



TO: The Honorable Members of the Board of Regents

FROM: Angelique Johnson-Dingle *Angelique Johnson-Dingle*

SUBJECT: Proposed Amendment of Section 151-1.3 of the Regulations of the Commissioner of Education Relating to the Universal Prekindergarten Program (UPK) Staffing Qualifications

DATE: July 6, 2023

AUTHORIZATION(S): *Donna B. [Signature]* *Betty [Signature]*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of section 151-1.3 of the Regulations of the Commissioner of Education relating to Universal Prekindergarten Program (UPK) staffing qualifications?

Reason(s) for Consideration

Required by State Statute.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at the July 2023 Regents meeting. A copy of the proposed rule (Attachment A) and a statement of facts and circumstances which necessitate emergency action (Attachment B) are included.

Procedural History

The proposed amendment was presented to the P-12 Education Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at the June 2023 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 28, 2023, for a 60-day public comment period.

Because the June 2023 emergency action will expire on September 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 October 2023 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on September 27, 2023. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

The 2023-24 Enacted State Budget (L.2023, C. 56, Part A or “Chapter 56”) amended section 3602-e(12)(d) of the Education Law in relation to staffing qualifications for the Universal Prekindergarten Program (UPK), effective April 1, 2023.

Prior to this amendment, Education Law 3602-e(12)(d), as amended by the 2022-23 Enacted State Budget, allowed school districts to apply by August of the current school year for a waiver allowing personnel employed by an eligible agency collaborating with that school district to provide prekindergarten services and to meet staff qualifications prescribed by the licensing or registering agency. The Department adopted regulations at its January 2023 amendment to implement those amendments.

The recent amendment made to Education Law §3602-e by Chapter 56 allows for school districts to apply by September first of the current school year, rather than by August first, as most school districts do not have a complete understanding of their enrollment for the current school year until that time. Therefore, the Department proposes to amend section 151-1.3(e)(1)(iv) of the Commissioner’s regulations to conform with this amendment.

Related Regents Items

January 2023: [Proposed Amendment of Section 151-1.3 of the Regulations of the Commissioner of Education Relating to Universal Prekindergarten Program \(UPK\) Staffing Qualifications](https://www.regents.nysed.gov/sites/regents/files/123brca9.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/123brca9.pdf>)

June 2023: [Proposed Amendment of Section 151-1.3 of the Regulations of the Commissioner of Education Relating to the Universal Prekindergarten Program \(UPK\) Staffing Qualifications](https://www.regents.nysed.gov/sites/regents/files/623p12a1revised.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/623p12a1revised.pdf>).

Recommendation

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

VOTED: That section 151-1.3 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 11, 2023, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately conform the Commissioner’s regulations to Part A of Chapter 56 of the Laws of 2023 and to ensure that the emergency action taken at the June 2023 meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the July 2023 Regents meeting, the emergency rule will become effective September 11, 2023. It is anticipated that the proposed amendment will be presented for permanent adoption at the October 2023 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the October 2023 meeting, the proposed amendment will become effective as a permanent rule on November 1, 2023.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 305, and 3602 of the Education Law and Part A of Chapter 56 of the Laws of 2022

3.

Subparagraph (iv) of Paragraph (1) of Subdivision (e) of section 151-1.3 of the Regulations of the Commissioner of Education is amended to read as follows:

(iv) a school district may annually apply to the Commissioner by [August] September first of the current school year, on a form and format prescribed by the Commissioner, for a waiver that would allow personnel employed by an eligible agency that is collaborating with such school district to provide prekindergarten services, and licensed by an agency other than the department, to meet the staff qualifications prescribed by the licensing or registering agency.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

This year's Enacted State Budget (L.2023, C. 56, Part A or "Chapter 56") amended section 3602-e(12)(d) of the Education Law in relation to staffing qualifications for the Universal Prekindergarten Program (UPK), effective April 1, 2023. Prior to this amendment, Education Law 3602-e(12)(d), as amended by last year's Enacted State Budget (L. 2023, C. 56, Part A), allowed school districts to apply by August of the current school year for a waiver allowing personnel employed by an eligible agency collaborating with that school district to provide prekindergarten services and to meet staff qualifications prescribed by the licensing or registering agency. The Department adopted regulations at its January 2023 amendment to implement those amendments.

The recent amendment made to Education Law §3602-e by Chapter 56 allows for school districts to apply by September first of the current school year, rather than by August first, as many school districts do not know their enrollment for the current school year until September first. Therefore, the Department proposes to amend section 151-1.3(e)(1)(iv) of the Commissioner's regulations to conform with this amendment.

The proposed amendment was presented to the P-12 Education Committee for recommendation to the Full Board for adoption as an emergency rule at the June 2023 meeting of the Board of Regents, effective June 13, 2023. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) 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 October 2023 Regents meeting. Furthermore, pursuant to SAPA 203(1),

the earliest effective date of the proposed rule, if adopted at the October 2023 meeting, would be November 1, 2023, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on September 10, 2023. Therefore, a second emergency action is necessary at the July 2023 meeting for the preservation of the general welfare in order to immediately conform the Commissioner's regulations to Part A of Chapter 56 of the Laws of 2023 and to ensure that the emergency action taken at the June 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 the October 2023 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rule-making.