

Amend section 721.3, subparagraph (b)(7)(i) as follows:

(7) Refusal.

(i) If the [inmate]in~~carcerated~~ individual refuses to accept the privileged correspondence when it is offered, the delivering employee shall note the refusal in the log and any known reason for non-acceptance. The privileged correspondence should be returned to the sender stamped “addressee refused to accept.”

Amend section 721.3, subparagraph (b)(7)(ii) as follows:

(ii) If the [inmate]in~~carcerated~~ individual refuses to respond to the privileged mail delivery call, a second attempt should be made to deliver the letter. If the [inmate]in~~carcerated~~ individual again refuses to respond, note the date and time, and any known reason for not responding to privileged mail calls in the privileged mail log. The receipt with this information shall be retained in an appropriate file. The privileged correspondence should be returned to the sender stamped “addressee refused to accept.”

Amend section 721.3, paragraph (b)(8) as follows:

(8) Privileged correspondence originally sent out of the facility by an [inmate]in~~carcerated~~ individual, but subsequently returned to the [inmate]in~~carcerated~~ individual sender by the postal service, shall be processed as incoming privileged correspondence in accordance with the procedures as set forth in paragraphs (1) and (2) of this subdivision.

Amend section 721.3, paragraph (c)(3) as follows:

(3) If after reading the contents of privileged correspondence there is reason to believe that the provisions of this or any directive or rule or regulation have been violated, or that any State or Federal law has been violated, or that the content of such correspondence threatens the safety, security good order of a facility or the safety or well-being of any person, then the correspondence may be confiscated, and the [inmate]in~~carcerated~~ individual must be given written notice of the confiscation, unless doing so would be inconsistent with the need to safeguard an investigation. The notice must include the reason(s) for the confiscation, and it must inform the [inmate]in~~carcerated~~ individual of the right to appeal the confiscation to the deputy commissioner for program services. In the case of incoming correspondence, the correspondent must also be given a copy of such notice and accorded the right to appeal, unless doing so would be inconsistent with the need to safeguard an investigation. Reason to believe that privileged correspondence is being used to introduce contraband or other materials not entitled to the privilege shall be sufficient reason for confiscation.

Amend section 721.3, paragraph (c)(4) as follows:

(4) This subdivision shall not be deemed to require the express written authorization of the superintendent to inspect incoming privileged correspondence, in the presence of the [inmate]in~~carcerated~~ individual, to ensure that the materials contained in the correspondence are entitled to the privilege.

**This notice is intended:** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 3, 2025.

**Text of rule and any required statements and analyses may be obtained from:** Jason Golub, Deputy Commissioner and Counsel, Department of Corrections and Community Supervision, 1220 Washington Avenue, Hariman State Campus, Building 4, Albany, New York 12226-2050, (518) 457-4951, email: rules@dcccs.ny.gov

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 60 days after publication of this notice.

**Regulatory Impact Statement**

Statutory Authority:

Article 6, section 112, subdivision 1 of the Correction Law provides the commissioner of corrections and community supervision with the superintendence, management, and control of the correctional facilities in the department and of the incarcerated individuals confined therein, and of all matters relating to the government, discipline, policing, contracts and fiscal concerns thereof. In this regard, the Department of Corrections and Community Supervision (DOCCS) interprets this authority to extend to promulgation of rules and regulations governing mail processing within correctional facilities for general and privileged correspondence.

Legislative Objectives:

In proposing this rule, the Department seeks to further the legislative objective of orderly and efficient operation of New York State Correctional Facilities.

Needs and Benefits:

The processing of privileged correspondence is currently regulated under Part 721 of Title 7 of the New York State Code of Rules and Regulations. Screening of privileged correspondence is imperative in preventing the dissemination of drugs and dangerous contraband into prison facilities and in protecting the safety and welfare of security staff, civilian employees and the incarcerated population.

This emergency rule is necessary to provide updated guidelines for the screening and inspection of incarcerated individual privileged correspondence in an effort to curtail the introduction of drugs and dangerous contraband into correctional facilities.

Costs:

i. Compliance with this rule imposes no cost on the Department’s personnel or the incarcerated individuals required to follow the rule.

ii. This rule imposes no additional costs on the State or on the Department.

iii. This cost analysis is based on the Department’s own review of its procedures.

Paperwork:

This rule imposes no reporting requirements.

Local Government Mandates:

This rulemaking imposes no program, service, duty, or responsibility on any county, city, town, village, school district, or other special district. It applies only to DOCCS correctional facilities.

Duplication:

There is no overlap or contract with any other legal requirements of the State or Federal government.

Alternatives:

The alternative is to leave the existing regulation in place. However, the Department is amending this regulation to address concerns regarding incarcerated individual safety, employee safety and the quality of working life in Department facilities.

Federal Standards:

No Federal standards are applicable to the subject matter of this rule.

Compliance Schedule:

Department personnel can achieve compliance with the rule upon its adoption. The emergency adoption of this rule will be effective upon filing for publication in the State Register.

**Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this Notice of Emergency Adoption and Proposed Rule Making because the rulemaking will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any reporting, recordkeeping, or other affirmative acts on the part of these entities for compliance purposes. The Department makes this finding based on the fact that the rule strengthens existing regulations and therefore, imposes no new requirements on such entities.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not submitted with this Notice of Emergency Adoption and Proposed Rule Making because the rulemaking will not impose any adverse economic impact on rural areas, nor will it require or impose any reporting, recordkeeping, or other affirmative acts on the part of public or private entities in rural areas. The Department makes this finding based on the fact that the rule strengthens existing regulations and therefore, imposes no new requirements on such entities. Rural areas are not affected.

**Job Impact Statement**

A job impact statement is not submitted with this Notice of Emergency Adoption and Proposed Rule Making because the rulemaking will not have a substantial adverse impact on jobs or employment opportunities nor does it have adverse implications for job opportunities.

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## Education Department

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### EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Licensing Examinations and Testing Accommodations in the Social Work Professions**

**I.D. No.** EDU-20-25-00012-EP

**Filing No.** 479

**Filing Date:** 2025-05-06

**Effective Date:** 2025-05-06

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

**Proposed Action:** Amendment of section 74.2 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207, 6506, 6507 and 7704

**Finding of necessity for emergency rule:** Preservation of general welfare.

**Specific reasons underlying the finding of necessity:** The proposed amendment is necessary to conform the Commissioner's regulations to align New York State's (NYS) social work licensure examination requirements with national standards set by the Association of Social Work Boards (ASWB). ASWB's master's and clinical examinations are used by all jurisdictions across the United States and its territories to determine if a licensure candidate is competent to independently practice the social work professions. Currently, NYS is the only jurisdiction that does not permit English as a Second Language (ESL) accommodations on the ASWB examinations. The proposed rule conforms the Commissioner's regulations to national standards by permitting ESL testing accommodations for the master's and clinical ASWB examinations.

Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency action) after expiration of the required 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 202(1) and (5) would be the September 2025 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the September 2025 meeting, would be September 24, 2025, the date a Notice of Adoption would be published in the State Register.

Therefore, since ASWB's ESL testing accommodations policies are already effective in every other jurisdiction, emergency action is necessary at the May 2025 meeting, effective May 6, 2025, for the preservation of the general welfare in order to provide these accommodations to anticipated Spring 2025 graduates for upcoming examination dates.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the September 2025 Regents meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rule making. However, since the emergency action will expire before the September 2025 Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the July 2025 Regents meeting.

**Subject:** Licensing examinations and testing accommodations in the Social Work professions.

**Purpose:** Allow English as a Second Language test accommodations for LMSW and LCSW exams.

**Text of emergency/proposed rule:** Section 74.2 of the Regulations of the Commissioner of Education is amended to read as follows:

§ 74.2 Professional licensing examinations.

(a) Examination for licensure as a licensed master social worker.

(1) Each candidate for licensure as a licensed master social worker shall pass an examination:

(i) that is offered by [the Association of Social Work Boards, its successors, or another] an organization determined by the department to have satisfactory administrative and psychometric procedures in place to offer the licensing examination; [and]

(ii) that the department determines adequately tests social work proficiency at the master's degree level and adequately measures the candidate's knowledge concerning practice as a licensed master social worker as defined in subdivision (1) of section 7701 of the Education Law[.]; and

(iii) notwithstanding section 59.3 of this Title, such examination may include testing accommodations offered by an organization that meets the requirements of part (a)(1)(i) of this paragraph and is acceptable to the department, such accommodations may include all non-standard accommodations, including, but not limited to English as a second language accommodations.

(2) Requirements for admission to examination for licensure as a licensed master social worker. To be admitted to the licensing examination, the candidate shall be required to:

(i) file an application for licensure with the department;

(ii) pay the fees for the licensure application and first registration period; and (iii) present satisfactory evidence of having met the education requirement for licensure as a licensed master social worker, as prescribed in section 74.1(b) of this Part, including receipt of the social work degree.

(b) Examination for licensure as a licensed clinical social worker.

(1) Each candidate for licensure as a licensed clinical social worker shall pass an examination:

(i) that is offered by [the Association of Social Work Boards, its successors, or another] an organization determined by the department to have satisfactory administrative and psychometric procedures in place to offer the licensing examination; and

(ii) that the department determines adequately tests social work proficiency at the clinical level and adequately measures the candidate's knowledge concerning practice as a licensed clinical social worker as defined in subdivision (2) of section 7701 of the Education Law[.]; and

(iii) notwithstanding section 59.3 of this Title, such examination may include testing accommodations offered by an organization that meets the requirements of part (b)(1)(i) of this paragraph and is which acceptable to the department, such accommodations may include all non-standard accommodations, including, but not limited to English as a second language accommodations.

(2) ...

(i) ...

(a) ...

(b) ...

(c) ...

(d) ...

(c) Passing score. The passing score for the examination for licensure as a licensed master social worker and the examination for licensure as a licensed clinical social worker shall be determined by the Department [the State Board for Social Work].

**This notice is intended:** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 3, 2025.

**Text of rule and any required statements and analyses may be obtained from:** Joshua Dingman, Education Department, Office of Counsel, 89 Washington Avenue, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

**Data, views or arguments may be submitted to:** David H. Hamilton, Deputy Commissioner, Education Department, Office of the Professions, 89 Washington Avenue, SEB 2nd Floor, Albany, NY 12234, (518) 474-3817, email: REGCOMMENTS@nysed.gov

**Public comment will be received until:** 60 days after publication of this notice.

**This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.**

#### Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 6506 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions.

Section 7704 of the Education Law establishes the requirements for licensure in the profession of social work.

##### 2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above statutory authority and is necessary to conform the Commissioner's regulations to national social work licensure examination standards by allowing candidates for licensure as a Licensed Master Social Worker (LMSW) or Licensed Clinical Social Worker (LCSW) for whom English is a second language to apply for English as a Second Language (ESL) accommodations. Any organization approved by New York State to offer the examination(s) may provide ESL accommodations, which typically consist of additional time to take the examination and the use of two dictionaries, one bilingual word-to-word translation dictionary and/or one general ESL dictionary.

In implementing Chapter 420 of the Laws of 2002, the Department previously determined that the Association of Social Work Boards (ASWB) would administer social work licensing examinations. All United States jurisdictions use ASWB's examinations and already permit the use of ESL accommodations. This regulation is thus necessary to ensure that all candidates have equitable access to the ASWB examinations.<sup>2</sup>

The examinations are one-part of the social work licensure criteria, which includes education and, in the case of clinical practice, supervised experience in the profession. Test-takers who receive such accommodations must meet the same passing standard as other candidates.

##### 3. NEEDS AND BENEFITS:

The proposed rule is necessary to conform the Commissioner's regulations to the national social work licensure examination standards set by ASWB by permitting ESL testing accommodations.

##### 4. COSTS:

(a) Costs to State government: The proposed rule will not impose any additional costs on State government beyond those imposed by the statutory requirements.

(b) Costs to local governments. There are no additional costs to local governments.

(c) Costs to private regulated parties. The proposed rule does not impose any additional costs to regulated parties. As required by ASWB, the LMSW examination costs \$230 and the LCSW examination costs \$260. If candidates fail the LMSW or the LCSW examinations, they will have to retake them at the cost of \$230 or \$260, respectively. Since ASWB does

not supply dictionaries, ESL candidates taking a licensure examination at a test center must buy their own printed word-to-word translation dictionaries, which will be subject to inspection at the testing center before and after the examination to ensure that there are no unauthorized markings or notes added to the text.

(d) Cost to the regulatory agency: The proposed rule does not impose any additional costs on the Department beyond those imposed by statute. Any associated costs to the Department will be offset by the fees charged to licensees and no significant cost will result to the Department.

#### 5. LOCAL GOVERNMENT MANDATES:

The proposed rule conforms to the Commissioner's regulations to the national social work licensure examination standards set by ASWB. The proposed rule does not impose any program, service, duty, or responsibility upon local governments.

#### 6. PAPERWORK:

The proposed rule imposes no new reporting or other paperwork requirements beyond those imposed by the statute.

#### 7. DUPLICATION:

The proposed rule is necessary to conform to the Commissioner's regulations to the national social work licensure examination standards set by ASWB. There are no other state or federal requirements on the subject matter of the proposed rule. Therefore, the proposed rule does not duplicate other existing New York State or federal requirements.

#### 8. ALTERNATIVES:

The proposed rule is necessary to conform to the Commissioner's regulations to the national social work licensure examination standards. There are no significant alternatives to the proposed rule available and none were considered.

#### 9. FEDERAL STANDARDS:

Since there are no applicable federal standards, the proposed rule does not exceed any minimum federal standards for the same or similar subject areas.

#### 10. COMPLIANCE SCHEDULE:

The proposed rule is necessary to conform to the Commissioner's regulations to the national social work licensure examination standards. It is anticipated that the proposed rule will be presented for permanent adoption at the September 2025 Regents meeting. If adopted at the September 2025 Regents meeting, the proposed amendment will become effective on September 24, 2025. It is anticipated that regulated parties will be able to comply with the proposed rule by the effective date.

<sup>1</sup> ESL is a non-standard testing accommodation policy, distinct from reasonable accommodations authorized under the Americans with Disabilities Act (ADA).

<sup>2</sup> In September 2023, the Board of Regents permanently adopted ESL testing accommodations in the profession of architecture. See, <https://www.regents.nysed.gov/sites/regents/files/923brca14.pdf>

#### **Regulatory Flexibility Analysis**

The purpose of the proposed rule is to conform to the Regulations of the Commissioner of Education (Commissioner's regulations) to the national social work licensure examination standards set by the Association of Social Work Boards (ASWB) by allowing candidates for licensure as a Licensed Master Social Worker (LMSW) or Licensed Clinical Social Worker (LCSW) for whom English is a second language to apply for English as a Second Language (ESL) accommodations. Any organization approved by New York State to offer the social examination(s) may provide ESL accommodations, which typically consist of additional time to take the examination and the use of two dictionaries, one bilingual word-to-word translation dictionary and/or one general ESL dictionary.

All United States jurisdictions use ASWB's examinations and already permit the use of ESL accommodations. This regulation is thus necessary to ensure that all candidates have equitable access to the ASWB examinations.

The proposed rule amends section 74.2 of the Commissioner's regulations to conform it to the national social work licensure examination standards set by ASWB by permitting ESL testing accommodations.

The proposed rule does not impose any new reporting, recordkeeping, or other compliance requirements on local governments or have any adverse economic impact on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not adversely affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required, and one has not been prepared.

#### **Rural Area Flexibility Analysis**

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

The proposed rule will apply to all social work licensure applicants in New York State (NYS) and conforms to the Commissioner's regulations to the national social work licensure examination standards set by the As-

sociation of Social Work Boards (ASWB) by allowing candidates for licensure as a Licensed Master Social Worker (LMSW) or Licensed Clinical Social Worker (LCSW) for whom English is a second language to apply for English as a Second Language (ESL) accommodations. Any organization approved by New York State to offer the social examination(s) may provide ESL accommodations, which typically consist of additional time to take the examination and the use of two dictionaries, one bilingual word-to-word translation dictionary and/or one general ESL dictionary. The proposed rule will apply to all social work licensure applicants 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. All NYS social work licensure applicants will be subject to the requirements of the proposed rule.

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

The proposed rule updates section 74.2 of the Commissioner's regulations to conform it to the national social work licensure examination standards set by ASWB by permitting ESL testing accommodations.

The proposed rule does not impose any professional services requirements on entities in rural areas.

##### 3. COSTS:

The proposed rule does not impose any additional costs to regulated parties beyond those imposed by statute, including those located in rural areas. As required by ASWB, the LMSW examination costs \$230 and the LCSW examination costs \$260. If candidates fail the LMSW or the LCSW examinations, they will have to retake them at the cost of \$230 or \$260, respectively. Since ASWB does not supply dictionaries, ESL candidates taking a licensure examination at a test center must buy their own printed word-to-word translation dictionaries, which will be subject to inspection at the testing center before and after the examination to ensure that there are no unauthorized markings or notes added to the text.

##### 4. MINIMIZING ADVERSE IMPACT:

The proposed rule conforms to the Commissioner's regulations to the national social work licensure examination standards set by ASWB. ASWB does not make exceptions for individuals who live or work in rural areas. Thus, the Department has determined that the proposed rule's requirements should apply to all social work licensure applicants, regardless of their geographic location, to help ensure a uniform standard of continuing competency across the State.

Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

##### 5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from statewide organizations representing all parties having an interest in the practice of social workers. Included in this group was the State Board for Social Work and professional associations representing the social work profession. These groups have members who live or work in rural areas.

#### **Job Impact Statement**

The proposed rule is necessary to conform to the Regulations of the Commissioner of Education (Commissioner's regulations) to the national social work licensure examination standards set by the Association of Social Work Boards (ASWB) by allowing candidates for licensure as a Licensed Master Social Worker (LMSW) or Licensed Clinical Social Worker (LCSW) for whom English is a second language to apply for English as a Second Language (ESL) accommodations. Any organization approved by New York State to offer the social work examination(s) may provide ESL accommodations, which typically consist of additional time to take the examination and the use of two dictionaries, one bilingual word-to-word translation dictionary and/or one general ESL dictionary.

All United States jurisdictions use ASWB's examinations and already permit the use of ESL accommodations. This regulation is thus necessary to ensure that all candidates have equitable access to the ASWB examinations.

The proposed rule amends section 74.2 of the Commissioner's regulations to conform it to the national social work licensure examination standards set by ASWB by permitting ESL testing accommodations.

Because, the proposed regulation implements specific national standards set by ASWB, any impact on jobs and employment opportunities created by updating the licensure examination requirements for social workers is attributable to the ASWB's national standards, not the proposed rule, which simply establishes standards that conform with ASWB's national licensure examination standards, which permit ESL testing accommodations. In addition, the ASWB's national standards for licensure examinations that allow ESL testing accommodations may increase the number of New York State licensed social workers, which may increase New Yorkers' access to social work services.

Therefore, the proposed rule will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and

none were taken. Accordingly, a job impact statement is not required and one was not prepared.

## NOTICE OF ADOPTION

### Moral Character of Certificate Holders

**I.D. No.** EDU-04-25-00018-A

**Filing No.** 481

**Filing Date:** 2025-05-06

**Effective Date:** 2025-05-21

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

**Action taken:** Addition of section 83.7 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 305 and 308

**Subject:** Moral character of certificate holders.

**Purpose:** Establishes process for interim suspension of an individual's teaching certificates if teacher/student relationship is violated.

**Text of final rule:** The Regulations of the Commissioner of Education is amended by adding a new section 83.7 to read as follows:

#### 83.7 Summary Suspension

(a) If the Commissioner receives a referral pursuant to section 83.1 of this Part from a superintendent or school district official that is supported by a preponderance of the evidence indicating that a certificate holder has engaged in a sex offense as defined in Penal Law § 130 or committed a boundary violation in their professional capacity, such referral may trigger an interim suspension of the certificate holder's certificate pending a formal hearing pursuant to section 83.4 of this Part. For purposes of this section:

(1) The term "preponderance of the evidence" may include a conviction, decision, order, or judgment of a court of competent jurisdiction; findings of an administrative hearing officer or arbitrator; including an Education Law § 3020-a proceeding; admissions against interest; witness statements sworn to under oath or subscribed to by the signature of a witness to the alleged act; or evidence of similar nature and weight. A referral that does not meet this standard, such as a witness statement consisting solely of uncorroborated hearsay, shall be insufficient to support an interim suspension.

(2) The term "boundary violation" shall mean behavior by the certificate holder that is sexual in nature and results in student harm, including sexual physical contact, sexualized communications (e.g., "sexting"), displaying or transmitting sexual objects or pornography to a student, or personal communications that reveal an intention to enter into a romantic relationship.

(b) (1) Summary suspension proceedings shall be commenced by the service on the certificate holder of a notice of argument and a verified petition. The notice of argument shall identify the time and place of oral argument on the application for summary suspension and the hearing officer designated by the Commissioner to hear the matter. The notice shall also include a copy of this section.

(2) The hearing officer shall be appointed from the panel utilized by the Department for hearings under this Part.

(3) The notice of argument and verified petition shall be personally served upon the certificate holder no later than forty-five days prior to the date set for oral argument. If personal service cannot be effectuated after due diligence, the notice of argument and verified petition may be served by certified mail, return receipt requested, to the certificate holder's last known address on file with the Department within 30 days prior to the oral argument.

(4) The petition shall set forth the basis for the application and shall include sworn statements based upon personal knowledge and/or exhibits demonstrating that the certificate holder has demonstrated a lack of moral character and that the public health, safety, or welfare imperatively requires emergency action to summarily suspend the certificate holder's certification. There shall be no right to discovery, and the Department shall not be required to produce any additional documents or evidence.

(5) A verified answer and any sworn statements and supporting exhibits may be served by the certificate holder, via mail or email, upon the Commissioner no later than seven days prior to the date set for oral argument.

(6) The Commissioner may serve a verified reply, together with any sworn statement and supporting exhibits, to the answer, to the certificate holder or their counsel, if applicable, no later than five days prior to the date of oral argument. Upon the certificate holder's consent, the reply may be sent via email.

(7) The petition, answer, and reply, together with any sworn statement and supporting exhibits, shall be transmitted at the time of service of each paper to the hearing officer designated to hear the case.

(8) Saturdays, Sundays, and legal holidays shall be excluded in calculating the periods of time set forth in this subdivision. The hearing officer shall grant all reasonable requests for extensions of time made by the parties.

(c) At the oral argument, the Commissioner or their designee, and the certificate holder and/or their counsel, shall have the right to be heard. Absent a request from the certificate holder, no transcript of oral arguments shall be required. If a certificate holder so requests, the Department shall prepare a recording or transcript of the proceedings; if transcribed, the Commissioner shall follow the process for hearing transcription applicable to proceedings pursuant to Education Law § 3020-a. No further papers shall be submitted at the oral argument except by permission of the hearing officer designated to conduct the proceeding.

(d) Within fourteen days of the oral argument, the hearing officer shall submit a written report of their conclusions and recommendation(s) to the Commissioner, who shall determine whether to grant or deny the application for summary suspension. A determination by the Commissioner granting the application must be based upon a finding that the public health, safety, or welfare of the students and/or school community imperatively requires emergency action and shall be issued within seven days of receipt of the hearing officer's recommendation(s).

(e) Any determination of the Commissioner shall be without prejudice to the Department or certificate holder in any subsequent formal disciplinary proceeding pursuant to section 83.4 of this Part.

(f)(1) In the event a summary suspension is issued, a notice that a substantial question exists as to the moral character of the certificate holder pursuant to section 83.3 of this part shall be served within seven days of the latter of either (a) the Commissioner's determination granting summary suspension, or (b) the final determination of any appeal of such determination is adjudicated. Review by the State professional standards and practices board for teaching shall not be required under such circumstances.

(2) In the event that Part 83 charges are filed and a hearing is requested pursuant to section 83.4 of this Part, a panel or hearing officer must issue a recommendation within 120 days. Approval of the State professional standards and practices board for teaching, as described in section 83.2 of this Part, shall not be required under such circumstances.

(3) If the certificate holder appeals the recommendation of the panel or hearing officer pursuant to section 83.5 of this Part, the Commissioner shall issue a decision resolving such appeal within 60 days after the appeal is received.

(g) A certificate holder may appeal the Commissioner's granting of an application for summary suspension by filing an appeal pursuant to Article 78 of the New York Civil Practice Law and Rules in Albany County supreme court. The summary suspension shall remain in effect if and until modified by the court.

(h) Information related to the investigation and issuance of a summary suspension involving certificate holders shall be confidential and not be subject to public disclosure. However, once all applicable statutes of limitation have expired, the fact that the Commissioner issued a summary suspension may be publicly disclosed.

**Final rule as compared with last published rule:** Nonsubstantial changes were made in section 83.7(b)(1), (2), (3), (5), (c) and (g).

**Text of rule and any required statements and analyses may be obtained from:** Joshua Dingman, Education Department, Office of Counsel, 89 Washington Avenue, Room 112 EB, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

#### Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on January 29, 2025, the following non-substantial revisions were made to the proposed rule:

The Department has made two non-substantial revisions. First, the Department has authorized audio recording of the summary suspension hearing (which, like transcription, may only occur at the certificate holder's request). Second, the Department explicitly noted that an interim suspension ordered by the Commissioner remains in effect if and until Albany County Supreme Court orders otherwise.<sup>1</sup>

The Department also made two stylistic edits. First, the provision governing service of the answer erroneously indicated that it should be served on the hearing officer; this has been changed to the Commissioner. Second, the proposed regulation used both "hearing" and "oral argument" to describe a certificate holder's opportunity to oppose summary suspension. The Department changes all references to "oral argument" for consistency.

The above revisions to the proposed rule do not require any revisions to the previously published Regulatory Impact Statement.

<sup>1</sup> According to section 506 of the Civil Practice Law & Rules, all proceedings against the Commissioner of Education must be "commenced in the supreme court, Albany county."