




TO: The Honorable Members of the Board of Regents

FROM: Lester W. Young

SUBJECT: Proposed Amendment of Section 3.8(b) of the Rules of the Board of Regents Relating to Designation of a Deputy Commissioner of Education

DATE: November 27, 2024

AUTHORIZATION(S): 

SUMMARY

Issue for Decision

Should the Board of Regents adopt the proposed amendment of section 3.8(b) of the Rules of the Board or Regents relating to designation of a Deputy Commissioner as the Deputy Commissioner of Education as specified in Education Law §101, who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, power, and duties of the Commissioner?

Reason for Consideration

Review of Policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for discussion and recommendation to the Full Board for adoption as an emergency rule at its December 2024 meeting. A copy of the proposed rule (Attachment A) and a statement of facts and circumstances justifying emergency action (Attachment B) are included.

Procedural History

If adopted as an emergency rule at the December 2024 meeting, a Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on December 24, 2024 for a 60-day public comment period. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

Currently, section 3.8(b) of the Regents Rules designates the Executive Deputy Commissioner of the State Education Department as the Deputy Commissioner of Education as specified in Education Law §101 who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties of the Commissioner.

To reflect the current internal organization of the Department, and to provide flexibility should the organization of the Department change in the future, the Department proposes to amend such provision to provide that, in the absence or disability of the executive deputy commissioner or when a vacancy exists in that title, the senior deputy commissioner for education policy shall serve as the Deputy Commissioner identified in Education Law §101. In the absence or disability of both of the above titles, or when vacancies exist in both titles, the seniormost deputy commissioner (*i.e.*, the deputy commissioner with the longest amount of continuous service in that title) would serve as the deputy commissioner of education described in Education Law §101.

Related Regents Items

[May 2021: Proposed Amendment to Section 3.8\(b\) of the Rules of the Board of Regents to Designate The Executive Deputy Commissioner as the Deputy Commissioner of Education as specified in Education Law §101, who, in the Absence or Disability of the Commissioner or when a vacancy exists in the Office of Commissioner, Shall Exercise and Perform the Functions, Power, and Duties of the Commissioner](https://www.regents.nysed.gov/sites/regents/files/521brca1.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/521brca1.pdf>)

Recommendation

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

VOTED: That section 3.8(b) of the Rules of the Board of Regents be amended, as submitted, effective December 10, 2024, as an emergency rule upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to ensure that the Rules of the Board of Regents are immediately brought into conformance with changes in the Department's internal organization.

Timetable for Implementation

If adopted as an emergency rule at the December 2024 Regents meeting, the emergency rule will become effective December 10, 2024. It is anticipated that the proposed amendment will be presented for permanent adoption at the April 2025 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. Because the emergency action will expire before the April Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the February 2025 meeting. If adopted at the April 2025 meeting, the proposed amendment will become effective as a permanent rule on April 23, 2025.

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS

Pursuant to Education Law section 101.

Paragraph (b) of section 3.8 of the Rules of the Board of Regents is amended to read as follows:

(b) The executive deputy commissioner shall be the deputy commissioner of education as specified in [section 101 of the] Education Law §101. In the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, the executive deputy commissioner shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by statute and by rule of the Regents. In the absence or disability of the executive deputy commissioner or when a vacancy exists in such office, the senior deputy commissioner for education policy shall be the deputy commissioner of education as specified in Education Law §101. In the absence or disability of both of the above titles, or when vacancies exist in both titles, the seniormost deputy commissioner (i.e., the deputy commissioner with the longest amount of continuous service in that title) shall serve as the deputy commissioner of education as specified in Education Law §101.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH
NECESSITATE EMERGENCY ACTION

Currently, section 3.8(b) of the Regents Rules designates the Executive Deputy Commissioner of the State Education Department as the Deputy Commissioner of Education as specified in Education Law §101 who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties of the Commissioner. However, the current Executive Deputy Commissioner, Sharon Cates-Williams, is retiring.

To reflect the current internal organization of the Department, to provide flexibility should the organization of the Department change in the future, the Department proposes to amend such provision to provide that, in the absence or disability of the executive deputy commissioner or when a vacancy exists in such office, the senior deputy commissioner for education policy shall be the deputy commissioner of education as specified in section 101 of the Education Law. In the absence or disability of both of the above titles, or when vacancies exist in both titles, the seniormost deputy commissioner (i.e., the deputy commissioner with the longest amount of continuous service in that title) shall serve as the deputy commissioner of education described in Education Law §101.

Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) action after expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the April 2025 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at

the April meeting, would be April 23, 2025, the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the December meeting, effective December 10, 2024, for the preservation of the general welfare in order to ensure that the Rules of the Board of Regents are immediately brought into conformance with changes in the Department's internal organization.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the April 2025 Regents meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rule making. However, since the emergency action will expire before the April Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the February 2025 Regents meeting.