



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY,
NY 12234

TO: The Honorable the Members of the Board of Regents

FROM: Joseph P. Frey

SUBJECT: Proposed Amendment to the Regulations of the
Commissioner of Education Relating to Teacher
Certification Flexibility to Avoid or Mitigate Reductions in
Force

DATE: July 8, 2010

STRATEGIC GOAL: Goal 3

AUTHORIZATION(S):

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt as an emergency measure proposed amendments to Section 80-4.3 of the Commissioner's Regulations relating to teacher certification flexibility to avoid or mitigate reductions in force?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

This item will come before the full Board for adoption, as an emergency measure, and as a permanent rule at its July 2010 meeting. A statement of facts and circumstances justifying the emergency action is attached.

Procedural History

The Regents have historically provided flexibility in teacher certification. In 2000, the Board of Regents provided flexibility in Section 80-5.12 of the Commissioner's Regulations through the Experiment in Organizational Change. This provision, which allows certain school districts that propose an experiment concerned with organizational changes in their elementary, junior or senior high school to employ a certified teacher for any teaching assignment, for a five year period, if the teacher is deemed by the

superintendent, or other legally authorized body, to be qualified by education and experience.

In 2004, the Regents also approved the use of Supplementary certificates in Section 80-5.18 of the Commissioner's Regulations, allowing certified teachers to teach in a subject area and/or grade level, while the teacher completes the necessary requirements to qualify for the new certificate. The provisions of the attached amendment are similar to existing flexibility provisions but tailored to meet the needs of districts in this immediate fiscal crisis.

The Board of Regents adopted, as an emergency measure, the proposed amendments at their April 2010 meeting. The purpose of these amendments is to retain effective teachers with appropriate education and experience who may be reassigned to meet the needs of other students.

Background Information

School districts and the New York State Council of School Superintendents requested that the Regents consider flexibility in the following three areas to help them retain effective teachers while meeting key staffing needs during the current fiscal crisis:

Grades 7-12 Academic Area Certification Extended to Grades 5 and 6

The proposed amendment provides a level of flexibility in certification similar to that of the Experiment in Organizational Change. During a period of fiscal crisis, a district could reassign a teacher who is employed by the district and certified in the classroom teaching service in a subject area in grades 7-12 to teach that same subject area in grades 5 or 6 through a limited extension to the teacher's existing certificate. The limited extension will be valid for two years and shall be valid with that employing entity only. A full extension may be issued to the candidate if the candidate meets the requirements within those two years.

Childhood Education Extended to Kindergarten

The proposed amendment authorizes a teacher who is currently certified in childhood education (grades 1-6) to be reassigned to teach kindergarten under a limited extension to their existing certificate for a two-year period while they complete six semester hours of pedagogical coursework in early childhood education. At that point, the teacher could apply for the full extension to teach kindergarten.

Childhood Education Extended to Grades 7 and 8

Similar to the regulation on the Experiment in Organizational Change, the proposed amendment authorizes a certified and qualified elementary school teacher (grades 1-6) to be reassigned to a position teaching an academic subject in grades 7 and 8. The teacher would need to have appropriate education and experience for such teaching assignment as demonstrated by earning Highly Qualified status under NCLB in order to be granted a limited extension to their existing certificate title. Also, the teacher must agree to: 1) successfully complete the Content Specialty Test in that subject area,

and 2) complete 6 semester hours of course work in Middle Childhood Education, within the next two years to qualify for the full certificate extension when their limited extension expires.

Summary

Limited Extensions would not be renewable and would expire at the end of the two-year period. It is intended that these Limited Extensions would provide a two-year bridge to authorize teaching for an already experienced teacher who is seeking to complete any remaining requirements to qualify for the full certificate extension in the new teaching assignment.

A Notice of Proposed Rule Making was published in the State Register on May 5, 2010 and the Department has received no comments on the proposed amendment.

Recommendation

VOTED: That subdivisions (k), (l) and (m) be added to Section 80-4.3 of the Regulations of the Commissioner of Education, effective July 23, 2010, as an emergency action upon a finding by the Board of Regents that such action is necessary to ensure that the emergency rule remains continuously in effect until it can be adopted and made effective as a permanent rule; and

VOTED: That subdivisions (k), (l) and (m) be added to Section 80-4.3 of the Regulations of the Commissioner of Education, as submitted, effective August 11, 2010.

Timetable for Implementation

The April emergency adoption will expire on July 25, 2010. If adopted as an emergency measure at the July Regents meeting, the proposed amendment will become effective on July 23, 2010. A second emergency adoption is necessary at the July Regents meeting to ensure that the regulations remain continuously in effect until the regulation becomes effective on August 11, 2010.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 3001 and 3004 of the Education Law.

New subdivisions (k), (l) and (m) are added to section 80-4.3 of the Regulations of the Commissioner of Education is amended, effective August 11, 2010, to read as follows:

(k) Requirements for the issuance of a limited extension to teach a subject in grades 7-8 during a period of immediate fiscal crisis and a 7-8 grade level extension.

(1) Purpose. The purpose of extensions issued under this subdivision, subject to their period of applicability as set forth in paragraph (2) of this subdivision, is to authorize a teacher who is currently employed and certified in the classroom teaching service in childhood education (grades 1-6) or students with disabilities (grades 1-6) or an equivalent certificate title authorizing the teaching of all common branch subjects in childhood education (grades 1-6) to be reassigned by the employing entity to teach that subject in grades 7-8 during a demonstrated fiscal crisis to avoid or mitigate a reduction in force consistent with the requirements of law.

(2) Applicability. The provisions of this subdivision shall apply commencing April 27, 2010 and end on June 30, 2013.

(3) Limitations. A limited extension issued under this subdivision shall be valid for two years from its effective date and shall not be renewable. A limited extension may be issued to a teacher currently employed by an employing entity that meets the requirements in paragraph (4) of this section. A limited extension shall authorize a candidate to teach a subject in grades 7-8 with that employing entity only. Thereafter, a 7-8 grade level extension may be issued to such teacher upon completion of the requirements in paragraph (5) of this subdivision and shall authorize the teacher to teach a subject in grades 7 and 8 in any employing entity.

(4) Requirements for limited extension. Notwithstanding the provisions of this section, a limited extension may be issued to a candidate in a specific subject area for grades 7 and 8 provided that the candidate meets the requirements in each of the following subparagraphs:

(i) The candidate shall hold a valid provisional, permanent, initial or professional certificate in the classroom teaching service in childhood education (grades 1-6) or students with disabilities (grades 1-6) or an equivalent certificate title authorizing the teaching of all common branch subjects in grades 1 through 6; and

(ii) The candidate shall submit a statement by the Chancellor, in the case of employment with the City School District of the City of New York; or by the superintendent, in the case of other employing boards; or by the chief school officer, in the case of employment with another entity required by law to employ certified teachers certifying that:

(a) the employing entity seeks to reassign a currently employed teacher to a new teaching position in grades 7-8 in a subject area in the classroom teaching service;

(b) the candidate meets the qualification requirements of section 120.6 of this Title, relating to the No Child Left Behind Act of 2001;

(c) the employing entity is in an immediate fiscal crisis and the issuance of an extension in grades 7-8 to such candidate will avoid or mitigate a reduction in force;

(d) the employing entity will provide appropriate support to the currently employed teacher undertaking a new teaching assignment under a limited extension to ensure the maintenance of quality instruction for students;

(e) the employing entity will require, as a condition of employment under the extension, the candidate's enrollment in study at an institution of higher education to complete the requirements in paragraph (5) of this subdivision; and

(f) the employing entity will not assign the employed teacher to teach courses for high school credit;

(5) Requirements for 7-8 grade level extension in a subject. Notwithstanding the provisions of this section, an extension to teach a subject in grades 7-8 shall be issued to a candidate in a specific subject area for grades 7 and 8 provided that the candidate successfully completes the New York State Teacher Certification Examination content specialty test in the subject for which a certificate extension is being sought and six semester hours of coursework in middle childhood education.

(l) Requirements for a limited extension to teach kindergarten during a period of immediate fiscal crisis and a kindergarten extension.

(1) Purpose. The purpose of extensions issued in this subdivision, subject to their period of applicability as set forth in paragraph (2) of this subdivision, is to authorize a teacher who is currently employed and certified in the classroom teaching service in childhood education (grades 1-6) or students with disabilities (grades 1-6) or an equivalent certificate title authorizing the teaching of all common branch subjects in childhood education (grades 1-6) to be reassigned by the employing entity to teach kindergarten during a demonstrated immediate fiscal crisis to avoid or mitigate a reduction in force consistent with the requirements of law.

(2) Applicability. The provisions of this subdivision shall apply commencing April 27, 2010 and end on June 30, 2013.

(3) Limitations. A limited extension issued under this subdivision shall be valid for two years from its effective date and shall not be renewable. A limited extension may be issued to a teacher currently employed by an employing entity, provided that the requirements in paragraph (4) of this section are met. A limited extension shall authorize a candidate to teach kindergarten with that employing entity only. Thereafter,

a kindergarten extension may be issued to such teacher upon completion of the requirements in paragraph (5) of this subdivision and shall authorize the teacher to teach kindergarten in any employing entity.

(4) Requirements for a limited extension. Notwithstanding the provisions of this section, a limited extension may be issued to a candidate to teach kindergarten provided that the candidate meets the requirements in each of the following subparagraphs:

(i) The candidate shall hold a valid provisional, permanent, initial or professional certificate in the classroom teaching service in childhood education (grades 1-6) or students with disabilities (grades 1-6) or an equivalent certificate title authorizing the teaching of all common branch subjects in grades 1 through 6; and

(ii) The candidate shall submit a statement by the Chancellor, in the case of employment with the City School District of the City of New York; or by the superintendent, in the case of other employing boards; or by the chief school officer, in the case of employment with another entity required by law to employ certified teachers certifying:

(a) the employing entity seeks to reassign a currently employed teacher to a new teaching position in kindergarten;

(b) the candidate meets the qualification requirements of section 120.6 of this Title, relating to the No Child Left Behind Act of 2001;

(c) the employing entity is in an immediate fiscal crisis and the issuance of a limited extension in kindergarten to such candidate will avoid or mitigate a reduction in force;

(d) the employing entity will provide appropriate support to the currently employed teacher undertaking a new teaching assignment under an extension to ensure the maintenance of quality instruction for students; and

(e) the employing entity will require, as a condition of employment under the extension, the candidate's enrollment in study at an institution of higher education to complete the requirements in paragraph (5) of this subdivision.

(5) Requirements for kindergarten extension. Notwithstanding the provisions of this section, a kindergarten extension may be issued to a candidate provided that the candidate satisfactorily completes six semester hours of pedagogical coursework in early childhood development.

(m) Requirements for the issuance of a limited extension to teach a subject in grades 5-6 during a period of immediate fiscal crisis and a 5-6 grade level extension in a subject.

(1) Purpose. The purpose of extensions issued under this subdivision, subject to their period of applicability as set forth in paragraph (2) of this subdivision, is to authorize a teacher who is currently employed and certified in the classroom teaching service in a certain subject in grades 7-12 and who has demonstrated an appropriate academic background to teach in the subject area of his/her grade 7-12 certificate, to be reassigned by the employing entity to teach that subject in grades 5-6 during a demonstrated immediate fiscal crisis to avoid or mitigate a reduction in force, consistent with the requirements of law.

(2) Applicability. The provisions of this subdivision shall apply commencing April 27, 2010 and end on June 30, 2013.

(3) Limitations. A limited extension issued under this subdivision shall be valid for two years from its effective date and shall not be renewable. A limited extension

may be issued to a teacher currently employed by an employing entity that meets the requirements in paragraph (4) of this section. A limited extension shall authorize a candidate to teach a subject in grades 5-6 with that employing entity only. Thereafter, a 5-6 grade level extension may be issued to such teacher upon completion of the requirements in paragraph (5) of this subdivision and shall authorize the teacher to teach a subject in grades 5-6 in any employing entity.

(4) Requirements for a limited extension to teach a subject in grades 5-6. Notwithstanding the provisions of this section, a limited extension may be issued to a candidate in a subject for grades 5-6 provided that the candidate meets the requirements in each of the following subparagraphs:

(i) The candidate shall hold a valid provisional, initial, permanent, or professional certificate in English language arts (7-12), language other than English (7-12), mathematics (7-12), biology (7-12), chemistry (7-12), earth science (7-12), physics (7-12), or social studies (7-12); and

(ii) The candidate shall submit a statement by the Chancellor, in the case of employment with the City School District of the City of New York; or by the superintendent, in the case of other employing boards; or by the chief school officer, in the case of employment with another entity required by law to employ certified teachers certifying:

(a) the employing entity seeks to reassign a currently employed teacher to a new teaching position in grades 5-6 in a subject area in the classroom teaching service;

(b) the candidate meets the qualification requirements of section 120.6 of this Title, relating to the No Child Left Behind Act of 2001;

(c) the employing entity is in an immediate fiscal crisis and the issuance of a limited extension to such candidate to teach grades 5-6 will avoid or mitigate a reduction in force;

(d) the employing entity will provide appropriate support to the currently employed teacher undertaking a new teaching assignment under a limited extension to ensure the maintenance of quality instruction for students; and

(e) the employing entity will require, as a condition of employment under the extension, the candidate's enrollment in study at an institution of higher education to complete the requirements in paragraph (5) of this subdivision.

(5) Requirements for a 5-6 grade level extension in a subject area. A 5-6 grade level extension may be issued to a candidate in a specific subject area provided that the candidate meets the requirements of subdivision (b) of this section.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ADOPTION

The purpose of the proposed amendment is to provide flexibility from the current teacher certification requirements to allow school districts and BOCES to reassign effective classroom teachers to another grade level during this demonstrated immediate fiscal crisis in order to avoid or mitigate reductions in force. School districts and the New York State Council of School Superintendents requested that the Regents consider flexibility in the following three areas to help them retain effective teachers while meeting key staffing needs during the current fiscal crisis:

Grades 7-12 Academic Area Certification Extended to Grades 5 and 6

The proposed amendment provides a level of flexibility in certification similar to that of the Experiment in Organizational Change. During a period of fiscal crisis, a district could reassign a teacher who is employed by the district and certified in the classroom teaching service in a subject area in grades 7-12 to teach that same subject area in grades 5 or 6 through a limited extension to the teacher's existing certificate. The limited extension will be valid for two years and shall be valid with that employing entity only. A full extension will be issued to the candidate if the candidate completes six semester hours of coursework in Middle Childhood education.

Childhood Education Extended to Kindergarten

The proposed amendment authorizes a teacher who is currently certified in childhood education (grades 1-6) to be reassigned to teach kindergarten under a limited extension to their existing certificate for a two-year period while they complete six semester hours of pedagogical coursework in early childhood education. At that point, the Department will issue the teacher a full extension to teach kindergarten.

Childhood Education Extended to Grades 7 and 8

Similar to the regulation on the Experiment in Organizational Change, the proposed amendment authorizes a certified and qualified elementary school teacher (grades 1-6) to be reassigned to a position teaching an academic subject in grades 7 and 8. The teacher would need to have appropriate educational and experience for such teaching assignment as demonstrated by earning Highly Qualified status under NCLB in order to be granted a limited extension to their existing certificate title. Also, the teacher must agree to successfully complete the content specialty test in that subject area and complete six semester hours of coursework in Middle Childhood Education, within the next two years to qualify for the full certificate extension when their limited extension expires.

Emergency action is necessary at the July 2010 Board of Regents meeting in order to ensure that the regulations remain continuously in effect until the regulation becomes effective on August 11, 2011. Pursuant to State Administration Procedure Act § 202(1)(a), a rule may not be adopted until after 45-days from publication of a Notice of Proposed Rule Making in the State Register. The Notice of Proposed Rule Making was published in the State Register on May 5, 2010 and the 45-day period expired on June 26, 2010 and will not become effective until August 11, 2010. However, the emergency rule adopted at the May Regents meeting is only effective for 90 days and will expire on July 25, 2010. To avoid the adverse effects of a lapse in the emergency rule, another emergency action is necessary at the July Regents meeting to readopt the rule, effective July 23, 2010 so that it may remain continuously in effect until it can be adopted and made effective as a permanent rule.

