



To: The Honorable the Members of the Board of Regents
From: John L. D'Agati *John L. D'Agati*
Subject: Proposed Amendment to Section 80-5.5 of the Regulations of the Commissioner of Education Relating to the Employment of Retired Public Employees

Date: September 9, 2013

Authorization(s):

Richard A. Triantafyllou

John B. D'Agati

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents amend Section 80-5.5 of the Commissioner's Regulations relating to the requirements for the employment of retired public employees to implement Section 212(3) of Retirement and Social Security Law?

Reason(s) for Consideration

Required by State statute.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as an emergency measure and permanent adoption at its September 2013 meeting (see Attachment A- Amendment to the Regulations and Attachment B- for a Statement of Facts and Circumstances Justifying the Emergency). A Notice of Proposed Rule Making was published in the State Register on July 10, 2013. Supporting materials on the proposed amendment are available upon request from the Secretary to the Board of Regents.

Background Information

The recently enacted Budget Bill (Section 1 of Part Y of Chapter 55 of the Laws of 2013), included an amendment to Section 212(3) of Retirement and Social Security Law to provide the Commissioner of Education with discretion to waive the earnings limitations for retired police officers employed by a school district as a school resource officer. Currently, earnings for retired persons are limited to \$30,000.

A school resource officer's primary duties are to provide a safe learning environment within schools, provide valuable resources to school staff, and maintain an atmosphere where students can reach their fullest learning potential. Working with classroom teachers, other faculty members, and the school's leadership team, school resource officers can present information and answer questions on a variety of topics, including drugs, safety concerns, crime prevention, violence prevention, laws and regulations, and general techniques for reducing crime.

School resource officers may additionally assist in ongoing investigations that are occurring on school grounds in relation to criminal activity, in accordance with New York State Law and school district policy.

The current regulations only allow for the approval of section 211 waivers for individuals in "unclassified service" positions. As the position of a school resource officer is a "classified service" position, the proposed amendment is needed to conform the current regulations relating to the waiver of earnings limitations to the new law which allows the Commissioner to waive the earnings limitation for school resource officers.

A district that submits a request for the school resource officer earnings limitations waiver will have to meet all of the same requirements as currently required for waivers in the unclassified service, such as:

- specific reasons as to why there is a need for the services of the particular retired person;
- specific reasons as to why the employment of the particular retired person is in the best educational interests of the district or the board;
- demonstration that there are not other persons readily available, who are not retired persons, qualified to perform the duties to be assigned, in accordance with Section 211 of the Retirement and Social Security Law; and
- the district or board must demonstrate that they have undertaken an extensive and good faith recruitment search for a qualified candidate and determined that there are no available non-retired persons qualified to perform the duties of such position.

We are recommending that this item be approved on an emergency basis in order to ensure that the Department can timely implement the new law and to provide school districts with the option of requesting a waiver as soon as possible.

Recommendation

VOTED: That subdivision (b) of section 80-5.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 23, 2013, upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to timely implement the provisions of Section 1 of Part Y of Chapter 55 of the Laws of 2013.

VOTED: That subdivision (b) of section 80-5.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective October 2, 2013, upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to timely implement the provisions of Section 1 of Part Y of Chapter 55 of the Laws of 2013.

Recommendation

If adopted at the September Regents meeting, the proposed amendment will become effective as an emergency measure on September 23, 2013 and will become effective as a permanent rule on October 2, 2013.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207 and 305 of the Education Law and sections 211 and 212 of the Retirement and Social Security Law.

Subdivision (b) of section 80-5.5 of the Regulations of the Commissioner of Education is amended, effective September 23, 2013, to read as follows:

(b) Applicability.

(1) The approval of the commissioner to the employment of a retired person by any school district (other than the city school district of the City of New York), or by any board of cooperative educational services (BOCES) or any county vocational education and extension board, in the unclassified service pursuant to section 211 of the Retirement and Social Security Law, or to the employment by any school district of a retired person as a school resource officer in the classified service as authorized by section 212(3) of the Retirement and Social Security Law, shall be obtained in accordance with the requirements prescribed in this section.

(2) . . .

(c) Written request for approval.

(1) . . .

(2) The written request shall also include satisfactory documentation to establish either of the following:

(i) that the district or board has undertaken an extensive and good faith recruitment search for a certified_and qualified candidate , or in the case of a school resource officer a qualified candidate_and determined that there are no available non retired persons qualified to perform the duties of such position. Satisfactory

documentation of an extensive and good faith recruitment search shall include, but not be limited to, evidence that the district or board:

(a) considered all certified and qualified non retired candidates, or in the case of a school resource officer all qualified non retired candidates, before requesting approval from the commissioner under this section; and

(b) advertised for the particular position in a sufficiently broad manner appropriate for that position, based on the geographic location of the district or board and on any prior historical shortages for that position in the district or board; or

(ii) . . .

(3) Each written request for approval of employment of a retired person shall be accompanied by:

(i) a copy of the resolution of the board authorizing such employment, subject to the approval of the commissioner;

(ii) a recruitment plan, detailing how the prospective employer plans to replace the retired person with a certified, and qualified person, or in the case of a school resource officer a qualified person, by the conclusion of the approved temporary employment period. The recruitment plan shall specify the selection criteria, the media outlets the district or board will utilize to recruit a candidate and contingency plans for expanded recruitment if the initial recruitment procedures do not yield sufficient, certified non retired candidates; and

(iii)

(4) . . .

(d) . . .

(e)

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement the amendment to section 212(3) of Retirement and Social Security Law made by Section 1 of Part Y of Chapter 55 of the Laws of 2013, which provides the Commissioner of Education with discretion to eliminate the earnings limitations for retired police officers employed by a school district as a school resource officer. Currently, earnings for retired persons are limited to \$30,000. This new law became effective on March 28, 2013.

Emergency action is necessary at the September 2013 Regents meeting for the preservation of the general welfare in order to timely implement the provisions of the new law and to ensure that proper procedures are in place to ensure that the Commissioner can adequately process requests to eliminate the earnings limitations for retired police officers employed by a school district as a school resource officer. Emergency action is also necessary to ensure that the emergency rule adopted at the June Regents meeting remains continuously in effect until it becomes effective on October 2, 2013.