

Board of Regents April COVID-19 Emergency Regulations

At the Board of Regents' ("BOR") April 6, 2020 meeting, a series of COVID-19 related regulations were presented for emergency adoption. These regulations codify multiple aspects of the Governor's Executive Orders, and the BOR will present these regulations for a second emergency adoption in June. They will then present the regulations for permanent adoption at the July 2020 meeting. Please also note that at the April 6, 2020 meeting, BOR Chancellor Betty Rosa announced that Regents exams will be cancelled for this year. A formal announcement regarding Regents exams is expected to take place on April 7, 2020.

The regulations cover various topics, as set forth below:

State Aid

The regulations codify the 180-day attendance requirement exemption in accordance with the Governor's Executive Orders. To reiterate, the days that a school is closed due to the Executive Orders regarding the COVID-19 State of Emergency will be waived and will not count against the 180-day requirement for State Aid purposes. As provided in Executive Order 202.11, schools must continue to exhaust any remaining vacation or snow days for such waiver to apply.

The regulations further state that, during the days which qualify for the 180-day waiver, any missed instructional hours will count towards the minimum annual instruction hour requirements.

Charter Schools Reporting to School Districts

The Commissioner is permitted to excuse delays by charter schools in making reports to public schools for the time school is closed under the Governor's Executive Orders, provided the delay is not longer than 30 days. If there is such a delay, public schools are, likewise, permitted to delay payment to the charter school, provide the payment delay does not exceed 30 days.

Home Instruction

Please note that these changes apply to students who are home schooled (not distance learning). During the 2019-20 school year, districts will be able to use home instruction as an alternative form of evaluation, in lieu of an annual assessment, for *all grades* due to the COVID-19 state of emergency (currently it is only available for certain grade levels). Such evaluations may be conducted by a NYS certified teacher, home instruction peer review group panel, or other person who has interviewed the child and reviewed a portfolio of their work. Whoever conducts the evaluation must prepare a written narrative and a certification of whether the child has made adequate academic progress for the year.

Curriculum & Instruction

The regulations provide that students may be exempted from the unit of study requirements if they are unable to meet the requirements as a result of COVID-19 closures pursuant to Executive Orders. However, students will only be eligible for such exemption if they otherwise achieve the learning outcomes for the unit of study requirements.

Early Learning

The 180-day and 90-day operational requirements for prekindergarten programs are similarly waived where such programs were closed pursuant to the Governor's Executive Orders regarding the COVID-19 state of emergency.

Furthermore, where State Education Department staff are unable to conduct an annual visit of a nonpublic nursery school or kindergarten, such staff will conduct the annual visit as soon as practicable when the school reopens.

Special Education

The regulations also waive the 180-day instructional requirements for special education programs for state-approved private schools, state operated schools, special act school districts, state supported schools, and preschools required to close for COVID-19 pursuant to the Governor's Executive Orders.

Additionally, impartial hearing officers will be allowed to conduct special education due process hearings by video conference during the COVID-19 State of Emergency. Similarly, the ability for hearing officers to receive testimony via telephone has been expanded to encompass videoconference testimony. However, all personally identifiable data, information, or records pertaining to students remain subject to applicable confidentiality requirements. The new regulations will also allow impartial hearing officers to issue case extensions up to 60 days, as opposed to the typical 30 day maximum, during the COVID-19 State of Emergency.

Although preschool providers are typically required to make up missed services within 30 days, such requirement will not include any days where the school was closed pursuant to the Governor's Executive Orders regarding COVID-19.

Similarly, boards of education typically have 60 days to arrange for appropriate special education programs and services after receiving the consent to evaluate a non-identified student, or the referral of a student with a disability. If the board recommends a private school placement, a 30-day period typically applies. However, the regulations provide that the 60-day or 30-day periods will not include any days where the school was closed pursuant to the Governor's Executive Orders regarding COVID-19.

SRO Filings

The regulations also allow State Review Officers to authorize certain filings via electronic means during the COVID-19 state of emergency. This applies to the filing of a party's pleading, memoranda of law, supporting documents, or record of proceedings before the impartial hearing officer.

Bilingual Education

Any days during a school closure ordered by the Governor's Executive Orders related to COVID-19 will not count against a school district's obligation to meet Bilingual Education timeline requirements. Specifically, such days will not be counted towards the English language learner identification process timeline, parental notification and information timeline, and English as a New Language/Bilingual Education placement timeline.

Bilingual students will also be exempted from their unit of study requirements where they are unable to meet them as a result of COVID-19 ordered closures, so long as such students otherwise achieve the corresponding learning outcomes for such requirements.

Moreover, there will no longer be an English learner annual assessment for the 2019-2020 school year, as a result of the COVID-19 closures.

Professions

Where the Governor's Executive Orders regarding the COVID-19 state of emergency make certain professional requirements unattainable, the regulations carve out various exemptions to such requirements. Specifically, the regulations will allow the State Education Department (SED) to:

- Waive the continuous experience requirements for speech-language pathology, audiology, and occupational therapy;
- Accept passing scores from Public Accounting applicants outside of the 18-month examination window;
- Modify professional educational program requirements for licensure, to the extent authorized by law;
- Grant an exemption for the in-person supervision requirements for licensed clinical and master social work, mental health counseling, marriage and family counseling, creative arts therapy, and psychoanalysis;
- Create an edTPA safety net for candidates in registered educator preparation programs who have had their Spring 2020 student teaching or clinical experiences impacted by COVID-19;

NYSED Memo – Extending SOCE and Limited Extension Deadlines

The State Education Department recently released a memo regarding extensions for the Subject Area Certification Requirement Effective Date and Statement of Continued Eligibility (SOCE) Application Deadline for Grade 7-12 Special Education teachers who teach one or more subject areas.

- The subject area certification requirement for such special education teachers is extended from July 1, 2020 to July 1, 2021;
- The SOCE application deadline from June 30, 2020 to June 30, 2021; and
- For the SOCE and limited extension, extend the time period for completion to June 30, 2021.

Commissioner Appeals

Education Law 310

Typically, Education Law 310 requires personal service for the pleadings and supporting papers in an appeal to the Commissioner. However, the regulations will allow parties to utilize alternative forms of service during the time period of any movement restrictions or school closures regarding COVID-19, pursuant to the Governor’s Executive Orders. Specifically, parties will be able to serve pleadings and supporting papers alternatively, by:

1. Mailing the petition, notice of petition, and all supporting papers by first class mail in an envelope bearing the legend “APPEAL TO THE COMMISSIONER OF EDUCATION” (all capitalized) to an individual respondent at his or her last known residence or place of business, or, for school districts, to the attention of the district clerk and superintendent of schools; and
2. On the same date as the mailing, emailing the petition, notice of petition, and all supporting documents under the subject heading “APPEAL TO THE COMMISSIONER OF EDUCATION” (all capitalized) to such person, or, for school districts, to both the district clerk and superintendent of schools.

Part 83 Appeals

In addition, the Commissioner will be authorized to excuse late filings for any appeals related to a hearing officer’s determination of good moral character, where such late filings are caused by COVID-19 related Executive Orders.

Part 87 Appeals

The regulations also authorize SED to excuse late submissions relating to due process procedures for prospective employees’ clearance for employment, provide

that the late submissions were caused by Executive Orders regarding COVID-19. Similarly, the Commissioner is authorized to excuse the timelines for the submission of appeals and additional papers by prospective school employees where SED has determined to deny employee clearance.

Lastly, the regulations amend the definition of a “prospective school employee” to encompass individuals who are reasonably expected by the school to provide services which involve direct contact with students younger than 21, *or online communication or interaction directly with such students during the period of a school closure ordered pursuant to an Executive Order of the Governor pursuant to a state of emergency for the COVID-19 crisis.*

Accountability (ESSA Waiver)

Since the federal government has approved the State Education Department’s one-year ESSA waiver application, the regulations provide that school districts will have the same accountability status during the 2020-2021 year as they did for the 2019-2020 year. Thus, the 2018-2019 school year results will be used in any instance when the 2019-20 results would have been used when making accountability determinations for the 2021-2022 school year.

The Commissioner will not use 2019-2020 school year results when conducting performance reviews. Additionally, for the 2019-20 through 2021-22 school years, the Commissioner can modify any timelines pertaining to notifications, plans, reports, or the implementation of required activities, upon a finding of good cause.