





TO: The Honorable the Members of the Board of Regents

FROM: Angélica Infante-Green *A. Infante - Green*
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SUBJECT: Proposed Amendment to Add a New Section 80-5.26 of the Regulations of the Commissioner of Education to Allow a Temporary Certificate for Teachers Displaced from Puerto Rico and/or Another U.S. Territory as a Result of Hurricane Maria to Teach in New York State

DATE: November 30, 2017

AUTHORIZATION(S):  

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents add a new Section 80-5.26 to the Regulations of the Commissioner of Education to allow a temporary certificate for teachers displaced from Puerto Rico and/or another U.S. territory as a result of Hurricane Maria to teach in New York State?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at its December 2017 Board of Regents meeting (Attachments A and B, respectively, are a copy of the proposed amendment and a Statement of the Facts and Circumstances Justifying the Emergency Adoption).

Procedural History

A Notice of Proposed Rule Making was published in the State Register on November 1, 2017. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents. During the 45-day public comment period required under the State Administrative Procedure Act, the Department received two comments on the proposed amendment. An Assessment of Public Comment is included as Attachment C.

Background Information

As a result of the category 5 Hurricane that made landfall in Puerto Rico on September 20, 2017, we are anticipating an influx of individuals who are certified teachers in Puerto Rico and other U.S. territories affected by Hurricane Maria coming to New York State, and the Department would like to advance a regulation that will allow individuals who are appropriately certified in Puerto Rico or another U.S. territory and who have been affected by and displaced by Hurricane Maria to become certified in New York for a temporary period of time. The Department also anticipates that many children from Puerto Rico and other U.S. territories will come to New York (possibly staying with family who reside in New York) and enroll in New York State public schools and/or BOCES.

The expectation is that many of these students may not be fluent in English, and the Department wants to ensure that there are a sufficient number of certified teachers capable of teaching and supporting these students so that their education can continue over the course of the next several months.

Proposed Amendment

The Department is proposing to add a new Section 80-5.26 to the Regulations to allow for a temporary certificate for teachers who have been displaced from Puerto Rico and/or other U.S. territories as a result of Hurricane Maria to teach in New York if they meet the following requirements:

- (1) The candidate holds a certificate or authorization to teach from Puerto Rico or another U.S. territory prior to Hurricane Maria and who, as a result of the Hurricane, has relocated to NY;
 - They must provide satisfactory evidence of such certificate or equivalent authorization, or provide verification of such certificate from the Department of Education of such U.S. territory, or the equivalent thereof, or a notarized attestation that such individual is certified;
- (2) They must also provide satisfactory evidence of employment, such as recent pay-stubs or W-2 forms, from a public school in Puerto Rico or another U.S. territory affected by Hurricane Maria in a position that is equivalent to the title and type of certificate sought;

(3) Meet the general requirements for certificates prescribed in Subpart 80-1 (including all workshops and a criminal history check); and

(4) A commitment of employment from a school district or BOCES for one year of employment as a teacher in the area of the certificate sought (including a plan for mentoring from the school district).

The Department recognizes that these candidates may have difficulty obtaining a copy of their certificate and/or proof of employment, therefore, the regulations have allowed for certain alternatives that candidates may use to show proof of certification and employment. However, the Department will be working with the Puerto Rico Department of Education to verify that the candidate has the appropriate certification, to the extent possible, through the Department of Education's online verification system.

This temporary certificate is valid until June 30, 2018 and would allow the teacher to work in a public school or BOCES for the remainder of the 2017-2018 school. This temporary certificate is not renewable.

However, during this time, teachers from Puerto Rico may pursue a New York State initial teaching certificate through the existing reciprocity pathway provided for in Section 80-5.8 of the Commissioner's Regulations, which allows certified teachers from other states or U.S. territories to obtain a New York certification if they have at least three years of experience in a public school in another state or territory and the candidates received ratings of effective or highly effective or the substantial equivalent during each of his/her three most recent years of experience. In addition, these candidates must complete the required workshops and receive fingerprint clearance.

If they do not have three years of teaching experience they may also choose to pursue a conditional initial certificate, as set forth in Section 80-5.17 of the Regulations, which requires that candidates meet all requirements for an Initial Certificate (including a passing score on the EAS and any required CSTs). The Conditional Initial certificate allows candidates to work in a school district for one year while they complete the edTPA requirement and gain their Initial Certificate.

Related Regents Items

October 2017: <http://www.regents.nysed.gov/common/regents/files/1017p12hea1.pdf>

Recommendation

Department staff recommends that the Board of Regents take the following action:

VOTED: That Section 80-5.26 of the Regulations of the Commissioner of Education be added, as submitted, effective January 15, 2018, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately certify teachers in New York State who were affected and displaced by Hurricane Maria for a temporary period of time and to ensure

that the emergency rule that was adopted at the October 2017 meeting remains in effect until it can be adopted as a permanent rule.

Timetable for Implementation

If adopted as a second emergency measure at the December Regents meeting, the proposed amendment will become effective on January 15, 2018. Following the 45-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at its January 2018 meeting. If adopted at the January 2018 meeting, the proposed amendment will become effective as a permanent rule on January 25, 2018.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, 3001, 3004 and 3009 of the Education Law

Add a new section 80-5.26 to the Regulations of the Commissioner of Education, to read as follows:

80-5.26 Temporary "Hurricane Maria" certificate for teachers displaced from Puerto Rico and/or another U.S. territory as a result of Hurricane Maria to teach in New York.

(a) Temporary "Hurricane Maria" hardship certificate to teach in New York. The Commissioner may issue a temporary certificate in the classroom teaching service for teachers who held a certificate or authorization to practice from Puerto Rico or another United States territory prior to Hurricane Maria and who as a result of the hurricane were forced to relocate to New York. The requirements for such certificate are as follows:

(1) (i) The candidate shall hold a valid certificate or equivalent authorization to practice from Puerto Rico or another U.S. territory impacted by Hurricane Maria that is equivalent to the title and type of the certificate sought;

(ii) if the candidate is unable to provide the Department with a copy of such certificate and/or authorization to practice, the candidate shall either:

(a) submit verification of such certificate from the Department of Education of such U.S. territory or the equivalent thereof, in a form and format prescribed by the Commissioner; or

(b) submit a signed and notarized attestation stating that the candidate holds a valid certificate or the equivalent authorization in Puerto Rico or another U.S. territory

that was impacted by Hurricane Maria and as a result of such hurricane he/she is unable to produce written evidence of such certificate.

(2) The candidate shall provide evidence of satisfactory employment in a public school (K-12) in Puerto Rico or another U.S. territory (such as pay-stubs or W-2 forms) impacted by Hurricane Maria in a position that is equivalent to the title and type of the certificate sought. Such experience must be within one year of the stated effective date of this section.

(3) The candidate shall meet the general requirements for certificates prescribed in Subpart 80-1 of this Part, including but not limited to the requirements of section 80-1.3 relating to citizenship, section 80-1.4 relating to study in child abuse identification and reporting, and school violence prevention and intervention; section 80-1.13 relating to coursework or training in harassment, bullying and discrimination prevention and intervention; and section 80-1.1 relating to a criminal history check.

(4) The candidate shall submit satisfactory evidence of having a commitment of employment from a school district or BOCES for one year or employment as a teacher in the area of the certificate sought, which shall include a plan from the school district for mentoring and appropriate instructional support.

(b) Upon meeting the requirements in subdivision (a) of this section, the Commissioner may issue a nonrenewable temporary hardship certificate that is valid until June 30, 2018.

STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING THE EMERGENCY
ACTION

On September 20, 2017, Category 5 Hurricane Maria made landfall in Puerto Rico and other U.S. territories and wreaked havoc. As a result of this catastrophic event, many individuals directly affected by Hurricane Maria have been displaced, including children who may come to New York State and enroll in schools.

The expectation is that many of these students may not be fluent in English, and the Department wants to ensure that there are adequate teachers capable of teaching these students. The Department also anticipates an influx of individuals who were certified teachers in Puerto Rico and other U.S. territories coming to New York State as well, and the Department would like to advance a regulation that will allow those certified in Puerto Rico or another U.S. territory who have been affected by and displaced by Hurricane Maria to become certified in New York for a temporary period of time.

At this time, the Department would like to add a new Section 80-5.26 to the Commissioner's Regulations to allow those who hold a teaching certificate in Puerto Rico or another U.S. territory to obtain a nonrenewable temporary_hardship certificate that is valid until June 30, 2018_to teach in New York State public school districts and BOCES, provided they meet certain requirements. Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 202(1) and (5), is the January 2018 Regents meeting.

Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the January Regents meeting, is January 25, 2018, the date a Notice of Adoption would be published in the State Register. However, emergency action taken at the October 2017 meeting will expire on January 14, 2018. Therefore, a second emergency adoption is needed to preserve by the general welfare by ensuring that the proposed rule adopted at the October 2017 meeting will remain in effect until it can be adopted as a permanent rule and because the resulting influx of individuals from Puerto Rico and other U.S. territories who have been affected by Hurricane Maria is expected to be immediate, and the Department must ensure that the proposed amendment is effective immediately to timely allow for those individuals who meet the requirements to apply for this temporary certificate.

ASSESSMENT OF PUBLIC COMMENT

Since publication of the Notice of Emergency Adoption and Proposed Rule Making in the State Register on November 1, 2017, the State Education Department (SED) received the following comments on the proposed amendment. Below is an assessment of the public comment received:

1. COMMENT:

One commenter agrees with the Department's proposal to provide qualified teachers displaced from Puerto Rico with a temporary certificate to teach in New York. However, the commenter recommends that these candidates should be allowed to complete the DASA training online and that the certificate should be valid until June 2019 rather than 2018.

DEPARTMENT RESPONSE:

In response to the recommendation that candidates from Puerto Rico applying for a temporary certificate be allowed to complete DASA training online, please note that while 6 clock hours of DASA training is required to obtain a certificate in the classroom teaching service, only 3 of those hours are required to be face-to-face. Therefore, 3 may be completed in an online format.

In response to the recommendation that certification be extended until June 2019, the Department believes that the current sunset date of June 2018 is sufficient to address any immediate teaching shortages directly related to the hurricane and will

allow sufficient time for those who are temporarily certified through this regulation to obtain the documentation necessary to pursue their Initial certificate.

2. COMMENT:

Another commenter suggested that the temporary certificate for teachers displaced in Puerto Rico be extended until June 2019 because after the completion of paperwork and applying for a job there would not realistically be enough time to find employment.

DEPARTMENT RESPONSE:

Please see answer to COMMENT #1 above. In order to obtain a temporary certificate under this regulation, the candidate must already have an offer of employment to fill an immediate need from a school district or BOCES. Moreover, the purpose of this regulation is to fill immediate employment needs resulting from Hurricane Maria and therefore it was time limited.