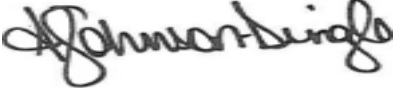





TO: P-12 Education Committee

FROM: Angelique Johnson-Dingle 

SUBJECT: 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

DATE: September 1, 2022

AUTHORIZATION(S): 

SUMMARY

Issue for Decision

Should the Board of Regents adopt the proposed amendments 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?

Reason(s) for Consideration

Review of policy.

Proposed Handling

The proposed amendment is submitted to the P-12 Education Committee and Full Board for adoption as a permanent rule at the September 2022 Regents meeting. A copy of the proposed amendment is attached (Attachment A).

Procedural History

The proposed amendment was presented to the P-12 Education Committee for discussion at its April 2022 meeting. A Notice of Proposed Rule Making was published in the State Register on April 27, 2022, for a 60-day public comment period in accordance with the State Administrative Procedure Act (SAPA). At the July 2022 Regents meeting, the Department submitted the proposed amendment to the Full Board for adoption as an emergency rule, effective July 12, 2022.

Following publication in the State Register, the Department received comments on the proposed amendment. An Assessment of Public Comment is included (Attachment B). No changes to the proposed amendment are recommended at this time. A Notice of Adoption will be published in the State Register on September 28, 2022. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

The Department previously authorized a “snow day pilot” program during the 2020-2021 and 2021-2022 school years. This program allowed school districts to deliver instruction remotely on days in which they would otherwise have closed due to an emergency. In the 2020-2021 school year, 126 districts reported utilizing this program. The greatest concentration of participating districts was in the Hudson Valley and Long Island regions. Higher-need districts were less likely to use the pilot, but student density and the concentration of nonpublic students did not appear to play a role in a district’s likelihood of utilizing this flexibility. A map portraying this usage is provided in (Attachment C).

To give districts greater predictability, the Department proposes to amend section 175.5(e) of the Commissioner’s regulations to codify this flexibility. Districts that would otherwise close due to an emergency may provide remote instruction and count these instructional days towards the minimum requirements. Instruction must be provided to all students and be consistent with the definition of remote instruction, as explained below. In addition, beginning with the 2023-2024 school year, such instruction must be consistent with the school district’s emergency remote instruction plan described below.

Additionally, the Department proposes to amend section 155.17 of the Commissioner’s regulations to require that public schools, boards of cooperative educational services (BOCES) and county vocational education and extension boards amend their district-wide school safety plans to include plans for remote instruction beginning with the 2023-2024 school year. The public will have an opportunity to provide feedback on such plans for remote instruction prior to their adoption.¹ Such plans must include the methods by which public schools, BOCES, and county vocational education and extension boards will ensure the availability of devices, internet access, provision of special education and related services for students with disabilities, and the expectations for time spent in different remote modalities. Additionally, such plans require that each chief executive officer of each educational agency located within a public school district report information on student access to computing devices and access to the internet each year.

The proposed rule also clarifies that school districts may, but are not required to, report the activation of emergency plan or building-level school safety plans that result

¹ School districts must accept public comment at least 30 days prior to their adoption. Additionally, districts must convene at least one public hearing that allows for the participation of school personnel, parents, students and any other interested parties.

in the closing of a school building through the district superintendent.

Finally, the Department proposes additions to section 100.1 of the Commissioner’s regulations to define the term “remote instruction.” This definition identifies various ways in which remote instruction may be delivered—but which must include, in all situations, regular and substantive teacher-student interaction with an appropriately certified (or, for charter schools, qualified) teacher.

The Department anticipates proposing additional amendments to address emergency remote instruction provided to students in approved private schools for the education of students with disabilities, state-supported schools, state-operated schools, and approved preschool special education programs in the coming months.

Non-Substantial Revision

Since publication of the proposed rule in the State Register, the proposed rule has been revised to make a technical revision to correctly label the clauses in subparagraph 155.17(c)(1)(xxi) in alphabetical order. Therefore, clauses 155.17(c)(1)(xxi)(c)-(f) are now labeled clauses 155.17(c)(1)(xxi)(b)-(e).

Related Regents Items

February 2021: [Proposed Amendments to Sections 52.3, 52.21, 57-4.5, 70.4, 74.6, 75.2, 75.5, 76.2, 79-9.3, 79-10.3, 79-11.3, 79-12.3, 801.13, 80-1.5, 80-3.15, 80-4.3, 83.5, 87.2, 87.5, 100.2, 100.4, 100.5, 100.6, 100.10, 100.21, 119.1, 119.5, 125.1, 151-1.4, 1542.3, 175.5, 200.4, 200.5, 200.7, 200.20, and 275.8 and Addition of Section 279.15 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/221brca6.pdf)
(<https://www.regents.nysed.gov/common/regents/files/221brca6.pdf>)

March 2021: [Proposed Amendment of Sections 100.4, 100.10, and 175.5 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](https://www.regents.nysed.gov/common/regents/files/321p12a7revised_0.pdf)
(https://www.regents.nysed.gov/common/regents/files/321p12a7revised_0.pdf)

June 2021: [Proposed Amendment to Section 175.5 of the Regulations of the Commissioner of Education Relating to Extending the Instructional Hour COVID-19 Waiver to the 2021-2022 School Year](https://www.regents.nysed.gov/common/regents/files/621p12d1.pdf)
(<https://www.regents.nysed.gov/common/regents/files/621p12d1.pdf>)

September 2021: [Proposed Amendment to Section 175.5 of the Regulations of the Commissioner of Education Relating to Extending the Instructional Hour COVID-19 Waiver to the 2021-2022 School Year](https://www.regents.nysed.gov/common/regents/files/921brca7.pdf)
(<https://www.regents.nysed.gov/common/regents/files/921brca7.pdf>)

April 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/common/regents/files/422p12d1revised.pdf)

(<https://www.regents.nysed.gov/common/regents/files/422p12d1revised.pdf>)

July 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/common/regents/files/722brca17.pdf)

(<https://www.regents.nysed.gov/common/regents/files/722brca17.pdf>)

Recommendation

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

VOTED: That sections 100.1, 155.17, and 175.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 28, 2022

Timetable for Implementation

If adopted at the September 2022 meeting, the proposed amendment will become effective on September 28, 2022.

Attachment A

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 215, 305, 308, 1704, 2801-a, 2854, 3602, 3604 of the Education Law.

1. Subdivision (e) of section 175.5 of the Regulations of the Commissioner of Education are amended to read as follows:

(e) Emergency conditions.

(1) Remote instruction due to emergency conditions. If a school district would otherwise close due to an emergency, including but not limited to, extraordinary adverse weather conditions, impairment of heating facilities, insufficiency of water supply, shortage of fuel, destruction of a school building, or a communicable disease outbreak, the school district may remain in session and provide remote instruction, as defined in section 100.1(u) of this Chapter, and beginning with the 2023-2024 school year such remote instruction shall be consistent with such school district's emergency remote instruction plan pursuant to section 155.17(c)(1)(xxi) of this Chapter. Instruction provided on these session days may be counted towards the annual hour requirement set forth in subdivision (c) of this section. The superintendent shall certify to the Department, on a form prescribed by the Commissioner, that an emergency condition existed on a previously scheduled session day and that such school district was in session and provided remote instruction on that day and indicate how many instructional hours were provided on such session day and, beginning with the 2023-2024 school year, certify that remote instruction was provided in accordance with the district's emergency remote instruction plan.

(2) Unscheduled school delays and early releases. Instructional hours that a school district scheduled but did not execute, either because of a delay to the start of a school day or an early release, due to extraordinarily adverse weather conditions, impairment of heating facilities, insufficiency of water supply, shortage of fuel, destruction of a school building, or such other cause as may be found satisfactory by the Commissioner, may still be considered as instructional hours for State aid purposes for up to two instructional hours per session day, provided, however, that the superintendent shall certify to the Department, on a form prescribed by the Commissioner, that an extraordinary condition existed on a previously scheduled session day and that school was in session on that day.

2. Section 100.1 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (u) to read as follows:

(u) Remote instruction means instruction provided by an appropriately certified teacher or in the case of a charter school an otherwise qualified teacher pursuant to Education Law §2854(3)(a-1), who is not in the same in-person physical location as the student(s) receiving the instruction, where there is regular and substantive daily interaction between the student and teacher.

(1) Remote instruction shall encompass synchronous instruction provided through digital video-based technology and may also include asynchronous instruction intended to complement synchronous instruction. Digital video-based technology includes online technology and videoconferencing technology.

(2) Remote instruction may encompass non-digital and audio-based asynchronous and/or synchronous instruction where such instruction is more

appropriate for a student's educational needs.

(v) Non-digital and/or audio-based instruction means instruction accessed synchronously and/or asynchronously through paper-based materials where the student-to-teacher interaction occurs via telephone or other audio platforms.

(w) Asynchronous instruction means instruction where students engage in learning without the direct presence (remote or in-person) of a teacher.

(x) Synchronous instruction means instruction where students engage in learning in the direct presence (remote or in-person) of a teacher in real-time.

3. Subdivision (a) of section 155.17 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) Development of school safety plans. Every board of education of a school district, every board of cooperative educational services and county vocational education and extension board, and the chancellor of the City School District of the City of New York shall adopt by July 1, 2001, and shall update by July 1st for the 2002-2003 through the 2015-2016 school years and shall update and adopt by September 1st for the 2016-2017 school year and each subsequent September 1st thereafter, a comprehensive district-wide school safety plan and building-level emergency response plans regarding crisis intervention and emergency response and management, and commencing with the 2023-2024 school year district-wide school safety plans shall include plans for the provision of remote instruction during any emergency school closure, provided that in the City School District of the City of New York, such plans shall be adopted by the chancellor of the city school district. Such plans shall be developed by a district-wide school safety team and a building-level emergency

response team, as such terms are defined in subdivision (b) of this section, and shall be in a form developed by the commissioner in consultation with the Division of Criminal Justice Services, the superintendent of the State Police and any other appropriate State agencies. Each district-wide school safety plan and building-level emergency response plan shall be reviewed by the appropriate school safety team on at least an annual basis, and updated as needed.

4. Paragraphs (3) and (13) of subdivision (b) of section 155.17 of the Regulations of the Commissioner of Education are amended to read as follows:

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

(3) *Disaster* means occurrence or imminent threat of widespread or severe damage, illness, injury, or loss of life or property resulting from any natural or manmade causes, such as fire, flood, earthquake, hurricane, tornado, high water, landslide, mudslide, windstorm, wave action, epidemic, air contamination, drought, explosion, water contamination, chemical accident, communicable disease outbreak, war or civil disturbance.

(13) *District-wide school safety plan* means a comprehensive, multi-hazard school safety plan that covers all school buildings of the school district, BOCES, or county vocational education and extension board, that addresses crisis intervention, emergency response, and management, and commencing July 1, 2023, provision of remote instruction during an emergency school closure, at the district level and has the contents prescribed in paragraph (c)(1) of this section.

5. Subparagraphs (ix), (xviii), and (xx) of paragraph (1) of subdivision (c) of

section 155.17 of the Regulations of the Commissioner of Education are amended and a new subparagraph (xxi) is added to read as follows:

(ix) policies and procedures for contacting parents, guardians, or persons in parental relation to the students of the district in the event of a violent incident or an early dismissal or emergency school closure;

(xviii) in the case of a school district, except in a school district in a city having more than one million inhabitants, a system for informing all educational agencies within such school district of a disaster or emergency school closure;

(xx) ensure the development of protocols for responding to a declared state disaster emergency involving a communicable disease that are substantially consistent with the provisions of section 27-c of the Labor Law[.]; and

(xxi) beginning with the 2023-2024 school year and every school year thereafter, an emergency remote instruction plan. For purposes of this subparagraph, remote instruction shall have the same meaning as defined in section 100.1(u) of this Chapter. Emergency remote instruction plans shall include:

(a) policies and procedures to ensure computing devices will be made available to students or other means by which students will participate in synchronous instruction and policies and procedures to ensure students receiving remote instruction under emergency conditions will access internet connectivity. Each chief executive officer of each educational agency located within a public school district shall survey students and parents and persons in parental relation to such students to obtain information on student access to computing devices and access to internet connectivity to inform the emergency remote instruction plan;

(b) expectations for school staff as to the proportion of time spent in synchronous and asynchronous instruction of students on days of remote instruction under emergency conditions with an expectation that asynchronous instruction is supplementary to synchronous instruction;

(c) a description of how instruction will occur for those students for whom remote instruction by digital technology is not available or appropriate;

(d) a description of how special education and related services will be provided to students with disabilities, as defined in section 200.1(zz) of this Chapter, and preschool students with disabilities, as defined in section 200.1(mm) of this Chapter, as applicable, in accordance with their individualized education programs to ensure the continued provision of a free appropriate public education; and

(e) for school districts that receive foundation aid, the estimated number of instructional hours the school district intends to claim for State aid purposes for each day spent in remote instruction due to emergency conditions pursuant to section 175.5 of this Chapter.

6. Subdivision (f) of section 155.17 of the Regulations of the Commissioner of Education is amended to read as follows:

(f) *Reporting.* (1) Each superintendent shall notify the commissioner as soon as possible whenever the emergency plan or building-level school safety plan is activated and results in the closing of a school building in the district, and shall provide such information as the commissioner may require in a manner prescribed by the commissioner. [School] In addition, school districts within a supervisory district [shall] may provide such notification through the BOCES district superintendent, who shall be

responsible for notifying the commissioner. Such information need not be provided for routine snow emergency days. Provided, however, that for the 2020-21 and 2021-22 school years, districts shall provide such notification for snow emergency days, including those days converted to remote instruction under the 2020-21 and 2021-22 snow day pilot in accordance with the provisions of this subdivision.

(2) Beginning in the 2022-2023 school year, each chief executive officer shall report to the Commissioner, no later than June 30 of each school year, on a form and format prescribed by the Commissioner, the results of the survey on student access to computing devices and access to internet connectivity required pursuant to subparagraph (xxi) of paragraph (1) of subdivision (c) of this section.

ASSESSMENT OF PUBLIC COMMENT

Following publication of the Notice of Proposed Rule Making in the State Register on April 27, 2022, the Department received the following comments on the proposed amendment:

1. COMMENT: A commenter noted that the “well-intended” proposed changes to the Regulations of the Commissioner should not be adopted due to a “lack of broadband access in rural areas,” “lack of viable broadband speeds for all students,” “lack of viable tech resources (laptops) among students,” concerns that “emergency days heighten mental health and social-emotional well-being,” and that “adding school work to the situation...unnecessarily increases stress and anxiety of students and parents.” The commenter also stated that “[a]lthough paper form of work is necessary, it is not practical...” and added that the “option should only be allowed to be used when a school has exhausted all available days.”

DEPARTMENT RESPONSE: The State Education Department (SED) is aware of concerns regarding access to high-quality broadband internet and appropriate devices. The proposed amendment to Section 175.5 indicates that schools “may remain in session and provide remote instruction.” The use of this flexibility is entirely optional and should not be used by districts if there is concern about providing remote instruction for all students. As required by the proposed regulation, plans must include the methods by which schools will ensure the availability of devices, internet access, provision of special education and related services for students with disabilities, and the expectations for time spent in different remote modalities. Additionally, such plans require that each

chief executive officer of each educational agency located within a public school district report information on student access to computing devices and access to internet connectivity each year. SED also acknowledges legitimate concerns regarding the mental health of students and families. However, as indicated above, a district can choose not to offer remote learning on emergency closure days. Regarding the necessity or practicality of schools providing work in “paper” form, SED does not require the use of paper and permits the use of different modalities of instruction. Finally, only allowing remote learning when all other emergency days have been exhausted would be inconsistent with the intention of the proposed amendment: to provide flexibility for schools and districts as they seek to provide instruction for all students. Therefore, no changes to the proposed rule are necessary.

2. COMMENT: A commenter, writing in their capacity as a consultant to a public school district’s faculty association, described a situation of concern for the faculty association involving a particular student. The association mentions its concern that teachers “might be violating the law by following what they consider an improper directive” and that Individualized Educational Program (IEP) requirements are not being followed. The commenter asserts that the proposed changes do not “authorize” districts to provide remote instruction outside of emergency situations.

DEPARTMENT RESPONSE: The comment related to the specific situation of concern for the faculty association are outside of the scope of the proposed rule. Also, every remote instruction plan must include a description of how special education and related services will be provided to students with disabilities.

Regarding the commenter's assertion that the proposed changes do not "authorize" districts to provide remote instruction outside of emergency situations, other provisions of the Commissioner's regulations that permit schools to offer online and blended courses (8 NYCRR 100.5(d)(10)). Therefore, no changes to the proposed rule are necessary.

3. COMMENT: A civil rights organization submitted comments on the proposed amendment. The commenter states that they "are pleased that NYSED has promulgated these regulations to codify the provision of remote instruction." Additionally, the commenter outlines statewide experiences with remote instruction based on a 2020 survey, conducted by the organization, of parents, students, and community members across the state. They state that such experiences are "instructive as NYSED promulgates regulations regarding the provision of remote instruction." Additionally, the commenter raises multiple concerns with the proposed rule, summarized below.

A. Connectivity. The commenter states that "[i]nstruction is not sufficient unless all students have access to the tools they need to participate fully and equitably. During the pandemic, hundreds of thousands of students struggled to connect and receive instruction and were often left behind. School districts simply cannot meet their constitutional obligations to deliver a sound basic education if every child does not have a laptop and high-speed internet. NYSED should not tolerate any child being denied an education because a school district needs to operate remotely."

DEPARTMENT RESPONSE: The Department appreciates the supportive comments and agrees that it is imperative that students have access to the internet and devices to

participate in remote instruction. The proposed rule does not require that school districts shift to remote instruction during emergency conditions, but rather codifies this *option* for districts to provide remote instruction in lieu of closing. The decision to provide instruction remotely under emergency conditions is a local decision, based upon districts' assessment as to whether they can meet the needs of their students through remote instruction. The proposed rule also requires that all public schools, boards of cooperative educational services (BOCES) and county vocational education and extension boards adopt an emergency remote instruction plan by the 2023-2024 school year, to be included in the district-wide safety plan. Any remote instruction provided under emergency conditions pursuant to section 175.5(e) of the proposed rule must be consistent with such plan. Additionally, the plan ensures that schools, BOCES, etc. are better equipped and prepared to deal with future situations, like the COVID-19 pandemic, that may necessitate remote instruction. The plan also requires that public schools, BOCES, and county vocational education and extension boards establish policies and procedures to ensure computing devices will be made available to students or that otherwise address how students will participate in synchronous instruction, as well as survey students and parents and persons in parental relation to such students to obtain information on student access to computing devices and access to the internet. Therefore, no changes to the proposed rule are necessary.

B. Privacy. The commenter states that “the technology required for remote learning, including hardware, software, internet services, and educational learning platforms, is capable of collecting, storing, and sharing massive amounts of private, personal information from students and spying on them using surveillance technologies

.... Any regulations on remote learning must govern data collection and protect students' privacy from commercial, law enforcement, and other inappropriate uses. All computer hardware, software, ISP, and EdTech companies that provide or sell any of the above-listed remote learning technologies should be prohibited from collecting, using, and retaining any private, personal information about a student or their family members unless doing so is directly necessary for their platforms' remote learning functionality. None of this data should be shared with third parties unless directly required for the provision and functioning of the service. These companies should be required to remove or permanently disable any surveillance functions that accompany their products and services and consent to NYSED audits of their compliance with these privacy protections.”

DEPARTMENT RESPONSE: There are many state and federal laws that protect personal data including, Education Law §2-d, the Family Educational Rights and Privacy Act (FERPA), the Protection of Pupil Rights Amendment (PPRA), and the Children's Online Privacy Protection Rule (COPPA). Educational agencies are responsible for complying with these laws, including Education Law §2-d, which requires third-party contractors to meet certain minimum requirements when receiving student data. The Department's Privacy Office provides technical assistance and oversight in this regard. Therefore, no changes to the proposed rule are necessary.

C. Students with Disabilities. The commenter stated that “[m]any students with individualized education programs (“IEPs”) lost access to their federally mandated services and supports, such as occupational therapy and one-to-one aides, during COVID-19 shutdowns. Some of these students have fallen even further behind

compared to their peers... Tracking of time spent with one-on-one aides and other services mandated on a student's IEP plan is necessary to ensure equity across all students." The commenter also stated that the proposed rule only mandates that schools *describe* how special education and related services be administered and should have mandatory safeguards for schools to implement.

DEPARTMENT RESPONSE: Initially, the extent to which students may have "lost access to their federally mandated services and supports" is beyond the scope of this rulemaking. The proposed rule requires that emergency remote instruction plans must include a description of how special education and related services will be provided to students with disabilities and preschool students with disabilities in accordance with their IEPs to ensure the continued provision of a free appropriate public education (FAPE), nothing in the proposed rule changes the available remedies for a parent where they allege a denial of FAPE. Beginning with the 2023-2024 school year, any remote instruction provided during an emergency condition pursuant to section 175.5(e) of the proposed rule must be consistent with this plan. School districts, BOCES, and county vocational education and extension boards are responsible for ensuring that each student with a disability and preschool student with a disability receives special education programs and services consistent with their IEP, regardless of the mode of instruction. If a student with a disability or preschool student with a disability has a contingency plan developed by the committee on special education/committee on preschool special education to address remote learning needs in the event of intermittent or extended school closures, the contingency plan must be implemented. Therefore, no changes to the proposed rule are necessary.

D. Medical Issues. NYSED should allow immunocompromised students and/or medically vulnerable parents to elect remote instruction and participate virtually to the fullest extent possible in instruction and extracurricular activities. The existing language on homebound instruction should be updated to align with these proposed remote instruction regulations. 8 NYCRR § 175.21 describes the instruction of students unable to attend school because of physical, mental, or emotional illness or injury but in the age of remote school and COVID closures, it is outdated. Homebound instruction only requires a fraction of the remote opportunities that were granted to all students during COVID closures. But now that the tools are in place, they should be used to expand access to education for homebound students.”

DEPARTMENT RESPONSE: The Department initially notes that it has proposed amendments to the Commissioner’s regulations regarding home, hospital, and institutional instruction that permit the use of remote instruction for students receiving such instruction. The Department anticipates that these regulations, originally presented to the Board of Regents at the May 2022 meeting, will be presented to the Board for permanent adoption in October 2022. The comments related to the election of remote instruction for immunocompromised students and/or medically vulnerable parents are outside the scope of the proposed rule, as the proposed rule relates to remote instruction provided during emergency conditions. Therefore, no changes to the proposed rule are necessary.

E. Student Discipline. The commenter states that “[o]ver the past two school years, we have seen school districts turn to asynchronous delivery of materials in nonemergency circumstances, including, most troubling, misbehavior and disorder

among students. In essence, this use of remote instruction is a punishment without due process, a suspension of every student in the school. It is vital that NYSED prohibit this practice. Additionally, strict remote learning rules often carry disciplinary consequences that are purely punitive, illogical, and arbitrary. There should be a moratorium on new suspensions during periods of remote learning. If a student is currently serving a suspension and the school moves to remote learning, they should be allowed to participate fully with that time counting towards the suspension. Across the country, there were reports of students being suspended from online instruction, having access to email and online platforms blocked, and even being remanded to the criminal legal system for breaking various rules. These kids are Black, Latinx, and Native, the same kids who were disproportionately punished before the pandemic, and who have suffered the most from the disease.”

DEPARTMENT RESPONSE: These comments are outside the scope of the proposed rule, as the proposed rule relates only to remote instruction provided during emergency conditions. However, the Department notes that remote instruction is a potentially vital tool in promoting equity, especially for traditionally underserved populations. Placement in a fully virtual or remote learning modality should never be used as a disciplinary intervention for a student, although virtual or remote learning may be appropriate to provide supplemental required instruction to a student who is suspended from school.

F. The commenter additionally offers specific recommendations for remote instruction time and methods as follows:

- i. Longer and more frequent instruction time. The commenter states that “[m]any teachers spent limited if any time providing direct instruction during remote

learning. Some students were instead provided with homework packets or online asynchronous lessons, which placed a disproportionate burden on parents to provide instruction and on students to self-education. We recommend that teachers provide instruction more frequently and for more minutes during the period of remote learning to provide students guidance, routine, and stability.”

- ii. Collaborative learning. The commenter states that “[s]tudents’ social skills and engagement with schoolwork can deteriorate without interaction with their peers. We recommend that teachers provide students with more opportunities for collaborative and project-based learning, both in remote learning and in classrooms, to increase exposure to other students.”
- iii. Concrete lesson plans. The commenter states that “[f]amilies often felt overwhelmed by homework and instructional packets because they were not provided in advance with schedules for lectures, homework, and special education services ... [This] made it difficult for families to plan around their work schedules. During (and where possible, prior to) periods of remote learning, families must be provided with lesson plans and schedules so they can accommodate their student’s needs.”
- iv. Flexible schedules to meet family needs. The commenter states that “[s]ome families have the need for flexible class schedules to accommodate their jobs while others can accommodate regular hours. During periods of remote learning, we recommend school districts provide students the option to participate in fixed or flexible class schedules with live instructions and pre-recorded lessons.”

- v. Promoting inclusivity over punitive measures. The commenter states that “[s]ome schools and districts engaged in expulsion and suspension activities during the COVID-19 shutdowns. Due to the fact that there is zero physical risk to any student from another student in a virtual classroom, and that both audio and visual feeds can be controlled by teachers, districts should be prohibited from excluding students from virtual instruction or preventing students from participating in class, logging on to lectures, and participating in group projects.”

DEPARTMENT RESPONSE:

- i. Section 100.1(a) of the Commissioner’s regulations requires 180 minutes per week, or the equivalent, for a course to meet a “unit of study.” Additionally, the proposed rule adds a definition of remote instruction that applies whenever remote instruction is provided. This definition requires regular and substantive daily interaction between the student and teacher. It also provides that remote instruction shall encompass synchronous instruction provided through digital video-based technology and may also include asynchronous instruction to complement synchronous instruction. The definition further provides that remote instruction may encompass non-digital and audio-based asynchronous and/or synchronous instruction where such instruction is more appropriate for a student’s educational needs. Therefore, this definition for remote instruction places emphasis on direct interaction between teachers and students and synchronous instruction provide through digital video-based technology. Additionally, the emergency plans required by the proposed rule must include expectations for school staff as to the proportion of time spent in synchronous

and asynchronous instruction of students on days of remote instruction under emergency conditions with an expectation that asynchronous instruction is supplementary to synchronous instruction. Therefore, no changes to the proposed rule are necessary.

- ii. Nothing in the proposed rule prohibits collaborative learning and the Department agrees that collaborative learning is helpful for students' social skills and engagement with schoolwork. The Department recently released the ["Quality Remote/Hybrid Teaching Framework"](#) that identifies "promising practices" for remote instruction. The practices identified by the commenter are supported by this framework. Therefore, no changes to the proposed rule are necessary.
- iii. While the Department agrees that this is best practice and understands the burden placed on families during periods of emergency remote learning, it is up to local school districts and teachers whether they wish to provide lesson plans and schedules in advance. The Department also notes that the proposed rule requiring the adoption of emergency remote instruction plans allows for public input prior to its adoption. There is nothing in the proposed rule that would prohibit an emergency remote instruction plan from requiring that lesson plans and schedules be provided in advance during periods of emergency remote instruction. Therefore, no changes to the proposed rule are necessary.
- iv. It is up to local school districts whether to provide flexible scheduling during the period of emergency remote instruction. Therefore, no changes to the proposed rule are necessary.
- v. Please see section D of this response above.

G. The commenter offers feedback on specific provisions of the proposed rule as follows:

- i. Regarding section 175.5(e) of the proposed rule, the commenter states that it is reasonable for districts to utilize remote instruction for emergency days, but a limit should be placed on how many as replacing in-person days with asynchronous learning time will be “particularly burdensome for already underserved students.”
- ii. Regarding the proposed definition of remote instruction in section 100.1(u) of the proposed rule, the commenter states that this definition is vague as there is no definition for the terms “regular” and “substantive” and districts could interpret this to mean minimal teacher-student interaction.
- iii. Regarding section 155.17(a) of the proposed rule, the commenter states that a switch to remote learning should be for emergency circumstances only, not for lack of transportation or other non-immediate safety concerns. They state that they support the inclusion of remote instruction plans in districts’ safety plans and plans for students to participate in synchronous instruction via devices and broadband access to the extent that it helps provide uninterrupted learning during unforeseen circumstances. However, the commenter states that the Department should require districts to periodically collect and publish data on actual connectivity, such as submitting a period-by-period attendance report to the Department for any district implementing remote instruction to determine which districts are failing to provide access.

- iv. Regarding section 155.17, the commenter states that they “commend NYSED for requiring public feedback on plans for remote instruction prior to adoption and a public hearing on the matter...However, it is not clear to us that this is actually reflected in the proposed language...The commissioner should make public the surveys of students’ access to computing devices and to the internet, disaggregated by gender, age, grade, race/national origin, and disability status.”
- v. Regarding section 155.17(c)(1)(xxi)(a), the commenter states that this provision “is a welcome change. However, more guardrails should be applied to specify what proportion of students should have devices and internet access at home.” Additionally, the commenter states that the proposed rule should define how much instructional time should be synchronous, recommending that the majority of time should be synchronous. Further, the commenter characterizes section 155.17(c)(1)(xxi)(c) as vague, stating that “[i]t states instruction be modified for those who cannot access full remote instruction. If instruction is simply ‘weekly work packets’ this would not meet the needs of many students.”

DEPARTMENT RESPONSE

- i. The Department disagrees that a limit must be placed on how many days a district is permitted to shift to remote instruction due to emergency conditions. Please also see section E(i) of this response regarding asynchronous instruction. Therefore, no changes to the proposed rule are necessary.
- ii. While not defined specifically in regulation, “regular and substantive interaction” can be understood as “meaningful and frequent” interaction (see 8 NYCRR 100.1[a]). Such interactions should provide opportunities for the teacher of

record to develop a professional relationship with all students enrolled in a class; to track and understand the student's strengths, areas that need additional attention, and engagement; to provide timely and quality feedback; and to identify areas where students may need additional services. The Department will consider providing additional guidance on this topic. Therefore, no changes to the proposed rule are necessary.

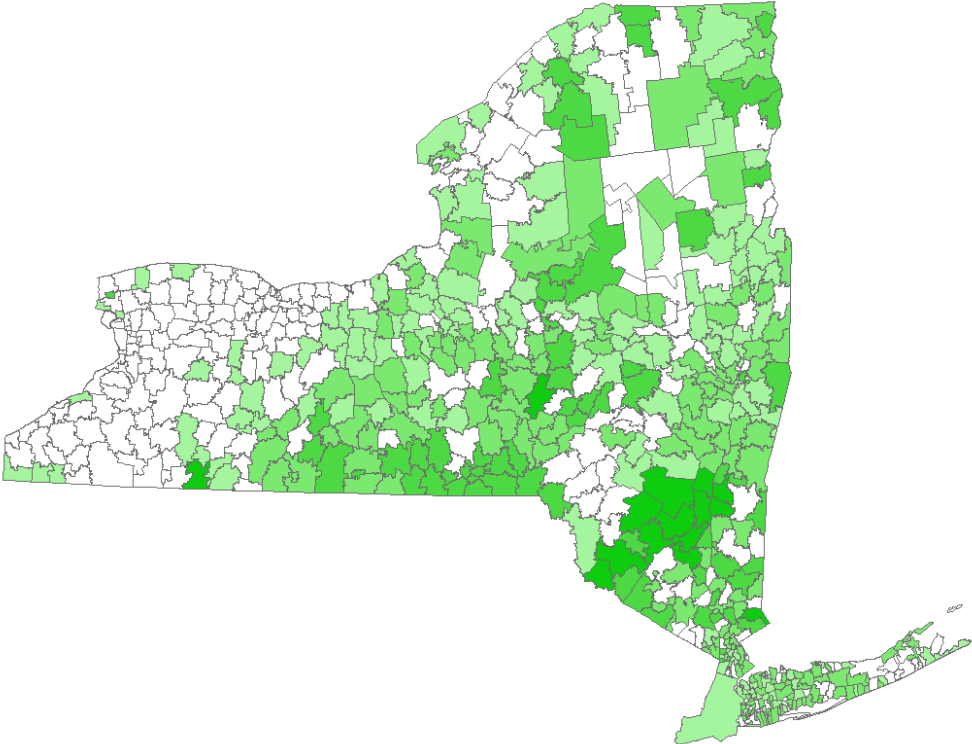
- iii. The proposed rule provides specific and illustrative examples of what emergencies may justify a shift to remote instruction (i.e. extraordinary adverse weather conditions, impairment of heating facilities, insufficiency of water supply, shortage of fuel, destruction of a school building, or a communicable disease outbreak). Regarding data on connectivity, the proposed rule requires that each chief executive officer of each educational agency located within a public school district survey students and parents to obtain information on student access to computing devices and access to the internet to inform the emergency remote instruction plan. Additionally, it requires that each chief executive officer report the results of such survey to the Commissioner. Period-by-period attendance, under any modality, is currently not collected by the Department; this would represent a significant increase in districts' reporting obligations. Therefore, no changes to the proposed rule are necessary.
- iv. Section 155.17(c)(3)(i) of the Commissioner's regulations requires that "[e]ach board of education, chancellor or other governing body shall make each district-wide safety plan available for public comment at least 30 days prior to its adoption." Since the emergency remote instruction plan has been made part of

the district-wide safety plan, it, too, will be subject to this comment period. The survey results submitted to the commissioner will be collected and made public in aggregate form to protect students' personally identifiable information.

Therefore, no changes to the proposed rule are necessary.

- v. Any remote instruction provided under emergency conditions must be provided consistent with the definition of remote instruction provided in section 100.1(u) of the proposed rule. Please also see section E(i) of this response. Therefore, no changes to the proposed rule are necessary.

2020-2021 “Snow Days” as reported in the State Aid Management System
Both Closures and remote instructional days



2020-2021 Remote Instructional “Snow Days”
Darker Colors represent more days utilized

