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# Board of Regents Acts on Fourth Series of Emergency Regulations to Ease Burdens on Educators, Students and Professionals in the Wake of the COVID-19 Pandemic

**New and Continued Emergency Amendments Help Schools and Institutions of Higher Education for 2019-20 and 2020-21 School Years**

The Board of Regents today adopted emergency regulations that afford essential flexibility for educators, students and professionals to address issues due to the COVID-19 pandemic. The emergency regulations include the continuation of previously adopted amendments as well as new regulatory changes. The amendments cross multiple areas affecting P-12 schools, institutions of Higher Education and the professions and were informed by a series of eight regional meetings on reopening held for the P-12 and higher education communities.

"Life has changed radically for New York's students, parents and educators during the unprecedented COVID-19 emergency and we have to provide flexibility to districts in our new normal," Board of Regents Chancellor Betty A. Rosa said. "The efforts of our educators throughout have been nothing short of heroic. These amendments are critical to ensuring that our schools and districts can continue to provide meaningful instruction and strive for educational equity for all students."

"The monumental challenges brought about by the pandemic are like nothing our state has ever confronted," Interim Commissioner Tahoe said. "Educators and Professionals have faced innumerable complex problems over the last several months, and we have to ensure that work can continue across the state to execute a responsible, coordinated response to COVID-19."

The regulatory amendments were informed by four virtual Regional School Reopening Task Force meetings as well as a student forum hosted by the Board of Regents and Department last month to gather input. Each regional meeting included more than 350 experts and stakeholders from health and education fields. In all, more than 1,650 parents, students, teachers, administrators, school board members and stakeholders, representing New York's diversity, attended and provided valuable feedback.

Additionally, four virtual regional meetings were held to provide the Board of Regents and the Department with thoughtful and inclusive input needed to develop regulatory changes that will support New York's colleges and universities. These were attended by nearly 900 faculty, college administrators, students, and other interested parties from every region of the state, representing more than 170 Institutions of Higher

Education. The Department presented a summary of the meeting and next steps to the Board at today's Regents meeting.

### Summary of Continued Amendments

As a result of the pandemic and the Governor's numerous Executive Orders, the Department adopted emergency regulations at the April, May, and June 2020 Board of Regents meetings to address the issues resulting from the interruptions caused by the COVID-19 crisis.

The emergency regulations relating to the COVID-19 crisis, previously adopted at the April, May, and June 2020 Regents meetings that are continued for the 2020-21 school year can be found in the Regents items.

### Summary of New Amendments

The Board acted on further emergency regulatory amendments to provide additional flexibility to the field and students during the crisis to address anticipated issues resulting from the continued interruptions caused by the COVID-19 crisis and to prepare for the reopening of schools. A summary of new amendments follows. Full descriptions of the changes can be found in the Regents items.

## Early Learning

- **Flexibility in Teacher-Student Ratios:** In school districts outside of New York City, for the 2020-21 school year there must be one teacher assigned to each class for three-year-old students with a class size of seven children or fewer, and there must be one teacher assigned to each class for four-year-old students with a class size of 8 children or fewer.

  For the New York City School District, there must be one teacher assigned to each class for three-year old students with a class size of 10 children or fewer, and there must be one teacher assigned to each class for four-year-old students with a class size of 12 children or fewer.

- **Diagnostic Screening:** For the 2020-21 school year, diagnostic screening for new entrants and students with low test scores shall be conducted as soon as practicable due to the COVID-19 crisis rather than by December 1 of the school year.

## Curriculum and Instruction

- **Flexibility for Unit of Study Requirements:** The definition of "Unit of study" is amended to provide that "equivalent" shall mean at least 180 minutes of instructional time per week for instruction delivered in a traditional face to face model or through alternative instructional experiences, including but not limited to, digital technology or blended learning that represents standards-based learning under the guidance and direction of an appropriately certified teacher. Instructional experiences shall include, but not be limited to:
  - meaningful and frequent interaction with an appropriately certified teacher;
  - academic and other supports designed to meet the needs of the individual student; and
  - instructional content that reflects consistent academic expectations as in-person instruction.

  Any alternative instructional experience must include meaningful feedback on student assignments and methods of tracking student engagement. This amendment is necessary so that schools may plan for various types of instructional models, including hybrid models, because of contingencies

that may make it impossible for a specific amount of face to face contact between teachers and students due to the COVID-19 crisis.

- **Flexibility for CDOS:** A career development and occupational studies (CDOS) commencement credential may be awarded to students exiting school in the 2020-21 school year who are unable to complete all of the 54 hours of documented school supervised work-based learning experiences required and otherwise meet all other requirements for such credential, where such schools are unable to provide students a certain portion of their scheduled work-based learning experience in the 2020-21 school year due to the COVID-19 crisis.

- **Science Laboratory Experience:** For the 2020-21 school year, the 1,200 minutes of lab experience may be met through a combination of hands-on and simulated laboratory experience.

## Special Education

- **Initial Evaluation -- Individual Psychological Evaluation:** An individual psychological evaluation is only a required component for an initial evaluation when it is determined to be necessary by a school psychologist, due to the COVID-19 crisis when schools are closed pursuant to an Executive Order of the Governor and students are learning remotely.

- **Initial Evaluation -- Observation:** An observation of a student is a required component for an initial evaluation only when it is determined appropriate by the Committee on Preschool Special Education or Committee on Special Education, due to the COVID-19 crisis when schools are closed pursuant to an Executive Order of the Governor and students are learning remotely. Classroom observations will continue to be a required component of an initial evaluation for students suspected of having a learning disability.

## English Language Learners

- **Identifying ELLs:** 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 toward the calculation of less than 12 months for identifying English language learner (ELL) students with inconsistent/interrupted formal education.

- **Flexibility in ELL Identification Process:** The individual interview for the identification process to determine if a student is an English language learner is waived where a school district can document that video conferencing was used to remotely conduct an individual interview 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. In such cases, qualified personnel will review the previously completed Home Language Questionnaire with the parent or person in parental relation.

- **Flexibility in ELL Timeline:** Due to the COVID-19 crisis for the 2020-21 school year, the 45-school day timeline for a school district to initiate a review of a determination made in the initial or reentry identification process for English language learners after receipt of a written request is extended to 65 school days from the beginning of the 2020-21 academic school year for any student that was either newly enrolled during the COVID-19 closures in the 2019-20 school year, Summer 2020, or within the first 20 school days of the 2020-21 academic school year.

- **Flexibility in Initial Enrollment or Reentry Identification:** Due to the COVID-19 crisis for the 2020-21 academic school year, the process for initial enrollment or reentry identification and parent notification, orientation, and placement shall be completed such that a student who was either newly enrolled during the COVID-19 closures in the 2019-20 school year, Summer 2020, or the first

20 school days of the 2020-21 academic school year is placed in either a Bilingual Education or English as New Language program within 30 school days after commencement of the 2020-21 academic school year for school districts with 150 or more ELLs, or where ELLs comprise 10 percent or more of the district's population.

- **Timeline Exemption:** School districts with 149 or fewer ELLs or where ELLs constitute less than 10 percent of the district's population may seek an exemption from the English language learner identification timeline for students who are newly enrolled during the COVID-19 closures in the 2019-20 academic school year, Summer 2020, or the first 20 school days of the 2020-21 academic school year in a timeframe prescribed by the Commissioner, provided that such school demonstrates sufficient need for such exemption notwithstanding the size and percentage of its ELL population.

## Academic Intervention Services

- **Flexibility in AIS Identification:** Schools are not required to conduct the two-step identification prescribed for identification of students in grades 3 through 8 to receive AIS for the 2020-21 school year due to the cancelation of State assessments for the 2019-20 school year due to the COVID-19 crisis.

## Home Instruction

- **Program Deadline Extension**: For the 2020-21 school year, the home instruction program deadline for submission of the written notice of intention to instruct at home is extended from July 1 until August 1, 2020.

## Health Screening Waiver

- **Screening Waiver:** Hearing, vision, and scoliosis screenings required to be provided by public schools are waived for the 2020-21 school year due to the COVID-19 crisis, unless the screening is otherwise deemed necessary.

## Pupil Transportation

- **School Bus Drill:** For the first school bus drill to be conducted during the first seven days of schools, such seven days shall exclude any days where school is closed pursuant to an Executive Order of the Governor for the COVID-19 crisis for the Fall term for 2020-2021 school year.

## Higher Education

- **Incidental teaching:** During the State of emergency declared by the Governor, pursuant to an Executive Order for the COVID-19 crisis, a superintendent of schools will be allowed to assign certified teachers to teach a subject not covered by their certificate for a period not to exceed ten classroom hours a week when no certified or qualified teachers are available after extensive and documented recruitment.

- **Substitute teachers:** During the State of emergency declared by the Governor, pursuant to an Executive Order for the COVID-19 crisis, substitute teachers who do not hold a valid certificate and who are not working toward certification, but who hold a high school diploma or its equivalent, may

be employed by the school district or BOCES beyond the 40-day limit, for up to 90 days in extreme circumstances and for more than 90 days in rare circumstances.

- Shorter semester: The definitions of full-time and part-time student for Tuition Assistance Programs (TAP) are amended to provide that, for the 2020-21 academic year, students shall still meet the definition of full-time and part-time where the student is unable to enroll in credit-bearing courses for at least 15 weeks for a semester due to the COVID-19 crisis, provided that such student is enrolled in such credit-bearing courses for a minimum of 12 weeks for a semester and still meets the semester hour requirements.

## Professions

- Flexibility in Continuous Experience Requirements: The Department may waive the continuous experience requirements for speech language pathology, audiology, and occupational therapy when continuous experience could not be obtained due to the pandemic.

- CPA Examination Scores: The Department may accept CPA examination scores beyond the 18-month examination window exception due to pandemic related test center closures.

- Professional Education Program Requirements: The Department may modify professional educational program requirements, to the extent authorized by law, for licensure (including field experience, practicums, etc.), if such requirements cannot be met due to the crisis;

- In-Person Supervision Experience Requirements: The Department accept alternative means to satisfy the 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 pandemic;

- Flexibility for Limited Permits: Permits the Department, in its discretion, to renew limited permits in medicine for one additional 24-month period;

- CPR Certification in Dentistry: Permits the Department, in its discretion, to accept alternative means to be used by dentists and dental hygienists to obtain and/or maintain the required CPR certification, in lieu of the in-person CPR course requirement;

- Dental Anesthesia Certification: Permits the Department, in its discretion, to accept a lower number of live patient experiences and a specified number of Objective Structured Clinical Examinations for dentists and post-dental school residents seeking dental anesthesia certification.

## Timetable for Implementation

The proposed amendment will become effective as an emergency rule on July 14, 2020. It is anticipated that the proposed amendment will be presented for permanent adoption at the October 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 Procedures Act (SAPA). If adopted at the October 2020 meeting, the proposed rule will become effective on November 4, 2020. Because the emergency adoption will expire before the October 2020 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the September Regents meeting.

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