Rule Making Activities

NOTICE OF ADOPTION

Jurisdictional Classification
I.D. No. CVS-29-15-00011-A
Filing No. 119
Filing Date: 2016-01-22
Effective Date: 2016-02-10

Pursuant to the Provisions of the State Administrative Procedure Act, Notice is hereby given of the following action:

Action taken: Amendment of Appendix 1 of Title 4 NYCRR

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the July 22, 2015 issue of the Register, I.D. No. CVS-29-15-00011-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12259, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Assessment of Public Comment
The agency received no public comment.

Education Department

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

School Counseling, Certification Requirements for School Counselors and the School Counselor Program Registration Requirements
I.D. No. EDO-06-16-00004-P

Pursuant to the Provisions of the State Administrative Procedure Act, Notice is hereby given of the following proposed rule:

Proposed Action: Amendment of sections 52.21(a), (d), 80-5, 80-12, 80-2, 80-3, and addition of section 80-5.23 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101(1)(not subdivided), 207(1)(not subdivided), 210(1)(not subdivided), 214(1)(not subdivided), 305(1), 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: To implement policy enacted by the Board of Regents to enhance existing public school district guidance programs to require comprehensive developmental counseling programs for all students in grades prekindergarten through twelve by certified school counselors. The proposed amendment also makes changes to the requirements for the certification of school counselors and school counselor preparation programs to support comprehensive developmental school counseling programs in the public schools of this State.

Substance of proposed rule (Full text is posted at the following State website: https://www.regents.nysed.gov): The Commissioner of Education proposes to amend §§ 52.21, 80-3, 80-2, 80-3, 80-5 and 100.2(j) of the Commissioner's regulations, relating to comprehensive developmental school counseling 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, 2018.

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, 2021.

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, 2021 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, 2023 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, 2023 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 and qualify for such certificate on or after September 2, 2021.

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, 2021 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, 2021.

A new Section 80-3.12 prescribes 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 certification 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 programs. Paragraph (1) of section 100.2(j) is amended to clarify that the existing guidance programs for public schools shall apply until the 2017-2018 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 program, beginning with the 2017-2018 school year and describes the requirements thereof.

Text of proposed rule and any required statements and analyses may be obtained from: Kirit 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 Department, 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: 45 days after publication of this notice.

Summary of Regulatory Impact Statement
1. STATUTORY AUTHORITY:
Education Law (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 SED 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 SED 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 institu-
tions which are or may be incorporated in the state, and grants authority to the Regents 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 Ed. L., or of any statute relating to education.

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

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

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

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 Ed. L.

2. LEGISLATIVE OBJECTIVES:

The amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Regents to require comprehensive developmental counseling programs for all public schools. Students who are enrolled in kindergarten through twelve provided by certified school counselors. The amendment changes the certification requirements for school counselors and requirements for school counselor preparation programs.

3. NEEDS AND BENEFITS:

SED created the School Counselor Advisory Council (SCAC) to solicit recommendations for a comprehensive, developmentally appropriate school counseling program and for improving the school counselor preparation program.

Two SCAC workgroups distributed surveys to P-12 and higher education practitioners. The results were compiled and analyzed by SED. SED also presented a summary of recommendations compiled from the April 2014 NYS School Counselor Summit. The SCAC reviewed the recommendations and also SCAC provided comments on a memo sent in April 2015 to the deans and department chairs overseeing school counseling programs which included an invitation to offer feedback. SED reviewed the feedback, made final adjustments to the amendment.

Highlights of § 100(2)(c) revisions:

• School counseling services for prekindergarten through twelve students provided by certified school counselors.

• The ratio of student to counselors, to the extent practicable, should conform to the American School Counselor Association standards or comparable national and/or NYS recognized standards by 2020-2021 school year.

• Provide all P-12 public school students annual individual progress review plans.

• Annually updated comprehensive school counseling plans published on the district website.

• Require school counselor advisory councils to advise the district on implementation of the program.

• Change the word “guidance” program to “school counseling program” for public schools.

• Use the title “School Counselor” rather than “Guidance Counselor.”

• Highlights of Part 52.21 revisions, and the addition of Part 80-3.11 Certification:

On or after September 2, 2021:

• Candidates seeking an initial certificate must complete an SED approved program (minimum of 48 semester hours) or complete 48 semester hours of graduate school counseling coursework in six areas as prescribed by the Commissioner in guidance. Initial certificate candidates must also take and receive a satisfactory passing score on a NYSED approved certification exam, if available.

• Candidates seeking a professional school counselor certificate must complete a registered program or a minimum of 60 semester hours of graduate study (an additional 12 semester hours over the already obtained 48 semester hours).

• Candidates seeking a professional school counselor certificate must meet the requirements for an initial certificate and three years of school counseling experience. Candidates who complete this requirement in total or part through experience in NY public schools shall be required to participate in a mentor program in the first year of employment.

Part 52.21(d) Program Registration

• By September 1, 2018, institutions of higher education (IHEs) offering a school counseling preparation program leading to an initial certificate are required to provide a minimum of 48 semester hours of graduate study in an approved program which must be in six areas prescribed by the Commissioner in guidance.

• By September 1, 2018, IHEs offering a program leading to a professional certificate are required to provide a minimum of 12 additional semester hours of graduate study in an approved certificate of advanced study, which must be in at least one of the two core areas prescribed by the Commissioner in guidance. Only individuals who have completed a minimum of a 48 semester hour program in school counseling or its equivalent and who hold a NYS initial certificate or meet the requirements for a NYS initial certificate, will be admitted to a minimum 12-credit advanced certificate program.

• All 48 semester hour or higher preparation programs leading to initial certification or a master’s degree must include a minimum of 10 hours of practicum and a 60-hour internship, as described in rule.

• The supervised 100-hour P-12 school counseling practicum must be in a P-12 setting and consist of 40 direct student service hours in group counseling, individual counseling, and school counseling core curriculum lesson delivery, and 60 indirect hours on developing, implementing, and/or evaluating certain program elements.

• The supervised 600-hour P-12 internship must be in a P-12 program and consist of 240 direct student service hours in group counseling, individual counseling, and school counseling core curriculum lesson delivery, and 360 hours on developing, implementing, and evaluating certain program elements; 300 hours must be in elementary school and 300 in secondary school and there must be a written agreement with the school or school district.

• Programs registered for the first time on or after September 1, 2018 leading to an initial and/or professional certificate shall be accredited by an acceptable professional education accrediting association and be continuously accredited thereafter by an acceptable professional education accrediting association.

Other Changes:

• The amendment prescribes that candidates are eligible for internship certificates when they have completed at least one half of the program’s supervised 48 semester hour requirements.

• All of the general requirements for registered programs in Sections 52.1 and 52.2 shall apply to school counseling programs in addition to the requirements in 52.21(d). All other general requirements not addressed in 80-3.11 are required pursuant to 80-1 and 80-3.2.

• Technical amendments are reflected throughout Subpart 80-2 and Subpart 80-3 and change the types of school counselor certificates issued on or after September 2, 2021 from “provisional” to “initial” and from “permanent” to “professional.”

• Prescribes requirements for the endorsement of out-of-state initial and professional certificates.

• Adds § 80-3.12 to prescribe requirements for meeting the education requirements through individual evaluation.

• Initial certificates are valid for five years, subject to certain time extensions and renewals. Professional certificates are valid for life.

4. COSTS:

(a) Costs to State government: None.

(b) Costs to local government: The existing rule requires school districts to have a guidance program, designed in coordination with teaching staff for students in grades kindergarten through six, and services provided by certified school counselors for grades seven through twelve. The statewide average counselor to student ratio is 1:418. A successful comprehensive developmental school counseling program should, to the extent practicable, use ratios for certified school counselors that conform to the American School Counselor Association standards (1:100 - 1:250), or other national and/or NYS recognized standards. An effort to bring the statewide average ratio closer to the recommendation and achieve a ratio of 1:350 requires adding approximately 1,600 school counselors statewide. Adding 1,600 positions at an approximate average cost of $68,000 per position would cost approximately $100 million dollars. The proposed amendment merely recommends but does not require such ratios.

The amendment requires district and building-level comprehensive school counseling plans. Currently, the rule requires district-level plans and an annual review for 7-12 grade students. The amendment requires creation of school counseling plans and an annual individual progress review plans for each student from prekindergarten through twelfth. To minimize the impact of the amendment, for students in grades prekindergarten through six, the plan may be provided individually or with small groups. The amendment does not impose additional costs. Those 350 districts could develop building level and district plans within current school counselor job responsibilities. Of
the remaining 350 school districts, we project that approximately half of those districts, (175 districts) would shift responsibilities to meet the requirements of the amendment. We project that the remaining 175 districts would need to hire, on average, one half-time counselor, with larger districts requiring more and smaller districts requiring an additional school counselor. With the average estimated salary for a half-time counselor of $34,000, the cost of a half-time school counselor would be approximately $34,000. The anticipated added cost of building-level staff and individual progress review plans for prekindergarten through twelfth grade students is estimated to be: $34,000 (.5FTE) X 175 districts (one quarter of the districts) = $5,350,000.

For individuals obtaining a school counselor certificate if, and when, a certification exam is available, they will be required to pay an exam fee to SED.

(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 to require comprehensive developmental counseling programs for all students in grades prekindergarten through twelve provided by certified school counselors. The amendment provides a goal for public schools to increase the ratio of school counselors to students, to the extent practicable, to the ASCA standards (1:100-1:250) or other comparable national standards for NYS. Recognized standards. The amendment requires that certified school counselors provide annual individual progress review plans for each prekindergarten through twelfth grade student. School districts are also required to annually update both building-level and district-level plans. Plans must be made available on the district website. Districts must establish a school counselor advisory council to review and advise on program implementation.

6. PAPERWORK:
See Section 5.

7. DUPLICATION:
The amendment does not duplicate existing State or federal regulations.

8. ALTERNATIVES:
The proposal arose from the SCAC which initially considered requiring all schools to meet the national standard of 1:100-1:250. To reduce costs, the amendment merely recommends and does not require schools to meet those ratios. Flexibility was also provided to schools by allowing individual progress review plans for students in pre-kindergarten through sixth grade to be conducted through small groups.

9. FEDERAL STANDARDS:
There are no related federal standards.

10. COMPLIANCE SCHEDULE:
It is anticipated that all parties will be able to comply by the effective date. Public school districts have until the 2017-2018 school year to comply with comprehensive school counseling program. IHE's school counseling preparation programs have until September 1, 2018 to meet the requirements. Candidates seeking school counselor certificates on or after September 2, 2018 must meet such requirements.

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 programs for all students in grades prekindergarten through twelve provided by certified school counselors. 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 prekindergarten through twelve through a comprehensive developmental school counseling program. The proposed amendment will also apply to institutions of higher education with registered school counseling preparation programs that lead to certification as 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:

- School counseling services shall be provided to all students in grades prekindergarten through twelve by certified school counselors (current regulations only require school counselors for students in grades 7-12).
- The goal is for the ratio of student to school counselors, to the extent practicable, to conform to American School Counselor Association standards or other comparable national and/or New York State recognized standards.

- Provide all students in P-12 public schools with annual individual progress review plans reflecting each student’s educational progress and career plans conducted by certified school counselors, except in grades 7-12 where such plans may be provided in small groups.

- Develop comprehensive school counseling plans that are updated annually and 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:

On or after September 2, 2021:

Candidates seeking an initial school counselor certificate must complete a supervised graduate school counseling program (minimum of 48 semester hours) or complete 48 semester hours of graduate school counseling coursework in six core areas prescribed by the Commissioner in regulations and guidance and complete a 100-hour practicum and a 600-hour internship as described in Section 52.21 (d). In addition to the requirements detailed above for the initial certificate, the candidate must take and receive a satisfactory passing score on a NYS certified counseling exam, if available.

Candidates seeking a professional school counselor certificate must complete a school counseling program registered by the Department pursuant to Section 52.21 (d) of the Commissioner’s Regulations or a minimum of 60 semester hours of graduate study (an additional 12 semester hours over the already obtained 48 semester hours).

Candidates seeking a professional school counselor certificate must meet the education, experience, and examination requirements described for an initial certificate and will be required to satisfactorily complete three years of experience as a school counselor. A candidate who completes this requirement in part through experience in New York public schools shall be required to participate in a mentored program in the first year of employment.

Part 52.21(d) Program Registration

By September 1, 2018, institutions of higher education (IHEs) offering a school counseling preparation program leading to an initial certificate will be required to provide a minimum of 48 semester hours of graduate study in an approved school counseling program. The 48 hours of graduate study must be in each of the following six core areas, and the subareas for these core content areas, as prescribed by the Commissioner in regulations and guidance.

By September 1, 2018, IHEs offering a school counseling preparation program leading to a professional certificate will be required to provide a minimum of 12 additional semester hours of graduate study in an approved certificate of advanced study. Only individuals who have completed a minimum of a 48 semester hour program in school counseling or its equivalent, and who hold a NYS initial certificate or meet the requirements for a NYS initial certificate in school counseling, will be admitted to a minimum 12-credit advanced certificate program in school counseling. The minimum of 12 semester hours of graduate study must be in at least each of the following two core areas and the subareas for these core areas, as prescribed by the Commissioner in guidance:

- Career development and college readiness
- Research and program evaluation

All 48 semester hour or higher school counseling preparation programs leading to initial certification or a master’s degree must include a minimum of a 100-hour practicum and a 600-hour internship.

The supervised 100-hour P-12 school counseling practicums must be in a P-12 school counseling program setting that consist of 40 direct student service hours in group counseling, individual counseling, and school counseling core curriculum lesson delivery; and 60 indirect hours on developing, implementing, and/or evaluating school counseling program elements such as:

- Student outcomes and standards
- Curriculum
- Individual student needs and plans
- Responsive services
- Consultation with others on behalf of student
- Time management
- School counseling program goals
- Data analysis
- Action plans
- Calendars/schedules
Rule Making Activities

The proposed amendments were based on the work and recommendations of the School Counseling Advisory Committee (SCAC). The SCAC is a group of school counselors from across the state who provide feedback and guidance to the department. The proposed amendments were designed to support a successful comprehensive school counseling program.

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3. PROFESSIONAL SERVICES:
The proposed amendment does not impose any professional services requirements on school districts, school counselor candidates or school counselor program post-graduates.

4. COMPLIANCE COSTS:
The existing rule requires school districts to have a guidance program, designed in coordination with teaching staff for students in grades kindergarten through six, and services provided by certified school counselors for grades seven through twelve. The current statewide average counselor to student ratio is 1:418. The proposed amendment provides that a successful comprehensive developmental school counseling program should, where practicable, use ratios for certified school counselors that conform to the American School Counselor Association standards (1:100 - 1:250), or other national and/or NYS recognized standards. An effort to bring the statewide average ratio closer to the recommended and achieve a ratio of 1:350 requires adding approximately 1,600 school counselors statewide. Adding 1,600 positions at an approximate average cost of $68,000 per position would cost approximately $100 million dollars. However, the proposed amendment merely recommends but does not require such ratios.

The amendment requires individual, district and building-level comprehensive school counseling plans. Currently, the regulations require district-level plans, and an individual annual review for 7-12 grade students. The amendment requires certified school counselors to provide annual progress plan review plans for each student from prekindergarten through twelfth. However, in an effort to minimize the impact of the amendment, for students in grades prekindergarten through six, the plan may be provided individually or with small groups.

It is anticipated that for roughly half of the 700 districts (350 districts) that already have elementary school counselors, the amendment would not impose additional costs. It is expected that those 350 districts could develop building level and district plans within current school counselor job responsibilities. Of the remaining 350 school districts, we project that approximately half of those districts, (175 districts) could shift current responsibilities to meet the requirements of the amendment. We project that the remaining 175 districts would need to hire, on average, one half-time counselor, with larger districts needing more and smaller districts sharing the cost of an additional school counselor. With the average estimated salary with fringe benefits of $68,000, the cost of a half-time school counselor would be approximately $34,000. The anticipated added cost of building-level plans and individual progress review plans for prekindergarten through twelfth grade students is estimated to be: $34,000 (SFT) X 175 districts (one quarter of the districts) = $5,950,000.

For candidates seeking a school counselor certificate if, and when, a certification exam is available, they will be required to pay an exam fee to SFDA.

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:
In an effort to minimize any adverse impact, the proposed amendment merely recommends and does not impose specific school counselor to student ratios necessary to support a successful comprehensive developmental school counseling program.

The proposed amendments were based on the work and recommendations of the School Counseling Advisory Committee (SCAC). The SCAC is a group of school counselors from across the state who provide feedback and guidance to the department. The proposed amendments were designed to support a successful comprehensive school counseling program.

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 Certified Teachers representatives, and one United Federation of Teachers representative.

Rural Area Flexibility Analysis

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 less than 150 people per square mile. The proposed amendment 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. The proposed amendment requires that the state education commissioner oversee the implementation of the proposed amendment. The proposed amendment provides that a successful comprehensive developmental school counseling program should, to the extent practicable, use ratios for certified school counselors that conform to the American School Counselor Association standards (1:100 - 1:250), or other national and/or NYS recognized standards. An effort to bring the statewide average ratio closer to the recommendation and achieve a ratio of 1:350 requires adding approximately 1,600 school counselors statewide. Adding 1,600 positions at an approximate average cost of $68,000 per position would cost approximately $100 million dollars. However, the proposed amendment merely recommends but does not require such ratios.

The amendment requires additional services for students in grades kindergarten through six, and services provided by certified school counselors for grades seven through twelve. The current average counselor to student ratio is 1:418. The proposed amendment provides that a successful comprehensive developmental school counseling program should, where practicable, use ratios for certified school counselors that conform to the American School Counselor Association standards (1:100 - 1:250), or other national and/or NYS recognized standards. An effort to bring the statewide average ratio closer to the recommended and achieve a ratio of 1:350 requires adding approximately 1,600 school counselors statewide. Adding 1,600 positions at an approximate average cost of $68,000 per position would cost approximately $100 million dollars. However, the proposed amendment merely recommends but does not require such ratios.

The amendment requires individual, district and building-level comprehensive school counseling plans. Currently, the regulations require district-level plans, and an individual annual review for 7-12 grade students. The amendment requires certified school counselors to provide annual progress plan review plans for each student from prekindergarten through twelfth. However, in an effort to minimize the impact of the amendment, for students in grades prekindergarten through six, the plan may be provided individually or with small groups.

It is anticipated that for roughly half of the 700 districts (350 districts) that already have elementary school counselors, the amendment would not impose additional costs. It is expected that those 350 districts could develop building level and district plans within current school counselor job responsibilities. Of the remaining 350 school districts, we project that approximately half of those districts, (175 districts) could shift current responsibilities to meet the requirements of the amendment. We project that the remaining 175 districts would need to hire, on average, one half-time counselor, with larger districts needing more and smaller districts sharing the cost of an additional school counselor. With the average estimated salary with fringe benefits of $68,000, the cost of a half-time school counselor would be approximately $34,000. The anticipated added cost of building-level plans and individual progress review plans for prekindergarten through twelfth grade students is estimated to be: $34,000 (SFT) X 175 districts (one quarter of the districts) = $5,950,000.

For candidates seeking a school counselor certificate if, and when, a certification exam is available, they will be required to pay an exam fee to SFDA.

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:
In an effort to minimize any adverse impact, the proposed amendment merely recommends and does not impose specific school counselor to student ratios necessary to support a successful comprehensive developmental school counseling program.

The proposed amendments were based on the work and recommendations of the School Counseling Advisory Committee (SCAC). The SCAC is a group of school counselors from across the state who provide feedback and guidance to the department. The proposed amendments were designed to support a successful comprehensive school counseling program.

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For candidates seeking a school counselor certificate if, and when, a certification exam is available, they will be required to pay an exam fee to SED.

4. MINIMIZING ADVERSE IMPACT:
The proposed amendment is necessary to implement policy enacted by the Board of Regents related to 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. However, to provide flexibility to school districts, including those located in rural areas of the State, the proposed amendment merely recommends and does not require specific school counselor to student ratios.

The proposal to enhance school counselor preparation programs and to implement comprehensive developmental school counseling programs arose from the work of the School Counselor Advisory Council (SCAC), which was established by the Department upon recommendation by the Board of Regents. The proposed amendments were based on the work and recommendations of the SCAC. The SCAC initially considered requirements for all schools to meet the nationally recognized school counselor to student standards of between 1:100 and 1:250. However, in an effort to reduce the potential costs of the comprehensive developmental school counseling program, the proposed amendment was amended to merely recommend and not require schools to meet the nationally recognized ratios. The proposed amendment was further amended to provide flexibility to schools by allowing the individual counseling for students in prekindergarten through sixth grade to be provided through small groups.

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 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.

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 programs for all students in grades prekindergarten 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 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.

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

New York State Seal of Biliteracy

L.D. No. EDU-04-16-00003-RP

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

Proposed Action: Addition of section 100.5(b) to Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 305(1), (2), 308(not subdivided), 309(not subdivided) and 815(2)(b)

Subject: New York State Seal of Biliteracy.

Purpose: To establish requirements for students to earn a State Seal of Biliteracy.

Text of revised rule: Subdivision (h) of section 100.5 of the Regulations of the Commissioner of Education is added, effective May 4, 2016, as follows:

(a) New York State Seal of Biliteracy.

(1) Purpose and Intent. The purpose of this subdivision is to establish requirements for earning a New York State (NYS) Seal of Biliteracy pursuant to Education Law § 815. The intent of the NYS Seal of Biliteracy is to encourage the study of languages; certify attainment of biliteracy; provide employers with a method of identifying high school graduates with language and biliteracy skills; provide universities with an additional method to recognize applicants seeking admission; prepare students with twenty-first century skills; recognize the value of foreign and home language instruction in schools; and strengthen intergroup relationships, affirm the value of diversity, and honor the multiple cultures and languages of a community. The NYS Seal of Biliteracy shall be awarded by the Commissioner to students who meet the criteria of this subdivision and are graduates of public schools in the state that are approved by the Commissioner pursuant to this subdivision to participate in the program. The NYS Seal of Biliteracy shall be offered to high school diplomas and transcripts of graduating pupils attaining Seal criteria.

(2) Definitions. For purposes of this section, “foreign language” means any language other than English (ELOE) including all modern languages, Latin, American Sign Language, Native American languages and native languages.

(3) School district requirements. School district participation in the NYS Seal of Biliteracy program is voluntary. A school district that wishes to participate in the program shall:

(a) form a Seal of Biliteracy Committee (SBC).

(b) The SBC shall:

(i) create a Seal of Biliteracy plan that includes, but is not limited to, details concerning committee recruitment and composition, communications, student advisement, evaluation and presentation of awards;

(ii) create a timeline for all activities pertaining to the Seal of Biliteracy program including, but not limited to, communications, student advisement schedule, and dates for important benchmarks throughout the year;

(iii) develop a student application process, including an application form to be completed by interested students and returned to the SBC;

(iv) provide for the assignment of an advisor to each student accepted into the program to review program requirements and meet regularly with the student to review the student’s progress; and

(v) review and evaluate all coursework, assessments, and other work completed by each student to ensure criteria for the seal are met.

(b) Minimum requirement. Students who wish to receive the NYS Seal of Biliteracy shall complete all requirements for graduating with a Regents diploma (however, students in schools with an alternate pathway for graduation approved by the Commissioner will be held to these school’s criteria);

(i) Additional requirements. Except as provided in subparagraph