



TO: The Honorable Members of the Board of Regents

FROM: Sarah S. Benson *Sarah S. Benson*
William P. Murphy *William P. Murphy*

SUBJECT: Proposed Addition of Section 29.21 to the Rules of the Board of Regents and Section 59.16 to the Regulations of the Commissioner of Education and Amendment of Section 80-5.6 of the Regulations of the Commissioner of Education Relating to Temporary Practice by Certain U.S. Servicemembers and Servicemembers' Spouses Licensed or Certified in Another State

DATE: July 6, 2023

AUTHORIZATION(S):

Don McGreevey *Betsy Maloney*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed addition of section 29.21 to the Rules of the Board of Regents and section 59.16 to the Regulations of the Commissioner of Education and amendment of section 80-5.6 of the Regulations of the Commissioner of Education relating to temporary practice by certain U.S. servicemembers and servicemembers' spouses licensed or certified in another state?

Reason for Consideration

Required by federal statute (Public Law 117-333).

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 justifying emergency action (Attachment B) are attached.

Procedural History

The proposed amendment was presented to a joint meeting of the Higher Education and Professional Practice Committees 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 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 for the proposed amendments are available upon request from the Secretary to the Board of Regents.

Background Information

The proposed amendments implement provisions of federal law, Public Law (P.L.) 117-333, that require a receiving state to consider the professional license or educator certificate of a servicemember or their spouse to be valid in the new jurisdiction for the duration of military order or orders. The purpose of this law is to eliminate barriers to professional practice for servicemembers or their spouses who relocate because of military order(s). Prior to the enactment of this federal law, differing education, experience, and/or examination requirements between the states may have prevented servicemembers and their spouses from securing professional employment during deployment to another jurisdiction.

P.L. 117-333, provides that where a servicemember or their spouse relocate because of a military order or orders for military service to a location that is outside of the jurisdiction of the licensing authority that issued the covered license, such covered license shall be considered valid by the jurisdiction where they reside at a similar scope of practice and in the discipline applied for in the jurisdiction of such new residency for the duration of such military orders if such servicemember or spouse:

- provides a copy of the military order or orders to the licensing authority in the jurisdiction in which the new residence is located;
- remains in good standing with the licensing authority that issued the covered license and with any other licensing authority that has issued a license to the servicemember or spouse at a similar scope of practice and in the discipline applied in the jurisdiction of the licensing authority; and
- submits to the authority of the licensing authority in the new jurisdiction for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.

P.L. 117-333 defines a “covered license” as a professional license or certificate that:

- is in good standing with the licensing authority and with any other licensing authority that issued such professional license or certificate;
- the servicemember or servicemember’s spouse has actively used such license during the two years immediately preceding the relocation; and
- is not a license to practice law.

The 50-plus professions licensed in New York State and educator certificate titles are comparable, but often not identical, to professional licenses/educator certificates issued by other U.S. states and jurisdictions; licenses, certificate titles, and scopes of practice may differ. The federal law requires only that a license or certificate be “comparable” to one offered in the jurisdictions receiving servicemembers and servicemembers’ spouses.

Compliance with the standards of practice includes the practice of a profession as defined in the Education Law. An out-of-state licensee authorized pursuant to this law who engages in activities outside the scope of practice as defined in New York law could be charged with unprofessional conduct under Education Law §6509.

Proposed Amendment

The Department proposes to add a new section 59.16 to the Commissioner’s regulations. This will allow the Department to issue a temporary practice certificate to eligible servicemembers or their spouses who hold an out-of-state license for a profession authorized or recognized in New York State. The proposed amendment also allows the Department to issue an educator permit to eligible servicemembers or their spouses who hold an out-of-state educator certificate comparable to a New York State certificate. The temporary practice certificate/educator permit would provide evidence that the individual is authorized to practice in New York State under the out-of-state license or certificate for the duration of the military order or orders.

Application:

Title VIII Professions. For the temporary practice certificate, a servicemember or servicemember’s spouse must submit an application that includes:

- (1) a copy of the military order or orders that relocates the servicemember to New York State;
- (2) a copy of their current license and registration from another U.S. state or jurisdiction that authorizes the applicant to practice in the same profession in which the servicemember/spouse seeks to practice in New York State;
- (3) an attestation that the servicemember/spouse submits to the full disciplinary and regulatory authority of the Board of Regents and the Department, and fulfillment of any continuing education requirements for such profession;

- (4) verification of good standing in the U.S. state or jurisdiction where the servicemember or their spouse is currently licensed or certified to practice the profession; and
- (5) an attestation that the servicemember/spouse has actively used the license during the two years (i.e., 24 months) immediately preceding the relocation.

Educators. For the educator permit, a servicemember or servicemember's spouse must submit an application that includes:

- (1) a copy of their military order that relocates the servicemember to New York State;
- (2) a copy of their valid educator certificate or license from another U.S. state or jurisdiction that authorizes the applicant to practice in the same educator area in which the servicemember or their spouse seeks to practice in New York State;
- (3) an attestation that the servicemember/spouse submits to the full disciplinary and regulatory authority of the Board of Regents and the Department, and fulfillment of any continuing education requirements for such educator area;
- (4) verification of good standing in the U.S. state or jurisdiction where the servicemember or their spouse is currently certified as an educator; and
- (5) verification of two years¹ of satisfactory work experience in a position requiring the certificate or license issued by such other state or jurisdiction authorizing such service, provided that such experience was completed during the two years (i.e., 24 months) immediately preceding the relocation. The experience in the other U.S. state or jurisdiction must have been in a position that would have required the equivalent of an Initial, Provisional, Professional, or Permanent certificate in the area of the permit sought as an educator for employment in New York State.

If the application is approved, the Department will issue a temporary practice certificate or educator permit, as appropriate, to the servicemember or their spouse.

Time Validity:

The temporary practice certificate and educator permit are valid for the duration of the military order or orders for service in New York State or for the time period during which the out-of-state certificate or license is valid, whichever length of time ends first. If

¹ Servicemember's spouses who hold a valid out-of-state educator certificate but are not eligible for an educator permit because they do not have two years of acceptable experience immediately preceding the relocation may be eligible for the Transitional J certificate. If the servicemember or their spouse holds a valid out-of-state educator certificate and has completed three years of acceptable experience, they may be eligible for the Initial certificate through the "Endorsement of a Certificate" pathway and choose to pursue this certificate type instead of the permit.

disciplinary action is taken against the temporary practice certificate holder or educator permit holder by any other state or jurisdiction in which they hold a certificate or license, the temporary practice certificate and educator permit shall no longer be valid.

If such order or orders do not include an expiration date, the temporary practice certificate shall have an expiration date of the professional license or registration in the jurisdiction that qualifies the servicemember or spouse for practice in New York. Upon receipt of a revised or updated military order which includes an expiration date, the temporary practice certificate holder must notify the Department and provide the revised or updated military order or orders showing the updated expiration date of such order or orders. For educator permits, if such order or orders do not include an expiration date and the out-of-state certificate or license does not include an expiration date, the permit shall not have an expiration date until such order or orders are revised or updated or the out-of-state certificate or license is updated to include an expiration date.

If the duration of such order or orders change, in order to extend the authorization to continue to practice under the temporary practice certificate or educator permit, the temporary practice certificate or educator permit holder must notify the Department and provide the revised or updated military order showing the updated expiration date of such order or orders. Additionally, if the time period during which the out-of-state certificate or license is valid changes, the certificate or permit holder must notify the Department and provide documentation showing the updated license or educator certificate expiration date, if any. If the temporary practice certificate holder or educator permit holder does not renew the out-of-state license or certificate, they must apply for licensure or educator certification in New York State and meet all requirements under Education Law and/or the Commissioner's regulations to practice in the State.

Verification:

Individuals holding temporary practice certification in New York State would be verified on the Department's [website](#) like any other New York State licensee or limited permit holder. The temporary practice certificate holder must display the certificate where they are practicing in New York State and they must notify the Department within 60 days of any change in the certificate holder's name, address, or contact information. Individuals holding an educator permit will be listed on the Department's website through the [certification lookup](#) database.

Educator Permit Holders Tenure and CTLE:

Individuals who hold a valid educator permit in the classroom teaching service, pupil personnel service, or as a school building leader and are employed as a full-time educator will be considered a professional educator appointed to tenure or a probationary period in a tenure area and subject to any evaluation requirements pursuant to Part 30 of the Rules of the Board of Regents. Where an educator permit holder is appointed as a classroom teacher or building principal, such educator shall be subject to the same requirements prescribed in the Education Law related to satisfactory service and annual evaluations as any other classroom teacher or building principal.

Additionally, individuals who hold an educator permit in the classroom teaching service or educational leadership service for five or more years must complete the continuing teacher and leader education (CTLE) requirements pursuant to Part 80-6 of the Commissioner's regulations.

Department's Good Moral Character Determinations and Disciplinary Authority:

Consistent with requirements across existing licenses/permits issued pursuant to Education Law, to be granted an educator permit, or a temporary practice certificate, the Department must determine that the servicemember/spouse is of good moral character. Additionally, to obtain an educator permit, the servicemember/spouse must be fingerprinted and receive clearance from the Department after a criminal background check.

Once individuals are granted an educator permit, they will be subsequently subject to the moral character review process pursuant to Part 83 of the Commissioner's regulations. Failure to provide a revised or updated military order or orders for service in New York State and/or documentation showing an updated certificate or license expiration date may constitute grounds for a moral character review.

The proposed rule also adds a new section 29.21 to the Regents Rules to affirm the Board of Regents' role in public protection by subjecting temporary practice certificate holders to the same laws, rules, and regulations that define unprofessional conduct in that licensed profession. The out-of-state licensee's temporary practice certificate would be subject to suspension, revocation, or annulment for cause and disciplinary proceedings and penalties to the same extent, and for the same reasons, as individuals practicing the same profession, as provided in Title VIII of the Education Law.

Related Regents Items

June 2023: [Proposed Addition of Section 29.21 to the Rules of the Board of Regents and Section 59.16 to the Regulations of the Commissioner of Education and Amendment of Section 80-5.6 of the Regulations of the Commissioner of Education Relating to Temporary Practice by Certain U.S. Servicemembers and Servicemembers' Spouses Licensed or Certified in Another State](https://www.regents.nysed.gov/sites/regents/files/623ppchea1_revised.pdf)
(https://www.regents.nysed.gov/sites/regents/files/623ppchea1_revised.pdf)

Recommendation

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

VOTED: That section 29.21 of the Rules of the Board of Regents and section 59.16 of the Regulations of the Commissioner of Education be added, and section 80-5.6 of the Regulations of the Commissioner of Education be amended, as submitted, effective September 11, 2023, as an emergency action, upon a finding that such action is necessary for the preservation of the public health and the general welfare in order to timely implement the provisions of federal law Public Law 117-333, effective January 5, 2023, which will increase the number of licensed professionals and practicing educators in New

York State, and to ensure that the emergency action taken at the June 2023 Regents 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 rule will be presented to the Board of Regents for 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 meeting, the proposed rule will become effective on November 1, 2023.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 305, 308, 3001, 3004, 3009, 6504, 6506, and 6507 of the Education Law and Public Law 117-333.

1. Section 59.16 of the Regulations of the Commissioner of Education is added to read as follows:

59.16 Temporary practice certificate for certain servicemembers and spouses

(a) Definitions. For purposes of this section, the following terms shall have the following meanings:

(1) "Servicemember" shall have the same meaning as defined in 50 U.S.C. 3911(1).

(2) "Military service" shall have the same meaning as defined in 50 U.S.C. 3911(2).

(b) Eligibility. A United States servicemember or servicemember's spouse, either of whom holds a current professional license in good standing in another United States state or jurisdiction other than New York State and has actively used such license during the two years preceding the relocation, and who relocates their residency because of a military order or orders for military service in New York State may practice under the out-of-state license in New York State if he or she meets the requirements for a temporary practice certificate prescribed in this section. For purposes of this section, a certificate of temporary practice shall be considered the same as a license to practice a profession.

(c) Application. The servicemember or servicemember's spouse shall submit in a form acceptable to the department an application for the temporary practice certificate, which shall include:

(1) A copy of the military order or orders that relocate the servicemember to New York State that include the expiration date (if any) of such orders;

(2) A copy of the current license and registration, including the expiration date of such license, from the other United States state or jurisdiction that authorizes the applicant to practice the same profession which the servicemember or servicemember's spouse seeks to practice in New York State;

(3) An attestation that the servicemember or servicemember's spouse submits to the full disciplinary and regulatory authority of the Board of Regents and the department, including but not limited to standards of practice, discipline, and fulfillment of any continuing education requirements for the profession in which the temporary practice certificate is issued;

(4) Verification of good standing by the current state(s) or jurisdiction(s) of licensure to practice the profession in that jurisdiction(s). If the profession is not authorized or recognized in New York State, the servicemember or servicemember's spouse may not practice that profession in New York State; and

(5) Attestation that the servicemember or spouse of a servicemember has actively used the license during the two years immediately preceding the relocation. For purposes of this section, year is defined as 12 months.

(d) The servicemember or servicemembers spouse shall be of good moral character, as required by the Education Law and as determined by the department.

(e) Certificate.

(1) The department shall issue a temporary practice certificate to a servicemember or servicemember's spouse who meets the requirements of this section.

(2) The certificate shall name the authorized New York State profession and the certificate holder's licensed profession and license number in the originating jurisdiction.

(3) The certificate holder shall display the certificate where the certificate holder practices such profession in New York State.

(4) Failure to notify the department within 60 days of any change in the certificate holder's name, address, or contact information shall subject the certificate holder to the penalties set forth in section 6511 of the Education Law.

(f) Duration. Except as otherwise prescribed in this section, the temporary practice certificate shall be valid for the duration of the military order or orders for service in New York State or for the time period during which the out-of-state license is valid, whichever length of time ends first; provided, however, that if disciplinary action is taken against the certificate holder by the other state or jurisdiction in which they hold a license, the temporary practice certificate shall no longer be valid as the servicemember or servicemember's spouse would no longer be in good standing in such other state or jurisdiction.

(1) If such order does not include an expiration date, the certificate shall expire on the date the applicant's license or registration in the other jurisdiction expires; the certificate holder is responsible for providing an updated registration from the other state for any renewal of the authorization.

(2) If the duration of such order or orders changes, the certificate holder shall notify the department and provide the revised or updated military order or orders for service in New York State showing the updated expiration date of such orders. If the time period during which the out-of-state license is valid changes, the certificate holder shall notify the department and provide documentation showing the updated license

expiration date. If disciplinary action is taken against the certificate holder by the other state or jurisdiction in which they hold a license, the certificate holder shall notify the department.

(3) The department shall change the expiration date of the certificate based on the revised or updated military order or orders for service in New York State that show a new or updated expiration date of such orders or documentation showing the updated end date of service or license expiration date.

2. Section 29.21 of the Rules of the Board of Regents is added to read as follows:

29.21 Unprofessional conduct by temporary practice certificate holder

(a) A servicemember or servicemember's spouse who is issued a temporary practice certificate pursuant to section 59.16 of this Title shall be under the supervision of the Board of Regents and subject to the disciplinary procedures and penalties set forth in Subarticle 3 of Article 130 of the Education Law.

(b) Any such certificate holder shall be subject to suspension, revocation, or annulment for cause, and disciplinary proceedings and penalties in the same manner, to the same extent, and for the same reasons as individuals licensed in the same profession in New York State, as provided in Title VIII of the Education Law and this Title.

(c) For purposes of this section, a certificate of temporary practice shall be considered the same as a license to practice a profession.

3. Section 80-5.6 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (f) to read as follows:

(f) Authorization for service under an out-of-state certificate for certain servicemembers and spouses.

(1) Definitions. For purposes of this subdivision, the following terms shall have the following meanings:

(i) "Servicemember" shall have the same meaning as defined in 50 U.S.C. 3911(1).

(ii) "Military service" shall have the same meaning as defined in 50 U.S.C. 3911(2).

(2) Eligibility. A United States servicemember or servicemember's spouse, either of whom holds a valid educator certificate or license in good standing in another state or jurisdiction in the United States other than New York State and has actively used such license during the two years preceding the relocation, and who relocates their residency because of a military order or orders for military service in New York State may practice under the out-of-state certificate or license in New York State if he or she meets the requirements for a permit prescribed in this section. For purposes of this section, a permit shall be considered the same as a certificate to practice as a professional educator.

(3) Application. The servicemember or servicemember's spouse shall submit in a form acceptable to the department an application for the permit, which shall include:

(i) A copy of military order or orders that relocate the servicemember to New York State that include the expiration date (if any) of such orders;

(ii) A copy of the valid educator certificate or license, including the expiration date of such certificate, from the other state or jurisdiction of the United States that authorizes the applicant to practice in the same area in which the servicemember or

servicemember's spouse seeks to practice in New York State and is equivalent to an initial, provisional, professional, or permanent certificate;

(iii) An attestation that the servicemember or servicemember's spouse submits to the full disciplinary and regulatory authority of the Board of Regents and the department, including but not limited to standards of practice, discipline, and fulfillment of any continuing education requirements for the area in which the permit is issued;

(iv) Verification of good standing by the current state(s) or jurisdiction(s) of certification or licensure to practice as an educator in that jurisdiction(s). If the area of the certificate or license is not comparable to a New York State certificate, the servicemember or servicemember's spouse may not practice in the area of the certificate or license in New York State; and

(v) Verification of two years of satisfactory experience in the other state or jurisdiction of the United States in a position that would have required the equivalent of an initial, provisional, professional, or permanent certificate in the area of the permit sought as an educator for employment in New York State and while under a certificate or license issued by such other state or jurisdiction authorizing such service, provided that such experience was completed during the two years immediately preceding the relocation.

(4) The servicemember or servicemember's spouse shall meet the requirements in section 80-1.11 of this Part and Part 87 of this Title relating to criminal history checks and the requirement in Part 83 of this Title that such applicant be of good moral character.

(5) Time Validity. Except as otherwise prescribed in this subdivision, the permit shall be valid for the duration of the military order or orders for service in New York

State or for the time period during which the out-of-state certificate or license is valid, whichever length of time ends first; provided, however, that if disciplinary action is taken against the permit holder by the other state or jurisdiction in which they hold a certificate or license, the permit shall no longer be valid as the servicemember or servicemember's spouse would no longer be in good standing in such other state or jurisdiction.

(i) If such order or orders do not include an expiration date and the out-of-state certificate or license does not include an expiration date, the permit shall not have an expiration date until such order or orders are revised or updated or the out-of-state certificate or license is updated to include an expiration date.

(ii) If the duration of such order or orders changes, the permit holder shall notify the department and provide the revised or updated military order or orders for service in New York State showing the updated expiration date of such orders. If the time period during which the out-of-state certificate or license is valid changes, the permit holder shall notify the department and provide documentation showing the updated certificate or license expiration date. If disciplinary action is taken against the permit holder by the other state or jurisdiction in which they hold a certificate or license, the permit holder shall notify the department.

(iii) The department shall change the expiration date of the permit based on the revised or updated military order or orders for service in New York State that show a new or updated expiration date of such orders or documentation showing the updated end date of service or certificate or license expiration date.

(6) Individuals who meet the requirements prescribed in this subdivision and hold a valid permit are subject to the moral character review process pursuant to Part 83 of this Title. Failure to provide revised or updated military order or orders for service in

New York State and/or documentation showing an updated certificate or license expiration date may constitute grounds for a moral character review.

(7) Individuals who meet the requirements prescribed in this subdivision, hold a valid permit in the classroom teaching service, pupil personnel service, or as a school building leader, and are employed as a full-time educator:

(i) shall be considered a professional educator pursuant to subpart 30-1 of this Title and shall be appointed to tenure or to a probationary period in a tenure area identified in subpart 30-1 of this Title; and

(ii) shall be subject to any evaluation requirements prescribed in Part 30 of this Title. For classroom teachers and building principals, in order to be appointed to tenure, such educators shall be subject to the same requirements prescribed in the education law related to satisfactory service and annual evaluations as any other classroom teacher or building principal.

(8) Individuals who meet the requirements prescribed in this subdivision and hold a permit in the classroom teaching service or educational leadership service for five or more years shall be subject to the continuing teacher and leader education requirements pursuant to Part 80-6.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

Servicemembers or their spouses who hold a professional license or an educator certificate and relocate because of service orders to another jurisdiction often must meet different standards than those of the jurisdiction in which they were originally licensed. The proposed rule is necessary to conform State law to implement provisions of federal law P.L. 117-333, which, effective January 5, 2023, requires receiving states to consider a servicemember or their spouse's professional license valid in the new jurisdiction for the duration of such military order or orders.

The proposed rule conforms the Regent's Rules to P.L. 117-333 by adding a new section 29.21 to affirm the Board of Regents role in public protection by subjecting temporary practice certificate holders to the same laws, rules, and regulations that define unprofessional conduct in that licensed profession. The out-of-state licensee's temporary practice certificate would be subject to suspension, revocation, or annulment for cause and disciplinary proceedings and penalties to the same extent, and for the same reasons, as individuals practicing the same profession as provided in Title VIII of the Education Law.

The proposed rule also conforms the Commissioner's regulations to P.L. 117-333 by adding a new section 59.16 that allows the Department to issue a temporary practice certificate and amending section 80-5.6 to allow the Department to issue an educator permit to an eligible servicemember or spouse. The temporary practice certificate and educator permit would provide evidence that the individual is authorized to practice in

New York State under the out-of-state license or educator certificate for the duration of the military orders.

The proposed amendment was presented to a joint meeting of the Higher Education and Professional Practice Committees 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 rule can be presented for adoption, after expiration of the required 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 202(1) and (5), would be the October 2023 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the October 2023 meeting, would be November 1, 2023, the date a Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on September 10, 2023. Therefore, since federal law P.L. 117-333 is already effective, a second emergency action is necessary at the July 2023 meeting, effective September 11, 2023, for the preservation of the public health and the general welfare in order to timely implement the provisions of federal law P.L. 117-333, which will increase the number of licensed professionals and practicing educators in New York State, and to ensure that the emergency action taken at the June meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed amendment will be presented for permanent adoption at the October 2023 Regents meeting, which is the first scheduled meeting after the expiration of the 60-day public comment period mandated by SAPA for state agency rulemaking.