



**TO:** Higher Education Committee

**FROM:** William Murphy *William Murphy*

**SUBJECT:** Proposed Addition of Section 83.7 to the Regulations of the Commissioner of Education Relating to the Moral Character of Certificate Holders

**DATE:** January 2, 2025

**AUTHORIZATION(S):** *Don McG* *Bell...*

### **SUMMARY**

#### **Issue for Discussion**

Should the Board of Regents adopt the proposed addition of section 83.7 to the Regulations of the Commissioner of Education relating to the moral character of certificate holders?

#### **Reason for Consideration**

Review of Policy.

#### **Proposed Handling**

The proposed amendment is submitted to the Higher Education Committee for discussion at its January 2025 meeting. A copy of the proposed rule is included as (Attachment A).

#### **Procedural History**

A Notice of Proposed Rule Making will be published in the State Register on January 29, 2025, for a 60-day public comment period. Supporting materials are available upon request to the Secretary of the Board of Regents.

#### **Background Information**

The Department's Office of Personnel Review & Accountability investigates cases where individuals holding teaching certificates have violated the appropriate boundaries of the teacher/student relationship. In some instances, this conduct is severe enough to justify the immediate, interim suspension of the individual's teaching certificates. The Department's Office of Professions has successfully developed an

interim suspension procedure for the professions it oversees (8 NYCRR 17.9). The proposed procedure described herein is largely based on that process. It ensures that students are protected while certificate holders receive due process and a timely determination on the merits.

### **Proposed Amendment**

The proposed new section 83.7 of the Commissioner's regulations establishes the process by which the Commissioner may serve an individual who holds a teaching certificate with an order seeking summary suspension of that individual's certification. The Department may initiate this process by serving a certificate holder with a verified petition identifying the sex offense or boundary violation that, in the Department's view, supports interim suspension. These allegations shall be based upon sworn statements, personal knowledge, and/or exhibits that demonstrate, by a preponderance of the evidence, that the public health, safety, or welfare imperatively requires emergency action to summarily suspend the individual's certification.

Upon request, an oral argument may be scheduled, during which a hearing officer designated by the Commissioner will allow the parties to be heard. No testimony will be taken and, absent a request by the certificate holder, no transcript of oral arguments will be required.

The hearing officer will submit a written report of their conclusions and recommendation to the Commissioner, who shall then determine whether to grant or deny the application for summary suspension. A determination by the Commissioner granting the application must be based upon a finding that the public health, safety, or welfare imperatively requires emergency action and shall be without prejudice to the Department or certificate holder in any subsequent formal disciplinary proceeding. The regulation also provides deadlines by which the Department must reach a final determination regarding the certified individual's certification.

### **Related Regents Items**

Not applicable.

### **Recommendation**

Not applicable.

### **Timetable for Implementation**

Following the 60-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed amendment will be presented to the Board of Regents for adoption at its May 2025 meeting. If adopted at the May meeting, the proposed amendment will become effective on May 21, 2025.

## Attachment A

### AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 305 and 308 of the Education Law.

1. The Regulations of the Commissioner of Education is amended by adding a new section 83.7, to read as follows:

#### 83.7 Summary Suspension

(a) If the Commissioner receives a referral pursuant to section 83.1 of this Part from a superintendent or school district official that is supported by a preponderance of the evidence indicating that a certificate holder has engaged in a sex offense as defined in Penal Law § 130 or committed a boundary violation in their professional capacity, such referral may trigger an interim suspension of the certificate holder's certificate pending a formal hearing pursuant to section 83.4 of this Part. For purposes of this section:

(1) The term "preponderance of the evidence" may include a conviction, decision, order, or judgment of a court of competent jurisdiction; findings of an administrative hearing officer or arbitrator, including an Education Law § 3020-a proceeding; admissions against interest; witness statements sworn to under oath or subscribed to by the signature of a witness to the alleged act; or evidence of similar nature and weight. A referral that does not meet this standard, such as a witness statement consisting solely of uncorroborated hearsay, shall be insufficient to support an interim suspension.

(2) The term "boundary violation" shall mean behavior by the certificate holder that is sexual in nature and results in student harm, including sexual physical contact, sexualized communications (e.g., "sexting"), displaying or transmitting sexual objects or

pornography to a student, or personal communications that reveal an intention to enter into a romantic relationship.

(b) (1) Summary suspension proceedings shall be commenced by the service on the certificate holder of a notice of hearing and a verified petition. The notice of hearing shall identify the time and place of oral argument on the application for summary suspension and the hearing officer designated by the Commissioner to hear the matter. The notice shall also include a copy of this section.

(2) The hearing officer shall be appointed from the panel of arbitrators utilized by the Department for hearings under this Part.

(3) The notice of hearing and verified petition shall be personally served upon the certificate holder no later than forty-five days prior to the date set for oral argument. If personal service cannot be effectuated after due diligence, the notice of hearing and verified petition may be served by certified mail, return receipt requested, to the certificate holder's last known address on file with the Department within 30 days prior to the oral argument.

(4) The petition shall set forth the basis for the application and shall include sworn statements based upon personal knowledge and/or exhibits demonstrating that the certificate holder has demonstrated a lack of moral character and that the public health, safety, or welfare imperatively requires emergency action to summarily suspend the certificate holder's certification. There shall be no right to discovery, and the Department shall not be required to produce any additional documents or evidence.

(5) A verified answer and any sworn statements and supporting exhibits may be served by the certificate holder, via mail or email, upon the hearing officer no later than seven days prior to the date set for oral argument.

(6) The Commissioner may serve a verified reply, together with any sworn statement and supporting exhibits, to the answer, to the certificate holder or their counsel, if applicable, no later than five days prior to the date of oral argument. Upon the certificate holder's consent, the reply may be sent via email.

(7) The petition, answer, and reply, together with any sworn statement and supporting exhibits, shall be transmitted at the time of service of each paper to the hearing officer designated to hear the case.

(8) Saturdays, Sundays, and legal holidays shall be excluded in calculating the periods of time set forth in this subdivision. The hearing officer shall grant all reasonable requests for extensions of time made by the parties.

(c) At the oral argument, the Commissioner or their designee, and the certificate holder and/or their counsel, shall have the right to be heard. Absent a request from the certificate holder, no transcript of oral arguments shall be required. If a certificate holder so requests, the Department shall prepare a transcript of the proceedings and the Commissioner shall follow the process for hearing transcription applicable to proceedings pursuant to Education Law §3020-a. No further papers shall be submitted at the oral argument except by permission of the hearing officer designated to conduct the proceeding.

(d) Within fourteen days of the oral argument, the hearing officer shall submit a written report of their conclusions and recommendation(s) to the Commissioner, who shall determine whether to grant or deny the application for summary suspension. A determination by the Commissioner granting the application must be based upon a finding that the public health, safety, or welfare of the students and/or school community imperatively requires emergency action and shall be issued within seven days of receipt of the hearing officer's recommendation(s).

(e) Any determination of the Commissioner shall be without prejudice to the Department or certificate holder in any subsequent formal disciplinary proceeding pursuant to section 83.4 of this Part.

(f)(1) In the event a summary suspension is issued, a notice that a substantial question exists as to the moral character of the certificate holder pursuant to section 83.3 of this part shall be served within seven days of the latter of either (a) the Commissioner's determination granting summary suspension, or (b) the final determination of any appeal of such determination is adjudicated. Review by the State professional standards and practices board for teaching shall not be required under such circumstances.

(2) In the event that Part 83 charges are filed and a hearing is requested pursuant to section 83.4 of this Part, a panel or hearing officer must issue a recommendation within 120 days. Approval of the State professional standards and practices board for teaching, as described in section 83.2 of this Part, shall not be required under such circumstances.

(3) If the certificate holder appeals the recommendation of the panel or hearing officer pursuant to section 83.5 of this Part, the Commissioner shall issue a decision resolving such appeal within 60 days after the appeal is received.

(g) A certificate holder may appeal the Commissioner's granting of an application for summary suspension by filing an appeal pursuant to Article 78 of the New York Civil Practice Law and Rules.

(h) Information related to the investigation and issuance of a summary suspension involving certificate holders shall be confidential and not be subject to public disclosure. However, once all applicable statutes of limitation have expired, the fact that the Commissioner issued a summary suspension may be publicly disclosed.