requirement that such experience be continuous where such continuous experience cannot be completed due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

10. Paragraph (2) of subdivision (a) of section 75.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(2) Credit toward the experience requirement may be given for part-time employment accumulated at the rate of not less than two days per week and consisting of not less than 15 hours per week for continuous periods of not less than six months. The department may excuse the requirement that such experience be continuous where such continuous experience cannot be completed due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

11. Subparagraph (ii) of paragraph (1) of subdivision (b) of section 75.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(ii) Credit. Credit toward the experience requirement may be given for part-time employment, accumulated at the rate of not less than 12 hours per week for continuous periods of not less than six months. The department may excuse the requirement that such experience be continuous where such continuous experience cannot be completed due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

12. Subdivision (b) of section 76.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(b) For candidates who have accumulated other than full-time supervised experience, part-time experience may be counted if it is obtained at the rate of at least two full days per week (minimum of 15 hours) and for continuous periods of not less than two months for an accumulated total of six months. The department may excuse the requirement that such experience be continuous where such continuous experience cannot be completed due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

13. Paragraph (1) of subdivision (c) of section 70.4 of the Regulations of the Commissioner of Education is amended to read as follows:

(1) For purposes of this paragraph, examination window means a three-month period in which the examination is available within a quarter of the year, the beginning and ending of which shall be established by the examination provider. A candidate may take the required sections of the examination individually and in any order. Credit for any section passed shall not be valid for more than 18 months, calculated from the last day of the examination window in which the candidate sat for such section of the examination. A candidate must pass all four sections of the examination within a rolling 18-month period, which begins on the last day of the examination window in which the candidate sat for any section of the examination that the candidate passed. A candidate may not retake a failed section of the examination in the same examination window. The department may accept passing examination scores that are outside the 18-month requirement where such examinations cannot be completed in the 18-month due to the

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

14. Subdivision (a) of section 52.3 of the Regulations of the Commissioner of Education is amended to read as follow:

(a) Any educational program that is intended to satisfy the educational requirement for licensure in a profession regulated under Title VIII of the Education Law or that leads to a degree or certificate at the subprofessional or post professional level in a professional area regulated under Title VIII shall have a curriculum that is adequate in breadth and depth to meet the objectives of the program and that is satisfactory to the commissioner. The Department, in its discretion, may modify the educational program requirements set forth in this Title, to the extent authorized by law, including but not limited to supervised field experience, practicums or other such experience requirements if such requirements cannot be successfully completed due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

15. Subparagraph (v) of paragraph (1) of subdivision (c) of section 74.6 of the Regulations of the Commissioner of Education is amended to read as follows:

(v) the supervisor provides at least one hundred hours of in-person individual or group clinical supervision, distributed appropriately over the period of the supervised experience. The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of this subparagraph that cannot be successfully completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

16. Subparagraph (v) of paragraph (1) of subdivision (d) of section 74.6 of the Regulations of the Commissioner of Education is amended to read as follows:

v. the supervisor provides at least two hours per month of in-person individual or group clinical supervision. The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of this subparagraph that cannot be successfully completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

17. Subdivision (c) of section 79-9.3 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (3) to read as follows to reads as follows:

(3) The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of paragraph (1) of this subdivision that cannot be successfully completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

18. Subdivision (d) of section 79-10.3 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (3) to read as follows:

(3) The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of paragraph (1) of this subdivision that cannot be successfully completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

19. Subdivision (c) of section 79-11.3 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (3) to read as follows:

(3) The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of this paragraph (1) of this subdivision that cannot be successfully completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis,

20. Subdivision (c) of section 79-12.3 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (3) to read as follows:

(3) The Department, in its discretion, may accept alternative means to meet the In-person supervision requirements of paragraph (1) of this subdivision that cannot be successfully completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

21. Section 83.5 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (d) to read as follows:

(d) Notwithstanding any provision of this section to the contrary, the Commissioner may excuse late filings for any timeline prescribed in this section where such late filings are due to the State of emergency declared by the Governor pursuant to an Executive Order(s) for the COVID-19 crisis.

22. Paragraph (4) of section 87.5 of the Regulations of the Commissioner of Education is amended by adding a new subparagraph (x) to read as follows:

(x) Notwithstanding any provision of this paragraph to the contrary, the Department may excuse the timeframes prescribed in this paragraph for submission of responses by prospective school employees where such late submissions are due to the State of emergency declared by the Governor pursuant to an Executive Order(s) for the COVID-19 crisis.

23. Paragraph (5) of section 87.5 of the Regulations of the Commissioner of Education is amended by adding a new subparagraph (v) to read as follows:

(v) Notwithstanding any provision of this paragraph to the contrary, the Commissioner's designee may excuse the timeframes prescribed in subparagraphs (i) and (ii) of this paragraph for submission of appeals and additional appeal papers by

prospective school employees where such late submissions are due to the State of emergency declared by the Governor pursuant to an Executive Order(s) for the COVID-19 crisis.

24. Paragraph (2) of subdivision (k) of section 87.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(2) who will reasonably be expected by such covered school to provide services which involve direct contact, meaning in person, face-to-face communication or interaction, with students under the age of 21, or online communication or interaction directly with such students during the period of a school closure ordered pursuant to an Executive Order of the Governor pursuant to a State of emergency for the COVID-19 crisis; and

25. Paragraph (5) of subdivision (b) of section 200.7 of the Regulations of the Commissioner of Education is amended to read as follows:

(5) Instruction for not less than 180 days each year shall be provided for each student. Approved private schools and State-operated and State-supported schools shall submit calendars of such days in session to the commissioner for approval by July 1st of the preceding school year. All approved private schools shall comply with the Education Law regarding attendance. Attendance registers shall be available for inspection by appropriate personnel of the contracting school districts, the department, and the school district in which the school is located. Any day that a school had been is closed and the 180-day requirement was been waived pursuant to an Executive Order(s) of the Governor pursuant to the State of emergency for the COVID-19 crisis shall be waived from the 180-day requirement of this paragraph in accordance with the terms of such Executive Order.

26. Paragraph (6) of subdivision (a) of section 200.20 of the Regulations of the Commissioner of Education is amended to read as follows:

(6) Each preschool program shall be in operation for not less than 180 days each year. Any day that a school is closed pursuant to an Executive Order(s) of the Governor and the 180-day requirement has been waived pursuant to the State of emergency for the COVID-19 crisis shall be waived from the 180-day requirement of this section in accordance with the terms of such Executive Order.

27. Clause (c) of subparagraph (xii) of paragraph (3) of subdivision (j) of section 200.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(c) The impartial hearing officer may receive any oral, documentary or tangible evidence except that the impartial hearing officer shall exclude evidence that he or she determines to be irrelevant, immaterial, unreliable or unduly repetitious. The impartial hearing officer may receive testimony by video or telephone, provided that such testimony shall be made under oath and shall be subject to cross examination provided that all personally identifiable data, information or records pertaining to students with disabilities during such testimony shall be subject to the requirements of section 200.5(e)(2) of this Part.

28. Subparagraph (xii) of paragraph (3) of subdivision (j) of section 200.5 of the Regulations of the Commissioner of Education is amended by adding a new clause (h) to read as follows:

(h) The impartial hearing officer may conduct the impartial hearing by video conference during a declared State of emergency issued by the Governor pursuant to an Executive Order, provided that all personally identifiable data, information or records

pertaining to students with disabilities during such hearing shall be subject to the requirements of section 200.5(e)(2) of this Part.

29. Subparagraph (i) of paragraph (5) of subdivision (j) of section 200.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(i) An impartial hearing officer may grant specific extensions of time beyond the periods set out in this paragraph, in subparagraph (3)(iii) of this subdivision, or in section 200.16(h)(9) of this Part at the request of either the school district or the parent. The impartial hearing officer shall not solicit extension requests or grant extensions on his or her own behalf or unilaterally issue extensions for any reason. Each extension shall be for no more than 30 days; except that if schools are closed pursuant to an Executive order issued by the Governor pursuant to a State of emergency for the COVID-19 crisis, an extension may be granted beyond 30 days for the length of time schools are closed but no more than 60 days. Not more than one extension at a time may be granted. The reason for each extension must be documented in the hearing record

30. Paragraph (6) of subdivision (b) of section 200.20 of the Regulations of the Commissioner of Education is amended to read as follows:

(6) Make-up of missed services. Each preschool provider shall, consistent with Department guidelines, ensure the make-up of missed services occurs, consistent with the duration and location specified in the IEP, within 30 days of the missed session unless there is a documented child-specific reason why the make-up session could not be provided within 30 days. Such 30-day time period under this paragraph shall not include any day(s) that such school is closed pursuant to an Executive Order of the Governor issued pursuant to a State of emergency for the COVID-19 crisis.

31. The opening paragraph of subdivision (d) of section 200.4 of the Regulations of the Commissioner of Education is amended to read as follows:

(d) *Recommendation.* For a student not previously identified as having a disability, the committee on special education shall provide a recommendation to the board of education, which shall arrange for the appropriate special education programs and services to be provided to the student with a disability within 60 school days of the receipt of consent to evaluate. For a student with a disability referred for review pursuant to subdivision (f) of this section, a recommendation shall be provided to the board of education, which shall arrange for the appropriate special education programs and services to be provided to the student with a disability within 60 school days of the referral for review of the student with a disability. Prior to the development of a recommendation, the committee shall ensure that the appropriateness of reading and math instruction and other resources of the regular education program, including support services, and academic intervention services, has been considered. Such 60-day time period under this subdivision shall not include any day(s) that such school is closed pursuant to an Executive Order of the Governor issued pursuant to a State of emergency for the COVID-19 crisis.

32. Paragraph (1) of subdivision (e) of section 200.4 of the Regulations of the Commissioner of Education is amended to read as follows:

(1) Within 60 school days of the receipt of consent to evaluate for a student not previously identified as having a disability, or within 60 school days of the referral for review of the student with a disability, the board of education shall arrange for appropriate special programs and services, except that if such recommendation is for placement in an approved in-state or out-of-state private school, the board shall arrange

for such programs and services within 30 school days of the board's receipt of the recommendation of the committee. Such 60-day and 30-day time periods required by this paragraph shall not include any day(s) that such school is closed pursuant to an Executive Order of the Governor issued pursuant to a State of emergency for the COVID-19 crisis.

33. Part 279 of the Regulations of the Commissioner of Education is amended by adding a new section 279.15 to read as follows:

§ 279.15 Pre-review conference

Notwithstanding any other requirement of this Part, a State Review Officer may, in his or her discretion, authorize the filing of a party's pleading, memoranda of law, supporting documents, or the record of the proceedings before the impartial hearing officer though electronic means during the State of emergency declared by the Governor pursuant to an Executive order for the COVID-19 crisis.

34. Paragraph (5) of subdivision (a) of section 154-2.3 of the Regulations of the Commissioner of Education is amended to read as follows:

(5) If the student receives a score below a State designated level of proficiency established by the commissioner on the Statewide English language proficiency identification assessment, or in the case of a student with a disability, the process defined in Subpart 154-3 of this Part has led to a determination that the student shall be initially identified as an English language learner, within five school days of such identification, the school district must provide the student, if the student is 18 years of age or older, or the student's parent or person in parental relation written notice of such identification determination the right to seek review of such identification determination pursuant to subdivision (b) of this section. Day(s) during a school closure ordered

pursuant to an Executive Order(s) of the Governor pursuant to a State of emergency for the COVID-19 crisis shall not count towards the five-day timeline prescribed in this paragraph.

35. Subdivision (b) of section 154-2.3 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (8) to read as follows:

(8) Any day(s) during a school closure ordered pursuant to an Executive Order(s) of the Governor pursuant to a State of emergency for the COVID-19 crisis shall not count towards the 45 school day timeline prescribed in paragraph (1) of this subdivision, 10 and 20 school day timelines prescribed in paragraph (3) of this subdivision, or the 10 day timeline prescribed in paragraph (5) of this subdivision.

36. Paragraph (3) of subdivision (f) of section 154-2.3 of the Regulations of the Commissioner of Education is amended to read as follows:

(3) Upon notification of the parent or person in parental relation, the school district shall provide the parent or person in parental relation 10 school days to sign and return to the district a statement that the parent or person in parental relation is either in agreement with the child being placed in a Bilingual Education program or directs the district to place the child in an English as a New Language program. If a parent or person in parental relation does not return the signed notification form within 10 school days of receiving the notice, the student shall be placed in a Bilingual Education program if there is one in the school that serves the grade and home language spoken by the student or in an English as a New Language program if the school is not required to provide a Bilingual Education program. In the event that a parent or person in parental relation does not return the signed notification form within 10 school days, the parent or person in parental relation shall retain the right to make a final decision

regarding the placement of their child in a Bilingual Education or English as a New Language program. Day(s) during a school closure ordered pursuant to an Executive Order(s) of the Governor pursuant to a State of emergency for the COVID-19 crisis shall not count towards the 10-day timeline prescribed in this paragraph.

37. Paragraph (1) of subdivision (g) of section 154-2.3 of the Regulations of the Commissioner of Education is amended to read as follows:

(1) Except as otherwise provided in this Part, the process for initial enrollment or reentry identification and parent notification, orientation, and placement shall be completed such that a student is placed in either a Bilingual Education or an English as a New Language program within 10 school days after the student's initial enrollment or reentry in the school district. Day(s) during a school closure ordered pursuant to an Executive Order(s) of the Governor pursuant to a State of emergency for the COVID-19 crisis shall not count towards the 10-day timeline prescribed in this paragraph.

38. Subdivision (h) of section 154-2.3 of the Regulations of the Commissioner of Educaiton is amended by adding a new paragraph (4) to read as follows:

(4) A student may be exempted from the unit of study requirements prescribed under this subdivision where a student is unable to meet such requirements due to a school being closed pursuant to an Executive Order(s) of the Governor pursuant to a State of emergency for the COVID-19 crisis where such student otherwise achieves the learning outcomes for such unit of study requirement.

39. Subdivision (l) of section 154-2.3 of the Regulations of the Commissioner of Education is amended to read as follows:

(l) Annual assessment. Each school district with English language learners shall annually assess the English language proficiency of each such student using such

assessment as prescribed by the commissioner for this purpose. For the 2019-2020 school year, there will be no annual assessment due to the assessment being suspended as a result of COVID-19 crisis.

40. Paragraph (1) of subdivision (d) of section 100.2 of the Regulations of the Commissioner of Education is amended by adding a new subparagraph (v) to read as follow:

(v) A student may be exempted from such unit of study requirements in a language other than English where a student is unable to complete such requirements due to a school being closed pursuant to an Executive Order(s) of the Governor pursuant to the State of emergency for the COVID-19 crisis where such student otherwise achieves the learning outcomes for the portion of such unit of study completed.

41. Subdivision (c) of section 100.4 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (8) to read as follows:

(8) A student may be exempted from the unit of study requirement(s) prescribed in this subdivision where such student is unable to meet such requirement(s) due to a school being closed pursuant to an Executive Order(s) of the Governor pursuant to the State of emergency for the COVID-19 crisis where such student otherwise achieves the learning outcomes for the portion of such unit of study completed.

42. Section 100.5 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (i) to read as follows:

(i) Notwithstanding any other provision of this section, a student may be exempted from any requirement(s) for units of study leading to units of credit for a diploma pursuant to this section if such student is unable to meet such unit of study

requirement due to a school being closed pursuant to an Executive Order(s) of the Governor pursuant to the State of emergency for the COVID-19 crisis where such student otherwise achieves the learning outcomes for the portion of such unit of study completed.

43. Subparagraph (ii) of paragraph (3) of subdivision (b) of section 100.6 of the Regulations of the Commissioner of Education is amended to read as follows:

(ii) the school district has evidence that the student has demonstrated commencement level knowledge and skills relating to the career development and occupational studies learning standards set forth in section 100.1(t)(1)(vii)(a), (b) and (c) of this Part, including but not limited to career development, integrated learning and the universal foundation skills; and the student has successfully completed in grades 9-12 not less than the equivalent of two units of study in career and technical education course(s) and/or work-based learning experiences. The equivalent units of study shall be earned through coursework in career and technical education and/or work-based learning experiences, provided that the equivalent units of study shall include a minimum of 54 hours of documented school supervised work-based learning experiences related to career awareness, exploration and/or preparation which may, but are not required to, be completed in conjunction with the student's career and technical education course(s). Provided, however, that a student may be exempted from the unit of study and/or work-based learning experience requirement(s) prescribed in this subparagraph where such student is unable to meet such requirement(s) due to a school being closed pursuant to an Executive Order(s) of the Governor pursuant to the State of emergency for the COVID-19 crisis where such student otherwise achieves the

learning outcomes for the portion of such unit of study and/or work-based learning experience requirement(s) completed. For purposes of this subdivision:

(a) …

(b) …

44. Paragraph (5) of subdivision (a) of section 52.21 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(5) All registered teacher education programs leading to certification in the classroom teaching service, school service, or administrative and supervisory service shall provide six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training in the prevention and intervention of harassment, bullying and discrimination, except that the six clock hours of coursework or training may be provided entirely online during the time period of the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis. Such coursework or training shall include, training on the social patterns of harassment. bullying and discrimination, as defined in section 11 of the Education Law, including but not limited to those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex; the identification and mitigation of harassment, bullying and discrimination; and strategies for effectively addressing problems of exclusion[.], bias and aggression in educational settings.

45. Item (xiii) of subclause (1) of clause (c) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(xiii) means for the prevention of and intervention in harassment, bullying and discrimination in accordance with section 14 of the Education Law. Such study shall include six clock hours, of which at least three hours must be conducted through face-to-face instruction, of course work or training on the social patterns of harassment, bullying and discrimination; as defined in section 11 of the Education Law, including but not limited to those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex; the identification and mitigation of harassment, bullying and discrimination; and strategies for effectively addressing problems of exclusion[.], bias and aggression in educational settings, except that the six clock hours of coursework or training may be provided entirely online during the time period of the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

46. Item (X) of subitem (A) of item (i) of subclause (1) of clause (a) of subparagraph (xiii) of paragraph (3) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(X) means for the prevention of and intervention harassment, bullying and discrimination in accordance with section 14 of the Education Law. Such study shall include six clock hours, of which at least three hours must be conducted through face to-face instruction, of course work or training on the social patterns of harassment, bullying and discrimination, as defined in section 11 of the Education Law, including but not limited to those acts based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex; the identification and mitigation of harassment, bullying and

discrimination; and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings, except that the six clock hours of coursework or training may be provided entirely online during the time period of the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis, and;

47. Subitem (J) of item (iv) of subclause (2) of clause (b) of subparagraph (xvii) of paragraph (3) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(J) means for the prevention of and intervention in harassment, bullying and discrimination in accordance with section 14 of the Education Law. Such study shall include six clock hours, of which at least three hours must be conducted through face to-face instruction, of course work or training on the social patterns of harassment, bullying and discrimination, as defined in section 11 of the Education Law, including but not limited to those acts based on person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex; the identification and mitigation of harassment, bullying and discrimination; and strategies for effectively addressing problems of exclusion, bias and aggression in educational settings, except that the six clock hours of coursework or training may be provided entirely online during the time period of the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

48. Clause (c) of subparagraph (iv) of paragraph (1) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(c) Programs shall ensure that candidates complete six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training on the social patterns of harassment[.], bullying and discrimination, a, in accordance with the requirements of section 14 of the Education Law, except that the six clock hours of coursework or training may be provided entirely online during the time period of the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

49. Clause (m) of subparagraph (v) of paragraph (7) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(m) ensure that candidates complete six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training on the social patterns of harassment, bullying and discrimination, in accordance with the requirements of section 14 of the Education Law, except that the six clock hours of coursework or training may be provided entirely online during the time period of the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis;

50. Subdivision (a) of section 57-4.5 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(a) A provider, at a minimum, shall offer the syllabus prepared by the department and demonstrate that at least three of the six clock hours shall be conducted through face-to-face instruction, except that the six clock hours of coursework or training may be provided entirely online during the time period of the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis. However, nothing

in this section shall preclude providers from offering additional coursework or training which exceeds, or expands upon, the six hour syllabus prescribed by the department.

51. Section 80-1.13 of the Regulations of the Commissioner of Education shall be amended to read as follows:

All candidates for a certificate or license valid for an administrative or supervisory service, classroom teaching service or school service who apply for a certificate or license on or after December 31, 2013, shall have completed at least six clock hours, of which at least three hours must be conducted through face-to-face instruction, of course work or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 the Education Law, which is provided by a registered program leading to certification pursuant to section 52.21 of this Title or other approved provider pursuant to Subpart 57-4 of this Title, except that candidates may complete the minimum six clock hours of course work or training entirely online during the time period of the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.

52. Paragraph (1) of subdivision (c) of section 80-1.5 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(1) Teacher performance assessment.

(i) Except as otherwise provided in subparagraph ([iii]c) of this paragraph, a candidate who takes and fails to achieve a satisfactory level of performance on the teacher performance assessment (after completing and submitting for scoring the teacher performance assessment), may, in lieu of retaking the teacher performance assessment:

([i]*a*) receive a satisfactory score on the written assessment of teaching skills after receipt of his/her score on the teacher performance assessment and prior to June 30, 2018; or

([ii]*b*) pass the written assessment of teaching skills on or before April 30, 2014 (before the new certification examination requirements became effective), provided the candidate has taken and failed the teacher performance assessment prior to June 30, 2018;

([iii]*c*) a candidate who takes and fails to achieve a satisfactory level of performance on the library specialist teacher performance assessment (after completing and submitting for scoring the library specialist teacher performance assessment), may, in lieu of retaking the library specialist teacher performance assessment:

([*a*]1) receive a satisfactory score on the written assessment of teaching skills after receipt of his/her score on the library specialist teacher performance assessment and prior to December 31, 2021; or

([*b*]2) pass the written assessment of teaching skills on or before April 30, 2014 (before the new certification examination requirements became effective), provided the candidate has taken and failed the library specialist teacher performance assessment prior to December 31, 2021.

(ii) A candidate who is enrolled in a program registered pursuant to section 52.21 of this Title in the spring of 2020, and whose student teaching or other clinical experience was impacted by the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis, as determined by the dean or his/her designee overseeing the candidate's program may either:

(*a*) take and receive a satisfactory level of performance on the teacher performance assessment;

(*b*) take the written assessment of teaching skills by September 1, 2023 and receive a satisfactory score on such assessment; or

(*c*) for a candidate who takes and fails to achieve a satisfactory level of performance on the teacher performance assessment, may, in lieu of retaking such assessment:

(1) take the written assessment of teaching skills by September 1, 2023 and receive a satisfactory score on the written assessment of teaching skills after receipt of his/her score on the teacher performance assessment; or

(2) apply for a waiver of the edTPA requirement through the multiple-measures review process pursuant to subdivision (d) of this section, if he/she meets the eligibility requirements.

53. Subdivision (d) and subparagraph (1) of section 80-3.15 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(d) Applications for the statement of continued eligibility shall be submitted to the department, on a form prescribed by the commissioner, on or before June 30, [2020]2021 and candidates must meet the requirements in the following paragraph to be issued a statement of continued eligibility for each subject area in which the statement of continued eligibility is sought prior to June 30, [2020]2021:

(1) As part of the application, the candidate shall submit satisfactory evidence of at least three years of satisfactory full-time teaching experience prior to June 30, [2020]2021, during which time the candidate met the qualifications to be considered highly qualified for a core academic subject for purposes of the No Child Left Behind Act

(NCLB) under the former 34 C.F.R. 200.56 through passing the high objective uniform State standard of evaluation rubric (HOUSSE) to demonstrate subject matter competency in grades 7- 12 in the subject area in which the statement of continued eligibility sought. The candidate shall submit, as part of the application, the completed HOUSSE rubric from the district(s) for each year of experience for each subject area that the candidate seeks a statement of continued eligibility.

54. Subparagraph (i) of paragraph (3) of subdivision (t) of section 80-4.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(i) the candidate shall submit evidence of having at least two years of satisfactory full-time teaching experience in a public school, State-supported or State-operated school, or private schools established under 853 of the Laws of 1976 prior to June 30, [2020]2021 during which time the candidate met the qualifications to be considered highly qualified for a core academic subject for purposes of the No Child Left Behind Act under the former 34 C.F.R. 200.56 through passing the high, objective, uniform State standard of evaluation rubric (HOUSSE) to demonstrate subject matter competency in grades 7-12 in the subject area for which the limited extension was sought. The candidate shall submit, as part of the application, the completed HOUSSE rubric from the district(s) for each year of experience for each subject area that the candidate seeks a limited extension;

55. Subdivision (a) of section 100.21 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) Applicability. (1) Notwithstanding the provisions of section 100.2(p)(1) through (11) and (14) through (16) and section 100.18 of this Part, this section shall apply to school districts and charter schools in lieu of such provisions during the period the

Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, is effective, except as otherwise provided in this section. If a provision of section 100.2(p) or section 100.18 of this Part conflicts with this section, the provisions of this section shall prevail and the provisions of section 100.2(p) or section 100.18 of this Part shall not apply. Provided that for accountability designations made prior to July 1, 2018, the requirements of section 100.18 of this Part shall continue to apply to the extent that plans and interventions under that section are required to be implemented until the end of the 2018-2019 school year.

(2) Notwithstanding any other provisions of this section, the Commissioner shall not conduct a review of school and district performance using 2019-2020 school year results, the accountability status of public schools and districts for the 2020-2021 school year shall be the same as for the 2019-2020 school year, and provided further that 2018-2019 school year results shall be used in any instance for which 2019-2020 school year results would have been used as part of the process of making 2021-2022 school year accountability determinations.

(3) Notwithstanding any other provision of this section, the Commissioner may, upon a finding of good cause, modify for the 2019-2020 through 2021-2022 school years any timelines pertaining to notifications, plans, reports, or implementation of activities required by this section.

56. Paragraph (1) of subdivision (b) of section 100.21 of the Regulations of the Commissioner of Educaiton is amended by adding subparagraphs (xii), (xiii), and (xxiv) to read as follows:

(xxii) *Previous school year and prior school year* shall mean the most recent school year preceding the current school year in which State assessments were administered.

(xxiii) Three consecutive years shall mean the current school year and the immediately preceding two school years, except as otherwise provided in this section, provided that for accountability determinations based on 2020-2021 school year results, three consecutive years shall mean determinations based on 2020-2021, 2018-2019, and 2017-2018 school year results and that for accountability determinations based on 2021-2022 school year results, three consecutive years shall mean determinations based on 2021-2022, 2020-2021, and 2018-2019 school year results.

(xxiv) *Two consecutive years* shall mean the current school year and the immediately preceding school year, except as otherwise provided in this section, provided that for accountability determinations based on 2020-2021 school year results, in which case two consecutive years shall mean determinations based on 2020-2021 and 2018-2019 school year results.

57. Subparagraphs (xi) and (xiii) of paragraph (2) of subdivision (b) of section 100.21 of the Regulations of the Commissioner of Education are amended to read as follows:

(xi) The out-of-school suspension rate shall mean the number of students who were suspended from school (not including in-school suspensions) for one full day or longer anytime during the school year divided by the number of students enrolled on BEDS day of that school year commencing with data collected for the [2017-2018] 2018-2019 school year. A student is counted only once, regardless of whether the student was suspended one or more times during the school year. For the [2018-2019]

2020-2021 school year results, the Commissioner shall report for each accountability group for which a school or district is accountable a Level from 1-4 based on the out-of-school suspension rate. For the [2019-2020] 2020-2021 school year results, districts must implement the provisions of 100.21(i)(4) for any schools that have an accountability group that performs at Level 1 on the out-of-school suspension indicator. Beginning with the [2020-2021] 2023-2024 school year results, the out-of-school suspension indicator shall be incorporated into the methodology used to determine the accountability status of schools and districts under this section.

(xiii) Graduation rate cohort.

(a) The four-year graduation rate cohort for each public school and school district shall consist of those students (including an ungraded student with a disability in accordance with clause (e) of this paragraph) whose first date of entry into grade nine (anywhere) was four years previously and whose last enrollment in the school or district (as applicable), did not end because of transfer to another school or district (as applicable), transfer to home schooling by a parent or guardian, transfer to a postsecondary school prior to earning a diploma, or being a prior graduate from outside the United States and enrolled without documentation from their previous school, or leaving the United States or its territories, or transferred to a prison or juvenile facility, or death. Data for this cohort are captured as of June 30th of the fourth school year after the school year in which the cohort first entered grade nine. Data for this cohort are lagged by a year, except that data for the 2018-19 school year that are used to make 2020-21 school year determinations pursuant to clause (f)(2)(i)(b) of this section shall not be lagged.

(b) The five-year graduation rate cohort for each public school, and school district shall consist of those students (including an ungraded student with a disability in accordance with clause (e) of this paragraph) whose first date of entry into grade nine (anywhere) was five years previously and whose last enrollment in the school or district (as applicable), did not end because of transfer to another school or district (as applicable), transfer to home schooling by a parent or guardian, transfer to a postsecondary school prior to earning a diploma, or being a prior graduate from outside the United States and enrolled without documentation from their previous school, or leaving the United States or its territories, or transferred to a prison or juvenile facility, or death. Data for this cohort are captured as of June 30th of the fifth school year after the school year in which the cohort first entered grade nine. Data for this cohort are lagged by a year except that data for the 2018-19 school year that are used to make 2020-21 school year determinations pursuant to clause (f)(2)(i)(b) of this section shall not be lagged.

(c) The six-year graduation rate cohort for each public school and school district shall consist of those students (including an ungraded student with a disability in accordance with clause (e) of this paragraph) whose first date of entry into grade nine (anywhere) was six years previously and whose last enrollment in the school or district (as applicable), did not end because of transfer to another school or district (as applicable), transfer to home schooling by a parent or guardian, transfer to a postsecondary school prior to earning a diploma, or being a prior graduate from outside the United States and enrolled without documentation from their previous school, or leaving the United States or its territories, or transferred to a prison or juvenile facility, or death. Data for this cohort are captured as of June 30th of the sixth school year after the

school year in which the cohort first entered grade nine. Data for this cohort are lagged by a year except that data for the 2018-19 school year that are used to make 2020-21 school year determinations pursuant to clause (f)(2)(i)(b) of this section shall not be lagged.

(d) …

(e) ....

58. Clause (a) of subparagraph (i) of paragraph (3) of subdivision (b) of section 100.21 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) beginning with the 2018-2019 school year, using 2017-2018 school year results, and the 2022-23 school year using 2021-22 school year results, the State shall identify a minimum five percent of the lowest performing schools as CSI schools and shall identify CSI schools based upon the results from the all students group once every three years thereafter, based on the accountability measures described in subdivision (f) of this section. Provided that, if the accountability measures used to identify CSI schools in subdivision (f) of this section result in the identification of fewer than five percent of Title I public elementary/middle schools in the State, the commissioner shall identify the lowest performing five percent of Title I public elementary/middle schools using the rank ordered list for the combined composite performance and growth index; and

59. Clause (a) of subparagraph (ii) of paragraph (3) of subdivision (b) of section 100.21 of the Regulations of the Commissioner of Educaiton is amended to read as follows:

(a) beginning with the 2018-2019 school year, using 2017-2018 school year results, and the 2022-23 school year using 2021-22 school year results, the State will identify a minimum five percent of the lowest-performing schools as CSI schools based upon the results from the all students group once every three years based on the accountability measures described in subdivision (f) of this section. Provided that, if the methodology pursuant to subparagraph (f)(1)(i) of this section for elementary/middle schools and subparagraph (f)(2)(i) of this section for high schools results in the identification of fewer than five percent of Title I public high schools in the State, the commissioner shall identify the lowest performing five percent of Title I public high schools using the rank ordered list for the combined composite performance and graduation rate index; and

60. Subclause (1) of clause (b) of subparagraph (i) of paragraph (1) of subdivision (f) of section 100.21 of the Regulations of the Commissioner of Education is amended to read as follows:

(1) a mean growth percentile for the all students subgroup in each school shall be calculated by adding the student growth percentile scores for continuously enrolled students in grades 4-8 ELA to the student growth percentile scores for continuously enrolled students in grades 4-8 math for the current and the previous two school years in which the State Grade 3-8 ELA and math assessments have been administered, and dividing the result by the total number of student growth percentile scores in those grades/subjects and years;

61. Subparagraphs (iii), (iv) and (v) of paragraph (5) of subdivision (i) of section 100.21 of the Regulations of the Commissioner of Education are amended to read as follows:

(iii) Beginning with 2018-2019 and [2019-2020] 2020-2021 school year results, for any school that completed a school participation rate self-assessment and improvement plan in the previous school year and that fails to improve its participation rates for the subgroup(s) and subject(s), as determined by the commissioner, for which the plan was required, the district shall conduct a participation rate audit and develop an updated participation rate improvement plan. Such district participation improvement plan shall be developed in collaboration with a committee composed of the superintendent or his/her designee(s); the school principal or his/her designee(s); school staff, including teachers and student support staff selected by the representative collective bargaining organization(s); and parents (not employed by the district or a collective bargaining organization representing teachers or administrators in the district) selected by district-related and/or school-related parent organizations. Such district plan must be adopted by the district board of education, no later than 60 days following notification to the district that such a plan is required. The board of education (in New York City, the chancellor or chancellor's designee) shall take appropriate action to notify the general public upon adoption of the school plan; such action shall include, but not be limited to, publishing on the district website, if one exists, or direct notification to the parents, within 30 days of adoption, in English and translated, when appropriate, into the recipient’s native language or mode of communication.

(iv) Beginning with [2019-2020] 2020-2021 and [2020-20221] 2021-2022 school year results, for any school for which a district audit and district participation rate improvement plan was completed in the previous school year and that fails to improve its participation rates for the subgroup(s) and subject(s), as determined by the commissioner, for which the plan was required, the district must partner with a Board of

Cooperative Educational Services (BOCES) or other technical assistance center to conduct a participation rate audit and develop an updated participation rate plan. Such participation rate improvement plan shall be developed in collaboration with a committee composed of BOCES staff, the superintendent or his/her designee(s); the school principal or his/her designee(s); school staff, including teachers and student support staff, no more than 50 percent of whom shall be selected by the representative collective bargaining organization(s); and parents (not employed by the district or a collective bargaining organization representing teachers or administrators in the district) selected by district-related and/or school-related parent organizations. Such plan must be adopted by the district board of education no later than 60 days following notification to the district that such a plan is required. The board of education (in New York City, the chancellor or chancellor's designee) shall take appropriate action to notify the general public upon adoption of the school plan; such action shall include, but not be limited to, publishing on the district website, if one exists, or direct notification to the parents, within 30 days of adoption, in English and translated, when appropriate, into the recipient’s native language or mode of communication.

(v) Beginning with [2020-2021] 2021-2022 and [2021-2022] 2022-23 school year results, for any school for which an audit and participation rate improvement plan was completed pursuant to subparagraph (iv) of this paragraph in the previous school year and that fails to improve its participation rates for the subgroup(s) and subject(s), as determined by the commissioner, for which the plan was required, the department shall conduct an audit of the participation rate and the school may be required by the commissioner to address recommendations contained in the participation rate audit.

Attachment B

STATEMENT OF FACTS AND CIRCUMSTANCE WHICH NECESSITATE EMERGECNY 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, directing non-essential work personnel to work from home, and directing non-essential gatherings of individuals of any size for any reason to be canceled or postponed. As a result, it is necessary for the Department to adopt emergency regulations to address numerous issues resulting from the interruptions caused by the COVID-19 crisis. The proposed amendment provides flexibility related to the following:

- Instructional day and hour requirements;
- The service of pleadings and supporting papers for appeals to the Commissioner pursuant to Education Law §310;
- Charter school lotteries, reporting requirements, and payments by public school districts to Charter schools;
- Annual visits to nonpublic nursery schools and kindergartens by Department staff;
- Annual assessments for homeschool students;
- Continuous experience requirements for certain professions;

- Examination timeframe requirements for Public Accounting applicants;
- Educational program requirements for licensure in a profession under Title VII of the Education Law;
- In person supervision experience requirements for certain professions;
- Filing and submission timelines for Part 83 and Part 87 appeals to the Commissioner;
- The definition of the term “prospective school employee”;
- Certain procedures and timeframes for special education due process hearings;
- Timeframes related to special education programs and services;
- Filings with the Office of State Review;
- Certain timelines relating to Bilingual education;
- English language learners’ annual assessment;
- Unit of study requirements;
- Required Dignity for All Students Act (DASA) training;
- Teacher performance assessments (edTPA);
- Statement of continued eligibility (SOCE) and limited extension application deadline, and special education full-time teaching experience deadline; and
- School and district accountability.

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 60-day public comment period

required in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), is the July 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 July 2020 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rule makings. However, since the emergency regulation will expire before the July meeting, it is anticipated that an additional emergency action will be presented for adoption at the June 2020 Regents meeting.