



TO: The Honorable Members of the Board of Regents

FROM: William P. Murphy *William P. Murphy*

SUBJECT: Proposed Amendment of Section 80-5.27 of the Regulations of the Commissioner of Education Relating to Extending the Validity Period of Emergency COVID-19 Certificates

DATE: August 29, 2024

AUTHORIZATION(S): *Donna M. Bell*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of section 80-5.27 of the Regulations of the Commissioner of Education relating to extending the validity period of Emergency COVID-19 certificates?

Reason for Consideration

Review of policy.

Proposed Handling

The proposed amendment will come before the Full Board for adoption as an emergency rule at its September 2024 Regents meeting. A copy of the proposed amendment (Attachment A) and a Statement of Facts and Circumstances necessitating emergency action (Attachment B) are attached.

Procedural History

The proposed amendment was presented to the Higher Education Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at the July 2024 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 31, 2024, for a 60-day public comment period.

Because the July 2024 emergency action is set to expire on October 13, 2024, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the November 2024 Regents meeting. If adopted at the September 2024 meeting, a Notice of Emergency Adoption

will be published in the State Register on October 30, 2024. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

At its May 2020 meeting, in response to the limited availability of testing sites, educator shortages, and other disruptions occasioned by the COVID-19 crisis, the Board of Regents voted to add section 80-5.27 to the Commissioner's regulations as an emergency rule, thereby creating an Emergency COVID-19 certificate for candidates seeking certain certificates, extensions, and annotations. In response to feedback from the field and the ongoing COVID-19 crisis, the Board adopted revisions to this emergency rule several times, such as extending the validity period of the Emergency COVID-19 certificate from one year to two years and extending the deadline to apply and complete the requirements for such certificate on two occasions.

To earn the Emergency COVID-19 certificate, candidates must have completed all requirements for the non-emergency certificate, extension, or annotation sought, other than the examination requirement(s), on or before September 1, 2022. Candidates were required to apply for the non-emergency certificate, extension, or annotation on or before September 1, 2022. Candidates were also required to apply for the Emergency COVID-19 certificate in the same title as the certificate, extension, or annotation sought on or before September 1, 2022. This certificate is valid for two years. Accordingly, a large number of remaining valid Emergency COVID-19 certificates will expire during the 2024-25 school year.

The Department has heard from the field that many educators who hold an Emergency COVID-19 certificate are employed in public school districts and that the expiration of these certificates will create a hardship for these educators and exacerbate staffing challenges. Therefore, the Department now proposes to extend the validity period of any currently valid Emergency COVID-19 certificates set to expire during the 2024-25 school year by changing the expiration date of such certificates to August 31, 2025. This extension will allow candidates extra time to complete the examination requirement(s) for their certificate and progress to the next level certificate. Extending this flexibility will also provide time for the Department and Board of Regents to consider undertaking further reforms to the educator certification process, which, among other goals, will increase the supply of available and appropriately qualified educators.

Related Regents Items

[July 2024: Proposed Amendment of Section 80-5.27 of the Regulations of the Commissioner of Education Relating to Extending the Validity Period of Emergency COVID-19 Certificates](https://www.regents.nysed.gov/sites/regents/files/724hea1.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/724hea1.pdf>)

[December 2021: Proposed Amendment 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 the 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/sites/regents/files/1221brca4.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/1221brca4.pdf>)

[September 2021: Proposed Amendment 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 the 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/sites/regents/files/921bra4.pdf>)

[May 2021: Proposed Amendment 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 the 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/sites/regents/files/521bra5.pdf>)

[March 2021: Proposed Amendment of 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 the 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/sites/regents/files/321bra5_0.pdf)

[September 2020: 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 COVID19 Crisis](#)

(<https://www.regents.nysed.gov/sites/regents/files/920bra3.pdf>)

[July 2020: 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/sites/regents/files/720bra5.pdf>)

[June 2020: 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/sites/regents/files/620bra12.pdf>)

[May 2020: 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/sites/regents/files/520bra9-REVISED.pdf>)

Recommendation

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

VOTED: That section 80-5.27 of the Regulations of the Commissioner of Education be amended, as submitted, effective October 14, 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, in order to immediately extend the expiration date of Emergency COVID-19 certificates that are set to expire during the 2024-25 school year to August 31, 2025 and address on-going staffing challenges due in part to disruptions from the COVID-19 crisis and to ensure that the emergency action taken at the July 2024 meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the September 2024 Regents meeting, the emergency rule will become effective October 14, 2024. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the November 2024 Regents meeting, after publication of the proposed amendment in the State Register and the expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the November 2024 meeting, the proposed amendment will become effective as a permanent rule on November 20, 2024.

Attachment A

AMENDMENTS TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, 3001, 3004, and 3009 of the Education Law.

Section 80-5.27 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (d) to read as follows:

(d) Notwithstanding any other provision of this section, any candidate who holds an Emergency COVID-19 certificate with an expiration date of August 31, 2024, or January 31, 2025, shall have the expiration date of such certificate extended to August 31, 2025.

STATEMENT OF FACTS AND CIRCUMSTANCES THAT NECESSITATE
EMERGENCY ACTION

The Board of Regents permanently adopted regulatory amendments at its December 2021 meeting to create Emergency COVID-19 certificates to address teaching shortages and related disruptions from the public health crisis.

The Department now proposes to extend the expiration date of Emergency COVID-19 certificates set to expire during the 2024-25 school year to August 31, 2025. This extension will allow candidates additional time to meet the requirements for the next level certificate and give the Department time to complete certification reforms.

The proposed amendment was presented to the Higher Education Committee for recommendation to the Full Board for adoption as an emergency rule at the July 2024 meeting of the Board of Regents, effective July 16, 2024. Since the Board of Regents meets at fixed intervals, the earliest that the proposed amendment could be adopted by regular (non-emergency) 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 November 2024 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the November meeting, would be November 20, 2024, the date that the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on October 13, 2024. Therefore, a second emergency action is necessary at the September 2024 meeting, effective October 14, 2024, for the preservation of the general welfare to immediately extend the expiration date of Emergency COVID-19 certificates set to expire during the 2024-25 school year to August 31, 2025, to address ongoing staffing challenges due in part to

disruptions from the COVID-19 crisis, and to ensure that the emergency action taken at the July Regents meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at its November 2024 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for State agency rulemaking.