TO: The Honorable Members of the Board of Regents

FROM: Shannon L. Tahoe

SUBJECT: Proposed Amendments to Sections 60.10, 80-1.2, 80-4.3, 80-4.4, 80-5.6, 100.2, 100.5, 100.7, 100.10, 110.4, 119.4, 121.5, 135.4, 145-2.15 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis

DATE: June 3, 2020

AUTHORIZATION(S): Shannon L. Tahoe

SUMMARY

Issue for Decision

Should the Board of Regents adopt the proposed amendments to Sections 60.10, 80-1.2, 80-4.3, 80-4.4, 80-5.6, 100.2, 100.5, 100.7, 100.10, 110.4, 119.4, 121.5, 135.4, 145-2.15 of the Regulations of the Commissioner of Education relating to addressing the COVID-19 Crisis?

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 June 2020 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rulemaking will be published on June 24, 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 for the remainder of the school year and summer school and directing nonessential work personnel to work from home. In response, the Department adopted emergency regulations at the April 2020 and May 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:

- Data Privacy
  - Section 121.5(b) is amended to extend the date required for the adoption and publishing of data security and privacy policies by educational agencies from July 1, 2020 until October 1, 2020 to provide educational agencies with additional time to develop their policies during the COVID-19 crisis (Attachment A #1).

- Home Instruction
  - Section 100.10(e) is amended to provide flexibility for the unit of study requirements for home instruction programs during the COVID-19 crisis, provided students meet the learning outcomes for the portion of the unit of study completed.
  - Section 100.10(f) is amended to provide flexibility from the instructional day and/or hour requirements provided the home instruction program provides continuity of learning to students (Attachment A #'s 2-3).

- Professions
  - Section 61.10(c)(1) is amended to provide that the Department, in its discretion, may accept a lower number of live patient experience for dentist and dental school residents seeking dental anesthesia certification during the COVID-19 crisis (Attachment A #'s 4-7)

- Higher Education
  - Ability-to-Benefit (ATB) test:
    - Section 145-2.15(e)(1)(iii)(j) is amended to provide that where testing centers and institutions are unable to administer and proctor the ATB during the COVID-19 crisis the test may be administered and proctored remotely in accordance with federal requirements (Attachment A #8).
  - Teaching Assistant Certificate Extension:

        - Section 80-1.2(b) is amended to extend the expiration date of Teaching Assistant Level I certificates, Level I Renewals, Level II certificates, Pre-Professional certificates, and Pre-Professional Renewals 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 next level Teaching Assistant certificate (Attachment A #9).

    - Teaching Assistant Experience:
        - Section 80-5.6 is amended to allow teaching assistant experience that is gained while a candidate holds the Emergency COVID-19 Teaching Assistant certificate to satisfy the experience requirement for the Teaching Assistant Level II, Level III, and Pre-Professional certificates (Attachment A #'s10-12).

    - Certificate Extensions:
        - Sections 80-4.3 and 80-4.4 are amended to allow the Emergency COVID-19 certificate to serve as a base certificate for certain certificate extensions and the severe or multiple disabilities annotation (Attachment A #'s 13-30).

    - Coaching evaluations:
        - Section 135.4 is amended to not require temporary coaching candidates of extracurricular interscholastic sports, who held a temporary coaching certificate for the Winter 2019-20 and/or Spring 2020 sports season, to have received an evaluation by the principal or athletic director for such sports seasons for professional coaching certification due to the COVID-19 crisis. Currently, these candidates are required to receive a satisfactory evaluation by the principal or athletic director for each of the preceding three years that they coached in the sport for which a professional coaching certificate is sought (Attachment A #31).

- Curriculum and Instruction
    - High School Equivalency Diploma
        - Section 100.7(2)(a) is amended providing that for the duration of time that general comprehensive examination testing centers are closed due to the COVID-19 crisis, a candidate for a high school equivalency diploma shall not be required to take a sub-test of such examination where the candidate has been exempted from or passed five corresponding Regents examinations or other examinations approved by the Commissioner for such sub-tests (Attachment A #32).

    - Hands only CPR instruction:
        - Section 100.2(c)(11) is amended to provide an exemption to the requirement that senior high schools provide an opportunity to students to demonstrate the psychomotor skills necessary to perform

hands-only compression CPR for the 2019-20 school year due to schools being closured in response to the COVID-19 crisis (Attachment A #33).

- Regents exam requirement for online blended learning and make up incomplete or failed course credit:
  - Section 100.5(d)(10)(ii)(a) is amended to provide that a student shall not be required to pass a Regents examination and/or other assessment to receive credit for online blended learning where a student has been exempted from such examination and/or assessment (Attachment A #34).
  - Section 100.5(d)(8)(i) is amended to provide that a student shall not be required to pass a Regents examination and/or other assessment to receive credit for make up incomplete or failed course credit where a student has been exempted from such examination and/or assessment (Attachment A #35).

- Declination
  - Section 100.5(d) is amended to provide that parents or persons in parental relation of students scheduled to graduate in June or August of 2020 who have been exempted from a graduation assessment requirement shall be given the opportunity to decline such exemption (Attachment A #36).

- Summer school
  - Section 110.4(b) is amended to provide that a summer school session which provides the equivalent of 45 hours of instruction shall be considered the equivalent of one semester of work for each subject to provide flexibility for summer school instruction during the COVID-19 crisis (Attachment A #37).

- Child Abuse in an educational setting training deadline
  - Section 100.2(hh) is amended to extend the deadline for completion of the child abused in an educational setting training from July 1, 2020 until September 30, 2020 (Attachment A #38).

- Charter School Public Hearings
  - Section 119.4 is amended to provide an extension to the 30-day timeline for school districts to conduct public hearings after receipt of an application for the formation of a new charter school, renewal of an existing charter school, or a charter school's request to revise its existing charter until September 30, 2020. Additionally, the Department proposes to permit such hearings to be held remotely and public comment to be solicited and accepted either electronically or by mail (Attachment A #39).

Related Regent's 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)

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)

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)

Recommendation

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

VOTED: That Sections 60.10, 80-1.2, 80-4.3, 80-4.4, 80-5.6, 100.2, 100.5, 100.7, 100.10, 110.4, 119.4, 121.5, 135.4, 145-2.15 be amended, 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 60-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 2-d, 101 206, 207, 208, 209, 210, 214, 215, 305, 308, 309, 661, 803, 804-c, 911, 1125, 1126, 1128, 1132, 3004, 3009, 3028-b, 3204, 3205, 3210, 3212, 3602, 6504, 6506, 6507, 6601, 6605-a of the Education Law.

1. Subdivision (b) of section 121.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(b) [No later than July 1, 2020] Each educational agency shall adopt and publish a data security and privacy policy that implements the requirements of this Part and aligns with the NIST CSF no later than October 1, 2020.

2. Subdivision (e) of section 100.10 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (3) to read as follows:

(3) A student shall be exempted from the unit of study requirement of paragraph (1) of this subdivision if such student is unable to meet such unit of study requirement due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis where such student otherwise achieves the learning outcomes for the portion of such unit of study completed.

3. Subdivision (f) of section 100.10 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (6) to read as follows:

(6) A student shall be exempted from the instructional day and/or hour requirement(s) set forth in paragraphs (1) and (2) of this subdivision where a home instruction program is unable to provide such instructional days and/or hours due to the State of emergency declared by the Governor pursuant to an Executive order for the

COVID-19 crisis provided that such home instruction provided continuity of learning for such student.

4. Clause (b) of subparagraph (ii) of paragraph (1) of subdivision of (c) of section 61.10 of the Regulations of the Commissioner of Education is amended to read as follows:

(b) pre-doctoral or post-doctoral education acceptable to the department and accredited by an acceptable accrediting body, which shall include a formal course consisting of at least 60 clock hours of coursework that is provided through didactic instruction and/or an anesthesia rotation, which has been previously approved by the department. Simulation experiences may be part of the required coursework, which shall include but not be limited to, coursework in patient evaluation and monitoring, management of emergencies, rescue of patients from deep sedation, management of the pediatric and adult airways, pediatric and adult cardiac and pulmonary anatomy and physiology, pediatric and adult pharmacology, and the control of pain and anxiety; and in addition to the 60 clock hours of coursework, a clinical experience demonstrating the successful use of dental parenteral conscious (moderate) sedation on no fewer than 20 live dental patients via the intravenous route who shall be 13 years old or older in a 1 doctor/student to 1 patient ratio. Provided, however, that the Department, in its discretion, may accept a clinical experience demonstrating the successful use of dental parental conscious (moderate) sedation on no fewer than 15 live dental patients via the intravenous route who shall be 13 years old or older in a 1 doctor/student to 1 patient ratio and up to 5 Objective Structured Clinical Examinations (OSCE's) in a 1 doctor/student to 1 OSCE ratio for a total of 20 patients to meet the live dental patient requirement of this clause 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. The student/licensed

dentist enrolled in the course shall have his or her name listed on the anesthesia record and shall be the individual administering the medications and documenting said administration, as well as the physiologic findings required on the anesthesia record. The patients shall be monitored, at a minimum, pursuant to the practice requirements as set forth in subdivision (d) of this section. If the clinical portion of the course is given outside a teaching institution, a formal memorandum of understanding (MOU) between the teaching institution and the clinical teaching center (facility) shall be in place attesting that the clinical facility is held to the same practice standards as the teaching institution.

5. Clause (c) of subparagraph (iii) of paragraph (1) of subdivision of (c) of section 61.10 of the Regulations of the Commissioner of Education is amended to read as follows:

(c) pre-doctoral or post-doctoral education accredited by an acceptable accrediting body, which shall include a formal course consisting of at least 60 clock hours of coursework that is provided through didactic instruction and/or an anesthesia rotation, which has been previously approved by the department. Simulation experiences can be part of the coursework which shall include but not be limited to, coursework in patient evaluation and monitoring, management of emergencies, rescue of patients from deep sedation, management of the pediatric and adult airways, pediatric and adult cardiac and pulmonary anatomy and physiology, pediatric and adult pharmacology, and the control of pain and anxiety; and in addition to the 60 clock hours of coursework, a clinical experience, acceptable to and previously approved by the department, demonstrating the successful use of dental parenteral conscious (moderate) sedation by the intravenous route on no fewer than 15 live dental patients who shall be 12 years old or younger and five live dental patients who shall be 13 years old or older in a 1 doctor/student to 1 patient ratio. Provided, however, that the Department, in its discretion, may accept a clinical

experience demonstrating the successful use of dental parental conscious (moderate) sedation by the intravenous route on no fewer than 12 live dental patients who shall be 12 years old or younger and three live dental patients who shall be 13 years old or older and up to five Objective Structured Clinical Examinations (OSCE's), for a total of 20 patients, all in a 1 doctor/student to 1 patient ratio to meet the live dental patient requirement of this clause 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. The student/licensed dentist enrolled in the course shall have his or her name listed on the anesthesia record and shall be the individual administering the medications and documenting said administration, as well as the physiologic findings required on the anesthesia record. The patients shall be monitored, at a minimum, pursuant to the practice requirements as set forth in subdivision (d) of this section. If the clinical portion of the course is given outside a teaching institution, a formal memorandum of understanding (MOU) between the teaching institution and the clinical teaching center (facility) shall be in place attesting that the clinical facility is held to the same practice standards as the teaching institution.

6. Clause (b) of subparagraph (iv) of paragraph (1) of subdivision of (c) of section 61.10 of the Regulations of the Commissioner of Education is amended to read as follows:

(b) pre-doctoral education or post-doctoral education accredited by an acceptable accrediting body, and which shall include a formal course consisting of at least 60 clock hours of coursework that is provided through didactic instruction and/or an anesthesia rotation, which has been previously approved by the department. Simulation experiences may be part of the required coursework which shall include but not be limited to, coursework in patient evaluation and monitoring, management of emergencies including

IV access, rescue of patients from deep sedation, management of the pediatric and adult airways, pediatric and adult cardiac and pulmonary anatomy and physiology, pediatric and adult pharmacology, and the control of pain and anxiety; and in addition to the 60 clock hours of coursework, a clinical experience, acceptable to and previously approved by the department, demonstrating the successful use of dental enteral conscious (moderate) sedation on no fewer than 10 live clinical dental patients who shall be 13 years old or older and who are physically present in the same location as the students. Provided, however, that the Department, in its discretion, may accept a clinical experience demonstrating the successful use of dental enteral conscious (moderate) sedation on no fewer than eight live clinical dental patients who shall be 13 years old or older and who are physically present in the same location as the students and up to two Objective Structured Clinical Examinations (OSCE's) for a total of 10 patients to meet the live clinical dental patient requirement of this clause 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. The students may be in groups no larger than five. The patients shall be monitored, at a minimum, pursuant to the practice requirements as set forth in subdivision (d) of this section. If the clinical portion of the course is given outside a teaching institution, a formal memorandum of understanding (MOU) between the teaching institution and the clinical teaching center (facility) shall be in place attesting that the clinical facility is held to the same practice standards as the teaching institution.

7. Clause (c) of subparagraph (v) of paragraph (1) of subdivision of (c) of section 61.10 of the Regulations of the Commissioner of Education is amended to read as follows:

(*c*) pre-doctoral or post-doctoral education acceptable to the department and accredited by an acceptable accrediting body, which shall include a formal course

consisting of at least 60 clock hours of coursework that is provided through didactic instruction and/or an anesthesia rotation, which has been previously approved by the department. Simulation experiences can be part of the coursework which shall include but not be limited to coursework in patient evaluation and monitoring, management of emergencies, including IV access, rescue of patients from deep sedation, management of the pediatric and adult airways, pediatric and adult cardiac and pulmonary anatomy and physiology, pediatric and adult pharmacology, and the control of pain and anxiety; and in addition to the 60 clock hours of coursework, a clinical experience demonstrating the successful use of dental enteral conscious (moderate) sedation on no fewer than 15 live clinical dental patients 12 years old or younger and five live clinical dental patients 13 years old or older in a 2:1 doctor/student to patient ratio. Provided, however, that the Department, in its discretion, may accept a clinical experience demonstrating the successful use of dental enteral conscious (moderate) sedation on no fewer than 12 live clinical dental patients 12 years old or younger and three live clinical dental patients 13 years old or older in a 2:1 doctor/student to patient ratio for both age groups, as well as up to five Objective Structured Clinical Examinations (OSCE's) in a 1 doctor/student to 1 OSCE ratio for a total of 20 patients to meet the live clinical dental patient requirement of this clause 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. For the purpose of this section, a 2:1 doctor/student to patient ratio means the doctor/student providing dental care to the patient and a second doctor/student monitoring and documenting the sedation care can receive credit for the procedure as it relates to the minimum number of sedations required for certification. Both of these doctors/students shall be with the patient during the entire time of treatment and cannot be involved with any other activities or

responsibilities. Only the two doctors/students involved in direct patient care/monitoring can receive credit for treating the patient undergoing the procedure and sedation. The student/licensed dentist enrolled in the course shall have his or her name listed on the anesthesia record and shall be the individual administering the medications and documenting said administration, as well as the physiologic findings required on the anesthesia record. The patients shall be monitored, at a minimum, pursuant to the practice requirements set forth in subdivision (d) of this section. If the clinical portion of the course is given outside a teaching institution, a formal memorandum of understanding (MOU) between the teaching institution and the clinical teaching center (facility) shall be in place attesting that the clinical facility is held to the same practice standards as the teaching institution.

8. Clause (j) of subparagraph (iii) of paragraph (1) of subdivision (e) of section 145-2.15 of the Regulations of the Commissioner of Education is amended and a new subparagraph (iv) is added to read as follows:

(j) upon request, gives the Commissioner, guaranty agency, accrediting agency, and law enforcement agencies access to test records or other documents related to an examination, audit, investigation, or program review of the institution or test publisher[.]; or

(iv) where testing centers and institutions are unable to administer and proctor the test at such locations identified in subparagraphs (i), (ii), or (iii) of this subdivision due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis the test may be administered and proctored remotely provided such remote administration and proctoring is in accordance with federal requirements.

9. Paragraph (9) of subdivision (b) of section 80-1.2 of the Regulations of the Commissioner of Education shall be added to read as follows:

(9) The commissioner shall extend the expiration date of teaching assistant level I certificates, level I renewals, level II certificates, pre-professional certificates, and pre-professional renewals 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.

10. Item (iii) of subclause (1) of clause (b) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 80-5.6 of the Regulations of the Commissioner of Education shall be added to read as follows:

(iii) Experience. The candidate shall submit adequate evidence substantiating satisfactory employment as a teaching assistant for one school year under a level I teaching assistant certificate or an emergency COVID-19 teaching assistant certificate or under a temporary license authorizing employment as a teaching assistant.

11. Item (iii) of subclause (1) of clause (c) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 80-5.6 of the Regulations of the Commissioner of Education shall be added to read as follows:

(iii) Experience. The candidate shall submit adequate evidence substantiating satisfactory employment as a teacher in the classroom teaching service as defined in section 80-1.1 of this Part, a teaching assistant for one school year under a level I teaching assistant certificate[or], a level II teaching assistant certificate, or an emergency COVID-19 teaching assistant certificate, or under a temporary license authorizing employment as a teaching assistant.

12. Item (iii) of subclause (1) of clause (d) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 80-5.6 of the Regulations of the Commissioner of Education shall be added to read as follows:

(iii) Experience. The candidate shall submit adequate evidence substantiating satisfactory employment as a teaching assistant for one school year under a level I teaching assistant certificate, a level II teaching assistant certificate,[or] a level III teaching assistant certificate, or an emergency COVID-19 teaching assistant certificate, or under a temporary license or continuing certificate authorizing employment as a teaching assistant.

13. Paragraph (1) of subdivision (a) of section 80-4.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(1) The requirements of this subdivision shall be applicable to the extension in bilingual education of provisional, permanent, initial, emergency COVID-19, or professional certificates in the classroom teaching service. The requirements of section 80-2.9 of this Part shall be applicable to the extension in bilingual education for certificates in the pupil personnel service or the administrative and supervisory service.

14. Clause (b) of subparagraph (iii) of paragraph (4) of subdivision (a) of section 80-4.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(b) Certification. The candidate shall hold a valid provisional, initial, emergency COVID-19, permanent, or professional certificate in a title in the classroom teaching service identified in this Subpart or Subpart 80-3 of this Part.

15. Paragraph (1) of subdivision (b) of section 80-4.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(1) The candidate shall hold a valid permanent, initial, emergency COVID-19, or professional certificate in English language arts (7-12), language other than English (7-12), mathematics (7-12), biology (7-12), chemistry (7-12), earth science (7-12), physics (7-12), social studies (7-12), or in any specific career and technical education subject (7-12).

16. Paragraph (1) of subdivision (c) of section 80-4.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(1) The candidate shall hold a valid initial, emergency COVID-19, or professional certificate in childhood education (grades 1 through 6) or a valid provisional or permanent certificate for teaching common branch subjects in the lower (PreK-3) and upper (4-6) elementary grades (PreK-6).

17. Subparagraph (i) of paragraph (2) of subdivision (d) of section 80-4.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(i) The candidate shall hold a valid provisional, permanent, initial, emergency COVID-19, or professional certificate in the classroom teaching service.

18. Subparagraph (i) of paragraph (2) of subdivision (e) of section 80-4.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(i) The candidate shall hold a valid provisional, permanent, initial, emergency COVID-19, or professional certificate for classroom teaching service in any title in middle childhood education including students with disabilities (5-9), any title in adolescence education including students with disabilities (7-12), or any title in (K-12); or a valid provisional or permanent certificate in the title school counselor (Pre-K-12).

19. Subparagraph (i) of paragraph (2) of subdivision (f) of section 80-4.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(i) The candidate shall hold a valid provisional, permanent, initial, emergency COVID-19, or professional certificate for classroom teaching service authorizing instruction in any specific career and technical education title, or in agriculture (all grades), family and consumer sciences (all grades), business and marketing (all grades), or technology education (all grades).

20. Paragraph (1) of subdivision (g) of section 80-4.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(1) The candidate shall hold a valid provisional or permanent certificate in a language other than English (grades 7- 12) or a valid initial, emergency COVID-19, or professional certificate in a language other than English (grades 5-9) or a language other than English (grades 7-12).

21. Subparagraph (i) of paragraph (1) of subdivision (h) of section 80-4.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(i) The candidate shall hold a valid provisional, permanent, initial, emergency COVID-19, or professional certificate in the classroom teaching service.

22. Paragraph (1) of subdivision (i) of section 80-4.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(1) The candidate shall hold an initial, emergency COVID-19, or professional certificate in a science (grades 5-9).

23. Paragraph (1) of subdivision (j) of section 80-4.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(1) The candidate shall hold a provisional, permanent, initial, emergency COVID-19, or professional certificate in a science (grades 7-12).

24. Paragraphs (1), (2), and (3) of subdivision (n) of section 80-4.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(1) Purpose. The purpose of an extension issued under this section is to authorize a teacher who holds a valid initial, emergency COVID-19, or professional certificate in the classroom teaching service in students with disabilities (grades 5-9) generalist, students with disabilities (grades 5-9) content specialist, students with disabilities (grades 7-12) generalist, students with disabilities (grades 7-12) content specialist, or the special education generalist permanent certificate to authorize the teacher to be employed as the teacher of record for students with disabilities in certain subjects.

(2) Subjects for which extension may be obtained. A teacher who holds a valid initial, emergency COVID-19, or professional certificate in the classroom teaching service in students with disabilities generalist, students with disabilities (grades 5-9) content specialist, students with disabilities (grades 7-12) generalist, students with disabilities (grades 7-12) content specialist, or the special education generalist permanent certificate may seek an extension under this subdivision in one of the following subjects: mathematics; English language arts; biology; chemistry; earth science; physics; social studies; language other than English (specified) in either (grades 5-9) or (grades 7 through 12).

(3) Requirements for the extension. The candidate shall meet the requirements in each of the following paragraphs:

(i) the candidate shall hold a valid initial, emergency COVID-19, or professional certificate in students with disabilities (grades 5-9) generalist, students with disabilities (grades 5-9) content specialist, students with disabilities (grades 7-12) generalist,

students with disabilities (grades 7-12) content specialist, or the special education generalist permanent certificate;

(ii)…

(iii)…

25. Paragraph (1) of subdivision (o) of section 80-4.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(1) the candidate shall hold a valid initial, emergency COVID-19, or professional certificate in students with disabilities (birth - grade 2);

25. Paragraph (1) of subdivision (p) of section 80-4.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(1) the candidate shall hold a valid initial, emergency COVID-19, or professional certificate in students with disabilities (grades 1-6);

26. Paragraph (1) of subdivision (q) of section 80-4.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(1) the candidate shall hold a valid initial, emergency COVID-19, or professional certificate in students with disabilities (grades 1-6);

27. Paragraph (1) of subdivision (r) of section 80-4.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(1) the candidate shall hold a valid initial, emergency COVID-19, or professional certificate in students with disabilities (grades 7-12) generalist and students with disabilities (grades 7-12) content specialist;

28. Paragraph (1) of subdivision (s) of section 80-4.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(1) the candidate shall hold a valid initial, emergency COVID-19, or professional certificate in students with disabilities (grades 5-9) generalist and students with disabilities (grades 5-9) content specialist;

29. Paragraphs (1) and (3) of subdivision (t) of section 80-4.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(1) Purpose. The purpose of limited extensions issued under this subdivision is to authorize a teacher who holds a valid initial, emergency COVID-19, or professional certificate in the classroom teaching service in students with disabilities (grades 7-12) generalist, students with disabilities (grades 7-12) content specialist, students with disabilities (grades 5-9) generalist, students with disabilities (grades 5-9) content specialist, or the special education generalist permanent certificate to teach one of the following subject areas in a special class as defined in section 200.1(uu) of this Title: biology, chemistry, earth science, English Language Arts, general science, language other than English (specified) in either (grades 5-9) or (grades 7-12), mathematics, physics, and social studies.

(3) Requirements for a limited extension. A limited extension may be issued to a candidate in a specific subject area provided that the candidate holds a valid initial, emergency COVID-19, or professional certificate in the classroom teaching service in students with disabilities (grades 7-12) generalist, students with disabilities (grades 7-12) content specialist, students with disabilities (grades 5-9) generalist, students with disabilities (grades 5-9) content specialist, or the special education generalist permanent certificate and meets the requirements in one of the following subparagraphs:

30. Subdivision (a) of section 80-4.4 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(a) The candidate shall hold a valid provisional or permanent certificate for teaching special education, the deaf and hearing-impaired, the blind and partially sighted, the speech- and hearing- handicapped; or a valid initial, emergency COVID-19, or professional certificate in early childhood special education (birth-grade 2), childhood special education (grades 1-6), middle childhood special education (grades 5-9), adolescence special education (grades 7-12), deaf and hard of hearing (all grades), blind and visually impaired (all grades), speech and language disabilities (all grades).

31. Item (ii) of subclause (4) of clause (c) of subparagraph (i) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is amended to read as follows:

(ii) a professional coaching certificate shall be valid for a three year period, provided that such certificate may be renewed for additional three year periods upon the submission of a fee of $50 together with a renewal application for each successive renewal period, in a form prescribed by the commissioner, which satisfactorily establishes that:

(A) …

(B) the candidate has received a satisfactory evaluation by the principal or athletic director for each of the preceding three years that the candidate coached in the specific sport for which a professional coaching certificate is sought, provided, however that a candidate who held a temporary coaching certificate for the winter 2019-2020 and/or spring 2020 sports seasons shall not be required to have received an evaluation by the principal or athletic director for the winter 2019-2020 and/or spring 2020 sport

seasons for the professional coaching certificate due to school closures pursuant to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis;

32. Paragraph (2) of subdivision (a) of section 100.7 of the Regulations of the Commissioner of Education is amended by adding a new subparagraph (iii) to read as follows:

(iii) Notwithstanding the provisions of clauses (i)(a) and (b) of this paragraph, for the duration of time that general comprehensive examination testing centers are closed due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis, a candidate shall not be required to take any sub-test of the general comprehensive examination where such candidate has been exempted from or passed five corresponding Regents examinations or other examinations approved by the commissioner pursuant to section 100.2(f) or (mm) of this Part for such sub-tests.

33. Paragraph (11) of subdivision (c) of section 100.2 of the Regulations of the Commissioner of education is amended by adding a new subparagraph (v) to read as follows:

(v) Notwithstanding the provisions of this subdivision, senior high schools shall be exempted from providing an opportunity to students to demonstrate the psychomotor skills necessary to perform hands-only compression cardiopulmonary resuscitation required by this paragraph for the 2019-2020 school year where such schools were unable to provide such opportunity due to school closures ordered pursuant to an Executive Order of the Governor pursuant to a State of emergency for the COVID-19 crisis.

34. Clause (a) of subparagraph (ii) of paragraph (10) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Educaiton is amended to read as follows:

(a) To receive credit, the student shall successfully complete an online or blended course and demonstrate mastery of the learning outcomes for the subject, including passing the Regents examination in the subject and/or other assessment in the subject if required for earning a diploma, provided, however, that a student shall not be required to pass such Regents examination and/or other assessment where such student has been exempted from such examination and/or assessment pursuant to paragraph (5) of subdivision (a) of this section.

35. Subparagraph (i) of paragraph (8) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education are amended to read as follows:

(i) To receive credit, the student shall successfully complete a make-up credit program and demonstrate mastery of the learning outcomes for the subject, including passing the Regents examination in the subject or other assessment required for graduation, if applicable, provided, however, that a student shall not be required to pass such Regents examination or other assessment where such student has been exempted from such examination or assessment pursuant to paragraph (5) of subdivision (a) of this section.

36. Paragraph (5) of subdivision (a) of section 100.5 of the Regulations of the Commissioner of Education is amended by adding a new subparagraph (viii) to read as follows:

(viii) (a) Notwithstanding subparagraph (vii) of this paragraph, no entry shall be recorded on the transcript or permanent record of a student in the event that a parent

or person in a parental relation declines the exemption to the graduation assessment requirement(s) in accordance with clause (b) of this subparagraph.

(b) For the 2019-20 school year, at least10 calendar days prior to the date on a which a student shall receive a high school diploma, the superintendent, or school principal of a charter school, or chief administrative officer of a registered nonpublic high school shall send notification by letter and also be email and text, if available, to the parents or persons in parental relation of all students scheduled to graduate in June or August of 2020 who have been exempted from a graduation assessment requirement pursuant to this section or paragraph (10) of subdivision (d) of section 100.6 of this title . Such notification shall be sent in English and translated, when appropriate, into the recipient's native language or mode of communication.

(c) Such notification shall inform the parent and persons in parental relation of their right to decline the exemption to any graduation assessment requirement(s) for which a student is eligible. Such notification shall explain that:

(i) the decision of a parent or person in parental relation to decline the graduation assessment requirement exemption is irrevocable;

(ii) the student will not be eligible to graduate until he or she meets all the graduation assessment requirements, including those that were eligible for an exemption and the parent declined such exemption pursuant to this subparagraph; and

(iii) the child will remain eligible to receive a free public education until the end of the school year in which the child attains the age of 21 or earns a diploma, whichever shall occur first.

(d) Such notification shall include an enclosed declination form prescribed by the Commissioner to be filled out by parents or person in parental relation. Such form shall

be submitted to the student's school via mail, email or text. Schools shall also accept submissions not on such declination form by parents or persons in parental relation that provide substantially equivalent information about their intent to decline the exemption to the graduation assessment requirements.

(e) Upon receipt of the duly executed parental declination request, the superintendent of schools, charter school , or chief administrative officer of a registered nonpublic high school principal shall inform the parent or person in parental relation of the status of the declination request and the remaining graduation assessment requirement(s) that the student must meet in order to graduate.

(f) Notwithstanding the provisions of this subparagraph, where a student with a disabilitiy has an individualized education program (IEP) and/or other documentation from the Committee on Special Education indicating that the plan/recommendation for the student was to return to school to continue his or her education, a school may not confer a diploma for such student until a parent or person in parental relation confirms in writing that such student should receive a diploma.

37. Subdivision (b) of section 110.4 of the Regulations of the Commissioner of Education is amended to read as follows:

(b) A summer school session that provides 45 hours of instruction or the equivalent shall be considered the equivalent of one semester of work for each subject. Standings earned in Regents examinations in August may be applied toward a Regents diploma.

38. Subparagraph (ii) of paragraph (4) of subdivision (hh) of section 100.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(ii) Proof of completion of training. Each employee required to complete such training shall provide the school administrator of the school with documentation showing that he or she completed the required training by the later of [July 1, 2020] September 30, 2020 or within 30 days of employment. In addition, each school bus driver shall provide such contracting person or entity with documentation showing that he or she completed the required training. The Department is authorized to request such records on a periodic basis and may publish a list of any persons or schools who are not in compliance with this subdivision on its website.

39. Section 119.4 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 119.4. Hearings prior to the issuance, revision, or renewal of a charter school pursuant to Education Law section 2857(1).

(a) Within 30 days of initially receiving notice of the receipt of an application for the formation of a new charter school, of an application for the renewal of an existing charter school, or of a charter school's request to revise its existing charter, the school district in which the charter school is located shall hold a public hearing to solicit comments from the community in connection with the foregoing. Such hearing shall be held within the community potentially impacted by the proposed action or charter school. When a revision involves the relocation of a charter school to a different school district, the proposed new school district shall also hold a hearing within such 30-day period. The school district shall, at the time of its dissemination, provide the State Education Department with a copy of the public hearing notice. The school district shall, no later than the business day next following the hearing, provide written confirmation to both the charter school's charter entity and the State Education Department that the

hearing was held, along with the date and time of the hearing. In addition, such school district shall submit copies of any and all written records or comments generated from the hearing to the charter school's charter entity and the State Education Department within 15 business days of the hearing.

(b) Notwithstanding subdivision (a) of this section due to the State of emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis, any public hearing required to be conducted on or after the effective date of this subdivision during the 2020 calendar year shall be conducted by September 30, 2020 or within the 30 day period described in subdivision (a) of this section, whichever is later. Provided, further, that such public hearings may be held remotely by telephone conference, video conference, and/or other similar service, and that public comments shall be solicited and accepted either electronically or by mail. In addition, such school district shall submit copies of any and all written records or comments generated from the hearing to the charter school's charter entity and the State Education Department within 15 business days of the hearing.

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 for the remainder of the school year and summer school and directing non-essential work personnel to work from home. In response the Department adopted emergency regulations at the April 2020 and May 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, it is necessary for the Department to adopt further regulatory amendments. The proposed amendments provide flexibility related to the following:

- Adoption and publishing of data security and privacy policy deadline by educational agencies;
- Home instruction program unit of study requirements and instructional day and hour requirements;
- Live patient experience for dental anesthesia certification;
- Administration and proctoring of the Ability-to-Benefit Test;
- Certificate expiration dates
- Teaching assistant experience;
- Coaching evaluations;

- Sub-test requirement for the High School Equivalency Diploma;
- Hands only CPR instruction;
- Regents exams requirement for online blended learning and make up incomplete or failed course credit;
- Declination of exemption to graduation assessment requirements;
- Summer school instructional hours; and
- Charter school public hearings.

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 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 60-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 meeting.