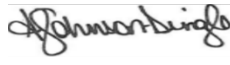





**TO:** The Honorable Members of the Board of Regents

**FROM:** Angelique Johnson-Dingle 

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

**DATE:** December 29, 2022

**AUTHORIZATION(S):** 

### 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 a permanent rule at its January 2023 meeting. A copy of the proposed rule is included (Attachment A).

#### **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 September 2022 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on September 28, 2022, for a 60-day public comment period.

Because the September 2022 emergency action was set to expire on December 11, 2022, a second emergency action was necessary at the November 2022 Regents

meeting to ensure the emergency rule remains continuously in effect until it could be permanently adopted at the January 2023 Regents meeting.

Following publication in the State Register, the Department received comments on the proposed amendment. An Assessment of Public Comment is included (Attachment B). No changes to the proposed amendment are recommended at this time. A Notice of Adoption will be published in the State Register on January 25, 2023. Supporting materials are available upon request to the Secretary of the Board of Regents.

### **Background Information**

The Enacted State Budget (L. 2022, C. 56, Part A or “Chapter 56”) amended section 3602-e(12)(d) of the Education Law in relation to staffing qualifications for Universal Prekindergarten Programs (UPK), effective April 1, 2022. The Enacted State Budget also made similar amendments to Education Law §3602-ee in relation to staffing qualifications for Statewide Universal Full-Day Pre-Kindergarten Programs (SUFDPK). Part 151 of the Commissioner’s regulations as currently written, however, is only applicable to UPK.

Prior to this amendment, Education Law §3602-e(12)(d-1) required the Board of Regents to adopt regulations that permitted employees of an eligible agency that is collaborating with a district to deliver Pre-K services without early childhood certification so long as they: (1) were licensed and registered by an agency other than the Department; (2) met the standards of the “licensing or registering” agency; and (3) developed a written plan to obtain early childhood certification within five years of commencing employment or by June 30, 2022, whichever was later. Education Law §3602-e(12)(d-2) imposed a similar requirement for programs that were not licensed or registered by the Department or other agency.<sup>1</sup> Both provisions required that districts annually submit a report to the Commissioner regarding (i) barriers to certification, if any, (ii) the number of uncertified teachers teaching pre-kindergarten in the district, including those employed by a community-based organization, (iii) how long such teachers have been employed under transitional guidelines, and (iv) the expected certification completion date of such teachers. These provisions expired on June 30, 2022 and are no longer in effect.

The amendments made to Education Law §3602-e by Chapter 56 now require that the Board of Regents adopt regulations to establish an annual process by which a district may apply to the Commissioner by August first of a given year for a waiver from the staff qualifications requirements. It is identical to the waiver provision described above, except that it does not require employees subject to the waiver to obtain early childhood certification. Chapter 56 made similar amendments to Education Law §3602-ee.

In addition, these amendments removed the language permitting staff of eligible agencies from being qualified to provide SUFDPK services if they have a bachelor’s

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<sup>1</sup> The compliance date, if applicable, was June 30, 2020 for these employees (as opposed to June 30, 2022).

degree in a field related to early childhood education. Now such staff must have a bachelor's degree in early childhood education or obtain a waiver from the Department.

### **Proposed Amendments**

The Department proposes to amend section 151-1.3(e) of the Commissioner's regulations to conform with the above statutory amendments. Specifically, the proposed amendment:

- removes the requirement that eligible agencies collaborating with the district to provide Pre-K services maintain a written plan to obtain a certification valid for service in the early childhood grades within five years;
- removes the language that permits staff of eligible agencies, collaborating with the district to provide Pre-K services, to have a bachelor's degree in a field related to early childhood education. This amendment aligns the UPK requirements with the requirements for SUFDPK described above; and
- removes an outdated provision contained in 151-1.3(e)(1)(iv) that was only applicable until the beginning of the 2008-2009 school year and replaces that subparagraph with the waiver process. The proposed subparagraph provides, consistent with Chapter 56, that a school district may annually apply to the Commissioner by August first of the current school year as described above.

Thus, the proposed rule requires that staff of eligible agencies collaborating with the district to provide Pre-K services have a bachelor's degree in early childhood education or a teaching license or certificate valid for services in the childhood grades. If such staff lack these qualifications, the district must obtain a waiver from the Department as a condition of their employment.

Additionally, the Department proposes to amend 151-1.3(e)(2) regarding on-site education directors. Currently, unless all UPK teachers at eligible agency sites possess a teaching license or certificate valid for services in the early childhood or childhood grades, the agencies operating such programs must employ an on-site education director who is responsible for program implementation. The Department recognizes that, due to teacher shortages, it may be difficult for UPK programs to hire an on-site education director with the above qualifications. Therefore, the Department proposes to permit agencies to employ an on-site education director who possesses a bachelor's degree or higher in early childhood education, provided that such individual develops a written plan to obtain a certification valid for service in the early childhood grades within five years of the date such individual begins employment as a site director. Such plans must be submitted to the Department by October 31 of each year. Additionally, the school district must oversee program implementation by the eligible agency until the on-site education director meets the requisite on-site education director qualifications.

### **Related Regents Items**

November 2022: [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/common/regents/files/1122brca6.pdf>)

September 2022: [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/common/regents/files/922p12a2.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 January 25, 2023.

### **Timetable for Implementation**

If adopted at the January 2023 meeting, the proposed amendment will become effective as a permanent rule on January 25, 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.

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

(e) Staff qualifications.

(1) Prekindergarten teachers providing instruction through this Part shall possess:

(i) a teaching license or certificate valid for service in the early childhood grades pursuant to Part 80 of this Title; or

(ii) a teaching license or certificate for students with disabilities valid for service in early childhood grades pursuant to Part 80 of this Title; or

(iii) for eligible agencies collaborating with the district to provide prekindergarten services, a bachelor's degree in early childhood education [or a related field,] or a teaching license or certificate valid for services in the childhood grades pursuant to Part 80 of this Title[, and a written plan to obtain a certification valid for service in the early childhood grades within five years]; or

(iv) [eligible agencies collaborating with the district to provide prekindergarten services and licensed by an agency other than the State Education Department may employ staff who meet the standards of the licensing or registering agency, until the beginning of the 2008-2009 school year, at which time all prekindergarten teachers shall meet the qualifications set forth in subparagraphs (i)-(iii) of this paragraph.] a school district may annually apply to the Commissioner by August 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.

(2) [Until] Unless all universal prekindergarten teachers at an eligible agency site possess a teaching license or certificate valid for services in the early childhood or childhood grades, the agencies operating such programs shall employ an on-site education director during the hours that the prekindergarten program is in operation that will be responsible for program implementation.

(i) The on-site director shall possess a teaching license or certificate valid for services in the early childhood or childhood grades pursuant to Part 80 of this Title.

(ii) Notwithstanding subparagraph (i) of this paragraph, if the agencies operating such programs are unable to employ an on-site education director who meets the qualifications prescribed in such subparagraph, they may employ an on-site education director who possesses a bachelor's degree or higher in early childhood education, and a written plan to obtain a certification valid for service in the early childhood grades within five years of the date such individual begins employment as a site director. Such plan shall be submitted to the Department by October 31 of each year in a form and format as prescribed by the Commissioner. The school district shall oversee program implementation by the eligible agency until the on-site education director meets the qualifications prescribed in subparagraph (i) of this paragraph.

(3) A prekindergarten teaching assistant providing instructional support in a prekindergarten classroom shall meet qualifications pursuant to Part 80 of this Title.

(4) A prekindergarten teacher aide providing support in a prekindergarten classroom shall meet the requirements prescribed by the local board of education.

ASSESSMENT OF PUBLIC COMMENT

Following publication of the Notice of Emergency Adoption and Proposed Rule Making in the State Register on September 28, 2022 the Department received the following comments on the proposed amendment:

1. COMMENT: Four educators wrote to express support for the emergency regulation and note that this will benefit early childhood programs. One commenter wrote that the “emergency regulations in regard to UPK make it so much easier for CBOs to meet the education requirements.” Another commenter, from the NYS Office of Children and Family Services, wrote in support of the proposed amendment of section 151.1.3, stating that “OCFS believes that the proposed amendment will offer flexibility for UPK program staff who do not meet the educational requirements for their respective roles, by allowing for the submission of a waiver to meet the staff requirements prescribed by the program’s licensing or registering agency.” Additional comments noted how this change will help to meet the needs of children and families in New York State.

DEPARTMENT RESPONSE: The Department is encouraged by these responses in support of the regulatory change. The proposed amendment, consistent with statutory changes, provides flexibility to programs for staffing, while still ensuring that an on-site director has the appropriate early childhood credentials. Because these comments are supportive, no change to the proposal are necessary.

2. COMMENT: One comment was submitted in disagreement with the proposed amendment that requires directors of collaborating agencies of district UPK programs to



hold current teacher certification. The commenter notes that requiring certification for directors or hiring additional education coordinators with proper credentials would “significantly and negatively impact” local programs. The comment states that this is an unrealistic expectation for Community Based Organization directors and there is concern that this change in regulation will deter programs from collaborating with school districts.

DEPARTMENT RESPONSE: The Department appreciates the perspective of this comment and notes that current Commissioner’s regulations require that the on-site education director of collaborating agencies possess a teaching license or certificate valid for services in the early childhood or childhood grades pursuant to Part 80 of this Title (8 NYCRR 151-1.3(e)(2)). The proposed amendment provides flexibility for this requirement by permitting agencies to employ an on-site education director who possesses a bachelor’s degree or higher in early childhood education, provided that such individual develops a written plan to obtain a certification valid for service in the early childhood grades within five years of the date such individual begins employment as a site director. This regulatory change has been enacted to provide flexibility to these agencies while also ensuring that all students enrolled in UPK programs work with experienced and certified educators. Therefore, no change to the proposal is needed.