services (BOCES), and/or municipalities in New York State. The proposed amendment to § 80.5 of the Commissioner’s Regulations would also allow individuals who have at least three years of experience as a licensed certified public accountant working in the business office of one or more New York State school districts, BOCES, and/or municipalities in New York State to be eligible for the Transitional H certificate.

Licensed certified public accountants who have experience in the business office of one or more New York State school districts, BOCES, and/or municipalities in New York State would be excellent candidates for the Transitional H certificate given their background in areas such as fiscal management, facilities management, and human resources. Expanding the Transitional H certificate eligibility requirements to include this type of experience would increase the pool of qualified candidates for this certificate and therefore increase the number of candidates in the supplemental School District Business Leader certification, which would address the need for School District Business Leaders in the near future due to impending retirements.

Because it is evident from the nature of the proposed amendment that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken.

PROPOSED RULE MAKING

NO HEARING(S) SCHEDULED

Protecting Personally Identifiable Information

I.D. No. EDU-05-19-00008-P

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

Proposed Action: Addition of Part 121 to Title 8 NYCRR.

Statutory authority: Education Law, sections 2-d, 101, 207 and 305

Subject: Protecting Personally Identifiable Information

Purpose: To implement the provisions of Education Law section 2-d.

Substance of proposed rule (Full text is posted at the following State website: http://www.counsel.nysed.gov/rules/full-text-indices): § 121.1 Definitions.

This section provides definitions for specific terms for this Part.

§ 121.2 Educational Agency Data Collection Transparency and Restrictions.

Prohibits educational agencies from selling personally identifiable information (PII) or using/disclosed it or allowing any other entity to use or disclose it for any marketing or commercial purpose. Educational agencies must incorporate provisions in its contracts with third party contractors that require the confidentiality of PII.

§ 121.3 Parents Bill of Rights for Data Privacy and Security.

Requires each educational agency to: publish on its website a parent’s bill of rights for data privacy and security; include it with every contract where a third-party contractor will receive PII; include supplemental information for each contract such as the exclusive purposes for which the data will be used and; how the third-party contractor will comply with all applicable data protection and privacy requirements. Each educational agency must also publish the data security and privacy policy on its website.

§ 121.4 Parent Complaints of Breach or Unauthorized Release of Personally Identifiable Information.

Educational agencies must establish procedures for parents and eligible students to file complaints about breaches or unauthorized releases of student data. The procedure will require educational agencies to promptly acknowledge receipt of complaints, commence an investigation, and take the necessary precautions to protect any personally identifiable information.

§ 121.5 Data Security and Privacy Standard.

Adopts the National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1 (NIST Cybersecurity Framework or NIST CSF) as the standard for data security and privacy for educational agencies. Each educational agency must adopt and publish a data security and privacy policy that complies with the proposed regulations, aligns with the NIST CSF, and includes provisions that require every use of PII by the educational agency to benefit students and the educational agency and prohibits the inclusion of personally identifiable information in public reports or other documents. The educational agency is required to publish its data security and privacy policy on its website and provide notice of the policy to all its officers and employees.

§ 121.6 Data Security and Privacy Plan.

Educational agencies must ensure that their contracts with third-parties that will receive PII include a data security and privacy plan that complies with Education Law § 2-d.

§ 121.7 Training for Educational Agency Employees.

Educational agencies must provide annual information privacy and security awareness training to their officers and employees with access to personally identifiable information. Such training may be delivered using online training tools and may be included as part of training the educational agency already offers to employees.

§ 121.8 Educational Agency Data Protection Officer.

Each educational agency must designate one or more employees to serve as the educational agency’s data protection officer(s) to be responsible for implementing and enforcing the policies and procedures required in Education Law § 2-d and this Part, and to serve as the point of contact for data security and privacy for the educational agency.

§ 121.9 Third Party Contractors.

Third-party contractors that will receive PII must adopt technologies, safeguards and practices that align with the NIST Cybersecurity Framework; comply with the data security and privacy policy of the educational agency with whom it contracts; and comply with Education Law § 2-d and the proposed regulations. Contractors are prohibited from selling PII or using it for any marketing or commercial purpose. Additionally, where a third party contractor has existing obligations, the data protection obligations imposed on the third-party contractor are applicable to the subcontractor.

§ 121.10 Reports and Notifications of Breach and Unauthorized Release.

Third-party contractors must notify each educational agency with which it has a contract of any breach or unauthorized release of PII in accordance with requirements set forth in the proposed regulations. Educational agencies must report any breach or unauthorized release of PII to the Chief Privacy Officer and notify affected parents, eligible students, teachers and/or employees in the manner expeditious way possible in accordance with requirements set forth in the proposed regulations. The Chief Privacy Officer is required to report law enforcement any breach or unauthorized release that constitutes criminal conduct.

§ 121.11 Third Party Contractor Civil Penalties.

The Chief Privacy Officer has the authority to investigate reports of breaches or unauthorized releases and impose penalties on third party contractors for unauthorized releases or breaches of PII in accordance with requirements set forth in the proposed regulations.

§ 121.12 Right of Parents and Eligible Students to Inspect and Review Students Education Records.

Consistent with FERPA, parents and eligible students shall have the right to inspect and review a student’s education record by making a request directly to the educational agency in a manner prescribed by the educational agency. Educational agencies are required to notify parents annually of their right to request and review their child’s education records including any student data stored or maintained by an educational agency.

§ 121.13 Chief Privacy Officer’s Powers.

Chief Privacy Officer shall have the power to access all records, reports, audits, reviews, documents, papers, recommendations, and other materials maintained by an educational agency that relate to student data or teacher or principal data, which shall include but not be limited to records related to any technology product or service that will be utilized to store and/or process personally identifiable information as further described in the proposed regulations.

§ 121.14 Severability.

If any provision of this part or its application to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of the article or their application to other persons and circumstances, and those remaining provisions shall not be affected but shall remain in full force and effect.

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, NYS Education Department, Office of Higher Education, 89 Washington Avenue, Room 975 EBA, Albany, NY 12234, (518) 474-2238, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Temitope Akinyemi, NYS Education Department, Office of Higher Education, 89 Washington Ave, Room 975 EBA, Albany, NY 12234, (518) 474-6400, email: regcomments@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 charges the Department with the general management and supervision of the educational work of the State and establishes the Regents as head of the Department.

Education Law section 207 grants general rule-making authority to the Regents to carry into effect State educational laws and policies.
Education Law section 305(1) authorizes the Commissioner to enforce laws relating to personal supervision of students and the general management of their education. Section 305(2) provides the Commissioner with general supervision over schools and authority to advise and guide school districts in their duties and the general management of their schools.

Education Law section 2-d authorizes the Commissioner to enforce laws relating to the privacy and security of personally identifiable information (PII) of students, and certain annual professional performance review (APPR) data of teachers and principals.

2. LEGISLATIVE OBJECTIVES

The purpose of the proposed rule is to implement Education Law section 2-d, as added by Chapter 56 of the Laws of 2014 which outlines certain requirements for educational agencies and their third-party contractors to ensure the privacy and security of the personally identifiable information of students, and certain annual professional performance review (APPR) data of teachers and principals (PII).

3. NEEDS AND BENEFITS

The proposed rule, consistent with Education Law section 2-d, establishes certain requirements for educational agencies and their third-party contractors to ensure the security and privacy of PII.

4. COSTS:

a. Costs to State government: The proposed amendment implements Education Law section 2-d and does not impose any additional costs on State government, including the State Education Department, beyond those currently imposed by the statute.

b. Costs to local government: Education Law section 2-d, as added by Chapter 56 of the Laws of 2014, establishes certain requirements for educational agencies and their third-party contractors to ensure the security and privacy of PII. The proposed amendment does not impose any direct costs on local governments beyond those currently imposed by the statute.

The Department anticipates that educational agencies will need to dedicate existing staff to accomplish the duties required by the statute and/or the proposed rule. However, most educational agencies are or should already be performing these activities.

For example, § 121.7 requires educational agencies to provide annual information privacy and security awareness training to their officers and employees with access to personally identifiable information. However, such training may be delivered using online training tools and may be included as part of training the educational agency already offers to its workforce.

§ 121.8 requires each educational agency to designate one or more employees to serve as the educational agency’s data protection officer(s) to be responsible for the implementation of the policies and procedures required in Education Law § 2-d and this Part, and to serve as the point of contact for data security and privacy for the educational agency. This requirement may be fulfilled by a current employee(s) of the educational agency who may perform this function in addition to other job responsibilities.

§ 121.13 addresses the Chief Privacy Officer’s powers, including the power to access records and other materials maintained by an educational agency that relate to PII.

6. PAPERWORK:

§ 121.2 prohibits educational agencies from selling personally identifiable information or using/disclosing it or allowing any other entity to use or disclose it for any marketing or commercial purpose. Educational agencies must incorporate provisions in its contracts with third party contractors that require the confidentiality of PII.

§ 121.10 requires third-party contractors to notify any educational agency with which it has a contract of any breach or unauthorized release of personally identifiable information. Educational agencies are required to notify parents annually of their right to request and review their child’s education record including any student data stored or maintained by an educational agency.

§ 121.11 provides that consistent with FERPA, parents and eligible students shall have the right to inspect and review a student’s education record by making a request directly to the educational agency in a manner prescribed by the educational agency. Educational agencies are required to notify parents annually of their right to request and review their child’s education record including any student data stored or maintained by an educational agency.

§ 121.12 provides that consistent with FERPA, parents and eligible students shall have the right to inspect and review a student’s education record by making a request directly to the educational agency in a manner prescribed by the educational agency. Educational agencies are required to notify parents annually of their right to request and review their child’s education record including any student data stored or maintained by an educational agency.

7. DUPLICATION:

The rule is necessary to implement Education Law section 2-d and does not duplicate existing State or Federal requirements.

8. ALTERNATIVELY:

The rule is necessary to implement Education Law section 2-d. No significant alternatives were considered.

9. FEDERAL STANDARDS:

The rule is necessary to implement Education Law section 2-d. There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

The proposed amendment will become effective on its stated effective date. As stated above, section 121.5 of the proposed regulation requires each educational agency to adopt and publish a data security and privacy policy that complies with the regulations and aligns with the National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1 no later than December 31, 2019.

§ 121.6 requires each educational agency to adopt and publish a data security and privacy policy that complies with the regulations and aligns with the National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1 no later than December 31, 2019.
Rule Making Activities

Regulatory Flexibility Analysis

(a) Small business

The purpose of the proposed rule is to implement Education Law section 12-2, as added by Chapter 56 of the Laws of 2014 which outlines certain requirements for educational agencies and their third-party contractors to ensure the privacy and security of the personally identifiable information of students, and certain annual professional performance review data of teachers and principals (PII).

1. EFFECT OF RULE:

The proposed rule, consistent with Education Law section 2-2, establishes certain requirements for educational agencies and their third-party contractors to ensure the security and privacy of PII. Some of the third-party contractors with educational agencies may be small businesses.

2. COMPLIANCE REQUIREMENTS:

Certain requirements in the proposed rule apply to small businesses that receive PII and do not impose any program, service, duty or responsibility on small businesses beyond those imposed by the statute. Compliance requirements are summarized as follows:

§ 121.2 prohibits educational agencies from selling personally identifiable information or using/disclosing it or allowing any other entity to use or disclose it for any marketing or commercial purpose. Educational agencies must incorporate provisions in its contracts with third party contractors that require the confidentiality of PII.

§ 121.3 requires each educational agency to adopt a parent’s bill of rights for data privacy and security that is included with every contract an educational agency enters with a third-party contractor that receives personally identifiable information and is published on its website.

§ 121.4 requires educational agencies to establish procedures for parents and eligible students to file complaints about breaches or unauthorized releases of student data.

§ 121.5 requires each educational agency to adopt and publish a data security and privacy policy that complies with the regulations and aligns with the National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1 no later than December 31, 2019.

§ 121.6 requires each educational agency to ensure that its contracts with third-party contractors include a data security and privacy plan.

§ 121.7 requires educational agencies to provide annual information privacy and security awareness training to their officers and employees with access to personally identifiable information. Such training may be delivered using online training tools and may be included as part of training the educational agency already offers to its workforce.

§ 121.8 requires each educational agency to designate one or more employees to serve as the educational agency’s data protection officer(s) to be responsible for the implementation of the policies and procedures required in Education Law § 2-2 and this Part, and to serve as the point of contact for data security and privacy for the educational agency. This requirement may be fulfilled by a current employee(s) of the educational agency who may perform this function in addition to other job responsibilities.

§ 121.9 requires third-party contractors that will receive PII to adopt technologies, safeguards and practices that align with the NIST Cybersecurity Framework; comply with the data security and privacy policy of the educational agency with which it contracts; Education Law § 2-2; and the regulations.

§ 121.10 requires third-party contractors to notify each educational agency with which it has a contract of any breach or unauthorized release of personally identifiable information. Educational agencies must report breaches or unauthorized releases of PII to the Chief Privacy Officer and notify affected parents, eligible students, teachers and/or principals in accordance with the regulations.

§ 121.11 provides that the Chief Privacy Officer has the authority to investigate reports of breaches or unauthorized releases and may impose civil penalties on third party contractors for breaches or unauthorized releases of PII.

§ 121.12 provides that consistent with FERPA, parents and eligible students shall have the right to inspect and review a student’s education record by making a request directly to the educational agency in a manner prescribed by the educational agency. Educational agencies are required to notify parents annually of their right to request to inspect and review their child’s education record including any student data stored or maintained by an educational agency.

§ 121.13 addresses the Chief Privacy Officer’s powers, including the power to access records and other materials maintained by an educational agency that relate to PII.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements on small businesses.

4. COMPLIANCE COSTS:

See the Costs Section of the Regulatory Impact Statement that is published in the State Register on this publication date for an analysis of the costs of the proposed rule.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule may impose additional technological requirements on small businesses that receive PII. Economic feasibility is addressed above under Compliance Costs.

6. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 2-2, as added by Chapter 56 of the Laws of 2014. The rule has been carefully drafted to meet statutory requirements. Moreover, since the proposed amendment applies to all third party contractors across the State, in order ensure consistency and the privacy of PII across the State, it was not possible to establish different compliance and reporting requirements for regulated parties in rural areas, or to exempt them from the rule’s provisions.

7. SMALL BUSINESS PARTICIPATION:

The proposed regulation was developed in consultation with stakeholders and the public. In the Spring of 2018, fourteen public forums were held across the state to receive public comment on the law; which included small businesses. Electronic comments were also accepted by the Department during this two-month period. These comments were critical to developing the implementing regulations.

(b) Local governments:

1. EFFECT OF RULE:

The proposed rule, consistent with Education Law section 2-2, establishes certain requirements for educational agencies and their third-party contractors to ensure the security and privacy of PII.

2. COMPLIANCE REQUIREMENTS:

The proposed rule applies to educational agencies and does not impose any program, service, duty or responsibility on educational agencies beyond those imposed by the statute. Compliance requirements are summarized as follows:

§ 121.2 prohibits educational agencies from selling personally identifiable information or using/disclosing it or allowing any other entity to use or disclose it for any marketing or commercial purpose. Educational agencies must incorporate provisions in its contracts with third party contractors that require the confidentiality of PII.

§ 121.3 requires each educational agency to adopt a parent’s bill of rights for data privacy and security that is included with every contract an educational agency enters with a third-party contractor that receives personally identifiable information and is published on its website.

§ 121.4 requires educational agencies to establish procedures for parents and eligible students to file complaints about breaches or unauthorized releases of student data.

§ 121.5 requires each educational agency to adopt and publish a data security and privacy policy that complies with the regulations and aligns with the National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1 no later than December 31, 2019.

§ 121.6 requires each educational agency to ensure that its contracts with third-party contractors include a data security and privacy plan.

§ 121.7 requires educational agencies to provide annual information privacy and security awareness training to their officers and employees with access to personally identifiable information. Such training may be delivered using online training tools and may be included as part of training the educational agency already offers to its workforce.

§ 121.8 requires each educational agency to designate one or more employees to serve as the educational agency’s data protection officer(s) to be responsible for the implementation of the policies and procedures required in Education Law § 2-2 and this Part, and to serve as the point of contact for data security and privacy for the educational agency. This requirement may be fulfilled by a current employee(s) of the educational agency who may perform this function in addition to other job responsibilities.

§ 121.9 requires third-party contractors that will receive PII to adopt technologies, safeguards and practices that align with the NIST Cybersecurity Framework; comply with the data security and privacy policy of the educational agency with which it contracts; Education Law § 2-2; and the regulations.

§ 121.10 requires third-party contractors to notify each educational agency with which it has a contract of any breach or unauthorized release of personally identifiable information. Educational agencies must report breaches or unauthorized releases of PII to the Chief Privacy Officer and notify affected parents, eligible students, teachers and/or principals in accordance with the regulations.

§ 121.11 provides that the Chief Privacy Officer has the authority to investigate reports of breaches or unauthorized releases and may impose civil penalties on third party contractors for breaches or unauthorized releases of PII.

§ 121.12 provides that consistent with FERPA, parents and eligible students shall have the right to inspect and review a student’s education record by making a request directly to the educational agency in a manner prescribed by the educational agency. Educational agencies are required to notify parents annually of their right to request to inspect and review their child’s education record including any student data stored or maintained by an educational agency.

§ 121.13 addresses the Chief Privacy Officer’s powers, including the power to access records and other materials maintained by an educational agency that relate to PII.

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rule by making a request directly to the educational agency in a manner prescribed by the educational agency. The parties are required to notify parents annually of their right to request and review their child’s education record including any student data stored or maintained by an educational agency.

§ 121.13 addresses the Chief Privacy Officer’s powers, including the power to access records and other materials maintained by an educational agency that relate to PII.

3. PROFESSIONAL SERVICES

The proposed amendment does not specifically require any regulated parties to use professional services. However, § 121.7 requires educational agencies to provide annual information privacy and security awareness training to their officers and employees. Access to personally identifiable information, such as training, may be delivered using online training tools and may be included as part of training the educational agency already offers to its workforce.

§ 121.8 requires each educational agency to designate one or more employees to serve as the educational agency’s data protection officer(s) to be responsible for the implementation of the policies and procedures required in Education Law § 2-d and this Part, and to serve as the point of contact for data security and privacy for the educational agency. This requirement may be fulfilled by a current employee(s) of the educational agency who may perform this function in addition to other job responsibilities.

4. COMPLIANCE COSTS:

See the Costs Section of the Regulatory Impact Statement that is published in the State Register on this publication date for an analysis of the costs of the proposed rule.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule requires each educational agency to ensure it has a policy on data security and privacy. As required by Education Law § 2-d (5), the proposed rule regulation adopts the National Institute for Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity Version 1.1 (NIST Cybersecurity Framework or NIST CSF) as the standard for data security and privacy for educational agencies. No later than December 31, 2019, each educational agency shall adopt and publish a data security and privacy policy that implements the requirements of this Part and aligns with the NIST CSF.

Economic feasibility is addressed above under Compliance Costs.

6. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 2-d, as added by Chapter 56 of the Laws of 2014. The rule has been carefully drafted to meet statutory requirements while providing flexibility to educational agencies, to the extent possible. For instance, § 121.8 requires each educational agency to designate one or more employees to serve as the educational agency’s data protection officer(s) to be responsible for the implementation of the policies and procedures required in Education Law § 2-d and this Part, and to serve as the point of contact for data security and privacy for the educational agency. This requirement may be fulfilled by a current employee(s) of the educational agency who may perform this function in addition to other job responsibilities.

7. LOCAL GOVERNMENT PARTICIPATION:

The proposed regulation was developed in consultation with stakeholders and the public. In the Spring of 2018, fourteen public forums were held across the state to receive public comment on the law. Electronic comments were also accepted by the Department during this two-month period. These comments were critical to developing the implementing regulations. The Department has also coordinated with a Data Privacy Advisory Council (DPAC) and subset Regulatory Drafting Workgroup, to review drafts of the proposed regulation and provide an opportunity for stakeholder comment. The DPAC is comprised of stakeholders from a wide range of industry including parent advocates, administrative and teacher organizations as well as technical experts and district level staff. Finally, the Department is working with an Implementation Workgroup, comprised of RIC Directors, BOCES staff and district technical directors to receive feedback and ensure successful implementation of these regulations.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment applies to all educational agencies in the State, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 persons or less.

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

The majority of the requirements in the proposed amendment do not impose any program, service, duty or responsibility on educational agencies beyond those imposed by the statute.

§ 121.12 prohibits educational agencies from selling personally identifiable information or using/disclosing it or allowing any other entity to use or disclose it for any marketing or commercial purpose. Educational agencies must incorporate provisions in its contracts with third party contractors that require the contractor to fulfill the requirements of PII.

§ 121.13 requires each educational agency to adopt a parent’s bill of rights for data privacy and security that is included with every contract an educational agency enters with a third-party contractor that receives personally identifiable information. Each pair of such requirements is published by the Educational Law § 2-d; and the regulations.

§ 121.10 requires third-party contractors to notify each educational agency with which it has a contract of any breach or unauthorized release of personally identifiable information. Educational agencies must report breaches or unauthorized releases of PII to the Chief Privacy Officer and notify affected parents, eligible students, teachers and/or principals in accordance with the regulations.

§ 121.11 provides that the Chief Privacy Officer has the authority to investigate reports of breaches or unauthorized releases and may impose civil penalties on third party contractors for breaches or unauthorized releases.

§ 121.12 provides that consistent with FERPA, parents and eligible students shall have the right to inspect and review a student’s education record by making a request directly to the educational agency in a manner prescribed by the educational agency. Educational agencies are required to notify parents annually of their right to request and review their child’s education record including any student data stored or maintained by an educational agency.

§ 121.13 addresses the Chief Privacy Officer’s powers, including the power to access records and other materials maintained by an educational agency that relate to PII.

3. COSTS:

See the “Costs” Section of the Regulatory Impact Statement that is published in the State Register on this publication date for an analysis of the costs of the proposed rule, which include costs for educational agencies across the State, including those located in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 2-d. The rule has been carefully drafted to meet statutory requirements while providing flexibility to educational agencies. Since the statute applies to all educational agencies throughout the State, it was not possible to establish different compliance and reporting requirements for regulated parties in rural areas, or to exempt them from the rule’s provisions.

5. RURAL AREA PARTICIPATION:

The proposed regulations were developed in consultation with stakeholders and the public. In the Spring of 2018, fourteen public forums were held across the state to receive public comment on the law including comments from those located in rural areas. Electronic comments were also accepted by the Department during this two-month period. These comments were critical to developing the implementing regulations. The Department has also coordinated with a Data Privacy Advisory Council (DPAC) and subset Regulatory Drafting Workgroup, to review drafts of the proposed regulation and provide an opportunity for stakeholder comment. The DPAC is comprised of stakeholders from a wide range of industry including parent advocates, administrative and teacher organizations as well as technical experts and district level staff including those located in rural areas. Finally, the Department is working with an Implementation
Rule Making Activities

Workgroup, comprised of RIC Directors, BOCES staff and district technical directors to receive feedback and ensure successful implementation of these regulations.

Job Impact Statement
The purpose of the proposed rule is to implement Education Law section 2-d, as added by Chapter 56 of the Laws of 2014, which protects the privacy and security of personally identifiable information of students, and teacher and principal annual professional performance review (APPR) data. The law outlines certain requirements for educational agencies and the third-party contractors they utilize to ensure the security and privacy of protected information. Because 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, 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

RELATES TO PROFESSIONAL DEVELOPMENT PLANS AND OTHER RELATED REQUIREMENTS FOR SCHOOL DISTRICTS AND BOCES

I.D. No. EDU–40-18-00010-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, 75.8, 80-3.4, 80-3.10, 90.18, 100.11, 100.15, 100.17, 100.18, 200.2, Parts 57-2, 151-1, 154-2, Parts 30 and 80; repeal of section 80-3.6 of Title 8 NYCCR.

Statutory authority: Education Law, sections 101, 305(1), 2017, 3004(1), 3006, 3006-a and 3009.

Subject: Relates to professional development plans and other related requirements for school districts and BOCES.

Purpose: To improve the quality of teaching and learning for teachers and leaders for professional growth.

Substance of revised rule (Full text is posted at the following State website: http://www.counsel.nysed.gov/rules/full-text-indices): The proposed amendments to subdivision 100.2(dd) are designed to create greater coherence with other statutory and Department initiatives related to ensuring that all educators – teachers, teaching assistants, and school leaders - have the knowledge and skills necessary to meet the needs of all students. Specifically, the amendments further align the Commissioner’s Regulations with requirements related to the Dignity for All Students Act (DASA), the Continuing Teacher and Leader Education (CTLE) statutory requirements, and the Department’s recently approved Every Student Succeeds Act (ESSA) plan. These changes include:

- A shift in terminology from professional development to professional learning, which is consistent with the changes to the standards adopted by the PSBP. This shift is more than just a change in language. Professional organizations and educational researchers, including Learning Forward, the Learning Policy Institute (LPI), and the Association for Supervision and Curriculum Development (ASCD), have adopted this change in language, which emphasizes the importance of educators taking an active role in their continuous development. Rather than being passive recipients of information, educators should be active partners in determining the content of their learning, how their learning occurs, and how they evaluate its effectiveness.

- Requires the professional learning plan to describe how professional learning related to educator practice and curriculum development are culturally responsive and reflect the needs of the community that the school district or BOCES serves.

- Clarifying the Department’s expectations regarding the use of data – both qualitative and quantitative – in determining appropriate professional learning and measuring its impact on educators and student learning, consistent with research on effective professional learning.

- Clarifying that professional learning plans must describe the professional learning opportunities that are available to teachers, teaching assistants, and school leaders, whereas the existing regulations do not consistently include references to educators other than teachers.

- Technical edits to remove references to dates, professional learning requirements for teachers, pupil personnel service providers and educational leaders, and certain structures in the New York City Department of Education that are no longer relevant.

Consistent with the shift in terminology from professional development to professional learning, revisions to related school district and BOCES professional learning plans, the amendments make conforming edits to other provisions of the Commissioner’s Regulations. Specifically, Sections 52.21, 57.2, 75.8, 80-1, 80-2, 80-5, 80-6, 90.18, 100.2, 100.13, 100.15, 100.17, 100.19, 151-1, 154-2, and 200.2 of the Commissioner’s Regulations and 30-1, 30-2, and 30-3 of the Rules of the Board of Regents are amended to change references to professional development to professional learning. Additionally, Section 80-3.6 of the Commissioner’s Regulations, which described professional development requirements for teachers through the 2016-17 school year, is repealed since that school year has ended and the section is no longer applicable. Conforming edits were also made to other sections of Part 80 consistent with the repeal of Section 80-3.6.

Revised rule compared with proposed rule: Substantial revisions were made in sections 80-6.3(b)(4), (5) and 100.2(dd)(3).

Text of revised proposed rule and any required statements and analyses may be obtained from Kirti Goswami, NYS Education Department, Office of Higher Education, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-6400, email: legal1@nysed.gov.

Data, views or arguments may be submitted to: Petra Maxwell, NYS Education Department, Office of Higher Education, 89 Washington Avenue, Room 975, Albany, NY 12234, (518) 486-3635, email: regcomments@nysed.gov.

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

Revised Regulatory Impact Statement
Since publication of a Notice of Proposed Rule Making in the State Register on October 3, 2018, the following substantial revisions were made to the proposed rule:

Section 100.2(dd)(3)(i)(a) was amended to remove the following sentence: The level of involvement of individuals selected to be part of the professional learning team shall be determined by the school district or BOCES.

Section 100.2(dd)(3)(i)(b) was amended to replace the words “well represented” with a “majority” of teachers on the professional learning team.

Sections 80-6.3(b)(4) and (5) are amended to increase the number of hours of CTLE that can claimed for serving as a mentor teacher from 25 to 30 hours for mentoring a first year teacher and from 15 to 25 hours for mentoring a student teacher. These sections were also amended to remove the requirement to report two hours of CTLE hours for mentoring a student teacher in instances where the mentor teacher receives remuneration from the earlier preparation program.

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

Revised Regulatory Flexibility Analysis
Since publication of a Notice of Proposed Rule Making in the State Register on October 3, 2018, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule do not require any revisions to the previously published Regulatory Flexibility Analysis.

Revised Rural Area Flexibility Analysis
Since publication of a Notice of Proposed Rule Making in the State Register on October 3, 2018, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above revisions to the proposed rule do not require any revisions to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement
Since publication of a Notice of Proposed Rule Making in the State Register on October 3, 2018, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The revised proposed rule will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the revised 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 has not been prepared.

Assessment of Public Comment
Following publication of the Notice of Proposed Rulemaking in the State Register on October 3, 2018 through December 2, 2018, the Department received the following comments on the proposed amendments:

1. COMMENT: The proposed changes emphasize the importance of providing educational leaders with professional learning opportunities and are consistent with nationally recognized research calling for educators’ active involvement in their continuous development. The changes also codify the recommendations of the Professional Learning Team.

DEPARTMENT RESPONSE: No changes necessary. The Department agrees with the commenter. The intention of the proposed amendments is,