

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 209, 215, 305, 308, 309, 602, 661, 905, 1709, 2117, 2854, 3001, 3004, 3009, 3204, 3205, 3208, 3212, 3214, 3602, 3602-c, 3602-e, 3604, 3623, 3713, 4401, 4403, and 4410 of the Education Law.

1. Subparagraph (ii) of paragraph (2) of subdivision (ee) of section 100.2 is amended by adding a new clause (f) to read as follows:

(f) Notwithstanding any other provision of this subparagraph, schools shall not be required to conduct the two-step identification process prescribed in clauses (a) and (b) of this subparagraph for the 2020-21 school year due to the cancelation of State assessments for the 2019-20 school year due to the State of emergency declared by the Governor for the COVID-19 crisis. For all students who will be enrolled in grades 3 through 8 for the 2020-21 school year, schools shall make such identification based solely on the district-developed procedures prescribed in clauses (b), (d) and (e) of this subparagraph.

2. Subdivision (b) of section 100.10 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (4) to read as follows:

(4) For the 2020-21 school year, the written notice of intention to instruct at home required in paragraph (1) of this subdivision shall be due on August 1, 2020 due to the State of emergency declared by the Governor pursuant to an Executive Order(s) for the COVID-19 crisis.

3. Subdivision (e) of section 136.3 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (3) to read as follows:

(3) The hearing, vision, and scoliosis screenings required pursuant to paragraph (1) of this subdivision shall be waived for the 2020-21 school year due to the COVID-19 crisis, unless such screening has otherwise been deemed necessary.

4. Subdivision (a) of section 100.1 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) *Unit of study* means at least 180 minutes of instruction per week throughout the school year, or the equivalent. 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 through 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.

5. Paragraph (3) of subdivision (b) of section 100.6 of the Regulations of the Commissioner of Education is amended by adding a new subparagraph (iv) to read as follows

(iv) Notwithstanding any other provision of this paragraph to the contrary, a career development and occupational studies commencement credential may be awarded to students exiting school in the 2020-2021 school year who are unable to

complete all of the 54 hours of documented school supervised work-based learning experiences required pursuant to subparagraph (ii) of this paragraph 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 2020-2021 school year due to the COVID-19 crisis.

6. Clause (d) of subparagraph (iv) of paragraph (7) of subdivision (b) of Section 100.5 of the Regulations of the Commissioner of Education is amended to read as follows:

(d) Science, three units of credit and one of the Regents examinations in science or an approved alternative pursuant to section 100.2(f) of this Part. In order to qualify to take a Regents examination in any of the sciences a student must complete 1,200 minutes of actual hands-on (not simulated) laboratory experience with satisfactory documented laboratory reports, provided that, for students who attend educational programs administered pursuant to Education Law section 112 and Part 116 or 118 of this Title, and for all students during the 2020-2021 school year as a result of the COVID-19 crisis, the 1,200 minutes of laboratory experience may be met through a combination of hands-on and simulated laboratory experience. The 1,200 minutes of laboratory experience must be in addition to the required classroom instruction associated with earning a unit of credit.

7. Paragraph (3) of subdivision (b) of section 117.3 of the Regulations of the Commissioner of Education is amended to read as follows:

(3) in the case of new entrants, such screening shall be conducted prior to the school year, if possible, but no later than December 1st of the school year of entry, or

within 15 days of transfer of a student into a New York State public school should the entry take place after December 1st of the school year; provided, however, that for the 2020-21 school year such screening shall be conducted as soon as practicable due to the COVID-19 crisis;

8. Paragraph (1) of subdivision (b) of section 200.4 of the Regulations of the Commissioner of Education is amended as follows:

(1) . . .

(i) . . .

(ii) an individual psychological evaluation, except when a school psychologist determines after an assessment of a school-age student, pursuant to paragraph (2) of this subdivision, that further evaluation is unnecessary, except that for the 2020-2021 school year, to allow for appropriate flexibility due to the unique circumstances that have arisen as a result of the COVID-19 crisis, no individual psychological evaluation shall be required if schools are closed pursuant to an Executive Order of the Governor and students are learning remotely, unless it is determined to be necessary by a school psychologist;

(iii) . . .

(iv) an observation of the student in the student's learning environment (including the regular classroom setting) or, in the case of a student of less than school-age or out of school, an environment appropriate for a student of that age, to document the student's academic performance and behavior in the areas of difficulty, except that, to allow for appropriate flexibility due to the unique circumstances that have arisen as a result of the COVID-19 crisis, during the 2020-21 school year if schools are closed

pursuant to an Executive Order of the Governor and students are learning remotely an observation shall only be a required component of an initial evaluation where determined appropriate by the committee, and as required under subparagraph (j)(1)(i) of this section; and

(v) . . .

(2) . . .

9. The opening paragraph of section 80-5.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

A superintendent of schools may assign a teacher to teach a subject not covered by such a teacher's certificate or license for a period not to exceed five classroom hours a week, and due to the COVID-19 crisis during the 2020-2021 school year for a period not to exceed ten classroom hours a week, when no certified or qualified teacher is available after extensive and documented recruitment, and provided that approval of the commissioner is obtained in accordance with the following requirements:

10. Subparagraph (ii) of paragraph (3) of subdivision (c) of section 80-5.4 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(ii) In extreme circumstances where there is an urgent need for a substitute teacher and the district has undertaken a good faith recruitment search for a properly certified candidate, and determined that there are no available certified teachers to perform the duties of such position, a substitute teacher, without a valid teaching certificate and who is not working towards certification but who holds a high school diploma or its equivalent, may be employed by the school district or board of cooperative educational services beyond the 40-day limit, for up to an additional 50

days (90 days total in a school year), if the district superintendent (for districts that are a component district of a board of cooperative educational services and boards of cooperative educational services) or the superintendent (for school districts that are not a component district of a board of cooperative educational services) certifies that the district or board of cooperative educational services, as applicable, has conducted a good faith recruitment search and there are no available certified teachers that can perform the duties of such position. In rare circumstances, a district or BOCES may hire a substitute teacher beyond the 90 days, if a district superintendent or superintendent attests that a good faith recruitment search has been conducted and that there are still no available certified teachers who can perform the duties of such position and that a particular substitute teacher is needed to work with a specific class or group of students until the end of the school year. The provisions of this subparagraph shall be applicable [until June 30, 2018] during the 2020-2021 school year due to the COVID-19 crisis.

11. Subparagraphs (i) and (ii) of paragraph (1) of subdivision (a) of section 145-2.1 of the Regulations of the Commissioner of Education are amended to read as follows:

(i) For State student financial aid programs, except the supplemental tuition assistance program (STAP), full-time study, where required by law, shall mean enrollment in credit-bearing courses applicable to the students' program of study, for at least 12 semester hours for a semester of not less than 15 weeks or 100 calendar days, inclusive of examination periods; or eight semester hours a quarter; or, in programs not organized on a semester or quarter basis, 24 semester hours for an academic year of not more than 12 months or the equivalent, as determined by the commissioner.

Provided, however, that for the 2020-2021 academic year, a student shall meet the definition of full-time study in accordance with this subparagraph where a student is unable to enroll in credit-bearing courses applicable to the student's program of study for at least 15 weeks for a semester due to the COVID-19 crisis, provided that the student is enrolled in such credit-bearing courses for a minimum of 12 weeks for a semester and otherwise meets the semester hour requirements prescribed in this subparagraph .

(ii) A student shall be considered full-time for a program organized on an academic-year basis only if the student has filed a plan of study with the institution for the entire academic year. Except as otherwise defined in paragraph (4) of this subdivision, part-time study, for general awards, other than tuition awards for veterans and tuition awards for part-time undergraduate students, and for academic performance awards, shall mean enrollment in credit-bearing courses applicable to the students' program, for at least 6, but less than 12, semester hours or the equivalent for a semester of not less than 15 weeks or 100 calendar days, inclusive of examination periods; or at least four, but less than eight, semester hours a quarter. Provided, however, that for the 2020-2021 academic year, a student shall meet the definition of part-time in accordance with this subparagraph where a student is unable to enroll in credit-bearing courses applicable to the student's program for at least 15 weeks for a semester due to the COVID-19 crisis, provided that the student is enrolled in such credit-bearing courses for a minimum of 12 weeks for a semester and meets the semester hour requirements prescribed in this subparagraph.

12. Subdivision (d) of section 151-1.3 of the Regulations of the Commissioner of Education is amended to read as follows

(d) Class size. (1) The maximum class size for a prekindergarten class is 20 children. For classes of up to 18 students, there must be one teacher and one paraprofessional assigned to each class. For classes of 19 or 20 students, there must be one teacher and two paraprofessionals assigned to each class.

(2) (i) Notwithstanding paragraph (1) of this subdivision, due to the COVID-19 crisis for the 2020-21 school year for school districts other than the City School District of the City of New York:

(a) for 3-year old students, with a class size of 7 children or less there must be one teacher assigned to each class; and

(b) for 4-year old students, with a class size of 8 children or less, there must be one teacher assigned to each class.

(ii) Notwithstanding paragraph (1) of this subdivision, due to the COVID-19 crisis for the 2020-21 school year the City School District of the City of New York:

(a) for 3-year old students, with a class size of 10 children or less, there must be one teacher assigned to each class; and

(b) for 4-year old students, with a class size of 12 children or less there must be one teacher assigned to each class.

13. Subdivision (y) of section 154-2.2 of the Regulations of the Commissioner of Education is amended to read as follows:

(y) Students with Inconsistent/Interrupted Formal Education shall mean English Language Learners who have attended schools in the United States (the 50 States and

the District of Columbia) for less than twelve months and who, upon initial enrollment in such schools are two or more years below grade level in literacy in their home language and/or two or more years below grade level in Math due to inconsistent or interrupted schooling prior to arrival in the United States (the 50 States and the District of Columbia). 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 calculation of less than twelve months of attendance in United States schools prescribed in this subdivision.

14. Paragraph (2) of subdivision (a) of section 154-2.3 of the Regulations of the Commissioner of Education is amended to read as follows:

(2) Step 2: An individual interview with the student by qualified personnel in English and the student's home language, and a review of the student's abilities or work samples in reading and writing in English and the home language and math that are collected or generated during the interview, and for students reentering the New York State public school system, a review of prior experience in home language and/or English instruction, to determine if the student shall be administered the statewide English language proficiency identification assessment and to determine the student's grade level of literacy in their home language and grade level in math. The individual interview is waived in circumstances when the 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 as defined by

Part 154-2.2(q) will review the previously completed Home Language Questionnaire with the parent or person in parental relation;

15. Subdivision (b) of section 154-2.3 of the Regulations of the Commissioner of Education is amended by adding a new paragraph (9) to read as follows:

(9) Notwithstanding paragraph (8) of this subdivision, due to the COVID-19 crisis for the 2020-2021 school year, the 45 day school timeline prescribed in paragraph (1) of this subdivision shall be extended to 65 days from the beginning of the 2020-2021 school year for any student that was either newly enrolled during the COVID-19 closures in the 2019-2020 school year, Summer 2020 or within the first twenty (20) days of the 2020-2021 school year.

16. Subdivision (g) of section 154-2.3 of the Regulations of the Commissioner of Education is amended by adding two new paragraphs (3) and (4) to read as follows:

(3) Notwithstanding paragraph (1) of this subdivision, due to the COVID-19 crisis for the 2020-2021 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 2019-2020 school year, Summer 2020 or the first twenty (20) days of the 2020-2021 school year is placed in either a Bilingual Education or an English as a New Language program within thirty (30) school days after the commencement of the 2020-2021 school year for school districts with one hundred-fifty (150) or more ELLs, or where ELLs constitute ten percent (10%) or more of the district's population.

(4) School districts with one hundred forty-nine (149) or fewer ELLs, or where ELLs constitute less than ten percent (10%) of the district's population may seek an

exemption from the timeline requirements of paragraph (1) of this subdivision for the newly enrolled students identified in paragraph (3) of this subdivision on an application form and 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.

17. Paragraph (2) of subdivision (f) of section 156.3 of the Regulations of the Commissioner of Education is amended to read as follows:

(2) A minimum of three such drills shall be held on each school bus during the school year, the first to be conducted during the first seven days of school, provided, however, that 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, the second between November 1st and December 31st and the third between March 1st and April 30th.