



**TO:** The Honorable Members of the Board of Regents

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

**SUBJECT:** Proposed Amendment of Section 80-5.3 of the Regulations of the Commissioner of Education Relating to Extending the Flexibility for Incidental Teaching

**DATE:** August 29, 2024

**AUTHORIZATION(S):** *Don McGreevey* *Beth A. Hochstadt*

### **SUMMARY**

#### **Issue for Decision (Consent)**

Should the Board of Regents adopt the proposed amendment of section 80-5.3 of the Regulations of the Commissioner of Education relating to extending flexibility for incidental teaching?

#### **Reason for Consideration**

Review of policy.

#### **Proposed Handling**

The proposed amendment is submitted to 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 which necessitate 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 December 2020, October 2021, September 2022, and September 2023 meetings, the Board of Regents permanently adopted regulatory amendments to increase the amount of incidental teaching permitted in schools from up to five classroom hours a week to up to 10 classroom hours a week during the 2020-2021, 2021-2022, 2022-2023, and 2023-2024 school years, respectively. This amendment helped school districts address staffing challenges related to and exacerbated by the COVID-19 pandemic. Through incidental teaching, certified teachers can teach a subject not covered by their certificate when the school district determines that no certified or qualified teachers are available. The school district must engage in extensive and documented recruitment efforts prior to making such a determination.

The Department now proposes to extend the flexibility for incidental teaching again through the 2024-2025 school year. This proposal will enable school districts to address ongoing staffing challenges by providing them with flexibility in making teaching assignments. Extending this flexibility for one additional school year will also provide time for the Department and Board of Regents to consider further reforms to the teacher and school leader certification process, one goal of which is to increase the supply of available and qualified educators.

### **Related Regents Items**

[July 2024: Proposed Amendment of Section of Section 80-5.3 of the Regulations of the Commissioner of Education Relating to Extending Flexibility for Incidental Teaching](https://www.regents.nysed.gov/sites/regents/files/724hea2.pdf)  
(<https://www.regents.nysed.gov/sites/regents/files/724hea2.pdf>)

[September 2023: Proposed Amendment of Section 80-5.3 of the Regulations of the Commissioner of Education Relating to Extending a Flexibility for Incidental Teaching](https://www.regents.nysed.gov/sites/regents/files/923brca4.pdf)  
(<https://www.regents.nysed.gov/sites/regents/files/923brca4.pdf>)

[September 2022: Proposed Amendment of Sections 80-5.3 and 80-5.4 of the Regulations of the Commissioner of Education Relating to Extending Flexibilities for Incidental and Substitute Teaching](https://www.regents.nysed.gov/sites/regents/files/922brca3.pdf)  
(<https://www.regents.nysed.gov/sites/regents/files/922brca3.pdf>)

[October 2021: Proposed Amendment to Sections 52.30, 63.9, 70.4, 74.6, 75.2, 75.5, 76.2, 79-9.3, 79-10.3, 79-11.3, 79-12.3, 80-5.3, 80-5.4, 83.5, 87.2, 87.5, 145-2.15, 155.17, 200.5, 200.6, and 279.15 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/1021brca7.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1021brca7.pdf>)

[December 2020: Proposed Amendments to Sections 80-5.3, 80-5.4, 100.1, 100.2, 100.5, 100.6, 100.10, 117.3, 136.3, 145-2.1, 151-1.3, 154-2.2, 154-2.3, 156.3, and 200.4 of the Regulations of the Commissioner of Education Relating to Addressing the COVID19 Crisis and the Reopening of Schools](https://www.regents.nysed.gov/common/regents/files/1220brca7.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/1220brca7.pdf>)

## **Recommendation**

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

VOTED: That section 80-5.3 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 to continue allowing certified teachers to teach up to 10 classroom hours a week in a subject area not covered by their certificate for the 2024-2025 school year 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 Board of Regents meeting, the emergency rule will become effective on 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 Board of Regents meeting, after the 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.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 305, 308, 3001, 3004, and 3009 of the Education Law.

1. 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 during the 2020-2021 through the [2023-2024] 2024-2025 school years 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:

STATEMENT OF FACTS AND CIRCUMSTANCES THAT NECESSITATE  
EMERGENCY ACTION

At its December 2020 meeting, in response to the COVID-19 pandemic, the Board of Regents permanently adopted regulatory amendments that increase the amount of incidental teaching permitted in schools from up to five classroom hours a week to up to 10 classroom hours a week during the 2020-2021 school year. Through incidental teaching, certified teachers can teach a subject not covered by their certificate when no certified or qualified teachers are available after extensive and documented recruitment.

The Board of Regents permanently adopted regulatory amendments at its December 2020, October 2021, September 2022, and September 2023 meetings to extend the flexibility for incidental teaching during the 2020-2021, 2021-2022, 2022-2023, and 2023-2024 school years, respectively, to give districts another way to address staffing challenges. The Department now proposes to extend the flexibility for incidental teaching again through the 2024-2025 school year. This proposal enables school districts to address their continuing staffing challenges by providing them with flexibility in making teaching assignments.

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 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 Board of 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 continue allowing certified teachers to teach up to 10 classroom hours a week in a subject area not covered by their certificate for the 2024-2025 school year to address teacher shortages 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.