

The Commissioner may then extend the time validity of an expired provisional certificate (excluding an expired provisional certificate in the classroom teaching service or an expired provisional certificate in the title of school administrator and supervisor) or an expired initial or transitional certificate beyond the two-year extension provided for one additional year, if in the six months preceding the end of the two-year extension, the candidate is faced with extreme hardship or other circumstances beyond the control of the individual and is unable to complete the requirements for the professional certificate in a timely manner.

**Proposed Amendment:**

Based on feedback from the field, the proposed amendment instead seeks to allow candidates to apply for just one three-year extension if they meet one of the criteria listed below instead of submitting two separate requests for an extension of their expired certificates:

- is on leave from his/her teaching duties because of childbearing, childrearing, serious illness, or extended illness;
- is serving with the Peace Corps or other volunteer organization;
- service as a teacher has been discontinued as a result of abolition of teaching positions in the school district in which employed;
- who, because of extreme hardship or other circumstances beyond the control of the individual, was unable to complete the requirements for the permanent or professional certificate in a timely manner, excluding normal family commitments or inconvenience;
- has been unable to secure employment as a teacher or who has been pursuing a career other than teaching.

The proposed amendment also eliminates the option to receive a time extension in increments of one additional year for candidates who apply for citizenship or permanent residency, and whose application for citizenship or permanent residency has not been acted upon by the U.S. Citizenship and Immigration Services (USCIS) because permanent residency is no longer required for a professional certificate in light of the regulatory changes made at the May 2016 Regents meeting.

The proposed amendment further removes the requirement that a candidate take and pass a content specialty examination prior to the issuance of a time extension because this requirement only applied to permanent teaching certificates, which are no longer issued by the Department.

**3. COSTS:**

The proposed amendment does not impose any costs on candidates. In fact, the amendment may result in a cost savings for candidates who may otherwise have had to apply for two separate time extensions.

**4. MINIMIZING ADVERSE IMPACT:**

The rule seeks to provide a more flexible pathway for certain candidates with expired provisional, initial, or transitional certificates who meet specific requirements to obtain an extension of their certificate in an effort to address hardships that school districts and BOCES are facing related to teacher shortages.

**5. RURAL AREA PARTICIPATION:**

Copies of the rule have been provided to Rural Advisory Committee for review and comment.

**Job Impact Statement**

The proposed amendment allows holders of certain provisional, initial or transitional certificates to apply for one three-year time extension (if they meet certain criteria) on an expired certificate rather than applying for two separate time extensions.

Because the proposed amendment seeks to address an issue raised by the field in employing certified teachers, it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, and no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

**REVISED RULE MAKING  
NO HEARING(S) SCHEDULED**

**School Counseling, Certification Requirements for School Counselors and the School Counselor Program Registration Requirements**

**I.D. No. EDU-06-16-00004-RP**

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following revised rule:

**Proposed Action:** Amendment of sections 52.21(a), (d), 80-2.1, 80-2.9(1)(iii), (2), 80-3.1, 80-5.9, 100.2(j); and addition of sections 80-3.11, 80-3.12 and 80-5.23 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 214(not subdivided), 215(not subdivided), 305(1), (2), 308, 3001(2), 3004(1), 3006(1)(b) and 3009(1)

**Subject:** School counseling, certification requirements for school counselors and the school counselor program registration requirements.

**Purpose:** School counseling/guidance programs, certification requirements for school counselors, and school counselor program registration.

**Substance of revised rule:** The Commissioner of Education proposes to amend §§ 52.21, 80-2, 80-3, 80-5 and 100.2(j) of the Commissioner's regulations, relating to comprehensive developmental school counseling/guidance programs, certification requirements for school counselors and registration requirements for school counselor preparation programs. The following is a summary of the substance of the rule.

Subdivision (a) of section 52.21 is amended to require that programs leading to initial or professional certification in school counseling meet the new requirements outlined in subdivision (d) of section 52.21 by September 1, 2020.

A new subdivision (d) is added to section 52.21 to prescribe the requirements for institutions of higher education offering school counseling preparation programs leading to an initial certificate, and for those programs leading to a professional certificate.

The title of Subpart 80-2 is amended to clarify that the requirements of Subpart 80-2 do not apply to certificates for school counseling applied and qualified for on or after September 2, 2022.

Section 80-2.1 is amended to clarify that candidates who apply and qualify for the provisional certificate in the title school counselor on or before September 2, 2022 shall be subject to the requirements of this Subpart. Candidates who do not meet these requirements shall be subject to the requirements of Subpart 80-3 of this Part, unless otherwise specifically prescribed in this Part. Candidates with an expired provisional certificate in the title school counselor who apply for permanent certificates prior to September 2, 2022 shall be subject to this Subpart, provided that they have been issued a provisional certificate in this title and have met all requirements for the permanent certificate while under a provisional certificate that was in effect. Candidates with expired provisional certificates who apply for permanent certificates in the title school counselor on or after September 2, 2022 or who do not meet these conditions shall be subject to the requirements of Subpart 80-3 of the Part, unless otherwise specifically prescribed in this Part.

Sections 80-2.9(1)(iii) and 80-2.9(2)(iii) are amended to include the definition of pupil personnel service professional as defined in section 80-3.11.

The title of Subpart 80-3 is amended to clarify that the requirements of Subpart 80-3 for school counselor certificates shall apply for candidates who apply or qualify for such certificate on or after September 2, 2022.

Section 80-3.1 is amended to clarify that candidates who apply for a permanent certificate in the title school counselor shall be subject to the requirements of Subpart 80-2 of this Part, provided that they have been issued a provisional certificate in this title for which the permanent certificate is sought and have met all requirements for the permanent certificate while under a valid provisional certificate that was in effect after that date and that candidates who apply for certificates on or after September 2, 2022 shall be subject to the requirements of Subpart 80-3.

A new Section 80-3.11 is added to establish the requirements for both an initial certificate for school counselor, and a professional certificate for candidates who apply for a school counselor certificate on or after September 2, 2022.

A new Section 80-3.12 proscribes the requirements necessary for meeting the education requirements for school counselor certificates through individual evaluation.

Section 80-5.9 is amended to allow a candidate in a registered or approved graduate program of school counseling to obtain an internship certificate when the registered program includes internship experience, and the candidate has completed at least one-half of the semester hour requirements of the program.

A new Section 80-5.23 is added to set forth the standards and process of the Commissioner of Education to endorse the certificate of another state or territory of the United States or the District of Columbia for service as a school counselor, provided that the candidate meets the requirements set forth therein.

The title of Subdivision (j) of section 100.2 is amended to include comprehensive developmental school counseling/guidance programs. Paragraph (1) of section 100.2(j) is amended to clarify that the existing guidance programs for public schools shall apply until the 2019-2020 school year.

A new Paragraph (2) is added to section 100.2(j) to require public school districts to have a comprehensive developmental school counseling/guidance program, beginning with the 2019-2020 school year and describes the requirements thereof. The full text of the terms are available by visiting: <http://www.regents.nysed.gov/common/regents/files/1116p12hed1.pdf>

**Revised rule compared with proposed rule:** Substantial revisions were made in sections 52.21(d)(2), (3), 80-3.12(a)(4), 100.2(j)(2) and (3).

*Text of revised proposed rule and any required statements and analyses may be obtained from* Kirti Goswami, New York State Education Department, 89 Washington Avenue, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

*Data, views or arguments may be submitted to:* Peg Rivers, Office of Higher Education, New York State Education Department, 89 Washington Avenue, Room 979, Albany, NY 12234, (518) 486-3633, email: regcomments@nysed.gov

*Public comment will be received until:* 30 days after publication of this notice.

### Revised Regulatory Impact Statement

#### 1. STATUTORY AUTHORITY:

Ed.L. § 101 continues the existence of the Education Department (SED), with the Board of Regents (Regents) at its head and the Commissioner of Education as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

Ed.L. § 207 empowers the Regents and the Commissioner to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the Department by law.

Ed.L. § 210 authorizes SED to fix the value of degrees, diplomas and certificates issued by institutions of other states or countries as presented for entrance to schools, colleges and the professions of the state.

Ed.L. § 214 provides that the institutions of The University of the State of New York shall include all secondary and higher educational institutions which are or may be incorporated in the state, and grants authority to the Board to exclude from such membership any institution failing to comply with law or with any rule of the university.

Ed.L. § 215 authorizes the Commissioner to require schools and school districts to submit reports containing such information as the Commissioner shall prescribe.

Ed.L. § 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Regents shall have general supervision over all schools and institutions subject to the provisions of the EdL., or of any statute relating to education.

Ed.L. § 308 authorizes the Commissioner to enforce and give effect to any provision in the EdL. or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Ed.L. § 3001(2) establishes certification by SED as a qualification to teach in the public schools of NYS.

Ed.L. § 3004(1) authorizes the Commissioner to prescribe, subject to approval by the Regents, regulations governing the examination and certification of teachers employed in the public schools of NYS.

Ed.L. § 3006(1)(b) provides that the Commissioner may issue such teacher certificates as the Regents Rules prescribe.

Ed.L. § 3009(1) provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or part thereof, be collected by a district tax except as provided in the EdL.

#### 2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Regents relating to comprehensive developmental school counseling/guidance programs for all students in grades kindergarten through twelve. It also changes the certification requirements for school counselors and requirements for school counselor preparation programs.

#### 3. NEEDS AND BENEFITS:

The proposed amendments were published in the State Register on February 10, 2016 and SED received approximately 1,000 comments. See, <http://www.regents.nysed.gov/common/regents/files/meetings/Sep%202015/915p12hed1.pdf>. The majority of the comments surrounded § 100.2(j). The proposed amendments to § 100.2(j) were intended to broaden opportunities for students to explore the multitude of pathways from P-12 to college and career. Exposing students at a younger age, in a more comprehensive manner will serve to prepare our students for success in P-12 and beyond. The comments made clear that there was confusion surrounding the amendments, and the perceived impact on students, schools, and other licensed professionals.

To better understand the areas of concern and areas of commonality, the Department met with stakeholders in May 2016 (NYSUT, UFT, the New York State School Social Workers Association, the Association of New York State School Psychologists, the New York State School Counselors Association). SED staff revised the amendments and convened again in September 2016. Below is an overview of the major areas revised in response to public comment:

- Many commenters objected to the ASCA recommended ratio of 1:100 up to 1:250, and the ASCA Model Standards. The regulation was revised to remove the ratio and standards, which will be encouraged through guidance.

- The proposed amendment updated the title from “guidance program” to “comprehensive school counseling program.” In response to comment, the proposed amendment revises the title to include the word “guidance” to make explicitly clear that this regulation only addresses school counseling within the context of the “comprehensive school counseling/guidance program.” Additional language was also included to ensure that, school counselors will continue to make referrals to a properly licensed professional and/or certified pupil personnel service provider, for more targeted supports. This last revision was made to help clarify the roles of the school counselor compared with other licensed professionals in schools (e.g. school social workers, school psychologists).

- SED received many comments opposing the use of the title school counselor. Part 80 of the Commissioner’s Regulations provides for the certification of school counselors and has referred to the professional title of “school counselor” for several decades. Additional concerns were raised by individuals who work in NYC and hold licenses issued by the NYC under the title “guidance counselor”, as permitted by 80-2.2. To address this concern, SED revised to make clear in § 100.2(j) that, for the NYC and Buffalo, certified school counselor includes “licensed guidance counselors” pursuant to Part 80.

- § 100.2(j) required individual progress review plans for grades 7-12. The amendments expanded that for all students in P-12. In response to public comment, the regulation was revised to only require plans grades 6-12. Additionally, comment, the revised regulation no longer includes prekindergarten.

- Pupil personnel service providers were concerned that the proposed amendment expanded the scope of practice of school counselors. Additional language was included to ensure that nothing within § 100.2(j) prohibits certified or licensed school psychologists or certified or licensed school social workers pursuant to Part 80 from providing other direct student services within their applicable scope of practice.

- Part 80-3.11 Certification. On or after September 2, 2022, candidates seeking an initial school counselor certificate must:

- o complete an approved graduate program or complete 48 semester hours of graduate school counseling coursework in six core areas. In response to comment, the six core areas were revised to, in lieu of content in best practices for implementing a school counseling program, require content in career development and college readiness (best practices for implementation are now a core content area for professional certificates).

- o complete a 100-hour practicum and a 600-hour internship. In response to comment the amendments were revised to provide that such mentoring and supervision may be provided by other qualified school personnel only if the employing school district cannot provide a certified school counselor in the school building.

- o take and receive a satisfactory passing score on a NYSED approved certification exam, if available.

- On or after September 2, 2022, candidates seeking a professional school counselor certificate must:

- o complete a registered school counselor program or a minimum of 60 semester hours of graduate study acceptable to the Department in each of the eight core areas and the subareas;

- o the two core content areas for the professional certificate were revised to, in lieu of content in career development and college readiness, require content in best practices for implementing a school counseling program. Candidates for a professional certificate will have received the content in career development and college readiness as preparation for the initial certificate.

- o earn a master’s degree in school counseling;

- o meet requirements described for an initial certificate and will be required to satisfactorily complete three years of experience as a school counselor.

- Program Registration (§ 52.21(d)) by September 1, 2020)

- o Initial certificate-must provide a minimum of 48 semester hours of graduate study in an approved school counseling program and in six core areas, and their subareas. In response to comment, the core areas for the initial certificate have been revised to, in lieu of content in best practices for implementing a school counseling program, require content in career development and college readiness (best practices for implementation have been transferred to the core content areas required for a professional certificate).

- o Professional certificate-must provide a minimum of 12 additional semester hours in two core areas of graduate study in an approved certificate of advanced study. In response to comment, in lieu of content in career development and college readiness, content in best practices for implementing a school counseling program is required.

- o Initial/professional certificate-must provide a minimum of 60 semester hours of graduate study in an approved school counseling program leading to a master’s or higher degree and in the eight core content areas (following those in the 48 and 12 credit registered programs).

#### 4. COSTS:

(a) Costs to State government: None.  
 (b) Costs to local government: The current rule requires a general guidance program, designed in coordination with the teaching staff for K-6 students. For 7-12 students a more comprehensive program is required. The proposed amendment requires both district and building-level comprehensive school counseling plans. For grades K-5, the proposed amendment requires the program to be designed by a certified school counselor in coordination with the teaching staff and any appropriate pupil personnel service providers for the purpose of preparing students to participate effectively in their current and future educational programs, to provide information related to college and careers, and to assist students who may exhibit challenges to academic success, including but not limited to attendance or behavioral concerns, and where appropriate make a referral to a properly licensed professional and/or certified pupil personnel service provider, as appropriate, for more targeted supports. For grades 6-12, the proposed amendment requires certified school counselors to provide an annual individual progress review plan which shall reflect each student's educational progress and career plans. The existing rule requires the plan for 7-12 students.

It is anticipated that for the apx. 700 districts who already have elementary school counselors, the proposed amendment would not impose additional costs. Those 350 districts could develop building-level and district plans and individual progress review plans for grade 6 within their current school counselor job responsibilities by the 2019-2020 school year. Of the remaining 350 school districts with no elementary school counselor, we project that approximately half of those districts, (175 districts), some districts have sixth grade within their middle/high schools, wherein a school counselor already exists. However, for the remaining districts with grade six in schools without a school counselor, we project that the remaining districts may need to hire, on average, a quarter-time counselor, with larger districts needing more than one half time school counselor and smaller districts perhaps sharing the cost of an additional school counselor so that the cost would be less than one four time counselor. With the average salary of a school counselor estimated to be \$68,000 with fringe benefits added, the cost of a 1/4-time school counselor would be approximately \$17,000. Therefore, the anticipated added cost of adding building-level plans and individual progress review plans to grade six is estimated to be: \$17,000 (.25FTE) X 175 districts (one quarter of the districts) = \$2,975,000.

For candidates seeking a school counselor certificate, the proposed amendment provides that if, and when, a certification exam is available, such candidates will be required to pay a fee to SED for the exam.

(c) Costs to private regulated parties: None.

(d) Costs to regulating agency for implementation and continued administration of this rule: None.

**5. LOCAL GOVERNMENT MANDATES:**

The amendment is necessary to implement policy enacted by the Regents related to enhancing existing guidance programs by requiring comprehensive developmental school counseling/guidance programs for all students in kindergarten through twelve. It also requires certified school counselors to provide an annual individual progress review plan for each 6-12 student. Districts are must annually update building-level and district-level comprehensive school counseling plans, and make them available online. Districts must also establish an advisory council to review and advise on implementation of the program.

**6. PAPERWORK:**

See Section 5.

**7. DUPLICATION:**

The proposed amendment does not duplicate existing State or federal regulations.

**8. ALTERNATIVES:**

The proposal to enhance school counselor preparation programs and comprehensive developmental school counseling/guidance programs arose from the work of the SCAC. The proposed amendment is necessary to implement Regents policy to meet the diverse and evolving needs of students by enhancing existing public school guidance programs to require comprehensive developmental school counseling/guidance programs for all students in K-12. It also amends the requirements of school counselor preparation programs necessary to support comprehensive developmental school counseling programs.

In an effort to reduce the potential costs of the comprehensive developmental school counseling program and in response to public comment, the proposed amendment removes the recommended ratios. It was further amended to only expand the individual progress review plans to students in grade six, rather than for students in pre-kindergarten through six. Such alternatives were considered, and proposed to minimize the impact of the comprehensive developmental school counseling/guidance programs.

**9. FEDERAL STANDARDS:**

There are no related federal standards.

**10. COMPLIANCE SCHEDULE:**

It is anticipated regulated parties will be able to achieve compliance by the effective date which provides districts until the 2019-2020 school year to have a comprehensive developmental school counseling/guidance program. Further, institutions of higher education offering a school counseling preparation program have until September 1, 2020 to meet the program registration requirements. Candidates seeking school counselor certificates on or after September 2, 2022 must meet the requirements.

**Revised Regulatory Flexibility Analysis**

**Small Businesses:**

The proposed amendment is necessary to implement policy enacted by the Board of Regents relating to enhancing existing public school district guidance programs to require comprehensive developmental counseling/guidance programs for all students in grades kindergarten through twelve. The proposed amendment also makes changes to the certification requirements for school counselors and the requirements for school counselor preparation programs in order to support comprehensive developmental school counseling programs.

The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

**Local Government:**

**1. EFFECT OF RULE:**

The proposed amendment applies to each of the approximately 680 public school districts in the State who will be required to expand existing guidance programs to meet the needs of students in grades kindergarten through twelve through a comprehensive developmental school counseling/guidance program. The proposed amendment will also apply to institutions of higher education with registered school counseling preparation programs that lead to certification in school counseling.

**2. COMPLIANCE REQUIREMENTS:**

The proposed amendment makes the following major changes to the existing guidance programs in the public schools of this State:

- All public schools are still required to have a guidance program for all students.
- All students in K-12 should have access to certified school counselor, which for the city school district of the City of New York and the city school district of Buffalo shall include licensed guidance counselors pursuant to Part 80 of the Commissioner's regulations.
- Provide all public school students in 6-12 with annual individual progress review plans reflecting each student's educational progress and career plans conducted by certified school counselors.
- Comprehensive school counseling plans that are updated annually should be made available on the district website.
- Districts must establish a school counselor advisory council to review and advise the district on implementation issues relating to the comprehensive developmental school counseling program.

The proposed amendment makes the following major changes to the certification requirements for school counselors:

- Part 80-3.11 Certification. On or after September 2, 2022, candidates seeking an initial school counselor certificate must:
  - o complete an approved graduate program or complete 48 semester hours of graduate school counseling coursework in six core areas. In response to comment, the six core areas were revised to, in lieu of content in best practices for implementing a school counseling program, require content in career development and college readiness (best practices for implementation are now a core content area for professional certificates).
  - o complete a 100-hour practicum and a 600-hour internship. In response to comment the amendments were revised to provide that such mentoring and supervision may be provided by other qualified school personnel only if the employing school district cannot provide a certified school counselor in the school building.
  - o take and receive a satisfactory passing score on a NYSED approved certification exam, if available.
- On or after September 2, 2022, candidates seeking a professional school counselor certificate must:
  - o complete a registered school counselor program or a minimum of 60 semester hours of graduate study acceptable to the Department in each of the eight core areas and the subareas;
  - o the two core content areas for the professional certificate were revised to, in lieu of content in career development and college readiness, require content in best practices for implementing a school counseling program. Candidates for a professional certificate will have received the content in career development and college readiness as preparation for the initial certificate.
  - o earn a master's degree in school counseling;
  - o meet requirements described for an initial certificate and will be

required to satisfactorily complete three years of experience as a school counselor.

Program Registration (§ 52.21(d)) by September 1, 2020)

o Initial certificate-must provide a minimum of 48 semester hours of graduate study in an approved school counseling program and in six core areas, and their subareas. In response to comment, the core areas for the initial certificate have been revised to, in lieu of content in best practices for implementing a school counseling program, require content in career development and college readiness (best practices for implementation have been transferred to the core content areas required for a professional certificate).

o Professional certificate-must provide a minimum of 12 additional semester hours in two core areas of graduate study in an approved certificate of advanced study. In response to comment, in lieu of content in career development and college readiness, content in best practices for implementing a school counseling program is required.

o Initial/professional certificate-must provide a minimum of 60 semester hours of graduate study in an approved school counseling program leading to a master's or higher degree and in the eight core content areas (following those in the 48 and 12 credit registered programs).

### 3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any professional services requirements on school districts, school counselor candidates or school counselor preparation programs.

### 4. COMPLIANCE COSTS:

The current rule requires a general guidance program, designed in coordination with the teaching staff for K-6 students. For 7-12 students a more comprehensive program is required. The proposed amendment requires both district and building-level comprehensive school counseling plans. For grades K-5, the proposed amendment requires the program to be designed by a certified school counselor in coordination with the teaching staff and any appropriate pupil personnel service providers for the purpose of preparing students to participate effectively in their current and future educational programs, to provide information related to college and careers, and to assist students who may exhibit challenges to academic success, including but not limited to attendance or behavioral concerns, and where appropriate make a referral to a properly licensed professional and/or certified pupil personnel service provider, as appropriate, for more targeted supports. For grades 6-12, the proposed amendment requires certified school counselors to provide an annual individual progress review plan which shall reflect each student's educational progress and career plans. The existing rule requires the plan for 7-12 students.

It is anticipated that for the apx. 700 districts who already have elementary school counselors, the proposed amendment would not impose additional costs. Those 350 districts could develop building-level and district plans and individual progress review plans for grade 6 within their current school counselor job responsibilities by the 2019-2020 school year. Of the remaining 350 school districts with no elementary school counselor, we project that approximately half of those districts, (175 districts), some districts have sixth grade within their middle/high schools, wherein a school counselor already exists. However, for the remaining districts with grade six in schools without a school counselor, we project that the remaining districts may need to hire, on average, a quarter-time counselor, with larger districts needing more than one half time school counselor and smaller districts perhaps sharing the cost of an additional school counselor so that the cost would be less than one four time counselor. With the average salary of a school counselor estimated to be \$68,000 with fringe benefits added, the cost of a 1/4-time school counselor would be approximately \$17,000. Therefore, the anticipated added cost of adding building-level plans and individual progress review plans to grade six is estimated to be: \$17,000 (.25FTE) X 175 districts (one quarter of the districts) = \$2,975,000.

For candidates seeking a school counselor certificate, the proposed amendment provides that if, and when, a certification exam is available, such candidates will be required to pay a fee to SED for the exam.

### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment requires school districts to post comprehensive developmental school counseling plans on the district website. Such actions may require minimal costs to add such documentation to an existing school district website.

### 6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy enacted by the Board of Regents related to meeting the diverse and evolving needs of students by enhancing existing public school district guidance programs to require comprehensive developmental counseling programs for all students in grades prekindergarten through twelve provided by certified school counselors. The proposed amendment also makes changes to the requirements of school counselor preparation programs necessary to support comprehensive developmental school counseling programs.

Because the Regents policy upon which the proposed amendment is

based uniformly applies to all school districts throughout the State, it is not appropriate to establish differing compliance or reporting requirements or timetables or to exempt school districts in rural areas from coverage by the proposed amendment.

### 7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts. The proposed amendment arose from recommendations made by the SCAC which was comprised of 8 school counselors from across New York State and 8 representatives from school counselor preparation programs. Membership included two New York State United Teachers representatives, and one United Federation of Teachers representative.

### Revised Rural Area Flexibility Analysis

#### 1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to school districts, and candidates seeking a certificate in school counseling in this State, including those who live and work, or are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The proposed amendment also applies to institutions of higher education with registered school counseling preparation programs, which include those in rural areas of the State.

#### 2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

See the Needs and Benefits and Paperwork sections of the Regulatory Impact Statement submitted herewith. The proposed amendment does not impose any additional compliance requirements upon rural areas but merely implements policy enacted by the Board of Regents to enhance existing public school district guidance programs to require comprehensive developmental counseling/guidance programs for all students in grades kindergarten through twelve. The proposed amendment also makes changes to the requirements of school counselor preparation programs necessary to support comprehensive developmental school counseling programs.

The proposed amendment imposes no additional professional services requirements on school districts in rural areas.

#### 3. COMPLIANCE COSTS:

The current rule requires a general guidance program, designed in coordination with the teaching staff for K-6 students. For 7-12 students a more comprehensive program is required. The proposed amendment requires both district and building-level comprehensive school counseling plans. For grades K-5, the proposed amendment requires the program to be designed by a certified school counselor in coordination with the teaching staff and any appropriate pupil personnel service providers for the purpose of preparing students to participate effectively in their current and future educational programs, to provide information related to college and careers, and to assist students who may exhibit challenges to academic success, including but not limited to attendance or behavioral concerns, and where appropriate make a referral to a properly licensed professional and/or certified pupil personnel service provider, as appropriate, for more targeted supports. For grades 6-12, the proposed amendment requires certified school counselors to provide an annual individual progress review plan which shall reflect each student's educational progress and career plans. The existing rule requires the plan for 7-12 students.

It is anticipated that for the apx. 700 districts who already have elementary school counselors, the proposed amendment would not impose additional costs. Those 350 districts could develop building-level and district plans and individual progress review plans for grade 6 within their current school counselor job responsibilities by the 2019-2020 school year. Of the remaining 350 school districts with no elementary school counselor, we project that approximately half of those districts, (175 districts), some districts have sixth grade within their middle/high schools, wherein a school counselor already exists. However, for the remaining districts with grade six in schools without a school counselor, we project that the remaining districts may need to hire, on average, a quarter-time counselor, with larger districts needing more than one half time school counselor and smaller districts perhaps sharing the cost of an additional school counselor so that the cost would be less than one four time counselor. With the average salary of a school counselor estimated to be \$68,000 with fringe benefits added, the cost of a 1/4-time school counselor would be approximately \$17,000. Therefore, the anticipated added cost of adding building-level plans and individual progress review plans to grade six is estimated to be: \$17,000 (.25FTE) X 175 districts (one quarter of the districts) = \$2,975,000.

For candidates seeking a school counselor certificate, the proposed amendment provides that if, and when, a certification exam is available, such candidates will be required to pay a fee to SED for the exam.

#### 4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy enacted by the Board of Regents related to meeting the diverse and evolving needs of

students by enhancing existing public school district guidance programs to require comprehensive developmental counseling/guidance programs for all students in grades prekindergarten through twelve provided by certified school counselors. The proposed amendment also makes changes to the requirements of school counselor preparation programs necessary to support comprehensive developmental school counseling programs.

Because the Regents policy upon which the proposed amendment is based uniformly applies to all school districts throughout the State, it is not appropriate to establish differing compliance or reporting requirements or timetables or to exempt school districts in rural areas from coverage by the proposed amendment.

##### 5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas. The proposed amendment was also based upon recommendations made by School Counselor Advisory Council which was comprised of 8 school counselors from across New York State, including Mount Markham Central School District and Hamburg Central School District, and representatives from school counselor preparation programs located across the State.

##### Revised Job Impact Statement

The proposed amendment is necessary to implement policy enacted by the Board of Regents to enhance existing public school district guidance programs to require comprehensive developmental counseling/guidance programs for all students in grades kindergarten through twelve. The proposed amendment also makes changes to the certification requirements for school counselors and the requirements for school counselor preparation programs to support comprehensive developmental school counseling/guidance programs in the public school districts of this state.

The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

##### Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on February 10, 2016, the State Education Department received approximately 1,000 individual comments. The majority of the comments received related to the amendments to Commissioner's regulation § 100.2(j). The proposed amendments to Commissioner's regulation § 100.2(j) were intended to broaden the opportunities for students to explore the multitude of pathways from P-12 to college and career. Exposing students to opportunities at a younger age and in a more comprehensive manner will only serve to prepare our students for success in P-12 and beyond. However, it was evident from the comments received that there was confusion surrounding the proposed amendments to the guidance program, and the perceived impact on students, schools, and other licensed professionals.

Below is an overview of the major areas which were revised in response to public comment and concerns from the field. For the full Assessment of Public Comment please visit: <http://www.regents.nysed.gov/common/regents/files/1116p12hed1.pdf>

- Student to School Counselor Ratios - deleted reference to ratios:

The proposed amendment was designed to encourage schools to use ratios for certified school counselors to students that conform to the American School Counselor Association standards. The ASCA recommended the following ratios for school counselors to students: 1:100 with a maximum of 1:250. Across New York State some schools meet this recommended ratio but some schools have a ratio of up to 1:700 or 1:800 (based on BEDS data<sup>1</sup>). In the 2013-14 school year, the statewide average ratio was 1:418. In response to a significant number of comments objecting to including a recommended ratio in regulation, the regulation has been revised and no longer recommends any such ratio. Instead, the Department will continue to encourage the use of the ASCA standards in guidance.

- The American School Counselor Association (ASCA) Model – deleted reference to the ASCA Model:

The ASCA model is nationally recognized for developing comprehensive school counseling standards aimed at increasing student outcomes. The proposed amendment presented to the Board in September 2015 required school counseling programs to address multiple student competencies in accordance with the ASCA Model including career/college readiness standards, and academic and social/emotional development standards. It also included language that referenced "other comparable national and/or New York State recognized standards." While the ASCA standards were praised for their quality by many stakeholders, others were concerned about prescribing the specific national standards developed by

ASCA in regulation. The Department revised the regulation to remove the reference to the ASCA Model and standards, and will instead encourage the use of such standards through guidance.

- Comprehensive School Counseling Program – added the word Guidance throughout the regulation when referring to the School Counseling Program:

The proposed amendments to the regulations presented to the Board in September 2015 updated the title of the required program from "guidance program" to "comprehensive school counseling program." This change was made to recognize that school counselors serve all students in schools and that the national movement over the past several decades has been to eliminate the word "guidance" when referring to school counseling. However, that change in the title of the program led to confusion in the field about the nature of the counseling. In response to public comment, the proposed amendment revises the title of the program to include the word "guidance" to make explicitly clear that this regulation only addresses school counseling within the context of the "comprehensive school counseling/guidance program." This program is designed for the purpose of preparing students to participate effectively in their current and future educational programs, to provide information related to college and careers, and to assist students who may exhibit challenges to academic success including, but not limited to, attendance or behavioral concerns. Additional language was also included to ensure that, where appropriate, school counselors will continue to make referrals to a properly licensed professional and/or certified pupil personnel service provider, for more targeted supports. This last revision was made to help clarify the roles of the school counselor compared with other licensed professionals in schools (e.g., school social workers, school psychologists).

The comprehensive school counseling/guidance program was not intended to be confused with the more targeted mental health and behavioral supports that may be provided to students by other certified/licensed professionals. In response to public comment and to avoid confusion about the purpose of the rule, the title of the program within the regulation was revised and is now called the "comprehensive school counseling/guidance program."

- School Counselor v. Guidance Counselor – added specific language to reference Part 80 of the Commissioner's regulations:

Consistent with the certification title prescribed by Part 80 of the Commissioner's Regulations, the proposed regulation continues to use the title of school counselor. However, the Department received many comments opposing the use of the title school counselor instead of guidance counselor. Part 80 of the Commissioner's Regulations provides for the certification of school counselors and has referred to the professional title of "school counselor" for several decades. Additional concerns were raised by individuals who work in New York City and hold licenses issued by the City of New York under the title "guidance counselor", as permitted by Commissioner's Regulation § 80-2.2. To address this concern, the Department revised the language to make clear in the beginning of Commissioner's regulations § 100.2(j) that, for the city school district of the City of New York and the city school district of Buffalo, certified school counselor shall include "licensed guidance counselors" pursuant to Part 80 of the Commissioner's regulations.

- Individual Annual Progress Review Plans – revised the language to include grades 6 – 12, rather than P-12:

The existing regulation required individual progress review plans for students in grades 7-12. The proposed regulation expanded that requirement for all students in P-12 public schools, with P-6 plans to be provided in small groups. In response to public comment, the regulation has been revised to now only require individual progress review plans for students in grades 6-12.

- Duration of the Comprehensive School Counseling/Guidance Program – changed the grade level requirement from P-12 to K-12:

The proposed regulation expanded the program to serve students in pre-kindergarten through grade 12. However, in response to public comment, the revised regulation limits the program for students in grades K-12.

- Scope of Practice of Pupil Personnel Service Providers – added language to be clear that these proposed regulations would not change the scope of practice for other licensed or certified professionals.

The Department received much feedback from other pupil personnel service providers who were concerned that this proposed regulation would expand the scope of practice of school counselors, and impinge upon the scope of practice of other certified or licensed individuals. Additional language was included to ensure that nothing within Commissioner's regulation § 100.2(j) would prohibit certified or licensed school psychologists or certified or licensed school social workers pursuant to Part 80 of the Commissioner's Regulations from providing other direct student services within their applicable scope of practice.

Office of Higher Education: Highlights of Recommended Revisions

In response to the comments received, the Department made the following major changes:

- Part 80-3.11 Certification
- On or after September 2, 2022 (previously 2020), candidates seeking an initial school counselor certificate:

o must complete a NYSED approved graduate school counselor program (minimum of 48 semester hours) or complete 48 semester hours of graduate school counseling coursework in six core areas and the subareas for these core areas. In response to public comment, the six core content areas for the initial certificate have been revised to, in lieu of content in best practices for implementing a school counseling program, require content in career development and college readiness, including use of a variety of research-based school counseling approaches to provide services to meet the career needs of all students. Best practices for implementation have been transferred to the core content areas required for a professional certificate.

o complete a 100-hour practicum and a 600-hour internship as described in section 52.21 (d). In response to public comment and to ensure that candidates receive adequate supervision during the internship the proposed amendments were revised to provide that such mentoring and supervision may be provided by other qualified school personnel only if the employing school district cannot provide a certified school counselor in the school building in which the internship occurs.

o must take and receive a satisfactory passing score on a NYSED approved certification exam, if available.

- On or after September 2, 2022 (previously 2020), candidates seeking a professional school counselor certificate:

o must complete a school counselor program registered by the Department pursuant to Section 52.21(d); or complete a minimum of 60 semester hours of graduate study acceptable to the Department in each of the eight core areas and the subareas;

o in response to public comment, the two core content areas for the professional certificate have been revised to, in lieu of content in career development and college readiness, require content in best practices for implementing a school counseling program. Candidates for a professional certificate will have received the core content in career development and college readiness as preparation for the initial certificate.

- o earn a master's degree in school counseling;
- o meet requirements described for an initial certificate and will be required to satisfactorily complete three years of experience as a school counselor.

- Section 52.21(d) Program Registration
- By September 1, 2020 (previously 2018), school counseling programs leading to:

o Initial certificate - must provide a minimum of 48 semester hours of graduate study in an approved school counseling program and in six core areas, and the subareas for those content areas. In response to public comment, the core content areas for the initial certificate have been revised to, in lieu of content in best practices for implementing a school counseling program, require content in career development and college readiness, including use of a variety of research-based school counseling approaches to provide services to meet the career needs of all students. Best practices for implementation have been transferred to the core content areas required for a professional certificate.

o Professional certificate - must provide a minimum of 12 additional semester hours in two core areas of graduate study in an approved certificate of advanced study. In response to public comment, the two core content areas for the professional certificate have been revised to, in lieu of content in career development and college readiness, require content in best practices for implementing a school counseling program. Candidates for a professional certificate will have received the core content in career development and college readiness as preparation for the initial certificate.

o Initial/professional certificate - must provide a minimum of 60 semester hours of graduate study in an approved school counseling program which leads to a master's or higher degree and in the eight core content areas (following those in the 48 and 12 credit registered programs).

<sup>1</sup> Basic Educational Data System (BEDS).

## Department of Environmental Conservation

### EMERGENCY RULE MAKING

#### Chemical Bulk Storage (CBS)

I.D. No. ENV-19-16-00006-E

Filing No. 1038

Filing Date: 2016-11-14

Effective Date: 2016-11-14

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of Part 597 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 17-0301, 17-0303, 17-0501, 17-1743, 27-1301, 37-0101 through 37-0107 and 40-0101 through 40-0121

**Finding of necessity for emergency rule:** Preservation of public health.

**Specific reasons underlying the finding of necessity:** The New York State Department of Health (NYSDOH) has requested that the New York State Department of Environmental Conservation (DEC) add perfluorooctanoic acid (PFOA-acid, Chemical Abstracts Service (CAS) No. 335-67-1), ammonium perfluorooctanoate (PFOA-salt, CAS No. 3825-26-1), perfluorooctane sulfonic acid (PFOS-acid, CAS No. 1763-23-1), and perfluorooctane sulfonate (PFOS-salt, CAS No. 2795-39-3) to 6 NYCRR Section 597.3, List of Hazardous Substances. DEC has concluded that these four substances meet the definition of a hazardous substance based upon the conclusion of the NYSDOH that prolonged exposure to significantly elevated levels of these compounds can affect health and, consequently, pose a threat to public health in New York State when improperly treated, stored, transported, disposed of or otherwise managed. NYSDOH scientists have concluded that it is essential to list these chemicals as hazardous substances. See the Regulatory Impact Statement for additional information, including NYSDOH's letter requesting that these chemicals be added to the List of Hazardous Substances (Section 597.3).

It is essential to immediately identify PFOA-acid, PFOA-salt, PFOS-acid, and PFOS-salt as hazardous substances pursuant to 6 NYCRR Section 597.3, thereby making them hazardous wastes pursuant to Environmental Conservation Law Section 27-1301, and enabling DEC to exert its enforcement authorities and to expend funds from the Hazardous Waste Remedial Fund to clean up the contaminant. The emergency rule will provide DEC with authority to take immediate action to protect public health. To the extent elevated levels of PFOA-related and PFOS-related substances are identified throughout the State, DEC needs the authority to act expeditiously.

**Subject:** Chemical Bulk Storage (CBS).

**Purpose:** To amend Part 597 of the CBS regulations.

**Text of emergency rule:** 6 NYCRR Part 597 is amended to read as follows:  
Existing subdivision 597.1(a) through paragraph 597.1(b)(1) remain unchanged.

Existing paragraph 597.1(b)(2) is amended to read as follows:

(2) Chemical [a]Abstracts [s]Service number or CAS number is the unique identifier for a chemical substance assigned by the CAS division of the American Chemical Society.

Existing paragraph 597.1(b)(3) through section 597.2 remain unchanged.

Existing section 597.3 is amended to read as follows:

597.3 List of hazardous substances

Table 1 sets forth the list of hazardous substances in alphabetical order.

Table 2 sets forth the list of hazardous substances in Chemical Abstracts Service (CAS) number order.

Table 1 and Table 2 are amended to read as follows:

Table 1 – Alphabetical Order

CASRN	Substance	RQ Air (pounds)	RQ Land/ Water (pounds)	Notes
3825-26-1	Ammonium Perfluorooctanoate	1	1	