



TO: Higher Education Committee

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

SUBJECT: Additional Changes to Education Law Contained in the Enacted 2015-2016 Budget Relating to Higher Education That May Require Regulatory Changes

DATE: May 11, 2015

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SUMMARY

Issue for Discussion

Possible regulatory amendments required as a result of changes to the Education Law enacted as part of the 2015-2016 New York State Budget.

Reason(s) for Consideration

Required by State statute.

Proposed Handling

It is anticipated that the proposed regulatory amendments will be presented to the Board of Regents for discussion at the June 2015 Regents meeting.

Procedural History

Not applicable.

Discussion

As a result of the recently enacted budget, several provisions that were enacted into law will require regulatory changes. The following is a brief summary of three major changes that may require regulatory action.

Graduate Level Teacher and Leader Preparation Program Admission Standards, Suspension and Deregistration

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

The newly enacted budget also requires the Department to suspend the program’s authority to admit new students if, for three consecutive academic years, fewer than fifty percent of its students who have completed the program pass each certification assessment they have taken that is required for certification, and deregister the program if it does not significantly improve during the time the students currently enrolled are completing the program.

1. Admission Requirements

The Department will propose regulations consistent with the requirements of 210-a to require institutions with graduate level teacher and education leader preparation programs registered by the Department to establish minimum selection criteria. The law requires candidates admitted to such programs have a minimum cumulative undergraduate GPA of 3.0, and have achieved a minimum score, to be set by the institution, on the Graduate Record Examination (GRE), or a substantially equivalent assessment, as determined by the institution. Pursuant to the law, each program is entitled to exempt up to fifteen percent of its incoming class from these admission requirements based on the exempted student’s demonstrated “potential to positively contribute to the teacher profession” or for “other extenuating circumstances”, as described by the Commissioner in regulations.

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

New section 210-b requires that, if fewer than fifty percent of a graduate teacher or education leader preparation program’s candidates who have completed the academic requirements of the program satisfactorily pass each assessment required for certification for three consecutive academic years, the Department must suspend the program’s authority to admit new students. 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 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.

The program may also appeal the Department’s determination 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 program must be deregistered.

Foster Youth College Success Initiative

Chapter 56 of the Laws of 2015 added a new section 6456 to the Education Law, requiring the Commissioner to allocate funds, subject to an appropriation, for the purpose of providing support services to assist youth in foster care to apply for, enroll in, and succeed in college. The new law defines foster youth to include students who have qualified as an orphan, foster child or ward of the court for the purposes of federal student financial aid programs authorized by Title IV of the Higher Education Act of 1965, as amended.

1. Funding

The 2015 – 2016 state budget appropriated \$1.5 million for the Foster Youth College Success Initiative. The law provides for grant awards for public institutions, including the State University of New York (SUNY), and The City University of New York (CUNY), and requires the Commissioner to enter into contracts with institutions currently funded by the Arthur O. Eve Higher Education Opportunity Program (HEOP). The new law allocates funding to these three sectors as follows: 52% to SUNY institutions; 30% to CUNY institutions; and 18% percent to currently funded HEOP institutions. It further requires that funds be in equal amounts per individual foster youth to each institution that applies for funding and is approved by the Commissioner and that funds be used to supplement, not supplant, the regular academic program(s) of any participating institution. The law also prohibits funds from being provided for programs which are incompatible with the Regents plan for the expansion and development of higher education in New York State.

2. Services for Foster Youth

The new law indicates the funds may be used for the following purposes:

- a. providing additional services and covering expenses to expand opportunities through existing postsecondary opportunity programs at the SUNY, CUNY, and other degree-granting higher education institutions for foster youth, and
- b. providing necessary supplemental financial aid for foster youth, which may include: the cost of tuition and fees, books, supplies, transportation, and other expenses approved by the Commissioner for such foster youth to attend college, and
- c. summer college preparation programs to help foster youth transition to college, prepare them to navigate on-campus systems, and provide preparation in reading, writing, and mathematics for foster youth who need it, and
- d. providing advisement, tutoring and other academic assistance for foster youth.

3. Implementation

The new law takes effect July 1, 2015 and requires eligible institutions to file an application with the Commissioner by October 1st of each year. The application must demonstrate a need for such funding; including how the funds would be used and how many foster youth will be funded.

Department staff is currently in the process of developing regulations to implement the Foster Youth College Success Initiative.

Teacher Tenure Hearings

Chapter 56 of the Laws of 2015 amended Education Law §§ 305, 3020 and 3020-a to modify and streamline the process by which a school district can terminate a tenured educator; expand the grounds for the automatic termination of employment and revocation of certification; and clarify the applicability of the changes to New York City.

1. Elimination of panels in all cases

Cases brought against tenured educators must now be held in front of a single hearing officer, foreclosing the option previously available to educators to choose to have a panel decide cases where pedagogical incompetence or pedagogical judgement were at issue. Elimination of the panels is designed to reduce delays precipitated by panel scheduling issues commonly associated with these types of cases.

2. Probable Cause Hearings (Suspension without Pay)

Traditionally, except where the case was based on certain felony convictions, educators are suspended with pay during the pendency of the matter. This amendment permits this suspension to be *without pay* for charges of misconduct brought on or after July 1, 2015, if the matter concerns misconduct constituting physical or sexual abuse of a student. Pursuant to the new law, several procedural obligations attach when an educator is suspended without pay, including:

- a. Probable Cause Hearing: A probable cause hearing must be held within 10 days of the suspension without pay before an impartial hearing officer to determine whether sufficient probable cause exists to support the charges. The hearing officer must be chosen in a manner as similar as possible to the appointment of an impartial hearing officer pursuant to Education Law §4404 for special education due process hearings.
- b. Duration of Unpaid Suspension: If the hearing officer determines sufficient probable cause exists to support the charges, the educator may be suspended without pay no longer than 120 days.
- c. Expedited Hearing: An expedited hearing on the merits of the charges must also be simultaneously commenced.

- d. Restoration of Pay: At the conclusion of either the probable cause proceeding, or the expedited proceeding on the merits, if the hearing officer finds in favor of the educator, the educator is eligible for full reimbursement of the withheld pay, plus interest compounded at a rate of six percent per annum.

3. Expedited Proceedings

The law amends Education Law §3020-a and establishes a new Education Law §3020-b to provide for expedited proceedings in certain situations. The expedited proceedings generally share common requirements, among them: the selection of the hearing officer from the established American Arbitration Association list; the 10 day time limit to draft the probable cause decision; and the general prohibition on adjournments in the absence of circumstances substantially beyond the control of the parties and injustice if the adjournment were not granted.

- a. Expedited Proceedings Based on Misconduct Constituting Physical or Sexual Abuse of a Student:

Where the charges involve misconduct constituting physical or sexual abuse of a student, schools must conduct an expedited proceeding.

- i. The hearing before a single hearing officer.
- ii. The hearing concludes within 60 days of the pre-hearing conference.

- b. Expedited Proceedings Based on Two (2) Annual Ineffective Ratings: Where the charges are based on 2 ineffective ratings pursuant to the annual professional performance reviews pursuant to Education Law §§ 3012-c or 3012-d, the school **may** bring charges of incompetence.

- i. The school must have developed and substantially implemented a Teacher Improvement Plan or Principal Improvement Plan in accordance with Education Law §§ 3012-c or 3012-d for the educator following the first evaluation in which the educator was rated ineffective, and the immediately preceding evaluation if the employee was rated developing.
- ii. The parties jointly select the hearing officer.
- iii. Two ineffective ratings are prima facie evidence of incompetence overcome only by clear and convincing evidence that the employee is not incompetent in light of the surrounding circumstances.
- iv. The hearing must conclude within 90 days of the date of the hearing request.

- c. Expedited Proceedings Based on Three (3) Annual Ineffective Ratings: Where the charges are based on three ineffective ratings pursuant to the annual professional performance reviews pursuant to Education Law §§ 3012-c or 3012-d, the school **shall** bring charges of incompetence.

- i. The Commissioner selects the hearing officer, instead of the parties.
 - ii. Three ineffective ratings are prima facie evidence of incompetence which may be overcome only by clear and convincing evidence that the calculation of one or more of the underlying components on the APPR was fraudulent, which includes mistaken identity
 - iii. The hearing must conclude within 30 days of the date of the hearing request.
4. Other Changes to Hearing Process
- a. Protections for Child Witnesses: Children under the age of 14 are permitted to testify through two-way closed circuit television if the hearing officer determines the child witness would suffer serious mental or emotional harm which would substantially impair the child's ability to communicate if the child was required to testify without such use.
 - b. Mutual Discovery Provisions: The amendments to the Education Law now require the educator to provide full and fair disclosure of the witnesses and evidence it intends to use in the proceeding to the school district.
 - c. Hearing Officer Must Consider Board Recommendation: The hearing officer must give serious consideration to the penalty recommended by the board and, if the penalty is rejected, such rejection must be based on reasons based upon the record as expressed in a written determination.
5. Expansion of Termination of Employment Without a Hearing and Revocation of Certification

The amendment to Education Law expands the grounds for which an educator can have his/her certification revoked without a hearing upon the commission of certain sex crimes (for which registration as a sex offender is required pursuant to Correction Law Art. 6-C) to include other violent felony offense(s) committed against a child when such child was the intended victim of the offense.

6. Application to NYCDOE

The law clarifies that any alternate disciplinary procedures contained in a collective bargaining agreement entered into by NYCDOE which takes effect after July 1, 2015 must have certain provisions related to a single hearing officer and the effect of two or three consecutive ineffective annual performance ratings as defined in the new Education Law §3020-b.

The changes in the law take effect on July 1, 2015. Department staff is currently in the process of developing regulations to implement the changes.

Recommendation

Not applicable.

Timetable for Implementation

No applicable.