






TO: The Honorable Members of the Board of Regents

FROM: Jeffrey Matteson 

SUBJECT: Proposed Addition of Subpart 124-1 to the Regulations of the Commissioner of Education Relating to District Superintendents

DATE: January 30, 2025

AUTHORIZATION(S):  

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the addition of Subpart 124-1 to the Regulations of the Commissioner of Education relating to District Superintendents?

Reason(s) for Consideration

Review of policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as a permanent rule at the February 2025 Regents meeting. A copy of the proposed rule (Attachment A) is attached.

Procedural History

The proposed amendment was presented to the Higher Education Committee for discussion at the October 2024 meeting of the Board of Regents. A Notice of Proposed Rule Making was published in the State Register on October 23, 2024, for a 60-day public comment period.

Following publication in the State Register, the Department received several comments on the proposed amendment. An Assessment of Public Comment (Attachment B) is attached. In response to public comment, the Department has made non-substantial revisions to the proposed amendment as described below. If adopted at the February 2025 meeting, a Notice of Adoption will be published in the State Register on February 26, 2025. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

The Department proposes to clarify the responsibilities and employment conditions for District Superintendents. District Superintendents play a pivotal role in the educational landscape of New York State. As the executive officers of Boards of Cooperative Educational Services (BOCES), District Superintendents are responsible for overseeing the provision of shared educational programs and services to component school districts within their respective supervisory districts. This role, as defined under Education Law §1950, positions the District Superintendent as both a local educational leader and a representative of the Commissioner of Education, tasked with ensuring that state policies and priorities are effectively implemented across their districts.

Given the unique dual reporting structure of District Superintendents—where they are accountable to both the BOCES Board of Trustees and the Commissioner—there is a critical need for guidelines that outline their authority, duties, and benefits within the context of the existing statutory frameworks. The reporting structure of District Superintendents has historically created complexities in ensuring that their role is consistently understood and applied across the state. The proposed regulation seeks to:

- **Ensure Consistency:** By clearly delineating the responsibilities and powers of District Superintendents, the regulations provide a uniform standard that aligns with the statutory requirements of Education Law §1950. This is crucial for maintaining coherence in how District Superintendents operate within their dual roles.
- **Support Effective Leadership:** Clarifying the role of District Superintendents strengthens their ability to lead state-led initiatives effectively. The proposed regulations emphasize the importance of their role in translating state policies.
- **Streamline Oversight:** The proposed regulations also address the need for clear procedures regarding the employment status, compensation, and benefits of District Superintendents, including the handling of leave accruals. This ensures that both the BOCES Board of Trustees and the Department can effectively manage and support these leaders, who are critical to the success of educational initiatives across the state.

The proposed Subpart 124-1 of Part 124 of the Commissioner's regulations describes the general role and responsibilities of District Superintendents, including executing policies set by the BOCES Board of Trustees, managing BOCES administrative functions, and ensuring compliance with state education mandates and guidelines. It also addresses the employment status of District Superintendents, explaining that while their daily operations and compensation are managed by the BOCES Board of Trustees, they also report to the Commissioner and serve as their representative in the field (the Department also ensures compliance with statutory salary caps and contract requirements). Finally, the amendment outlines policies related to leave accruals, timekeeping, insurance and health care benefits, and moving expenses, providing a consistent framework that aligns with state employment requirements while accommodating specific BOCES employment contracts.

Non-Substantial Revisions to the Proposed Amendment Following the Public Comment Period

To clarify the proposed rule, the Department has made the following non-substantial revisions since publication of the Notice of Proposed Rule Making in the State Register:

- Removed the statement that District Superintendents “are responsible for overseeing the BOCES and the component school districts of supervisory districts,” instead, indicating that they are the executive officer of the BOCES. Included specific references to the sections of law that the District Superintendent can carry out duties, responsibilities, and tasks as directed by the Commissioner pursuant to applicable sections of law, which are explicitly stated.
- Made the following clarifications/grammatical changes: (1) Removed “sole” as a descriptor of the term “supervisory districts” to ensure the inclusion of all supervisory districts; (2) replaced the phrase “reviewed with” with “communicated to” regarding changes in employment status; (3) indicated that the Commissioner reviews contracts “for compliance with the provisions of Education Law §1950(4)(a)(2)”; (4) clarified that the District Superintendent shall complete and submit “any documents relevant to” their performance evaluation to the Department; (5) replaced “can” with “shall” regarding the submission of performance evaluations; (6) replaced “is” with “shall be” with respect to unused sick leave; and (7) rephrased “not eligible, however, for” with “ineligible to receive” regarding moving expenses.
- Indicated that DS leave accruals are no longer upon consent of the Commissioner.

Related Regents Items

[December 2024: Proposed Addition of Part 124 and Subpart 124-2 to Subchapter E of the Regulations of the Commissioner of Education Relating to Regionalization Plans](https://www.regents.nysed.gov/sites/regents/files/1224p12a1.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/1224p12a1.pdf>)

[October 2024: Proposed Addition of Subpart 124-1 to the Regulations of the Commissioner of Education Relating to District Superintendents](https://www.regents.nysed.gov/sites/regents/files/1024p12d1revised.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/1024p12d1revised.pdf>)

Recommendation

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

VOTED: That Subpart 124-1 of the Regulations of the Commissioner of Education be added, as submitted, effective February 26, 2025.

Timetable for Implementation

If adopted at the February 2025 meeting, the proposed amendment will become effective on February 26, 2025.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 215, 305, 1950, 2204, 2205, 2209, 2212, 2215, and 2216 of the Education Law.

1. The Regulations of the Commissioner of Education is amended by adding a new Subpart 124-1 to Part 124 to read as follows:

Subpart 124-1 District Superintendents

Section 124-1.1 General role

(a) Pursuant to Education Law §1950, a board of cooperative educational services (BOCES) provides shared educational programs and services to component school districts within the state and is governed by a BOCES board of trustees (board).

(b) The district superintendent shall be the executive officer of a BOCES, and where a BOCES comprises two or more supervisory districts, the district superintendents, together with the president of the BOCES, shall act as an executive committee.

(c) The district superintendent shall serve as the representative of the Commissioner for a supervisory district. They are the executive officer of the BOCES. This role includes, but is not limited to, overseeing the development and implementation of regionalization plans pursuant to Subpart 124-2 of this Part, providing services for and facilitating collaboration among component school districts, carrying out duties and responsibilities as directed by the Commissioner pursuant to applicable sections of the law, reporting to and attending all board meetings, and acting as the primary liaison between the Department and the BOCES.

Section 124-1.2 Employment status

(a) Appointment and employment status.

(1) Pursuant to Education Law §1940(4), the BOCES shall have the power and duty to appoint a district superintendent in the manner provided in Education Law §2204, provided such district superintendent meets the qualifications requirement prescribed in Education Law §2205.

(2) The office of the district superintendent shall be vacant upon any event prescribed in Education Law §2208.

(3) A district superintendent may be removed from office pursuant to Education Law §2212, or as otherwise specified in their contract.

(4) Any change in employment status, suspension, or disciplinary action of the district superintendent shall be communicated to the Department prior to any such action being taken by the board.

(b) Operations. The daily operations and duties of the district superintendent are at the direction of the board. Provided, however, that the Commissioner may assign tasks to the district superintendent pursuant to applicable sections of law, as needed.

(c) Employment contract.

(1) The BOCES shall have the discretion to provide the payment of supplementary salary to the district superintendent by the supervisory district. Provided, however, that the total salary of a district superintendent is subject to the statutory salary cap set forth in Education Law §1950(4)(a)(2).

(2) The term of any employment contract or agreement between a district superintendent and the BOCES shall not exceed three years.

(3) Copies of employment contracts and amendments to such contracts entered into shall be filed with the Commissioner within five days of execution pursuant to Education Law §1950(4)(a)(1). The Commissioner shall review such filed contracts for compliance with the provisions of Education Law §1950(4)(a)(2).

(4) In no event shall the terms of the district superintendent's contract, including any provisions relating to an increase in salary, compensation or other benefits, be contingent upon the terms of any collective bargaining agreement between the BOCES and its teachers or other employees.

Section 124-1.3 Responsibilities

(a) District superintendents shall have the general powers and duties as prescribed in Education Law §§1950, 2215, and 2216.

(b) As the executive officer of the BOCES, the district superintendent is responsible for executing policies set by the board, managing BOCES administrative functions, participating in executive sessions of the board when deemed appropriate by such board, carrying out tasks as assigned by the Commissioner pursuant to applicable sections of law, and ensuring compliance with state education mandates and guidelines.

(c) The district superintendent shall lead investigations of potential violations of the Education Law in their component school districts and provide reports of the outcome of such investigations as directed by the Commissioner, or their designee.

(d) Unless excused by the Commissioner, the district superintendent shall attend each monthly statewide district superintendent meeting.

(e) Each year, on a form and manner prescribed by the Commissioner, the district superintendent shall complete and submit any documents relevant to their performance evaluation to the Department.

Section 124-1.4 Intermediary role

The district superintendent can act as an intermediary between the Department, BOCES, and component school districts to facilitate the successful execution of education initiatives within the supervisory district pursuant to applicable laws and

regulations, including translating state educational priorities into actionable regionalization plans that align with the unique needs and resources of the component school districts.

Section 124-1.5 Leave accruals

(a) Upon commencement of employment, or anytime thereafter, each board shall have the authority to permit carryover of unused vacation and/or sick leave per calendar year for district superintendents from their current or former employer at the discretion of the board and commissioner. Provided, however, that at the time of separation from service, no district superintendent shall be compensated for accrued and unused vacation credits or sick leave, or use accrued and unused sick leave for retirement service credit or to pay for health insurance in retirement, except at the maximum number of days allowable for management/confidential employees of the state.

(b) To the extent that holidays are provided by the BOCES to the district superintendent that exceed those made available to management/confidential employees of the state, the district superintendent shall be entitled to such holidays provided they make themselves available to carry out responsibilities at the direction of the Commissioner on those days.

(c) Leave accruals shall be at the discretion of the board. Provided, however, that such accruals, at the end of the calendar year, shall not exceed the maximum number of days allowable for managerial/confidential employees of the state pursuant to regulations promulgated by the state civil service commission, nor may any district superintendent at the time of separation from service be compensated for accrued and unused vacation credits or sick leave, or use accrued and unused sick leave for retirement service credit or to pay for health insurance in retirement, at a rate in excess of the rate permitted to managerial/confidential employees of the state pursuant to

regulations of the state civil service commission.

(d) A district superintendent who retires directly from State service may negotiate in their contract with the BOCES up to the maximum days allowable for management/confidential employees of unused sick leave or the equivalent of a retirement service credit on a day-to-day basis and up to the maximum days allowable for management/confidential employees to offset the cost of health insurance in retirement. For the latter, the value of unused sick leave shall be converted to a monthly credit, which is applied toward paying any contribution the employee makes for health insurance for the rest of his or her life. Such benefit shall be at the expense of the BOCES, unless the district superintendent is enrolled in the New York State Health Insurance Program (NYSHIP) at the time of separation, and shall not apply to the salary cap.

(e) The local BOCES has discretion to set leave and sick time for the district superintendent, pursuant to their contract, as long as such accruals do not exceed the maximum allowed for management/confidential employees. Nothing shall prohibit a district superintendent, upon employment or anytime thereafter, from accruing the maximum leave and sick time accrual, or some increment thereof, as long as such accruals do not exceed the maximum allowed for management/confidential employees.

(f) District superintendents shall not be eligible for enrollment in the management/confidential Income Protection Plan (IPP).

Section 124-1.6 Timekeeping

(a) District superintendents shall be exempt from recording their leave, accruals, and time worked through the New York State Leave and Accrual Tracking System (LATS) if a comparable system collecting the same data regarding leave, accruals, and time worked exists at the local BOCES level.

(b) The district superintendent or BOCES shall provide the data collected through any such local leave and accrual timekeeping system to the Department or other state entity, if requested, within ten business days.

Section 124-1.7 Insurance and health care benefits

(a) In addition to the payment of supplementary salary, a BOCES may provide for the payment of all or a portion of the cost of insurance benefits for the district superintendent, including health insurance, disability insurance, life insurance or any other form of insurance benefit made available to managerial/confidential employees of the state. Any such payments for whole life, split dollar, or other life insurance policies having a cash value, or any payments toward the employee contribution, co-pay, or uncovered medical expenses under a health insurance plan shall be included in the total salary of the district superintendent, during the time of employment of the district superintendent.

(b) The BOCES may negotiate health care coverage both in-service and in retirement, in excess of, or separate from, health care coverage provided by the State of New York for the benefit of a district superintendent. Contributions by the BOCES to a Health Saving Account or comparable account for the purpose of covering qualified health expenses, or a plan deductible, shall not count towards the salary cap prescribed in Education Law §4405(4)(a)(2) for the district superintendent.

Section 124-1.8 Moving Expenses

Newly hired district superintendents may be reimbursed by the BOCES for individual and family moving expenses pursuant to their contract and subject to the limitations within State Finance Law §202, which shall not count towards the salary cap. A newly hired district superintendent is ineligible to receive related expenses such as selling or buying a house or renting temporary quarters. Reimbursement shall not be

granted if the distance between the newly hired district superintendent's old and new place of employment, or between the new place of employment and place of residence at the time of employment, is less than 35 miles.

ASSESSMENT OF PUBLIC COMMENT

Following publication of the Notice of Emergency Adoption and Proposed Rule Making in the State Register on October 23, 2024, the Department received the following comments on the proposed amendment:

1. COMMENT: Several commenters oppose the proposed rule because they believe it grants BOCES District Superintendents an oversight role over component districts that conflicts with their legally defined purpose. They believe that the proposed rule suggests that District Superintendents can mandate compliance or unilaterally oversee districts' operations. They also believe that it bestows District Superintendents with powers beyond those identified in Education Law §§2215 and 1950, including the authority to oversee development and implementation of regionalization plans.

One commenter opposes the specific language that the District Superintendent is responsible for "ensuring compliance with state education mandates and guidelines." Another commenter opposes the District Superintendent serving as the representative of the Commissioner for a supervisory district.

Some of the commenters express that any attempt to centralize authority must align with existing statutes and the role of the District Superintendent must remain one of voluntary partnership. Some commenters recommend removing language that identifies the District Superintendent as an authority figure with enforcement powers, including elimination of the language expanding oversight powers in Section 124-1(c) of the proposed rule.

DEPARTMENT RESPONSE: The District Superintendent can carry out duties, responsibilities, and tasks as directed by the Commissioner pursuant to applicable sections of the law (Education Law §§1950, 2215, and 2216). As executive officers of

BOCES, District Superintendents are responsible for overseeing the provision of shared educational programs and services to component school districts within their respective supervisory districts. This role, as defined under Education Law §1950, positions the District Superintendent as both a local educational leader and a representative of the Commissioner of Education, tasked with ensuring that state policies and priorities are effectively implemented across their districts.

For clarity, the Department added specific references to applicable sections of law and removed the statement that District Superintendents “are responsible for overseeing the BOCES and the component school districts of supervisory districts.” No additional changes to the proposed rule are necessary.

2. COMMENT: Several commenters oppose the proposed rule because they believe it undermines local autonomy and control by expanding the authority of the District Superintendent. They believe the proposed rule fundamentally alters the relationship between school districts and BOCES; centralizes decision-making authority and could create conflicts in governance; infringes upon the role of locally elected board of education trustees; attempts to strip school districts of their autonomy and local control; promotes “micromanaging” and excessive oversight to an unelected entity; disregards local expertise; may hinder local capacity to effectively address local challenges; and risks creating a one-size-fits-all approach to education that overshadows diverse local needs.

Some commenters recommended striking language about facilitating education initiatives in Section 124-1.4 of the proposed rule.

DEPARTMENT RESPONSE: Ours is a state system of education. The New York State Constitution identifies the Board of Regents as the head of the State Education Department. N.Y. Const. Art. V, Sec. IV. The Department is led by the Commissioner of

Education, who “is the chief executive officer of the state system of education and of the board of regents.” The Commissioner is tasked with “enforc[ing] all general and special laws relating to the educational system of the state and ... all educational policies determined upon by the board of regents.” Education Law §305(1). Thus, although school districts are responsible “for the day-to-day operation of the schools,” they are subject to State oversight and regulation. *Campaign for Fiscal Equity, Inc. V. State*, 100 NY2d 893, 904 (2003).

The role of the District Superintendent has not been expanded under this proposed rule. As indicated above, the proposed rule is consistent with District Superintendents’ role as defined under Education Law §1950. For clarity, the Department added language to highlight where provisions in the proposed rule are grounded in applicable sections of the law. No additional changes to the proposed rule are necessary.

3. COMMENT: Several commenters oppose the proposed rule because they perceive ambiguity in the language that tasks may be assigned to the District Superintendent “as needed.” They believe the proposed rule can be read to mean that school districts will be required to implement whatever the District Superintendent demands, whether on their own or from the Commissioner. Some commenters recommended a more detailed definition of specific responsibilities and authority of the District Superintendent.

DEPARTMENT RESPONSE: District Superintendents possess the authority conferred to them by statute; no creative interpretation can change this. As indicated above, the Department has added language to expressly identify this statutory authority. Such sections outline the role of the District Superintendent and permit the District

Superintendent to carry out duties, responsibilities, and tasks as directed by the Commissioner. No additional changes to the proposed rule are necessary.

4. COMMENT: Several commenters oppose the proposed rule because they believe some language implies a level of oversight and authority regarding regionalization that mandates the opposite of “optional” participation. They oppose efforts toward regionalization and recommend the language of the proposed rule align with the public statements about optional participation.

DEPARTMENT RESPONSE: See the above response to comment 3. While a handful of Long Island school districts have raised political complaints about regionalization, this regulation concerning District Superintendents is an inappropriate forum to do so. The authority of the District Superintendents is well settled and, due to final adoption of the regionalization rule, may now include assisting those districts that choose to participate in regionalization plans. No additional changes to the proposed rule are necessary.

5. COMMENT: Several commenters opined that the regulation was proposed without sufficient consultation with key stakeholders. One commenter believes that significant policy change should undergo a thorough review process that incorporates feedback from those directly affected. Some commenters recommend that the Department engage in a collaborative process with all stakeholders any time it considers taking a position that is “entirely transformative” to the education system, prioritize thoughtful collaboration and transparency, and ensure all school boards and stakeholders have a meaningful say in decisions that affect students, schools, and communities.

DEPARTMENT RESPONSE: While not required to do so, the Department consulted with several stakeholder groups about the proposed rule prior to presenting it

to the Board of Regents in October 2024. The characterization of the rule as “significant” and “transformative” is inaccurate; the regulation clarifies the responsibilities and powers set forth in statute. No changes to the proposed rule are necessary.

6. COMMENT: One commenter opposes the proposed rule because they believe it could result in an increased administrative burden for districts by introducing additional reporting requirements and oversight mechanisms that may divert resources and attention. They recommend considering the practical implications and potential strain on district resources.

DEPARTMENT RESPONSE: As indicated above, the proposed rule does not alter or expand the role of the District Superintendent; it only seeks to clarify the responsibilities and powers set forth in statute. No changes to the proposed rule are necessary.

7. COMMENT: One commenter characterizes the proposed rule as improper lawmaking in violation of the New York State Constitution and State Administrative Procedure Act (SAPA). They allege that the rule violates various provisions of SAPA. They further complain that alternatives to the proposed rule were not analyzed.

DEPARTMENT RESPONSE: See the above responses to comments four and six. The commenter’s dramatic assertions as to the nature and scope of this rule do not make it so; the proposed rule does not alter or expand the role of the District Superintendent. The Department has complied with all required provisions of SAPA and declines to litigate these issues within an Assessment of Public Comment. No changes to the proposed rule are necessary.