



TO: The Honorable Members of the Board of Regents

FROM: Angelique Johnson-Dingle
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SUBJECT: Proposed Amendment of Sections 80-2.9, 80-4.3, and 80-5.18 of the Regulations of the Commissioner of Education Relating to Flexibilities for the Supplementary Certificate and Supplementary Bilingual Education Extension Requirements in Response to the Influx of Recently Arrived and Asylum-Seeking Students

DATE: November 2, 2023

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SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of sections 80-2.9, 80-4.3, and 80-5.18 of the Regulations of the Commissioner of Education relating to flexibilities for the Supplementary certificate and Supplementary Bilingual Education extension requirements in response to the influx of recently arrived and asylum-seeking students?

Reason for Consideration

Review of policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at the November 2023 Regents meeting. A copy of the proposed amendment (Attachment A) and a Statement of Facts and Circumstances which necessitate emergency action (Attachment B) are attached.

Procedural History

The proposed amendment was presented to a joint meeting of the Higher Education and P-12 Education Committees for discussion and recommendation to the Full Board for adoption as an emergency rule at the September 2023 meeting of the Board of Regents.

A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on September 27, 2023, for a 60-day public comment period.

Because the September 2023 emergency action is set to expire on December 10, 2023, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the January 2024 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on December 27, 2023. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Communities across New York State are experiencing an influx of recently arrived and asylum-seeking students and families. The Board of Regents and the Department are committed to supporting local educational agencies (LEAs) in the delivery of high-quality educational services to all students, including recently arrived children and youth.

Due to the unanticipated increase in the enrollment of speakers of languages other than English, some LEAs may have difficulty hiring the additional educators needed to support these new English language learners in schools. Therefore, the Department is proposing to amend the Supplementary certificate and the Supplementary Bilingual Education extension requirements to create flexibility so that educators can expeditiously obtain this certificate and extension to address this influx of students.

Supplementary Certificate:

A Supplementary certificate allows certified teachers to teach in an area that has a shortage of certified teachers, as determined by the Department. This type of teaching certificate is valid for five years and includes the following requirements, in addition to the general requirements for certificates in Subpart 80-1 of the Commissioner's regulations (8 NYCRR 80-5.18(c)):

- **Certification.** Hold a valid Initial, Permanent, or Professional teaching certificate.
- **Enrollment.** Agree to be enrolled in study leading to an Initial or Professional certificate in the area of the certificate sought at an institution of higher education.
- **Education.**
 - Hold the minimum degree required for an initial certificate in the certificate title sought; and
 - Complete 9-12 semester hours of specified coursework, depending on the area of the certificate sought.¹ For example, candidates who seek the English to Speakers of Other Languages (ESOL) certificate must

¹ Additionally, the candidate must have achieved at least a C or its equivalent in any undergraduate level course and at least a B- or its equivalent in any graduate level course submitted to meet the coursework requirements.

have completed six semester hours of coursework in methods of second language teaching in the elementary and secondary grades and six semester hours in teaching literacy skills.

- **Employer Statement.** Has a statement from the employer attesting that they:
 - Seek to employ the candidate in a position in an area with a demonstrated shortage of certified teachers for which the candidate would need the Supplementary certificate to qualify;
 - Will require, as a condition of employment under the Supplementary certificate, the candidate's enrollment in study at an institution of higher education leading to an Initial or Professional certificate in the certificate title sought; and
 - Will provide appropriate support to the candidate undertaking a teaching assignment under the Supplementary certificate to ensure the maintenance of quality instruction for students.
- **Examination.** Pass the Content Specialty Test in the area of the certificate sought, if available.

The Supplementary certificate gives teachers time to complete the requirements for the Initial or Professional certificate sought while addressing the staffing needs of their employer and receiving support from their employer in the area of the certificate. This certificate is only valid with the employer that completes the employer statement.

Supplementary Bilingual Education Extension:

There is also a Supplementary Bilingual Education extension available for certified teachers and certified pupil personnel services professionals. This three-year, non-renewable extension authorizes candidates that are: (1) certified teachers in a title in the classroom teaching service to teach bilingual ELLs; and (2) certified school counselors to work with bilingual ELLs, where there is a demonstrated shortage. Candidates must matriculate in a New York State registered program leading to a Bilingual Education extension and have completed three semester hours of coursework in bilingual education as required for the Bilingual Education extension sought, including study in theories of bilingual education and multicultural perspectives (8 NYCRR 80-2.9(a)(5) and 80-4.3(a)(4)).

Additionally, the employer must submit an employer statement attesting that they: (1) seek to employ the candidate in a position with a demonstrated shortage of certified teachers or certified pupil personnel services professionals with a Bilingual Education extension; (2) will require, as a condition of employment under the Supplementary Bilingual Education extension, the candidate's matriculation in a program at an institution of higher education leading to a Bilingual Education extension; and (3) will provide appropriate support to the candidate undertaking an assignment with the Supplementary Bilingual

Education extension to ensure the maintenance of quality instruction for such candidate. This extension is only valid with the employer that completes the employer statement.

Proposed Amendment

In response to the potential shortage of educators needed to support the influx of English language learners in schools, the Department proposes to amend the Supplementary certificate requirements to provide flexibility for certified teachers who apply for the Supplementary English to Speakers of Other Languages (ESOL) certificate, and for teachers who hold a valid Initial, Professional, or Permanent ESOL certificate and apply for a Supplementary certificate in another area, between September 12, 2023, and August 31, 2024. This flexibility will allow candidates to complete either the examination requirement or the enrollment and education requirements, instead of both sets of requirements.

The Department also proposes to amend the Supplementary Bilingual Education extension requirements to create flexibility for certified teachers and certified pupil personnel services professionals who apply for such extension between September 12, 2023, and August 31, 2024. This flexibility will allow candidates to pass the Bilingual Education Assessment (BEA), if available, in lieu of matriculating in a registered program leading to a Bilingual Education extension and completing coursework. Additionally, the proposed amendment permits candidates to renew the Supplementary Bilingual Education extension one time for a period of three years from the effective date of the renewal if they obtain their first extension through this flexibility and meet the currently existing requirements for the extension as described above.

By allowing candidates to demonstrate that they have the knowledge and skills to provide the necessary supports to recently arrived and asylum-seeking students by passing a test instead of completing coursework, the proposed amendments provide a quicker pathway to obtain the Supplementary certificate and/or Supplementary Bilingual Education extension. This pathway is also less costly than completing coursework, which can ease the financial barrier for candidates.

Related Regents Items

September 2023: [Proposed Amendment of Sections 80-2.9, 80-4.3, and 80-5.18 of the Regulations of the Commissioner of Education Relating to Flexibilities for the Supplementary Certificate and Supplementary Bilingual Education Extension Requirements in Response to the Influx of Recently Arrived and Asylum-Seeking Students](https://www.regents.nysed.gov/sites/regents/files/923hep12a1revised.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/923hep12a1revised.pdf>)

December 2021: [Proposed Amendment to Sections 52.21 and 80-2.9 and Subpart 80-4 of the Regulations of the Commissioner of Education Relating to the Creation of the Bilingual Education Extension, Supplementary Bilingual Education Extension, and Registration Requirements for Programs Leading to the Bilingual Education Extension for Initial and Professional School Counselor Certificates](https://www.regents.nysed.gov/sites/regents/files/1221brca3.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/1221brca3.pdf>)

Recommendation

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

VOTED: That sections 80-2.9, 80-4.3, and 80-5.18 of the Regulations of the Commissioner of Education be amended, as submitted, effective December 11, 2023, as an emergency rule upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to create flexibilities for the requirements for the Supplementary English to Speakers of Other Languages certificate and Supplementary Bilingual Education extension to address staffing challenges due to the influx of recently arrived and asylum-seeking students and to ensure that the emergency action taken at the September 2023 meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the November 2023 Regents meeting, the emergency rule will become effective December 11, 2023. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the January 2024 Regents meeting, after publication of the proposed amendment in the State Register and the expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the January 2024 meeting, the proposed amendment will become effective as a permanent rule on January 24, 2024.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 305, 308, 3001, 3004, and 3009 of the Education Law.

1. Paragraph (5) of subdivision (a) of section 80-2.9 of the Regulations of the Commissioner of Education is amended to read as follows:

(5) Supplementary bilingual education extension for certificates in pupil personnel services.

(i) Purpose. The purpose of a supplementary bilingual education extension is to authorize a pupil personnel service professional who is currently certified in a title in the pupil personnel service to work as a bilingual pupil personnel service worker where there is a demonstrated shortage, while the pupil personnel service professional is in a matriculated program at an institution of higher education leading to an extension in bilingual education or to provide necessary supports to recently arrived and asylum-seeking students.

(ii) Limitations. The supplementary bilingual extension shall be valid for three years from its effective date and shall not be renewable, provided that such extension may be renewed one time for a period of three years from effective date of the renewal if the candidate obtained their first extension by submitting evidence of having achieved a satisfactory level of performance on the bilingual education assessment pursuant to subparagraph (iv) of this paragraph, is matriculated in a registered program leading to a bilingual education extension, and completed the coursework and employer statement requirements as prescribed in clauses (c) and (d) of subparagraph (iii) of this section. A

supplementary bilingual education extension shall also be limited to employment with an employing entity.

(iii) Requirements. To be eligible for a supplementary bilingual education extension, a candidate shall meet the following requirements:

(a)

(b)

(c) The candidate shall be matriculated in a registered program leading to a bilingual education extension, provided that such program must require the candidate to pass an assessment of proficiency in the language of the bilingual education extension sought as a condition for entry into the program, or unless otherwise prescribed in subparagraph (iv) of this paragraph.

(d) Education. The candidate shall have completed coursework as prescribed in this subparagraph unless otherwise prescribed in subparagraph (iv) of this paragraph. The candidate shall have achieved at least a C or its equivalent in any undergraduate-level course and at least a B- or its equivalent in any graduate-level course submitted to meet the coursework requirements of this subparagraph.

(1)

(2) A statement shall be submitted 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 pupil personnel professionals certifying that:

(i) ...

(ii) the employing entity will require, as a condition of employment under the supplementary bilingual education extension, the candidate's matriculation in a program at an institution of higher education leading to a bilingual extension unless otherwise prescribed in subparagraph (iv) of this paragraph; and

(iii)

2. Paragraph (5) of subdivision (a) of section 80-2.9 of the Regulations of the Commissioner of Education is amended by adding a new subparagraph (iv) to read as follows:

(iv) For candidates who apply for a supplementary bilingual education extension in the pupil personnel service between September 12, 2023, and August 31, 2024, in order to provide necessary supports to recently arrived and asylum-seeking students, the candidate may submit evidence of having achieved a satisfactory level of performance on the bilingual education assessment, if available, in lieu of matriculating in a registered program leading to a bilingual education extension and completing coursework as prescribed in clauses (c) and (d) of this subparagraph (iii) of this section.

3. Paragraph (4) of subdivision (a) of section 80-4.3 of the Regulations of the Commissioner of Education is amended to read as follows:

(4) Supplementary bilingual education extension for certificates in the classroom teaching service and the school counselor title.

(i) Purpose. The purpose of a supplementary bilingual education extension is to authorize a teacher who is currently certified in a title in the classroom teaching service to teach bilingual English language learners and to authorize a certified school counselor to work with bilingual English language learners, where there is a

demonstrated shortage, while the candidate is matriculated in a program at an institution of higher education leading to an extension in bilingual education or to provide necessary supports to recently arrived and asylum-seeking students.

(ii) Limitations. The supplementary bilingual extension shall be valid for three years from its effective date and shall not be renewable, provided that such extension may be renewed one time for a period of three years from effective date of the renewal if the candidate obtained the first extension by submitting evidence of having achieved a satisfactory level of performance on the bilingual education assessment pursuant to subparagraph (iv) of this paragraph, is matriculated in a registered program leading to a bilingual education extension, and completed the coursework and employer statement requirements as prescribed in clauses (c) and (d) of subparagraph (iii) of this section. A supplementary bilingual education extension shall also be limited to employment with an employing entity.

(iii) Requirements. To be eligible for a supplementary bilingual education extension, a candidate shall meet the following requirements:

(a)

(b)

(c) The candidate shall be matriculated in a registered program leading to a bilingual education extension, as prescribed in section 52.21(b)(4) of this Title, provided that such program must require the candidate to pass an assessment of proficiency in the language of the bilingual education extension sought as a condition for entry into the program, or unless otherwise prescribed in subparagraph (iv) of this paragraph.

(d) Education. The candidate shall have completed coursework as prescribed in this subparagraph.

(1) The candidate shall have completed three semester hours in bilingual education as prescribed in the requirements for a bilingual education extension, set forth in this section, including study in theories of bilingual education and multicultural perspectives unless otherwise prescribed in subparagraph (iv) of this paragraph.

(2) A statement shall be submitted 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 or school counselors certifying:

(i) ...

(ii) the employing entity will require, as a condition of employment under the supplementary condition bilingual extension, the candidate's matriculation in a program at an institution of higher education leading to a bilingual extension unless otherwise prescribed in subparagraph (iv) of this paragraph; and

(iii)

4. Paragraph (4) of subdivision (a) of section 80-4.3 of the Regulations of the Commissioner of Education is amended to add a new subparagraph (iv) to read as follows:

(iv) For candidates who apply for a supplementary bilingual education extension in the classroom teaching service and in the school counselor title between September 12, 2023, and August 31, 2024, in order to provide necessary supports to recently

arrived and asylum-seeking students, the candidate may submit evidence of having achieved a satisfactory level of performance on the bilingual education assessment, if available, in lieu of matriculating in a registered program leading to a bilingual education extension and completing coursework as prescribed in clauses (c) and (d) of subparagraph (iii) of this section.

5. Section 80-5.18 of the Regulations of the Commissioner of Education is amended to read as follows:

(a) Purpose. The purpose of the supplementary certificate is to authorize a teacher who is currently certified in a title in the classroom teaching service to teach under a different title in the classroom teaching service for which there is a demonstrated shortage of certified teachers, while the teacher is engaged in study at an institution of higher education to complete requirements necessary to qualify for the new certificate or to provide necessary supports to recently arrived and asylum-seeking students.

(b)

(c) Requirements. To be eligible for a supplementary certificate, a candidate shall meet the requirements in each of the following paragraphs:

(1)

(2)

(3) The candidate shall agree to be enrolled in study at an institution of higher education leading to an initial or professional certificate in the certificate title sought unless otherwise prescribed in paragraph (7) of this subdivision.

(4) Education.

(i)

(ii) The candidate shall have completed coursework as prescribed in this subparagraph unless otherwise prescribed in paragraph (7) of this subdivision. The candidate shall have achieved at least a C or its equivalent in any undergraduate-level course and at least a B- or its equivalent in any graduate-level course submitted to meet the coursework requirements of this subparagraph.

(a)

(b)....

(c)

(d)

(e)

(f)

(5)

(6)

(7) For candidates who apply for a supplementary certificate in the English to speakers of other languages title, or who hold a valid certificate in the English to speakers of other languages title and apply for a supplementary certificate in another area, between September 12, 2023, and August 31, 2024, in order to provide necessary supports to recently arrived and asylum-seeking students, the candidate shall either:

(i) meet the application, certification, employer statement, and examination requirements pursuant to paragraphs (1), (2), (5), and (6) of this subdivision, or

(ii) meet the application, certification, enrollment, education, and employer statement requirements pursuant to paragraphs (1) through (5) of this subdivision.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

Communities across New York State are experiencing an influx of recently arrived and asylum-seeking students and families. The Board of Regents and the Department are committed to supporting local educational agencies (LEAs) in the delivery of high-quality educational services to all students, including recently arrived children and youth.

Due to the unanticipated increase in the enrollment of speakers of languages other than English, some LEAs may have difficulty hiring the additional educators needed to support these new English language learners in schools. Therefore, the Department is proposing to amend the Supplementary certificate and the Supplementary Bilingual Education extension requirements to create flexibility so that educators can expeditiously obtain this certificate and extension to address this influx of students.

A Supplementary certificate allows certified teachers to teach in an area that has a shortage of certified teachers, as determined by the Department. This type of teaching certificate is valid for five years and includes the following requirements, in addition to the general requirements for certificates in Subpart 80-1 of the Commissioner's regulations (8 NYCRR 80-5.18(c)):

- **Certification.** Hold a valid Initial, Permanent, or Professional teaching certificate.

- **Enrollment.** Agree to be enrolled in study leading to an Initial or Professional certificate in the area of the certificate sought at an institution of higher education.
- **Education.**
 - Hold the minimum degree required for an initial certificate in the certificate title sought; and
 - Complete 9-12 semester hours of specified coursework, depending on the area of the certificate sought.² For example, candidates who seek the English to Speakers of Other Languages (ESOL) certificate must have completed six semester hours of coursework in methods of second language teaching in the elementary and secondary grades and six semester hours in teaching literacy skills.
- **Employer Statement.** Has a statement from the employer attesting that they:
 - Seek to employ the candidate in a position in an area with a demonstrated shortage of certified teachers for which the candidate would need the Supplementary certificate to qualify;
 - Will require, as a condition of employment under the Supplementary certificate, the candidate's enrollment in study at an institution of higher education leading to an Initial or Professional certificate in the certificate title sought; and

² Additionally, the candidate must have achieved at least a C or its equivalent in any undergraduate level course and at least a B- or its equivalent in any graduate level course submitted to meet the coursework requirements.

- Will provide appropriate support to the candidate undertaking a teaching assignment under the Supplementary certificate to ensure the maintenance of quality instruction for students.
- **Examination.** Pass the Content Specialty Test in the area of the certificate sought, if available.

The Supplementary certificate gives teachers time to complete the requirements for the Initial or Professional certificate sought while addressing the staffing needs of their employer and receiving support from their employer in the area of the certificate. This certificate is only valid with the employer that completes the employer statement.

There is also a Supplementary Bilingual Education extension that is available for certified teachers and certified pupil personnel services professionals. This 3-year, non-renewable extension authorizes candidates that are: (1) certified teachers in a title in the classroom teaching service to teach bilingual ELLs; and (2) certified school counselors to work with bilingual ELLs, where there is a demonstrated shortage. Candidates must matriculate in a New York State registered program leading to a Bilingual Education extension and have completed three semester hours of coursework in bilingual education as required for the Bilingual Education extension sought, including study in theories of bilingual education and multicultural perspectives (8 NYCRR 80-2.9(a)(5) and 80-4.3(a)(4)).

Additionally, the employer must submit an employer statement attesting that they: (1) seek to employ the candidate in a position with a demonstrated shortage of certified teachers or certified pupil personnel services professionals with a Bilingual Education extension; (2) will require, as a condition of employment under the

Supplementary Bilingual Education extension, the candidate's matriculation in a program at an institution of higher education leading to a Bilingual Education extension; and (3) will provide appropriate support to the candidate undertaking an assignment with the Supplementary Bilingual Education extension to ensure the maintenance of quality instruction for such candidate. This extension is only valid with the employer that completes the employer statement.

The Department proposes to amend the Supplementary certificate requirements to provide flexibility for certified teachers who apply for the Supplementary English to Speakers of Other Languages (ESOL) certificate, and for teachers who hold a valid Initial, Professional, or Permanent ESOL certificate and apply for a Supplementary certificate in another area, between September 12, 2023, and August 31, 2024. This flexibility will allow candidates to complete either the examination requirement or the enrollment and education requirements, instead of both sets of requirements.

The Department also proposes to amend the Supplementary Bilingual Education extension requirements to create flexibility for certified teachers and certified pupil personnel services professionals who apply for such extension between September 12, 2023, and August 31, 2024. This flexibility will allow candidates to pass the Bilingual Education Assessment (BEA), if available, in lieu of matriculating in a registered program leading to a Bilingual Education extension and completing coursework. Additionally, the proposed amendment permits candidates to renew the Supplementary Bilingual Education extension one time if they obtain their first extension through this flexibility and meet the currently existing requirements for the extension as described above.

By allowing candidates to demonstrate that they have the knowledge and skills to provide the necessary supports to recently arrived and asylum-seeking students by passing a test instead of completing coursework, the proposed amendments provide a quicker pathway to obtain the Supplementary certificate and/or Supplementary Bilingual Education extension. This pathway is also less costly than completing coursework, which can ease the financial barrier for candidates.

The proposed amendment was presented to an ongoing meeting of the P-12 and Higher Education Committees for recommendation to the Full Board for adoption as an emergency rule at the September 2023 meeting of the Board of Regents, effective September 12, 2023. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (non-emergency) action after expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the January 2024 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the January meeting, would be January 24, 2024, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on December 10, 2023. Therefore, a second emergency action is necessary at the November 2023 meeting, effective December 11, 2023, for the preservation of the general welfare to create flexibilities for the Supplementary certificate and Supplementary Bilingual Education extension requirements to address staffing challenges due to the influx of recently arrived and asylum-seeking students, and to ensure that the emergency action taken at the

September 2023 meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at its January 2024 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for State agency rulemaking.