



**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:** John L. D'Agati

**SUBJECT:** Proposed Amendment of Section 80-4.3 of the Regulations of the Commissioner Relating to Teacher Certification to Provide Flexibility in the Assignment of Certified Teachers for More Cost-Efficient Operations

**DATE:** October 7, 2011

**AUTHORIZATION(S):**

**SUMMARY**

**Issue for Decision (Consent Agenda)**

Should the Board of Regents adopt the proposed amendment to section 80-4.3 of the Commissioner's Regulations relating to teacher certification in grades 5-6 and 7-8 to provide employing entities (school districts, BOCES, charter schools and other entities required by law to employ certified teachers) with flexibility for the assignment of certain teachers to provide for more cost-efficient operations?

**Reason(s) for Consideration**

Review of Policy.

**Proposed Handling**

This item is before the Full Board for adoption at its October 2011 meeting.

**Procedural History**

The proposed amendment was discussed by the Higher Education Committee at the June Regents meeting. A Notice of Proposed Rule Making was published in the State Register on August 3, 2011.

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 purpose of these amendments is to provide employing entities with greater flexibility in the assignment of certain teachers under certain circumstances so as to permit more efficient, cost-effective operations.

#### Background Information

In 2010, the Board of Regents adopted an amendment to section 80-4.3 of the Commissioner's Regulations to provide employing entities with flexibility in certification when there was a demonstrated immediate fiscal crisis and the certification flexibility would avoid a reduction in force. In 2010, the Regents created certification flexibility in the following areas:

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

The 2010 amendment allows an employing entity to reassign a teacher who is employed by the entity 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 Grades 7 and 8

The 2010 amendment also 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.

The Limited extensions certificates for teacher certification flexibility 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.

Currently, employing entities may only use this certification flexibility if they can demonstrate an immediate fiscal crisis and that such certification flexibility would avoid a reduction in force. The current regulation also sunsets in June 2013. The proposed amendment would create additional flexibility in the assignment of teachers to these grade levels. The proposed amendment eliminates the requirement that employing entities demonstrate an immediate fiscal crisis or a reduction in force. The employing entity would only need to demonstrate that the certification flexibility would provide for a more efficient operation. The proposed amendment also eliminates the sunset provision.

The proposed amendment addresses certification issues only. Hiring decisions or appointments to tenure areas continue to be governed by existing law and rules. For example, if, due to a previous reduction in force, a preferred eligibility list exists that covers the tenure area where the district seeks to fill a position, the school district must use the preferred eligibility list first before making any new appointments to that tenure area. Also, any reassessments to a new tenure area require the consent of the teacher and result in the teacher serving a probationary period in the new tenure area.

#### Recommendation

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

VOTED: That subdivisions (k) and (m) of section 80-4.3 of the Regulations of the Commissioner of Education be amended as submitted, effective November 9, 2011.

#### Timetable for Implementation

If adopted at the October Regents meeting, the proposed amendment will become effective on November 9, 2011.

#### Attachment

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF  
EDUCATION

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

Subdivisions (k) and (m) of section 80-4.3 of the Regulations of the Commissioner of Education are amended, effective November 9, 2011, 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] to provide an employing entity with flexibility in the assignment of teachers which will result in a more efficient operation of the employing entity 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.] in order to provide an employing entity with sufficient flexibility in the assignment of teachers which will result in a more efficient operation of the employing entity.

(2) [Applicability. The provisions of this subdivision shall apply commencing October 6, 2011 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)] (3) 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)] (4) of this subdivision and shall authorize the teacher to teach a subject in grades 7 and 8 in any employing entity.

[(4)] (3) 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] the issuance of an extension in grades 7-8 to such candidate will result in a more efficient operation of the employing entity.

(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)] (4) of this subdivision; and

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

[(5)] (4) 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.

(m) Requirements for the issuance of a limited extension to teach a subject in grades 5-6 [during a period of immediate fiscal crisis] to provide an employing entity with flexibility in the assignment of teachers which will result in a

more efficient operation of the employing entity 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] in order to provide an employing entity with flexibility in the assignment of teachers which will result in a more efficient operation of the employing entity.

(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)] (3) 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)] (4) of this subdivision and shall authorize the teacher to teach a subject in grades 5-6 in any employing entity.

[(4)] (3) 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 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] the issuance of an extension in grades 7-8 to such candidate will result in a more efficient operation of the employing entity.
  - (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)] (4) of this subdivision.

[(5)] (4) 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.