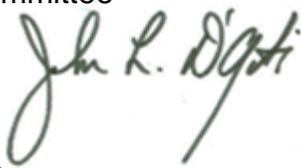


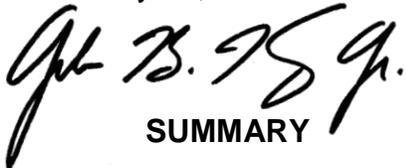


TO: Higher Education Committee
P-12 Education Committee

FROM: John L. D'Agati 
Ken Slentz 

SUBJECT: Proposed amendment of §82-1.10 of the Commissioner's Regulations relating to hearings pursuant to Education Law §3020-a

DATE: February 10, 2014

AUTHORIZATION(S): 
SUMMARY

Issue for Decision

Should the Board of Regents adopt as an emergency action an amendment to section 82-1.10 of the Regulations of the Commissioner of Education that would, under certain circumstances, allow tenured teachers and principals to raise as a defense in a §3020-a hearing that their school district failed to timely implement the Common Core in the 2012-2013 and/or 2013-2014 school years?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

The proposed amendment is submitted to the P-12 Education Committee and the Higher Education Committee for emergency adoption at its February 2014 meeting. A copy of the proposed amendment and a statement of the facts and circumstances which necessitate emergency action are attached. Supporting materials are available upon request from the Secretary to the Board of Regents. It is anticipated that a Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on February 26, 2014.

Procedural History

In December 2013, a Work Group of the Board of Regents P-12 Committee was charged with reviewing the feedback the Board of Regents and the State Education Department (“Department”) have received from various constituencies and presenting to the Board additional ideas to continue to improve the implementation of the Common Core State Standards (“Common Core”) at the State and district level for the Board’s consideration.

Specifically, the Work Group was asked to review feedback received by the Regents and the Department on the first 3 1/2 years of the 7 year phase-in of the Common Core from educators, parents, community leaders, and others in order to:

- (1) Identify assessment policy adjustments to be presented for consideration as part of the NYSED Elementary and Secondary Education Act waiver renewal application for 2014-2015.
- (2) Identify adjustment options to be presented for consideration to the Board of Regents policies governing professional development (including NYSED monitoring of the use of federal and state funds by districts to support professional development and use of the required 175 professional development hours).
- (3) Review the development processes - including the role of NYS educators - for the optional Common Core State Standards curriculum materials created pursuant to Race to the Top and the federally required state assessments in grades 3-8 and high school English Language Arts and Mathematics now measuring the Common Core State Standards, and present options for adjustments to consider as appropriate.
- (4) Analyze the practices of districts experiencing the greatest success with Common Core State Standards implementation and identify policy options for replicating those practices across the state.

At the February 2014 Regents meeting, the Work Group discussed its progress in meeting the charge and provided the Regents with several options to consider to improve implementation of the Common Core. In light of the options presented, and in order to provide a mechanism by which teachers and principals facing certain §3020-a charges are not harmed by untimely implementation of the Common Core, Department staff propose an amendment to §82-1.10 of the Commissioner’s Regulations that would, under certain circumstances, allow a teacher or principal to raise as a defense in a tenured teacher hearing initiated pursuant to Education Law §3020-a that their school district failed to timely implement the Common Core in the 2012-2013 and/or 2013-2014 school years.

Background Information

The proposed amendment would, in a §3020-a hearing based upon a charge of a pattern of ineffective teaching or performance or a hearing that includes a charge of incompetency, based on an ineffective rating on the state growth and/or locally selected measures subcomponents of the teacher's or principal's APPR that is attributable to student performance on the Common Core State assessments administered in the 2012-2013 and/or 2013-14 school years, permit the employee to raise as a defense an alleged failure by the employer to timely implement the Common Core by providing adequate professional development, guidance on curriculum or other supports to the employee during those school years. The proposed amendment would thus protect tenured teachers and principals from termination based on an ineffective Annual Professional Performance Review (APPR) rating resulting from student performance on the Common Core assessments where they can prove that the district did not provide the professional development, curriculum materials or other supports needed for Common Core implementation during the 2012-2013 and/or 2013-2014 school years.

Recommendation

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

VOTED: That subdivision (j) of section 82-1.10 of the Regulations of the Commissioner be added as submitted, effective February 11, 2014, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to ensure that teachers, principals, school districts and BOCES are given sufficient notice of the regulation, which would impact Education Law §3020-a proceedings involving ineffective APPR ratings received during the 2012-2013 and 2013-2014 school years.

Timetable for Implementation

If adopted as an emergency rule at the February meeting, the proposed amendment will become effective on February 11, 2014 and will remain in effect for 90 days. It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the April 2014 Regents meeting, after publication of a Notice of Emergency Rule Making and Proposed Rule Making in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF
EDUCATION

Pursuant to sections 207, 305 and 3020-a (3)(c)(i) of the Education Law

Subdivision (j) of section 82-1.10 of the Regulations of the Commissioner of
Education is added, effective February 11, 2014, as follows:

(j) Where an expedited hearing brought based solely upon a charge of a pattern of ineffective teaching or performance of a classroom teacher or principal, or a hearing brought on a charge of incompetency, is based on an ineffective rating on the state growth and/or locally selected measures subcomponents of the teacher's or principal's annual professional performance review resulting from student performance on the Common Core state assessments administered in the 2012-2013 and/or 2013-14 school years, the employee may raise as a defense an alleged failure by the employer to timely implement the Common Core by providing adequate professional development, guidance on curriculum or other supports to the employee.

8 NYCRR §82-1.10

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

In December 2013, a Work Group of the Board of Regents P-12 Committee was charged with reviewing the feedback the Board of Regents and the State Education Department (“Department”) have received from various constituencies and presenting to the Board additional ideas to continue to improve the implementation of the Common Core State Standards (“Common Core”) at the State and district level for the Board’s consideration. The Work Group was asked to review feedback received by the Regents and the Department on the first 3 1/2 years of the 7 year phase-in of the Common Core from educators, parents, community leaders, and others.

At the February 2014 Regents meeting, the Work Group discussed its progress in meeting the charge and provided the Regents with several options to consider to improve implementation of the Common Core. In light of the options presented, and in order to provide a mechanism by which teachers and principals facing certain Education Law §3020-a charges are not harmed by untimely implementation of the Common Core, Department staff propose an amendment to §82-1.10 of the Commissioner’s Regulations that would, under certain circumstances, allow a teacher or principal raise as a defense in a tenured teacher hearing initiated pursuant to Education Law §3020-a that their school district failed to timely implement the Common Core in the 2012-2013 and/or 2013-2014 school years.

The proposed amendment would, in a §3020-a hearing based upon a charge of a pattern of ineffective teaching or performance or a hearing that includes a charge of incompetency, based in whole or in part on student performance on the Common Core State assessments administered in the 2012-2013 and/or 2013-14 school years, permit

the employee to raise as a defense an alleged failure by the employer to timely implement the Common Core by providing adequate professional development, guidance on curriculum or other supports to the employee during those school years. The proposed amendment would thus protect tenured teachers and principals from termination based on an ineffective Annual Professional Performance Review (APPR) rating resulting from student performance on the Common Core assessments where they can prove that the district did not provide the professional development, curriculum materials or other supports needed for Common Core implementation during the 2012-2013 and/or 2013-2014 school years.

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 State Administrative Procedure Act (SAPA) section 202(1) and (5), is the April 28-29, 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the April meeting, would be May 14, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency action to immediately adopt the proposed rule is necessary for the preservation of the general welfare in order to ensure that teachers, principals, school districts and BOCES are given sufficient notice of the regulation, which would impact Education Law §3020-a proceedings involving ineffective APPR ratings received during the 2012-2013 and 2013-2014 school years.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the April 28-29, 2014 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.