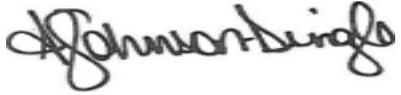




**TO:** The Honorable Members of the Board of Regents

**FROM:** Angelique Johnson-Dingle 

**SUBJECT:** Proposed Amendment of Section 151-1.3 of the Regulations of the Commissioner of Education Relating to Universal Prekindergarten Program (UPK) Staffing Qualifications

**DATE:** November 3, 2022

**AUTHORIZATION(S):** 

### **SUMMARY**

#### **Issue for Decision (Consent)**

Should the Board of Regents adopt the proposed amendment of section 151-1.3 of the Regulations of the Commissioner of Education relating to Universal Prekindergarten Program (UPK) staffing qualifications?

#### **Reason(s) for Consideration**

Required by State statute.

#### **Proposed Handling**

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at its November 2022 meeting. A copy of the proposed rule is included (Attachment A) and a statement of facts and circumstances justifying emergency action is included (Attachment B).

#### **Procedural History**

The proposed amendment was presented to the P-12 Education Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at the September 2022 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on September 28, 2022, for a 60-day public comment period.

Because the September 2022 emergency action will expire on December 11, 2022, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the January 2023 Regents meeting. Supporting materials are available upon request to the Secretary of the Board of Regents.

### **Background Information**

The Enacted State Budget, (L. 2022, C. 56, Part A or “Chapter 56”), amended section 3602-e(12)(d) of the Education Law in relation to staffing qualifications for Universal Prekindergarten Programs (UPK), effective April 1, 2022. The Enacted State Budget also made similar amendments to Education Law §3602-ee in relation to staffing qualifications for Statewide Universal Full-Day Pre-Kindergarten Programs (SUFDPK). Part 151 of the Commissioner’s regulations as currently written, however, is only applicable to UPK.

Prior to this amendment, Education Law §3602-e(12)(d-1) required the Board of Regents to adopt regulations that permitted employees of an eligible agency that is collaborating with a district to deliver Pre-K services without early childhood certification so long as they: (1) were licensed and registered by an agency other than the Department; (2) met the standards of the “licensing or registering” agency; and (3) developed a written plan to obtain early childhood certification within five years of commencing employment or by June 30, 2022, whichever was later. Education Law §3602-e(12)(d-2) imposed a similar requirement for programs that were not licensed or registered by the Department or other agency.<sup>1</sup> Both provisions required that districts annually submit a report to the Commissioner regarding (i) barriers to certification, if any, (ii) the number of uncertified teachers teaching pre-kindergarten in the district, including those employed by a community-based organization, (iii) how long such teachers have been employed under transitional guidelines, and (iv) the expected certification completion date of such teachers. These provisions expired on June 30, 2022, and are no longer in effect.

The amendments made to Education Law §3602-e by Chapter 56 now require that the Board of Regents adopt regulations to establish an annual process by which a district may apply to the Commissioner by August first of a given year for a waiver from the staff qualifications requirements. It is identical to the waiver provision described above, except that it does not require employees subject to the waiver to obtain early childhood certification. Chapter 56 made similar amendments to Education Law §3602-ee.

In addition, these amendments removed the language permitting staff of eligible agencies from being qualified to provide SUFDPK services if they have a bachelor’s degree in a field related to early childhood education. Now such staff must have a bachelor’s degree in early childhood education or obtain a waiver from the Department.

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<sup>1</sup> The compliance date, if applicable, was June 30, 2020 for these employees (as opposed to June 30, 2022).

## **Proposed Amendments**

Therefore, the Department proposes to amend section 151-1.3(e) of the Commissioner's regulations to conform with the above statutory amendments. Specifically, the proposed amendment:

- removes the requirement that eligible agencies collaborating with the district to provide Pre-K services maintain a written plan to obtain a certification valid for service in the early childhood grades within five years;
- removes the language that permits staff of eligible agencies, collaborating with the district to provide Pre-K services, to have a bachelor's degree in a field related to early childhood education. This amendment aligns the UPK requirements with the requirements for SUFDPK described above; and
- removes an outdated provision contained in 151-1.3(e)(1)(iv) that was only applicable until the beginning of the 2008-2009 school year and replaces that subparagraph with the waiver process. The proposed subparagraph provides, consistent with Chapter 56, that a school district may annually apply to the Commissioner by August first of the current school year as described above.

Thus, the proposed rule requires that staff of eligible agencies collaborating with the district to provide Pre-K services have a bachelor's degree in early childhood education or a teaching license or certificate valid for services in the childhood grades. If such staff lack these qualifications, the district must obtain a waiver from the Department as a condition of their employment.

Additionally, the Department proposes to amend 151-1.3(e)(2) regarding on-site education directors. Currently, unless all UPK teachers at eligible agency sites possess a teaching license or certificate valid for services in the early childhood or childhood grades, the agencies operating such programs must employ an on-site education director who is responsible for program implementation. The Department recognizes that, due to teacher shortages, it may be difficult for UPK programs to hire an on-site education director with the above qualifications. Therefore, the Department proposes to permit agencies to employ an on-site education director who possesses a bachelor's degree or higher in early childhood education, provided that such individual develops a written plan to obtain a certification valid for service in the early childhood grades within five years of the date such individual begins employment as a site director. Such plans must be submitted to the Department by October 31 of each year. Additionally, the school district must oversee program implementation by the eligible agency until the on-site education director meets the requisite on-site education director qualifications.

## **Related Regents Items**

September 2022: [Proposed Amendment of Section 151-1.3 of the Regulations of the Commissioner of Education Relating to Universal Prekindergarten Program \(UPK\) Staffing Qualifications](https://www.regents.nysed.gov/common/regents/files/922p12a2.pdf)

(<https://www.regents.nysed.gov/common/regents/files/922p12a2.pdf>)

## **Recommendation**

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

VOTED: That section 151-1.3 of the Regulations of the Commissioner of Education be amended, as submitted, effective December 12, 2022, as an emergency rule upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately conform Commissioner's regulations with the amendments made to Education Law §3602-e by Part A of Chapter 56 of the laws of 2022, which took effect April 1, 2022, and to ensure the emergency action taken at the September 2022 meeting remains continuously in effect.

## **Timetable for Implementation**

If adopted as an emergency rule at the November 2022 Regents meeting, the emergency rule will become effective on December 12, 2022. It is anticipated that the proposed amendment will be presented for permanent adoption at the January 2023 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the January 2023 meeting, the proposed amendment will become effective as a permanent rule on January 25, 2023.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, and 3602 of the Education Law and Part A of Chapter 56 of the Laws of 2022.

Subdivision (e) of section 151-1.3 of the Regulations of the Commissioner of Education is amended to read as follows:

(e) Staff qualifications.

(1) Prekindergarten teachers providing instruction through this Part shall possess:

(i) a teaching license or certificate valid for service in the early childhood grades pursuant to Part 80 of this Title; or

(ii) a teaching license or certificate for students with disabilities valid for service in early childhood grades pursuant to Part 80 of this Title; or

(iii) for eligible agencies collaborating with the district to provide prekindergarten services, a bachelor's degree in early childhood education [or a related field,] or a teaching license or certificate valid for services in the childhood grades pursuant to Part 80 of this Title[, and a written plan to obtain a certification valid for service in the early childhood grades within five years]; or

(iv) [eligible agencies collaborating with the district to provide prekindergarten services and licensed by an agency other than the State Education Department may employ staff who meet the standards of the licensing or registering agency, until the beginning of the 2008-2009 school year, at which time all prekindergarten teachers shall meet the qualifications set forth in subparagraphs (i)-(iii) of this paragraph.] a school district may annually apply to the Commissioner by August first of the current school

year, on a form and format prescribed by the Commissioner, for a waiver that would allow personnel employed by an eligible agency that is collaborating with such school district to provide prekindergarten services, and licensed by an agency other than the department, to meet the staff qualifications prescribed by the licensing or registering agency.

(2) [Until] Unless all universal prekindergarten teachers at an eligible agency site possess a teaching license or certificate valid for services in the early childhood or childhood grades, the agencies operating such programs shall employ an on-site education director during the hours that the prekindergarten program is in operation that will be responsible for program implementation.

(i) The on-site director shall possess a teaching license or certificate valid for services in the early childhood or childhood grades pursuant to Part 80 of this Title.

(ii) Notwithstanding subparagraph (i) of this paragraph, if the agencies operating such programs are unable to employ an on-site education director who meets the qualifications prescribed in such subparagraph, they may employ an on-site education director who possesses a bachelor's degree or higher in early childhood education, and a written plan to obtain a certification valid for service in the early childhood grades within five years of the date such individual begins employment as a site director. Such plan shall be submitted to the Department by October 31 of each year in a form and format as prescribed by the Commissioner. The school district shall oversee program implementation by the eligible agency until the on-site education director meets the qualifications prescribed in subparagraph (i) of this paragraph.

(3) A prekindergarten teaching assistant providing instructional support in a prekindergarten classroom shall meet qualifications pursuant to Part 80 of this Title.

(4) A prekindergarten teacher aide providing support in a prekindergarten classroom shall meet the requirements prescribed by the local board of education.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE  
EMERGENCY ACTION

The Enacted State Budget, (L. 2022, C. 56, Part A or “Chapter 56”), amended section 3602-e(12)(d) of the Education Law, in relation to staffing qualifications for Universal Prekindergarten Programs (UPK), effective April 1, 2022. The Enacted State Budget also made similar amendments to Education Law §3602-ee in relation to staffing qualifications for Statewide Universal Full-Day Pre-Kindergarten Programs (SUFDPK), however, Part 151 of the Commissioner’s regulations is only applicable to UPK.

Therefore, the Department proposes to amend section 151-1.3(e) of the Commissioner’s regulations to conform with the amendments made by Chapter 56.

Specifically, the proposed amendment:

- removes the requirement that eligible agencies collaborating with the district to provide Pre-K services maintain a written plan to obtain a certification valid for service in the early childhood grades within five years;
- removes the language which permits staff of eligible agencies collaborating with the district to provide prekindergarten services to have a bachelor’s degree in a field related to early childhood education; and
- removes an outdated provision contained in 151-1.3(e)(1)(iv) that was only applicable until the beginning of the 2008-2009 school year and replaces that subparagraph with the waiver process. The proposed subparagraph provides, consistent with Chapter 56, that a school district may annually apply to the Commissioner by August first of the current school year for a waiver that would allow personnel employed by an eligible agency that is collaborating with such

school district to provide Pre-K services, and licensed by an agency other than the Department, to meet the staff qualification prescribed by the licensing or registering agency.

Thus, the proposed rule requires that staff of eligible agencies collaborating with the district to provide Pre-K services have a bachelor's degree in early childhood education or a teaching license or certificate valid for services in the childhood grades. If such staff lack these qualifications, the district must obtain a waiver from the Department as a condition of their employment.

Additionally, the Department proposes to amend 151-1.3(e)(2) regarding on-site education directors. Currently, unless all UPK teachers at eligible agency sites possess a teaching license or certificate valid for services in the early childhood or childhood grades, the agencies operating such programs must employ an on-site education director who is responsible for program implementation. The Department recognizes that, due to teacher shortages, it may be difficult for UPK programs to hire an on-site education director with the above qualifications. Therefore, the Department proposes to permit agencies to employ an on-site education director who possesses a bachelor's degree or higher in early childhood education, provided that such individual develops a written plan to obtain a certification valid for service in the early childhood grades within five years of the date such individual begins employment as a site director. Such plans must be submitted to the Department by October 31 of each year. Additionally, the school district must oversee program implementation by the eligible agency until the on-site education director meets the requisite on-site education director qualifications.

The proposed amendment was presented to the P-12 Education Committee for recommendation to the Full Board for adoption as an emergency rule at the September 2022 meeting of the Board of Regents, effective September 13, 2022. 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 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the January 2023 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the January 2023 meeting, would be January 25, 2023, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on December 11, 2022. Therefore, emergency action is necessary at the November 2022 meeting, effective December 12, 2022, for the preservation of the general welfare to immediately conform Commissioner's regulations with the amendments made to Education Law §3602-e by Part A of Chapter 56 of the laws of 2022, which took effect April 1, 2022, and to ensure the emergency action taken at the September meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the January 2023 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rulemaking.