



TO: P-12 Education Committee

FROM: Angelique Johnson-Dingle *Angelique Johnson-Dingle*
Jason Harmon *Jason Harmon*

SUBJECT: Proposed Amendment of Sections 100.1, 100.2, and 100.5
of the Regulations of the Commissioner of Education
Relating to Virtual Instruction

DATE: November 30, 2023

AUTHORIZATION(S): *Don McGreevey* *Betsy Maloney*

SUMMARY

Issue for Discussion

Should the Board of Regents adopt the proposed amendment of sections 100.1, 100.2, and 100.5 of the Regulations of the Commissioner of Education relating to virtual instruction?

Reason for Consideration

Review of Policy.

Proposed Handling

The proposed amendment will be presented to the P-12 Education Committee for discussion at the December 2023 meeting of the Board of Regents. A copy of the proposed amendment (Attachment A) is attached.

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on December 27, 2023, for a 60-day public comment period. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

Virtual instruction has been part of the educational landscape in New York for decades. Schools, districts, and boards of cooperative educational services (BOCES)

across the State have offered learning experiences, courses, and programs through digital technologies that have met the needs of students and increased equitable access to courses, including advanced courses. The utilization of virtual instruction increased exponentially in the years of the COVID-19 pandemic. The experiences during that period have subsequently led to significant growth in the utilization of virtual instruction in New York.

Currently, there are regulations pertaining to (1) credit for online and blended courses (8 NYCRR 100.5(d)(10)); (2) remote instruction due to emergency conditions and plans for the provisions of such instruction (8 NYCRR 175.5(e), 155.17, 200.7); and (3) remote instruction provided to students in a home, hospital, or institutional setting other than a school (8 NYCRR 100.22(e)).

However, there are no regulations that define the parameters of virtual instruction generally. For example, the online and blended course regulations are relevant to diploma requirements and are, therefore, only applicable to students enrolled in courses eligible for diploma credit (typically students in grades 9-12). Additionally, the regulation authorizing remote instruction under emergency conditions adopted at the September 2022 Regents meeting only applies in limited circumstances.

Therefore, the Department proposes to amend the Commissioner's regulations to define the parameters under which a school district, BOCES, charter school, registered nonpublic school, school-age approved special education program (including approved private school for the education of students with disabilities, state-supported school, or state-operated school)¹ or educational program administered or supervised by a state agency pursuant to Education Law §§112 and 3202(f) may provide virtual instruction.

Proposed Amendment

Definitions:

While the Board of Regents adopted a definition for the term "remote instruction"² within the context of the emergency conditions regulation, there is no general definition of "virtual instruction." These terms have different definitions; remote instruction is instruction that occurs due to limitations on access to a brick-and-mortar classroom while virtual instruction is an intentional learning course or program conducted through digital means. Additionally, the definition of remote instruction in Commissioner's regulations encompasses non-digital and audio-based instruction while virtual instruction requires student access via a digital device with adequate internet service.

Therefore, the Department proposes to add a new subdivision (y) to section 100.1 of the Commissioner's regulations that defines "virtual instruction" as synchronous or a combination of synchronous/asynchronous instruction designed for delivery in a virtual learning environment where there is regular and substantive interaction between the student and teacher.

¹ Special Act School Districts also operate approved special education programs and will be authorized to provide virtual instruction pursuant to the regulations applicable to school districts.

² Definitions for the terms "non-digital and/or audio-based instruction," "asynchronous instruction," and "synchronous instruction" were also adopted.

The Department also proposes to add a new subdivision (z) to section 100.1 of the Commissioner's regulations defining "blended instruction" as instruction that is partially delivered as synchronous instruction in an in-person learning environment and partially as synchronous or a combination of synchronous/asynchronous instruction in a virtual learning environment where there is regular and substantive interaction between the student and teacher.

Additionally, the Department proposes to add a new subdivision (aa) to section 100.1 of the Commissioner's regulations defining "virtual learning environment" as an instructional and learning environment facilitated through digital video-based technology and/or an online learning management system where teacher-to-student, student-to-student, and/or student-to-content interactions occur solely through digital, internet-connected technology.

Virtual Instruction and Blended Instruction:

The proposed rule also adds a new subdivision (u) to section 100.2 of the Commissioner's regulations to define the conditions under which virtual instruction and blended instruction may be delivered. This provision provides that parents or persons in parental relation³ may voluntarily elect that their children receive virtual and/or blended instruction if offered by a school district, BOCES, charter school, registered nonpublic school, educational program, or school-age approved special education program.

Districts, BOCES, schools, and programs that offer virtual and/or blended instruction must ensure that students enrolled in such instruction have access to the digital, internet-connected technology and internet access necessary to receive and participate in instruction. Districts, BOCES, schools, and programs must also ensure that virtual and blended instruction: (1) align with the applicable New York State learning standards as prescribed in section 100.1(t); (2) results in documentation of student mastery of the learning outcomes; (3) are provided in a manner consistent with their definitions in section 100.1(y) and (z), as applicable; and (4) satisfy the unit of study and unit of credit requirements in section 100.1(a) and (b), as applicable; and (5) are provided in accordance with enrolled students' individualized education programs to ensure the continued provision of a free appropriate public education, as applicable.⁴

This provision also prescribes who may provide virtual and/or blended instruction. Such instruction must be provided by one of the following:

- an appropriately certified teacher from the school district in which the student is enrolled;
- an appropriately certified teacher from a BOCES that has contracted with the school district to provide instruction in the subject area where authorized pursuant to Education Law section 1950;

³ Or a student, where the student is 18 years or older or an emancipated minor, except where such student is a student with a disability.

⁴ The new rule ensures that requirements related to a free appropriate public education equally apply to students with disabilities receiving virtual instruction and/or blended instruction.

- an appropriately certified teacher from a school district who provides instruction in the subject area under a shared service agreement;
- in the case of a registered nonpublic school, a teacher of the subject area from the registered nonpublic school;
- in the case of a charter school, a teacher of the subject area from the charter school; or
- in the case of an educational program administered by a state agency, or a school-age approved special education program, a teacher of the subject area from such program.

The new rule defines an “appropriately certified teacher” providing virtual instruction and blended instruction as a “teacher who holds a New York State teaching certificate in the subject area in which instruction is provided.”⁵

Technical Corresponding Amendments:

The proposed rule repeals the online and blended coursework provision in section 100.5(d)(10) as that provision is only applicable to students enrolled in courses eligible for diploma credit. It is no longer needed with the newly added online and blended instruction provision in section 100.2(u) discussed above.

Additionally, the proposed rule amends section 100.5(d)(5) regarding the awarding of transfer credit for students awarded credit while attending an educational program administered or supervised by a state agency. References to section 100.5(d)(10) were removed, and a reference to coursework provided through virtual and/or blended instruction in accordance with section 100.2(u) was added.

Related Regents Items

January 2023: [Proposed Amendment of Sections 200.7, 200.16, and 200.20 of the Regulations of the Commissioner of Education Relating to Remote Instruction and its Delivery Under Emergency Conditions and Length of School Day for Approved School-Age and Preschool Programs Serving Students with Disabilities](https://www.regents.nysed.gov/sites/regents/files/123brca12.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/123brca12.pdf>)

January 2023: [Proposed Addition of Section 100.22 and Amendment of Section 200.6 of the Regulations of the Commissioner of Education Relating to Instruction Provided to Students in a Home, Hospital, or Institutional Setting Other Than a School \(Homebound Instruction\)](https://www.regents.nysed.gov/sites/regents/files/123brca7.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/123brca7.pdf>)

⁵ The new rule’s definition of an “appropriately certified teacher” conforms with the definition of an appropriately certified teacher in the area of providing online and blended courses for diploma credit [8 NYCRR 100.5(d)(10)]. As explained further in this Regents item, section 100.5(d)(10) will be repealed as unnecessary with the adoption of the new rule.

September 2022: [Proposed Amendment of Sections 100.1, 155.17, and 175.5 of the Regulations of the Commissioner of Education Relating to Remote Instruction and its Delivery under Emergency Conditions](https://www.regents.nysed.gov/sites/regents/files/922p12a4.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/922p12a4.pdf>)

June 2011: [Proposed addition of Section 100.5\(d\)\(10\) of the Regulations of the Commissioner of Education, relating to Credit for Online and Blended Coursework](https://www.regents.nysed.gov/sites/regents/files/documents/meetings/2011Meetings/June2011/611p12a5.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/documents/meetings/2011Meetings/June2011/611p12a5.pdf>)

Recommendation

Not applicable.

Timetable for Implementation

It is anticipated that the proposed amendment will be presented for permanent adoption at the April 2024 Regents meeting following 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. If adopted at the April 2024 meeting, the proposed amendment will become effective as a permanent rule on May 1, 2024.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 305, 308, 309, and 3204 of the Education Law.

1. Section 100.1 of the Regulations of the Commissioner of Education is amended by adding subdivisions (y), (z), and (aa) to read as follows:

(y) *Virtual instruction* means synchronous, or synchronous and asynchronous, instruction provided by a teacher as prescribed in section 100.2(u)(3) that is designed for delivery in a virtual learning environment where there is regular and substantive interaction between the student and teacher.

(z) *Blended instruction* means instruction provided by a teacher as prescribed in section 100.2(u)(3) that is designed for delivery part of the time as synchronous instruction in an in-person learning environment, and part of the time as synchronous, or synchronous and asynchronous, instruction in a virtual learning environment where there is regular and substantive interaction between the student and teacher.

(aa) *Virtual learning environment* means an instructional and learning environment facilitated through digital video-based technology and/or a combination of an online learning management system and video-conferencing technology, where teacher-to-student, student-to-student, and/or student-to-content interactions occur solely through digital, internet-connected technology.

2. Section 100.2 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (u) to read as follows:

(u) *Virtual instruction and blended instruction.*

(1) Parents, or persons in parental relation of a student, or a student that is 18 years or older, other than a student with a disability as defined in section 200.1(zz) of this Chapter, or a student who is an emancipated minor, who is enrolled in a school district, a board of cooperative educational services (BOCES), charter school, registered nonpublic school, or educational program operated by a state-operated or state-supported school pursuant to Articles 85, 87 and 88 of the Education Law, private residential or non-residential school for the education of students with disabilities approved pursuant to Article 89 of the Education Law or operating under Article 81 of the Education Law, or educational program administered or supervised by a state agency pursuant to Education Law §§112 and 3202(f) and Parts 116 and 118 of this Title may opt-in to receive virtual instruction and/or blended instruction if such instruction is offered.

(2) A school district, BOCES, registered nonpublic school, charter school, or educational program operated by a state-operated, state-supported, or approved private school for the education of students with disabilities, or administered or supervised by a state agency, that offers virtual instruction and/or blended instruction shall ensure that students enrolled in such instruction have the digital, internet-connected technology and internet access necessary to receive and participate in such instruction.

(3) The school district, BOCES, registered nonpublic school, charter school, or the chief administrator of an educational program operated by a state-operated, state-supported, or approved private school for the education of students with disabilities, or administered or supervised by a state agency shall ensure that virtual instruction and blended instruction:

(i) align with the applicable New York State learning standards as prescribed in subdivision (t) of section 100.1 of this Part;

(ii) are provided in accordance with enrolled students' individualized education programs to ensure the continued provision of a free appropriate public education;

(iii) provide for documentation of student mastery of the learning outcomes;

(iv) are provided in a manner consistent with the definitions of such terms pursuant to subdivisions (y) and (z) of section of this Part, as applicable; and

(v) satisfy the unit of study and unit of credit requirements in subdivisions (a) and (b) of section 100.1 of this Part, as applicable.

(4) (i) Virtual instruction and blended instruction must be provided by:

(a) an appropriately certified teacher from the school district in which the student is enrolled;

(b) an appropriately certified teacher from a BOCES that has contracted with the school district to provide instruction in the subject area where authorized pursuant to Education Law section 1950;

(c) an appropriately certified teacher from a school district who provides instruction in the subject area under a shared service agreement;

(d) in the case of a registered nonpublic school, a teacher of the subject area from a registered nonpublic school;

(e) in the case of a charter school, a teacher of the subject area from a charter school;

(f) in the case of an educational program administered by a state agency, a teacher of the subject area from such program; or

(g) in the case of an approved private school for school-age students with disabilities, state-supported or state-operated school, a teacher of the subject area from such school.

(ii) For purposes of this paragraph, appropriately certified teacher means a teacher who holds a New York State teaching certificate in the subject area in which instruction is provided.

(5) A student with a disability as defined in section 200.1(zz) of this Chapter who is receiving virtual instruction and/or blended instruction shall continue to receive educational services so as to enable the student to receive a free appropriate public education.

3. Item (ii) of subclause (2) of clause (b) of subparagraph (i) of paragraph (5) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(ii) A principal shall award transfer credit to any student for credit awarded while the student attended an educational program administered or supervised by a State agency pursuant to Education Law sections 112 and 3202 (7) and Parts 116 or 118 of this Title, upon the attestation of the chief administrator of such program, in a format prescribed by the commissioner, of the following:

(A) the student:

(I) ...

(II) ...

(III) ...

(IV) has met the requirements for the award of credit for independent study pursuant paragraph (9) of this subdivision; and[/or

(V) has met the requirements for the award of credit for online and/or blended courses pursuant to paragraph (10) of this subdivision; and]

(B) the student was provided instruction by a teacher certified pursuant to Part 80 of this Title or, where the coursework was for make-up credit[or in online and/or

blended courses], the student was provided instruction in accordance with the requirements of [paragraphs] paragraph (8) [and (10), respectively,]of this subdivision or where the coursework was provided through virtual instruction and/ or blended instruction in accordance with the requirements of subdivision (u) of section 100.2 of this Part.

4. Paragraph (10) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is REPEALED and RESERVED.