



TO: The Honorable Members of the Board of Regents

FROM: Angelique Johnson-Dingle *Angelique Johnson-Dingle*
William P. Murphy *William P. Murphy*

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: August 29, 2024

AUTHORIZATION(S):

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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(s) for Consideration

Review of policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as an emergency rule at its September 2024 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 the P-12 Education Committees for discussion and recommendation to the Full Board for adoption as an emergency rule at the July 2024 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 31, 2024, for a 60-day public comment period.

Because the July 2024 emergency action is set to expire on October 13, 2024, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the November 2024 Regents meeting. If adopted at the September 2024 meeting, a Notice of Emergency Adoption will be published in the State Register on October 30, 2024. 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 their 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 those who recently arrived in the United States.

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 (ELLs) in schools. Therefore, at the January 2024 Regents meeting, the Board of Regents adopted amendments to the Supplementary certificate and the Supplementary Bilingual Education extension requirements to create flexibility, so that educators with the required skills and background to support ELLs can expeditiously obtain the certificate or extension to address this influx of students. Because communities continue to adjust to the influx of recently arrived and asylum-seeking students and their families, the Department now proposes to extend this flexibility, as described below.

Supplementary Certificate:

A Supplementary certificate allows teachers certified in other areas 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.** The candidate must hold a valid Initial, Permanent, or Professional teaching certificate.
- **Enrollment.** The candidate must agree to be enrolled in a study leading to an Initial or Professional certificate in the area of the certificate sought at an institution of higher education.

- **Education.** The candidate must:
 - 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 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.** The candidate 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 in order to ensure the maintenance of quality instruction for students.

- **Examination.** The candidate must 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 valid only during employment with the employer that completed the employer statement for up to five years.

Supplementary Bilingual Education Extension:

There is also a Supplementary Bilingual Education extension that is available for certified teachers and certified pupil personnel services professionals. This three-year, non-renewable extension authorizes candidates who are: (1) certified teachers to teach bilingual ELLs; and (2) certified school counselors to work with bilingual ELLs, where there is a demonstrated shortage. To obtain this Supplementary Bilingual Education extension, candidates must enroll in a New York State registered program leading to a Bilingual Education extension and complete three semester hours of coursework in

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

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 proposed employer must attest 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, in order to ensure the maintenance of quality instruction for such candidate. This extension is valid only during employment with the employer that completed the employer statement for up to three years.

Proposed Amendment

In response to the potential shortage of educators needed to support the influx of ELLs in schools, the Board of Regents adopted amendments to 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 through August 31, 2024. This flexibility allows candidates to complete either the examination requirement **or** the enrollment and education requirements. The Department proposes to extend this flexibility through August 31, 2025.

The Board of Regents also amended the Supplementary Bilingual Education extension requirements to create flexibility for certified teachers and certified pupil personnel services professionals who apply for such extension through August 31, 2024. This flexibility allows 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. The Department similarly proposes to extend this flexibility through August 31, 2025. Additionally, the amendment permits a single renewal of the Supplementary Bilingual Education extension if a candidate obtains their first extension through this flexibility. This is designed to accommodate candidates who may decide to matriculate in a registered Bilingual Education extension program at a later date.

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, this flexibility provides a quicker pathway to obtaining 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

[July 2024: 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/724hep12a2.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/724hep12a2.pdf>)

[January 2024: 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/124brca2.pdf)

(<https://www.regents.nysed.gov/sites/regents/files/124brca2.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

The Department recommends 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 October 14, 2024, as an emergency rule upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare, in order to immediately continue flexibilities related to the requirements for the Supplementary 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 July 2024 meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the September 2024 Regents meeting, the emergency rule will become effective on October 14, 2024. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the November 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 November 2024 meeting, the proposed amendment will become effective as a permanent rule on November 20, 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. Subparagraph (iv) of paragraph (5) of subdivision (a) of section 80-2.9 of the Regulations of the Commissioner of Education is amended 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] 2025, 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.

2. Subparagraph (iv) of paragraph (4) of subdivision (a) of section 80-4.3 of the Regulations of the Commissioner of Education is amended 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] 2025, 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.

3. Paragraph 7 of section 80-5.18 of the Regulations of the Commissioner of Education is amended to read as follows:

(7) For candidates who apply for a supplementary certificate in English to speakers of other languages title, or who hold a valid certificate in English to speakers of other languages title and apply for a supplementary certificate in another area, between September 12, 2023, and August 31, [2024] 2025, in order to provide necessary supports to recently arrived and asylum-seeking students, the candidate shall either:

(i)

(ii)

STATEMENT OF FACTS AND CIRCUMSTANCES THAT NECESSITATE
EMERGENCY ACTION

The Board of Regents permanently adopted regulatory amendments at its January 2024 meeting to the Supplementary certificate requirements in order 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 allowed candidates to complete either the examination requirement **or** the enrollment and education requirements.

At this same meeting, the Board of Regents also permanently adopted regulatory amendments to the Supplementary Bilingual Education extension requirements in order 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.

The Department now proposes to extend the Supplementary certificate and the Supplementary Bilingual Education extension requirements for one additional year, through August 31, 2025, in order to ensure that educators can continue to expeditiously obtain this certificate and extension to address the influx of ELLs in schools.

The proposed amendment was presented to the Higher Education and P-12 Education Committees for recommendation to the Full Board for adoption as an emergency rule at the July 2024 meeting of the Board of Regents, effective July 16, 2024. Since the Board of Regents meets at fixed intervals, the earliest that 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 November 2024 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the November meeting, would be November 20, 2024, the date that the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on October 13, 2024. Therefore, a second emergency action is necessary at the September 2024 meeting, effective October 14, 2024, for the preservation of the general welfare to continue allowing flexibilities for the Supplementary certificate and Supplementary Bilingual Education extension requirements in order 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 July Regents 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 November 2024 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for State agency rulemaking.