

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: Higher Education Committee

FROM: Johanna Duncan-Poitier

SUBJECT: Qualifications for Teachers Appointed to a Position in Instructional Support Services and Tenure and Seniority Rights for Teachers Performing Such Services

DATE: April 15, 2009

STRATEGIC GOAL: Goal 3

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Should the Board of Regents, by emergency action, amend Subpart 30-1 of the Rules of the Board of Regents and section 80-1.1 of the Regulations of the Commissioner of Education and add a new section 80-5.21 to the Regulations of the Commissioner of Education, to authorize teachers employed by a school district or board of cooperative educational services (BOCES) to perform instructional support services to accrue tenure and seniority rights in a tenure area for which they are properly certified?

Reason(s) for Consideration

Review of Policy

Proposed Handling

The proposed amendment is submitted to the Higher Education Committee for adoption as an emergency measure at its April 2009 meeting. A second emergency measure and confirmation of the proposed amendment as a permanent rule is scheduled for the July 2009 Regents meeting. Supporting materials are available upon request from the Secretary to the Board of Regents. A Notice of Proposed Rule Making concerning the proposed amendment will be published in the State Register no later than May 13, 2009.

Procedural History

This issue was discussed at the March 2009 meeting of the Regents Higher Education Committee.

Background Information

At the March 2009 meeting of the Regents Committee on Higher Education, we briefly discussed the issue of teachers serving in instructional support positions outside of New York City, and our ongoing discussions with interested parties seeking an appropriate remedy. The purpose of the proposed amendment is to permit teachers employed in instructional support service positions in BOCES and school districts to receive tenure and seniority rights in a tenure area for which they are properly certified. (The regulations do not impact teachers serving in the New York City School District.) The proposed amendment is necessary because the number of individuals serving in these types of positions has grown considerably in the past three decades and these positions have never been formally recognized as being educational in nature under section 35-g of the Civil Service Law. The effect is that teachers serving in these positions currently are not eligible to accrue tenure and seniority rights in any tenure area.

Research in school improvement and instructional leadership tells us that improvement in educational outcomes occurs when teachers learn and grow. Much of this learning is accomplished through professional development activities provided by instructional support staff. Typically, individuals serving in this capacity are experienced teachers, employed to provide training workshops, study groups, demonstration lessons, modeling of instruction, coaching, and similar services. They provide technical assistance on the development, delivery, and assessment of programs in specific content areas; provide information on best practices and current research; make curriculum resources available; support a culture of reflective practice; assist teachers in analyzing student performance data; provide technical assistance on technology tools to extend and support student learning, and provide a host of other services. Instructional support providers are typically drawn from among the best and most experienced teachers in a school district. Sometimes, especially at BOCES, teachers with particular expertise in working with other educators are hired specifically to provide instructional support services. Job titles vary widely: teacher trainer, curriculum development specialist, subject coach, professional development specialist, CSE chair, technology coordinator, intervention specialist, etc.

Despite the fact that instructional support service positions have grown in number and variety, these positions were never certified to the State Civil Service Commission pursuant to the provisions of 35-g of the Civil Service Law as educational in nature and therefore individuals appointed to such positions were not required to have a teaching certificate and teachers in such positions were not able to acquire tenure and/or seniority rights for the performance of such duties.

To address this issue, if the Regents approve the proposed course of action, the Commissioner is prepared to certify to the New York State Civil Service Commission that positions providing direct instructional support to other educators for the purpose of enhancing instruction and improving student performance are part of the teaching staff of a public school. Accordingly, these positions would become part of the unclassified service, require an appropriate teaching certificate, and would be subject to Education Law in regard to appointment and tenure.

We propose that the following actions be taken:

- Establish qualifications for an individual to be appointed to a position where they perform instructional support services, i.e., (1) certification and (2) experience or education requirements
- Authorize a teacher who is performing instructional support services in a school district or BOCES to accrue tenure and/or seniority rights in a tenure area for which they are properly certified
- Permit teachers who did not provide knowing consent to an assignment outside of their previous tenure to receive retroactive credit for their prior service in an instructional support position and continue to receive credit in their previous tenure area while assigned to perform instructional support services
- Authorize teachers who were appointed to an improper tenure area or a tenure area not authorized by Part 30 of the Rules of the Board of Regents to receive retroactive credit for their prior service in instructional support services in a tenure area for which they are properly certified and to continue to receive such credit while assigned to perform instructional support services
- Require that by July 1, 2009, any school district or BOCES which currently employs a certified individual who is not appointed to tenure or a probationary period and who is working in an instructional support service position make a probationary appointment for such individual in a tenure area in which they are properly certified if the district/BOCES intends to continue to employ such individual.

Teaching vs. Instructional Support

Many teachers are selected for an assignment in instructional support services based on expertise gained from years of quality service to the district and possibly additional education or training attained. These teachers literally “bubble up” from the ranks of the various teaching areas as a result of exemplary service. It, therefore, makes sense to treat these additional responsibilities as an extension of their teaching duties and permit them to remain in their tenure area and continue to accrue seniority while performing instructional support services. The proposed amendment provides for an exception to the general rule that, to earn seniority credit, a teacher must devote at least 40% of his/her time working in classroom instruction in his/her tenure area and

now will allow teachers to accrue tenure and seniority rights for the performance of instructional support duties in any tenure area where they are properly certified.

Proposed Certification Requirements

The proposed amendment adds a new Section 80-5.21 to the Commissioner's Regulations, establishing the qualifications for an appointment of a teacher to a position in instructional support services. The proposed amendment requires that an individual performing instructional support services:

(1) hold a valid Permanent or Professional teaching certificate and have at least three years of satisfactory teaching experience, **or**

(2) hold a valid Initial, Provisional, Permanent or Professional certificate and hold an educational degree(s) beyond the baccalaureate level that qualifies such person to be competent and qualified to provide instructional support services.

As with any teaching position, local school districts or BOCES may establish additional requirements for a specific position beyond the minimum certification requirements set in Commissioner's Regulations.

Consideration for Teachers Currently Serving

The proposed rule also addresses the issues faced by teachers currently serving in instructional support positions who were appointed by their school district or BOCES to one of the existing tenure areas in Part 30 of the Rules of the Board of Regents or to a tenure area that does not currently exist in the Rules of the Board of Regents. While the school district/ BOCES and the teachers involved may have acted in good faith, the teachers are currently in a situation where their tenure appointments were not consistent with existing regulations, which may have unintended consequences. The various situations and how the proposed rule would address them are described below.

Situation 1: Teachers already employed in a district/BOCES who were appointed prior to May 1, 2009 to instructional support duties outside of their former tenure area without their knowing consent to leaving their prior tenure area:

Such teachers in school districts would be given credit for their past and future service performing instructional support duties by accruing tenure and seniority rights in their previous tenure area from the initial date of their assignment to instructional support services. These individuals would be able to continue in their assignment in instructional support, with accrued seniority for all the time they have served in this capacity.

Situation 2: Teachers hired for instructional support positions prior to May 1, 2009, and appointed with their knowing consent to either an improper or nonexistent tenure area.

Such teachers would have their past and future service in instructional support services applied to a tenure area in which they are properly certified.

Situation 3: Certified individuals hired for instructional support positions prior to May 1, 2009, but not appointed to a tenured position.

For each teacher the district or BOCES wishes to continue to employ, the district or BOCES would need to make a probationary appointment by July 1, 2009 to a tenure area for which the teacher is properly certified. These teachers, however, would not be credited for any service prior to their probationary appointment.

The attached chart displays how the proposed tenure structure will affect teachers employed in instructional support service positions.

Recommendation

I recommend that the Regents take the following action:

VOTED: That a new subdivision (j) be added to section 30-1.1 of the Rules of the Board of Regents; that subdivisions (b) and (c) of section 30-1.2 be renumbered to subdivisions (c) and (d), new subdivision (b) be added, and renumbered subdivision (d) be amended; that subdivision (a) of section 30-1.9 be amended, subdivisions (b) through (e) be renumbered to subdivisions (c) through (f), a new subdivision (b) be added; that paragraphs (23) through (46) of subdivision (b) of section 80-1.1 of the Regulations of the Commissioner of Education be renumbered to paragraphs (24) through (47) of subdivision (b), and a new subdivision (23) be added; and that a new section 80-5.21 be added, as submitted, effective May 1, 2009, as an emergency action upon a finding by the Board of Regents that such action is necessary for preservation of the general welfare in order to allow a teacher employed by a school district or BOCES to accrue tenure and seniority rights for the performance of instructional support services.

Timetable for Implementation

The emergency adoption will take effect on May 1, 2009. It is anticipated that the proposed amendment will be presented for confirmation at the July 2009 Regents meeting. If adopted in July, the effective date of the permanent rule will be August 20, 2009.

Attachment

Attachment to Higher Education Committee Regents Item

| Circumstances | School Districts/BOCES |
|---|--|
| Teacher (already employed) appointed prior to 5/1/09 to instructional support outside of former tenure area, without knowing consent. | Past and future service applied to prior tenure area. |
| Teacher hired for/ assigned to instructional support prior to 5/1/09; appointed with consent to improper or non existent tenure area. | Past and future service applied to tenure area in which certified. |
| Certified individual hired for/assigned to instructional support prior to 5/1/09, but not appointed to a tenure area. | New probationary appointment to tenure area for which certified by July 1, 2009 for those teachers that the district/BOCES desires to continue to employ; future service applied to this tenure area.; no credit for past service prior to probationary appointment. |
| <p>Teacher hired for/ assigned to instructional support on or after 5/1/09.</p> <p>a) Currently employed and serving in a proper tenure area.</p> <p>b) New hire.</p> | <p>a) Retain tenure area</p> <p>b) Probationary appointment to tenure area for which certified.</p> |

ISS = Instructional Support Services

4/14/09

Attachment to Higher Education Committee Regents Item
AMENDMENT OF THE RULES OF THE BOARD OF REGENTS AND THE REGULATIONS OF THE
COMMISSIONER OF EDUCATION

Pursuant to section 207 of the Education Law.

1. A new subdivision (j) shall be added to section 30-1.1 of the Rules of the Board of Regents, effective May 1, 2009, to read as follows:

(j) Instructional support services shall mean professional development, pedagogical support, technical assistance, consultation, and/or program coordination offered by teachers to other school personnel including, but not limited to: conducting workshops, study groups, and demonstration lessons; modeling instruction; providing feedback, coaching, mentoring and other professional support for instructional staff; providing training in best instructional practices in specific content areas; assisting instructional staff in analyzing student performance data and differentiating instruction to meet the needs of all students; coordinating the provision of special education services; developing and promoting a culture of reflective instructional practice; providing curriculum and assessment resources to instructional staff; providing information and support on technology tools to extend and support student learning; assessing curriculum development or professional development needs; and such similarly related work.

2. Subdivisions (b) and (c) of section 30-1.2 of the Rules of the Board of Regents shall be renumbered to subdivisions (c) and (d) of section 30-1.2 of the Rules of the Board of Regents, effective May 1, 2009.

3. A new subdivision (b) shall be added to section 30-1.2 of the Rules of the Board of Regents, effective May 1, 2009, to read as follows:

(b) The provisions of this Subpart shall apply to a professional educator appointed by a board of education or board of cooperative educational services for the performance of duties in instructional support services, as defined in subdivision (j) of section 30-1.1 of this Subpart, on or after August 1, 1975 as follows:

Attachment to Higher Education Committee Regents Item

(1) A professional educator employed by a board of education or board of cooperative educational services on May 1, 2009 that was appointed to tenure or a probationary period in a tenure area identified in this Subpart for the performance of duties in instructional support services and who did not provide knowing consent to an assignment outside of his previous tenure area pursuant to section 30-1.9 of this Subpart when he was assigned by such board of education or board of cooperative educational services prior to May 1, 2009 to the performance of duties in instructional support services shall receive credit toward tenure and/or accrue tenure and seniority rights in his previous tenure area from the initial date of his assignment to the performance of such duties and shall continue to receive tenure and/or seniority rights in his previous tenure area while assigned to perform duties in instructional support services.

(2) A professional educator employed by a board of education or board of cooperative educational services on May 1, 2009 who was appointed by such board of education or board of cooperative educational services prior to May 1, 2009 for the performance of duties in instructional support services, and who was appointed to tenure or a probationary period in an improper tenure area or a tenure area not authorized under this Subpart based upon the performance of such duties, shall be deemed to have been appointed or assigned by such board of education or board of cooperative educational services to serve in a tenure area for which he holds the proper certification as described in subdivision (b) of section 30-1.9 of this Subpart as it exists on May 1, 2009, from the initial date of his assignment and shall continue to receive credit toward tenure and/or accrue tenure and seniority rights in such tenure area while assigned to perform duties in instructional support services provided that he holds the proper certification for such tenure area.

(3) Any board of education or board of cooperative educational services that employs a professional educator on May 1, 2009 who has not been appointed to tenure or a probationary period in a tenure area and is performing duties in instructional support services, shall make a probationary appointment in accordance with the provisions of subdivision (b) of section 30-1.9 of this Subpart by

Attachment to Higher Education Committee Regents Item

July 1, 2009 if the board desires to continue to employ such professional educator for instructional support services, provided that the professional educator meets the requirements of section 80-5.21 of the Regulations of the Commissioner of Education. Thereafter, appointments on tenure shall be made in accordance with the provisions of this Subpart.

(4) Any board of education or board of cooperative educational services that assigns a professional educator to the performance of instructional support services on or after May 1, 2009 who has previously been appointed to tenure or a probationary period by such board in a tenure area identified in this Subpart shall credit the professional educator with tenure and seniority rights in their existing tenure area while assigned to perform duties in instructional support services.

(5) Any board of education or board of cooperative educational services that appoints a professional educator on or after May 1, 2009 for the performance of duties in instructional support services shall make probationary appointments and appointments on tenure in accordance with subdivision (b) of section 30-1.9 of this Subpart.

4. Renumbered subdivision (d) of section 30-1.2 of the Rules of the Board of Regents shall be amended, effective May 1, 2009, to read as follows:

(d) Except as otherwise provided in subdivision (b) of this section, each board of education or board of cooperative educational services shall on and after the effective date of this Subpart make probationary appointments and appointments on tenure in accordance with the provisions of this Subpart.

5. Subdivision (a) of section 30-1.9 of the Rules of the Board of Regents shall be amended, effective May 1, 2009, to read as follows:

(a) [A] Except as otherwise provided in subdivision (b) of this section, a board of education or a board of cooperative educational services shall appoint and assign a professional educator in such a manner that he shall devote a substantial portion of his time throughout the probationary period in at least one designated tenure area except that a professional educator who teaches in an

Attachment to Higher Education Committee Regents Item
experimental program as defined in [subdivision (i) of] section 30-1.1 of this Subpart and who does not devote 40 percent or more of his time to service in any one tenure area may be appointed to a tenure area for which he holds the proper certification.

6. Subdivisions (b) through (e) of section 30-1.9 of the Rules of the Board of Regents shall be renumbered to subdivisions (c) through (f) of section 30-1.9 of the Rules of the Board of Regents, effective May 1, 2009.

7. A new subdivision (b) shall be added to section 30-1.9 of the Rules of the Board of Regents, effective May 1, 2009, to read as follows:

(b) Except as otherwise provided in subdivision (b) of section 30-1.2 of this Subpart, a board of education or a board of cooperative educational services shall appoint and assign a professional educator in such a manner that he shall devote a substantial portion of his time in at least one designated tenure area except that a professional educator appointed or assigned on or after May 1, 2009 to duties described in either paragraph (1) or (2) of this subdivision, shall be appointed to a tenure area for which he holds the proper certification.

(1) A professional educator appointed or assigned to devote a substantial portion of his time to the performance of duties in instructional support services; or

(2) A professional educator appointed or assigned to devote a substantial portion of his time to a combination of duties in instructional support services and time in at least one designated tenure area identified in this Subpart.

8. Paragraphs (23) through (46) of subdivision (b) of section 80-1.1 of the Regulations of the Commissioner of Education shall be renumbered to paragraphs (24) through (47) of subdivision (b) of section 80-1.1 of the Regulations of the Commissioner of Education, effective May 1, 2009.

9. A new paragraph (23) shall be added to subdivision (b) of section 80-1.1 of the Regulations of the Commissioner of Education, effective May 1, 2009, to read as follows:

Attachment to Higher Education Committee Regents Item

(23) Instructional support services, for purposes of section 80-5.21 of the Regulations of the

Commissioner of Education, shall mean professional development, pedagogical support, technical assistance, consultation, and/or program coordination offered by teachers to other school personnel including, but not limited to: conducting workshops, study groups, and demonstration lessons; modeling instruction; providing feedback, coaching, mentoring and other professional support for instructional staff; providing training in best instructional practices in specific content areas; assisting instructional staff in analyzing student performance data and differentiating instruction to meet the needs of all students; coordinating the provision of special education services; developing and promoting a culture of reflective instructional practice; providing curriculum and assessment resources to instructional staff; providing information and support on technology tools to extend and support student learning; assessing curriculum development or professional development needs; and such similarly related work.

10. A new section 80-5.21 of the Regulations of the Commissioner of Education shall be added, effective May 1, 2009, to read as follows:

§80-5.21 Authorization for appointment or assignment of a teacher to provide instructional support services.

(a) Purpose. The purpose of this section is to authorize a board of education or board of cooperative educational services to appoint or assign an experienced and qualified teacher to provide instructional support services to other school personnel.

(b) Requirements for authorization to provide instructional support services. To be eligible to provide instructional support services to other school personnel, a candidate shall meet the requirements in either paragraph (1) or (2) of this subdivision.


(1) (i) Certification. The candidate shall hold a valid permanent or professional certificate in the teaching service identified in Subpart 80-2 or 80-3 of the Regulations of the Commissioner of Education and be competent and qualified to perform instructional support services by meeting the

Attachment to Higher Education Committee Regents Item
education and experience qualifications set by the employing school district or board of cooperative educational services, including holding any appropriate certificate(s) in the teaching service required by the school district or board of cooperative educational services for such position; and

(ii) Experience. The candidate shall have at least three years of satisfactory experience as a teacher as defined in section 80-1.1 of the Regulations of the Commissioner of Education, as determined by the department.

(2) (i) Certification. The candidate shall hold a valid initial, provisional, permanent or professional certificate in the teaching service identified in Subpart 80-2 or 80-3 of the Regulations of the Commissioner of Education and be competent and qualified to perform instructional support services by meeting the education and experience qualifications set by the employing school district or board of cooperative educational services, including holding any appropriate certificate(s) in the teaching service required by the school district or board of cooperative educational services for such position; and

(ii) Education. The candidate shall hold an educational degree(s) beyond the baccalaureate level for which the superintendent of school or district superintendent finds sufficiently qualifies such person to be competent and qualified to provide instructional support services.

A handwritten signature in black ink that reads "Johanna Duncan-Potter". The signature is written in a cursive style with a large, looped initial 'J'.