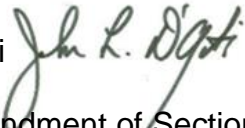





**TO:** Higher Education Committee

**FROM:** John L. D'Agati 

**SUBJECT:** Proposed Amendment of Section 52.21 of the Regulations of the Commissioner of Education Relating to Minimum Admission Standards for Graduate-Level Teacher and Educational Leadership Programs and Requirements for the Suspension and/or Deregistration of Certain Programs with Completers Who Fail to Achieve a Minimum Pass Rate on Certification Examinations for Three Consecutive Years

**DATE:** March 14, 2016

**AUTHORIZATION(S):**  

## SUMMARY

### Issue for Decision

Should the Board of Regents adopt, as an emergency measure, the proposed amendment to Section 52.21 of the Commissioner's Regulations to require graduate-level teacher and educational leadership programs to establish minimum admission standards and requirements for the suspension and/or deregistration of certain programs with completers who fail to achieve a minimum pass rate on certification examinations for three consecutive years?

### Reason(s) for Consideration

Required by State statute (Education Law §§210-a and 210-b)

### Proposed Handling

The proposed amendment will be presented to the Higher Education Committee for recommendation and to the full Board for adoption as a permanent rule at the March 2016 meeting of the Board of Regents.

## **Procedural History**

The proposed amendment was discussed by the Higher Education Committee and was adopted as an emergency action at the September 2015, December 2015 and January 2016 Regents meetings, effective September 21, 2015, December 20, 2015 and February 14, 2016, respectively. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on October 7, 2015.

A copy of the proposed amendment and an Assessment of Public Comment are attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

## **Background Information**

Chapter 56 of the Laws of 2015 added new Sections 210-a and 210-b to the Education Law to require all institutions with graduate-level teacher and educational leadership programs registered by the Department to “adopt rigorous selection criteria geared to predicting a candidate’s academic success in its program.”

The new law also requires the Department to suspend the program’s authority to admit new students if, for three consecutive academic years, fewer than 50 percent of its students, who have completed the program, pass each of the certification assessments required for their first initial certificate, and deregister the program if it does not significantly improve.

### **1. Admission Requirements**

The Department, consistent with the requirements of §210-a, will require institutions with graduate-level teacher and educational leadership programs commencing instruction on or after July 1, 2016, to establish rigorous minimum selection criteria geared to predicting a candidate’s academic success in the program. The law requires candidates who were admitted to such programs to have a minimum cumulative undergraduate grade point average of 3.0 or higher in the candidate’s undergraduate program, and to have achieved a minimum score, to be set by the institution, on the Graduate Record Examination (GRE), or a substantially equivalent admission assessment. Pursuant to the law, each program is entitled to exempt up to 15 percent of its incoming class from these admission requirements based on the exempted student’s demonstrated “potential to positively contribute to the teaching profession” or for “other extenuating circumstances pursuant to the regulations of the commissioner.” The Department has clarified this exemption to also extend to a student’s ability to positively contribute to the educational leadership profession for students in a graduate-level educational leadership program. However, the Department did not list any other extenuating circumstances in the regulation because it believes that an exemption should only be permitted where a student is able to demonstrate the potential to positively contribute to the teaching and/or educational leadership profession and if a student cannot demonstrate such potential, an exemption should not be granted. Further, adding extenuating circumstances does not increase the percentage of students exempted from the admission criteria set forth in the statute.

## 2. Minimum Program Completer Certification Assessment Pass Rate, Suspension and Deregistration

Section 210-b requires that, if fewer than 50 percent of the program completers in a graduate teacher or educational leadership program pass each examination required for certification for three consecutive academic years, the Department must suspend the program's authority to admit new students. This provision in the new law became effective July 1, 2015. The law provides that the program shall be permitted to continue operations for the length of time it would take all students currently admitted and/or enrolled students to complete the program based on a full-time course schedule. If, during that time, the Commissioner determines that student and/or program performance has significantly improved, the Commissioner may reinstate the program's ability to admit new students. In making this determination, the statute instructs the Department to consider performance on each certification examination of the cohort of students completing an examination not more than five years before the end of the academic year in which the program is completed or not later than September 30 following the end of such academic year, where such academic year is defined as July 1 through June 30, and shall consider only the highest score of individuals taking a test more than once. The Department will seek input from the field and, at a future date, recommend to the Board of Regents how it will define significant improvement.

A program that has been suspended would be permitted to continue operations for the length of time it would take all currently admitted and/or enrolled students, if such students were to attend classes on a full-time basis, to complete the requirements for their degrees. The institution would be required to notify all admitted and/or enrolled students of the suspension and, in the case of students attending classes on a part-time basis, the institution would be required to notify these students that they may not be able to complete the program before it may become de-registered.

The program may also appeal the suspension during this time, in a manner and timeframe prescribed by the Commissioner. The law further provides authority to the Commissioner to affirmatively reinstate the program's ability to admit new students if: (i) student or program performance improves; or (ii) the Department's suspension is successfully overturned on appeal. If the program's ability to admit new students is not affirmatively reinstated by the Commissioner, the law requires the program to be deregistered.

Education Law §210-b also authorizes the Commissioner to conduct expedited suspension and registration reviews for graduate programs pursuant to Commissioner's Regulations. The Department will be discussing this provision of the new law with stakeholders and the State Professional Standards and Practices Board for Teaching to determine what situations should trigger expedited reviews and will come back to the Board of Regents sometime over the next few months to discuss their recommendations.

Following the 45-day public comment period required under the State Administrative Procedure Act, the Department received several comments. Attachment B contains an Assessment of the Public Comment received.

## **Recommendation**

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

VOTED: That clause (l) of subparagraph (i) of paragraph (2) of subdivision (b) of Section 52.21 of the Regulations of the Commissioner of Education be added, and that subclause (3) of clause (b) of subparagraph (iv) of paragraph (2) of subdivision (b) of Section 52.21 of the Regulations of the Commissioner of Education be renumbered as subclause (4) and a new subclause (3) be added, as submitted, effective April 6, 2016.

## **Timetable for Implementation**

If adopted as a permanent rule at the March Regents meeting, the proposed amendment will become effective as a permanent rule on April 6, 2016.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

1. A new clause (l) shall be added to subparagraph (i) of paragraph (2) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education, effective April 6, 2016, to read as follows:

(l) Minimum Selection Criteria by Graduate-Level Teacher and Educational Leadership Programs Commencing Instruction on or after July 1, 2016.

(1) Institutions with registered graduate level teacher and educational leadership programs shall adopt rigorous selection criteria geared to predicting a candidate's academic success in its program. These rigorous selection criteria shall include, but not be limited to, a minimum score on the Graduate Record Examination or a substantially equivalent admission examination, as determined by the institution, and achievement of a cumulative grade point average of 3.0, or its equivalent, in the candidate's undergraduate program.

(2) Each program may exempt no more than 15 percent of any incoming class of students from such selection criteria described in this subclause based on such student's demonstration of potential to positively contribute to the teaching and/or educational leadership professions, as applicable. A program shall report to the Department the number of students admitted pursuant to such exemption and the selection criteria used for such exemptions.

2. Subclause (3) of clause (b) of subparagraph (iv) of paragraph (2) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education shall be renumbered as subclause (4) and a new subclause (3) shall be added, effective April 6, 2016, to read as follows:

(3) Requirements for Suspension and/or Deregistration of Graduate-Level Teacher and Educational Leadership Program.

(i) The authority of a graduate-level teacher and educational leadership program to admit new students shall be suspended if, for three consecutive academic years, fewer than fifty percent of its students who have satisfactorily completed the program pass each examination that they have taken that is required for such student's first initial certification, or certification examinations associated with the program leading to a student's additional certification. The pass rate calculation shall include students who have taken one of the certification examinations and used a safety net pursuant to section 80-1.5(c) of this Title. Notwithstanding such suspension, the program shall be permitted to continue operations for the length of time it would take all currently admitted and/or enrolled students, if such students were to attend classes on a full-time basis, to complete the requirements for their degrees. Upon such suspension, the graduate program shall promptly notify each admitted and/or enrolled student of such suspension and in the case of students attending classes on a part-time basis, the institution shall notify these students that they will not be able to complete the program. If, during this time period, the Commissioner determines that student and/or program performance has significantly improved, the Commissioner may reinstate the program's ability to admit new students. If the Commissioner does not affirmatively reinstate the program's authority to admit new students during such time period, the program shall be deregistered.

(a) For purposes of this subclause, students who have satisfactorily completed the graduate program shall mean students who have met each educational requirement of the program, without regard to whether such students have been awarded a degree, and excluding any requirement that the student pass each required certification

examination for such student's first initial certificate, or each required certification examination for such student's school building leader certificate in order to complete the program.

(b) Following suspension of a program pursuant to the subclause, the institution may submit an appeal, on a form prescribed by the Commissioner, to the Commissioner within 30 days of such suspension. The Office of College and University Evaluation shall then have 10 days to submit a written reply to the Commissioner. The Commissioner shall then review the written papers submitted and issue a written decision on the appeal within 30 days of either the Office of College and University Evaluation' reply or if such office does not submit a reply, within 30 days of receipt of the appeal, whichever occurs later. However, a program that has had its ability to admit students suspended shall not admit new students while awaiting the Commissioner's decision on any appeal. An institution with a deregistered program shall not admit any new students in such program while awaiting the Commissioner's decision on its application for registration.

[(3)] (4) By January 15, 2000 and annually by January 15th thereafter, each institution with programs registered pursuant to this section shall provide the department with a list of all students who satisfactorily complete each of its teacher education programs in the preceding year, July 1st through June 30th.

**8 NYCRR §52.21**

**ASSESSMENT OF PUBLIC COMMENT**

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on October 7, 2015, the State Education Department (SED) received the following comments:

**1. COMMENT:**

The language in the item itself states that the GRE and 3.0 are only for candidates seeking their first, initial certification (last paragraph on page 2). However, the actual regulation change included doesn't have that qualification and just states that the new standards are for graduate teacher and school building leader programs (third paragraph on page 5). As such, it is unclear if this applies to traditional initial cert candidates, or to all candidates (including Trans B candidates and candidates seeking additional certifications). Clarification around this issue would be greatly appreciated.

**DEPARTMENT RESPONSE:** The underlying statute does not limit the new admissions requirements to only students who are seeking their initial certification. The reference to an initial certificate in the Regents item was an inadvertent error. Therefore, the Department will revise the Regents item accordingly. However, since the reference to the initial certificate is not in the regulation, no regulatory changes are needed.

**2. COMMENT:**

Does this regulation specify that the revised general test (GRE) is required i.e., verbal reasoning, quantitative reasoning, and analytical writing but not GRE subject tests?



DEPARTMENT RESPONSE: Although the underlying statute does not specify the GRE general test, the Department believes that is what is meant. It should also be noted that the statute includes the option for an institution to identify a substantially equivalent admission examination to the GRE.

3. COMMENT:

Does this regulation (GRE) also apply to programs that lead to additional certification, i.e., advanced certificate programs?

DEPARTMENT RESPONSE: Yes, the admissions requirements apply to all graduate-level teacher and educational leadership programs. As stated in the response to Comment No. 1, the Department will remove the reference in the Regents item to initial certification.

4. COMMENT:

Currently, Teachers College has entrance examination requirement for admission across all teacher education programs. Applications for admission to Teachers College's 2016 summer and fall programs have already been printed and disseminated. As such, given the ability of students admitted for 2016 to have flexibility on when they "commence" instruction, we would suggest a 1-year exemption to allow for a transition to the new mandate. This limited flexibility will permit Teachers College (and possibly other programs) to establish the appropriate "substantially equivalent" entrance exam or other relevant assessments to be aligned with the law.

A one year exemption would also allow Teachers College the time to prepare for admissions and provide accurate information at recruiting events as well as in admissions and application materials.

DEPARTMENT RESPONSE: Adding a 1-year effective date as requested by the commenter would necessitate an amendment to the underlying statute and is not

something that the Department can accomplish through regulation. However, the statute and proposed regulation permit institutions to exempt up to 15% of any incoming class from the selection criteria upon a determination by the institution that a student has demonstrated the potential to positively contribute to the teaching profession.

5. COMMENT:

Teachers College allows students to defer admission for one year. Students admitted to either Spring, Summer or Fall 2015, for example, have already been approved to defer their admission to Fall 2016. The new state regulations directly affect these students because they were not required to have a GRE score when TC first offered them admission in 2015. At the time that they deferred their admission to 2016, they were informed that no additional application materials are required prior to enrollment in 2016. A transition year would allow us to enroll such students under our current guidelines.

DEPARTMENT RESPONSE: Adding a transition year as requested by the commenter would necessitate an amendment to the underlying statute and is not something that the Department can accomplish through regulation. However, the statute and proposed regulation permit institutions to exempt up to 15% of any incoming class from the selection criteria upon a determination by the institution that a student has demonstrated the potential to positively contribute to the teaching profession.

6. COMMENT:

I am deeply troubled by and opposed to the implementation of a GRE requirement for our programs in teacher certification for the following reasons:

1) based on research on such high stakes tests and their disparate effect on specific populations, such a requirement will accelerate the "whitening" of the teaching force;

2) given the new requirement of a 3.0 GPA, it is unclear why we need this additional test that doesn't correlate any better with later academic success;

3) there is absolutely no evidence that particular scores on the GRE correlate well with success as a teacher and there are too many variables to even begin to determine a meaningful correlation;

4) this will penalize students who wish to teach subjects other than math, because they will have had no recent educational experience that allows them to succeed on those standardized questions;

5) this will of course make a tidy profit for those selling preparation guides and test prep programs and thus throw up another block to aspiring teachers who do not have the means to pay for such tutoring;

6) this adds to the already astronomical expense to pursue certification;

7) it does little but intensify the emphasis on testing that has caused so much anger and disgust among teachers, parents, and teacher educators in NY State;

8) it confuses particular test taking skills with teaching ability;

9) such a requirement further strips autonomy from teacher education programs who best can determine who should be admitted, because it requires another standardized admission requirement that ignores differences in background, resources and context.

DEPARTMENT RESPONSE: Most of the comments are really about the underlying statute and are not something that the Department can address through regulation. However, the statute includes the option for an institution to identify a substantially equivalent admission examination to the GRE. In addition, the statute and regulation provide for an exemption of up to 15% of any incoming class from the selection criteria

upon a determination by the institution that a student has demonstrated the potential to positively contribute to the teaching profession.

7. COMMENT:

The legitimate authority of the local independent college and university is eroded by the action both of the law and the concomitant amendments. Local faculty and administrators are in a better position to make judgments about the “prediction of success as leaders” and the impact of rigorous classroom success. It is inappropriate for the SED to replace this judgment with a system that is dramatically flawed.

DEPARTMENT RESPONSE: See Response to Comment No. 6.

8. COMMENT:

The amendments propose that Educational Leadership programs create “rigorous selection criteria”. This provision presumes that there is not a “rigorous selective criteria with predictive success” in place. Most Graduate Schools have in their Educational Leadership criteria for admission, a need for a Master’s degree successfully completed along with permanent certification as a teacher or pupil personnel services in New York State. Advanced Certificate programs also require a Master’s degree and a minimum of 45 graduate credits. To intimate that a “rigorous selection criteria” may not be in existence is a false assumption. They already exist in most programs.

DEPARTMENT RESPONSE: This comment is about the underlying statute and is not something that the Department can address through regulation.

9. COMMENT:

This requirement is at the essence of these amendments and is replete with numerous psychometric and statistical issues which I will list and describe. The limitations of this testing, particularly, in the School Building Leader exam is extraordinary. First, there has been a lack of appropriate field testing by Pearson. This

limitation has been delineated by the Metropolitan Council of Educational Administration (MCEAP). The letter sent by the organization to the SED, indicates, in detail, numerous issues of validity, reliability and fairness to those preparing for school building leadership positions upon program completion. Numerous problems were found in validity, reliability, and fairness. In terms of the test's validity, MCEAP said "that the items do not actually discriminate leadership candidate readiness, as other choices appear plausible and the correct answers would not be problematic if done as second choice. In terms of reliability, there was a great concern that bias issues may make the test question dilemmas more difficult based on lack of exposure to the test question dilemmas(urban, suburban, rural)". Also, MCEAP believes that the "versions of the various tests may not be measuring the same set of skills and proficiencies". Additionally, "test is biased against individuals who do not read quickly and memorize information readily". In terms of fairness, the state assessments require knowledge and skill of resources that are not readily available or easily available. " Given testing limitations and documented by MCEAP, to suspend and end an Education Leadership Program based on these results is inadvisable, inaccurate and unfair at best. Additionally, for many of the components of both exams, there are questionable responses (which I and others as practitioners for many years) believe could be accepted as correct but are rejected by the examiners since they require a forced choice response.

DEPARTMENT RESPONSE: The comments relate to the validity of the school building leader examination are outside the scope of the proposed amendment. Nevertheless, the Department believes the examination is valid and properly assesses the minimum knowledge, skills and abilities required of a school building leader.

Moreover, the Department believes that if fewer than 50 percent of the program completers in a graduate teacher or educational leadership program pass each examination required for certification for three consecutive academic years, the Department should be able to suspend the program's authority to admit new students. Programs need to properly prepare candidates to ensure that they are able to enter the building on day 1 and be successful. Therefore, the Department believes that programs should be held accountable for the performance of their students on these exams, particularly in instances where fewer than 50 percent of their students are passing an examination required for certification.

#### 10. COMMENT:

The criteria describing annual "cohort" referenced in the amendments could have graduate students from previous cohorts or from students many years previous who have completed their program, and then, decide to take the state exam some significant years after their courses have ended. Colleges have no control over when these teachers or administrators who are graduate students take the state exams, even if it is many years after their course work has ended. Obviously, they will count toward the potential passage/failure rate for the particular year. This fact contaminates the results from year to year.

DEPARTMENT RESPONSE: The proposed amendment implements the provisions of the statute and, therefore, a statutory change would be needed.

#### 11. COMMENT:

The small number of program completers who take the SBL and/or SDL exams can have the impact of inflating the passage/failure rate which in turn, will provide a distorted picture of the annual cohort rate and could lead to possible suspension of the

program over a three year period. Obviously, these results will have a potentially detrimental impact.

DEPARTMENT RESPONSE: Education Law §210-b allows the Department to adjust its methodology for determining examination passage rates for one or more certification examinations to account for sample size and accuracy. The Department has done this and has decided to use a sample size of at least 10 test scores.

#### 12. COMMENT:

Several commenters did not support the program requirement of a minimum score on the GRE as research on the predictive ability of GRE tests and other similar assessments is not entirely certain, may create a negative disproportionate impact with the policy, would likely exclude the very teachers we need to recruit to serve the diverse populations in our schools today, and are even less predictive for graduate study than they are for undergraduate study. Further, the GRE poorly predicts STEM success among females and students of color. Finally, these scores have demonstrated a weak predictive capacity for only the first year of graduate study, not for overall graduate school success. Given that a more important indicator of interest for the public welfare might be candidates' performance after having graduated from our programs, weak predictors of first-year success in program seem ill advised as admission standards.

Given no definitive predictive data, setting cut scores at the State level would not be defensible. Thus, it is appropriate that the emergency regulation recognized that individual institutions would need to set the bar for entry scores according to their own understandings of such tests' ability to provide useful information about admitted candidates. However, such varying standards will in the end offer little evidence of the State's commitment to the general welfare, as the bar in some programs could be so low as to be meaningless. Over time, collecting these data might provide more insight

into whether GRE scores offer any actionable information for teacher candidate admissions, and those data might be of interest to the State. However, this hypothetical future benefit of the proposed regulation seems far outweighed by the challenges in equity, defensibility, and added cost to prospective teachers, who already spend nearly \$1000 to take exams for their certification.

DEPARTMENT RESPONSE: The proposed amendment implements Education Law §210-a and therefore any comments relating to the underlying statute must be pursued through a legislative change. However, the statute does provide the option for an institution to identify a substantially equivalent admission examination to the GRE. The statute and proposed regulation also permit institutions to exempt up to 15% of any incoming class from the selection criteria upon a determination by the institution that a student has demonstrated the potential to positively contribute to the teaching profession.

### 13.COMMENT:

To ensure potential teachers have the knowledge and skills they need, teacher candidates in New York already have more hours of examinations than do doctors, lawyers, and engineers in order to receive their initial certificates. It is reasonable to believe that the requirements for content knowledge such as that tested on the GRE will be amply assessed through standardized testing by the time candidates seek licensure. Requiring candidates to pay for yet another exam seems a meaningless excess—especially since the exam offers virtually no predictive validity.

DEPARTMENT RESPONSE: The proposed amendment implements Education Law §210-a. Therefore, a legislative change would be needed to address this comment.



#### 14.COMMENT:

Another way to regulate admissions concerns is to have institutions of higher education participate in knowledge-building activities around performance-based assessments for candidate selection. Incentivizing programs to develop meaningful, rigorous performance-based intake processes could help the State better understand what qualities future educators should be screened for. Alternatively, having admission candidates succeed on content knowledge tests the State has designed for certification could discourage individuals who might not take the education profession seriously from applying in the first instance.

Accordingly, language along the lines of the following might be more appropriate for the admissions regulation: "...establish rigorous minimum selection criteria geared to predicting a candidate's academic success in the program. The law requires candidates who are seeking their first initial certificate admitted to such programs to have a minimum cumulative undergraduate grade point average of 3.0 or higher in the candidate's undergraduate program. Additionally, candidates must either 1) have achieved a minimum score, to be set by the institution, on the Graduate Record Examination (GRE), 2) have achieved passing scores on the ALST and on the Multi-Subjects exams appropriate for the level of licensure, or 3) have succeeded in an intensive multi-stage admissions assessment process with defensible criteria, reliable scoring approaches, and longitudinal assessment of admissions criteria correlations with program outcomes."

DEPARTMENT RESPONSE: The proposed amendment implements Education Law §210-a. This comment is related to the underlying statute and is not something that the Department can address through regulation. However, the statute includes the option for an institution to identify a substantially equivalent admission examination to the

GRE. The statute and proposed regulation also permit institutions to exempt up to 15% of any incoming class from the selection criteria upon a determination by the institution that a student has demonstrated the potential to positively contribute to the teaching profession.

15.COMMENT:

The requirement for programs to submit to the State candidates who have graduated in the preceding year is defined as July 1 through June 30. Federal accountability and CAEP accreditation requirements use the reporting timeframe of September 1 through August 31. To reduce paperwork and reporting burdens and to align data analyses, I urge the Regents to change the reporting definition of “preceding year” to September 1 through August 31.

DEPARTMENT RESPONSE: Education Law §210-b defines the academic year for this purpose as July 1 through June 30. The proposed amendment merely implements the statutory definition of the academic year. To change this definition, a statutory change is needed.

16.COMMENT:

We are opposed to having the Board of Regents mandate particular selection criteria for all colleges. Although the stated intent is “predicting a candidate’s academic success in its program,” there is absolutely no evidence that requiring a minimum GPA of 3.0 or a minimum score on a standardized assessment will predict success.

Equally important, these new criteria will thwart critical efforts to diversify the teaching force by recruiting more men and women from under-represented populations. Many of the individuals from these groups fall into what appears to be an intractable achievement gap. As a group their grades and standardized test scores are below the level of the majority, and may well be below the minimum requirements set by the State.

Implementation of the proposed minimum requirements will keep candidates who have the potential to succeed from entering our program. Like all teacher preparation programs across New York State, the number of students in our programs has declined in recent years. Further decreases will threaten the viability of what has been for many years a highly successful program. In a small program such as ours the ability to exempt up to 15% of an incoming class from these requirements could mean as few as 2-3 students.

DEPARTMENT RESPONSE: The proposed amendment implements Education Law §210-a. This comment is related to the underlying statute and is not something that the Department can address through regulation. However, the statute includes the option for an institution to identify a substantially equivalent admission examination to the GRE. The statute and proposed regulation also permit institutions to exempt up to 15% of any incoming class from the selection criteria upon a determination by the institution that a student has demonstrated the potential to positively contribute to the teaching profession.