



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

TO: Full Board

FROM: Valerie Grey

SUBJECT: Tenure and Seniority Rights for Teachers Performing Instructional Support Services in a Board of Cooperative Educational Services (BOCES)

DATE: July 5, 2011

AUTHORIZATION(S):

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents, by emergency action, amend Subpart 30-1 of the Rules of the Board of Regents and sections 80-1.7 and 80-1.8 of the Regulations of the Commissioner of Education, to authorize teachers employed by a board of cooperative educational services (BOCES) that perform instructional support services to accrue tenure and seniority rights in new tenure areas within the BOCES that are aligned with their instructional support duties?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

The proposed amendment is submitted to the Full Board for adoption as an emergency measure at its July 2011 meeting. A statement of facts and circumstances justifying the emergency is attached.

Procedural History

At its May 2011 meeting, the Board of Regents adopted the proposed amendment as an emergency measure. A Notice of Proposed Rule Making concerning the proposed amendment was published in the State Register on June 8, 2011. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

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 in a school district are typically drawn from among the best and most experienced teachers. At BOCES, teachers with particular expertise in working with other educators are frequently hired from outside the BOCES to provide instructional support services for which they have specific skills. 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 until April 30, 2009. These positions are now part of the unclassified service, require an appropriate teaching certificate, and are subject to the Education Law in regard to appointment and tenure.

In 2009, the Board of Regents promulgated regulations to permit teachers employed in instructional support service positions in BOCES and school districts to accrue tenure and seniority rights in their existing teacher tenure area or if newly hired, to receive tenure and seniority rights in a tenure area for which they are properly certified. (The regulations did not impact teachers serving in New York City).

The BOCES have experienced many operational problems since 2009 with the current regulation. As a result of reductions in force, teachers hired for their skills in an area of instructional support services have been bumped by a teacher assigned to a classroom. Reductions in force have also resulted in bumping in the reverse direction (from instructional support services to the classroom). These bumping actions have placed teachers into assignments for which they are not prepared. To address these problems we propose to create new instructional support services tenure areas for BOCES to reflect the unique nature of instructional support services in a BOCES setting and to address the Network Team positions that BOCES will provide for component districts as part of the Race to the Top (RTTT) implementation.

Issue

Historically, BOCES have responded to the needs of component districts for the professional growth of district teachers through instructional support services duties

designed to enhance teaching skills, including infusing technology into instruction, providing for differentiated instruction and incorporating the analysis of student performance data, and providing a variety of specialized supports.

The staff hired by a BOCES to provide these instructional support services are, in most cases, hired from outside the BOCES for their particular expertise in the subject matter and the education of teachers. School districts, on the other hand, tend to identify individual members of their teaching staff who possess the needed skills to be professional developers, curriculum specialists, or have the knowledge and skills to assist other teachers in using technology as part of their instruction to provide these services. Using existing teachers seems to work effectively in many school districts as the teachers have a desire to retain their existing tenure area and continue to earn seniority while on special assignment.

In the BOCES, the need to provide teacher growth and professional development services to component districts is increasing and the number of teachers doing instructional support services work in a BOCES will continue to increase as the RTTT initiatives are implemented, particularly with the use of the Network teams.

The regulation adopted by the Regents in 2009 is designed to fit the school district model of providing ISS and the past two years have demonstrated that this model is causing substantial operational problems and disruption for the BOCES that would jeopardize the ability of the BOCES to provide the supports needed to implement RTTT initiatives and maintain capacity to provide high quality professional development for teachers by individuals who are hired because they are particularly adept at adult education and professional development in specific content areas.

The 2009 regulation, which leaves a teacher in the tenure area of his or her previous assignment or places a new Instructional Support Services Teacher in a tenure area for which they are certified, results in teachers in ISS assignments bumping into classroom assignments and vice versa. Unfortunately, the classroom teacher who bumps into an ISS position may not have the skills required to perform the ISS assignment. A teacher of English in Grade 8 may be selected to provide guidance to other teachers on the infusion of technology into their instruction, because of her exceptional knowledge of current technologies and related pedagogical issues. If there is a reduction in force in the English 7-12 tenure area and a classroom English teacher “bumps” that ISS teacher, it is quite likely that the classroom English teacher will not possess the technology skills needed for the ISS assignment. Attachment A provides some specific examples of the types of situations occurring when there are reductions in force that impact BOCES operations.

Proposal

The problems experienced with reductions in force resulting in teachers being placed into roles for which they do not possess the required knowledge or skills are of great concern for the work of the Network Teams and the BOCES professional development programs. The duties of Network Team members under RTTT are one example of Instructional Support Services work. The careful selection of properly qualified educators to assume Network Team and other Instructional Support Services

duties is a critical part of the implementation of SED's RTTT program. These Network Team duties along with other Instructional Support duties are different from classroom teaching duties and BOCES teachers performing Network Team duties should not be in the same tenure areas as individual classroom teachers.

Accordingly, after consultation with all interested parties, staff propose for the Regents consideration, the creation of the following ("new") tenure areas for BOCES that would be appropriate for the most common types of ISS assignments:

- (1) instructional support services in mathematics;
- (2) instructional support services in English language arts and literacy;
- (3) instructional support services in science;
- (4) instructional support services in special education;
- (5) instructional support services in curriculum and differentiated instruction incorporating the analysis of student performance data;
- (6) instructional support services in the integration of technology into instructional practices;
- (7) instructional support services in technical support for bilingual and English as a second language instruction for English language learners; and
- (8) instructional support services in professional development.

Transition for affected teachers

Teachers who are currently performing ISS duties in a BOCES would be able to choose to either: (1) go into a newly created ISS tenure area designated by the BOCES as appropriate for their duties; or (2) stay in their existing tenure area (grandparenting provision). If the teacher chooses to go into the new ISS tenure area designated by the BOCES, he or she would be eligible to carry with him/her the tenure and seniority previously earned for the time he/she spent performing those ISS duties.

New teachers hired by a BOCES to perform ISS duties after the effective date of this regulation would be appointed to an ISS tenure area as designated by the BOCES consistent with their duties determined by the BOCES.

Recommendation

I recommend that the Regents take the following action:

VOTED: That subdivision (b) of section 30-1.2 of the Rules of the Board of Regents be amended; that subdivisions (c) and (d) of section 30-1.2 shall be renumbered to subdivisions (d) and (e), a new subdivision (c) be added, and renumbered subdivision (d) shall be amended and a new subdivision (e) shall be added to section 30-1.2 of the Rules of the Board of Regents; that subdivision (b) and (d) of section 30-1.9 of the Rules of the Board of Regents be amended; that section 80-1.7 of the Regulations of the Commissioner of Education be amended and that subdivision (a) of section 80-1.8 of the Regulations of the Commissioner of Education be amended, as submitted, effective August 16, 2011, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general

welfare to ensure that the proposed amendment remains continuously in effect until it can be adopted as a permanent rule.

Timetable for Implementation

The emergency adoption will take effect on August 16, 2011. It is anticipated that the proposed amendment will be presented for confirmation at the September 2011 Regents meeting. If adopted in September, the effective date of the permanent rule will be October 5, 2011.

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. Subdivision (b) of section 30-1.2 of the Rules of the Board of Regents shall be amended, effective August 16, 2011, to read as follows:

(b) [The] Except as otherwise provided in subdivision (c) of this section, 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:

(1)

(2)

(3) . . .

(4) . . .

(5) . . .

2. Subdivisions (c) and (d) of section 30-1.2 of the Rules of the Board of Regents shall be renumbered to subdivisions (d) and (e) of section 30-1.2, respectively, effective August 16, 2011.

3. A new subdivision (c) shall be added to section 30-1.2 of the Rules of the Board of Regents, effective August 16, 2011, to read as follows:

(c) The provisions of this Subpart shall apply to a professional educator employed by a board of cooperative educational services to devote a substantial portion of his time to the provision of instructional support services on or after May 20, 2011 as follows:

(1) A professional educator employed by a board of cooperative educational services to devote a substantial portion of his time to the provision of instructional support services on May 20, 2011, who was previously appointed by the board to tenure or a probationary period in a tenure area identified in this Subpart shall either:

(a) continue to receive credit toward tenure and/or accrue tenure and seniority rights in his previous tenure area from the initial date of his assignment and continue to receive tenure and/or seniority rights in his previous tenure area while assigned to devote a substantial portion of his time to the provision of instructional support services;
or

(b) if the professional educator provides knowing consent to the board of cooperative educational services to change his tenure area pursuant to section 30-1.9 of this Subpart by June 20, 2011, he may receive credit toward tenure and/or accrue tenure and seniority rights in one of the special subject tenure areas of instructional support services established in section 30-1.8 of this Subpart, from the date of his initial assignment to a position where he devoted a substantial portion of his time to the provision of such instructional support services and he shall continue to receive tenure and seniority rights in that tenure area while assigned to a position where he devotes a substantial portion of his time to the provision of instructional support services appropriate for such tenure area.

(2) Any board of cooperative educational services that appoints or assigns a professional educator on or after May 20, 2011 to devote a substantial portion of his time to the provision of instructional support services shall make probationary appointments and appointments on tenure in accordance with subdivision (e) of section 30-1.8 of this Subpart.

(3) Any board of cooperative educational services that appoints a professional educator on or after May 20, 2011 to devote a substantial portion of his time to instructional support services as a result of a board of cooperative educational services taking over a program formerly operated by a school district or a county vocational education and extension board pursuant to section 3014-a of the Education Law, shall credit the professional educator with tenure and seniority rights in the special subject tenure area for instructional support services established in subdivision (e) of section 30-1.8 of this Subpart from the initial date of his assignment to the performance of instructional support services in the school district or county vocational education and extension board and shall continue to credit the professional educator with tenure and/or seniority rights in such tenure area while he is assigned to devote a substantial portion of his time to the performance of instructional support services in such tenure area at the board of cooperative educational services.

(4) Any board of education that appoints a professional educator on or after May 20, 2011 to devote a substantial portion of his time to instructional support services as a result of a school district taking over a program formerly operated by a board of cooperative educational services pursuant to section 3014-b, where the professional educator is serving in an instructional support services tenure area pursuant to subdivision of section 30-1.8 of the rules of the Board of Regents, shall credit the professional educator with tenure and seniority rights in a tenure area for which he holds the proper certification as described in Section 30-1.9(b) of this subpart, from the initial date of his assignment to the performance of instructional support services in the board of cooperative educational services and shall continue to credit such professional educator with tenure and/or seniority rights in such tenure area while he is assigned to

devote a substantial portion of his time to the performance of instructional support services provided that he holds the proper certification for such tenure area.

4. Renumbered subdivision (d) of section 30-1.2 of the Rules of the Board of Regents shall be amended, effective August 16, 2011, to read as follows:

(d) Except as otherwise provided in subdivisions (b) and (c) 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. A new subdivision (e) shall be added to section 30-1.8 of the Rules of the Board of Regents, effective August 16, 2011, to read as follows:

(e) A professional educator employed by a board of cooperative educational services to devote a substantial portion of his time to the provision of instructional support services in one of the following areas shall be deemed to serve in one of the following special subject tenure areas encompassing the duties of such subject:

(1) instructional support services in mathematics;

(2) instructional support services in English language arts and literacy;

(3) instructional support services in science;

(4) instructional support services in special education;

(5) instructional support services in curriculum and differentiated instruction, incorporating the analysis of student performance data;

(6) instructional support services in the integration of technology into instructional practices;

(7) instructional support services in technical support for bilingual and English as a second language instruction for English language learners; and

(8) instructional support services in professional development.

6. Subdivision (b) of section 30-1.9 of the Rules of the Board of Regents shall be amended, effective August 16, 2011, 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.

7. Subdivision (d) in section 30-1.9 of the Rules of the Board of Regents, is amended, effective August 16, 2011, to read as follows:

(d) If a professional educator possesses certification appropriate to more than a single tenure area and the board of education or board of cooperative educational services proposes at the time of initial appointment to assign such individual in such a manner that he will devote a substantial portion of his time during each of the school years constituting the probationary period in more than one of the tenure areas established by this Subpart, the board shall in its resolution of appointment designate such tenure area and shall thereafter separately confer or deny tenure to such individual in the manner prescribed by statute in each designated tenure area, except that individuals accruing tenure and/or seniority rights in their previous tenure area for the

performance of duties in instructional support services as provided for in subparagraph (a) of paragraph (1) of subdivision (c) of section 30-1.2 of this Subpart shall only accrue tenure and/or seniority rights in their previous tenure area and not in one of the instructional support service tenure areas prescribed in subdivision (e) of section 30-1.8 of this Subpart.

8. Section 80-1.7 of the Regulations of the Commissioner of Education is amended, effective August 16, 2011, to read as follows:

Section 80-1.7 Renewal of a provisional certificate

(a)

(1) [By] Except as otherwise provided by subdivision (c) of this section, by application to the commissioner by the holder of the certificate, the commissioner may renew an expired provisional certificate in the administrative and supervisory service or the pupil personnel service on one occasion only for a period of five years from the date the renewed provisional certificate is issued, provided that the candidate has met all requirements for the permanent certificate in the certificate title of the provisional certificate, except the experience requirement. The requirements of this paragraph shall not apply to the renewal of a provisional certificate in the title school counselor. The requirements of paragraph (2) of this subdivision shall apply to the renewal of a provisional certificate in the title school counselor.

(2)

(b) . . .

(c) The commissioner shall not renew a provisional certificate in the classroom teaching service. The commissioner shall not accept an application for the renewal of a provisional School Administrator and Supervisor certificate [in the administrative and supervisory service] submitted to the commissioner after September 1, 2007 unless the

certificate holder has been employed in a school district or BOCES to devote a substantial portion of his time, as defined in section 30-1.1 of the Commissioner's regulations, to instructional support services as defined in section 80-5.21 of this Subpart during three of the past five school years.

9. Subdivision (a) of section 80-1.8 of the Regulations of the Commissioner of Education, is amended, effective August 16, 2011, to read as follows:

(a) The holder of an initial certificate whose certificate has expired, and who has not successfully completed three school years of teaching experience, or its equivalent, as is required for a professional certificate, shall be issued an initial certificate on one occasion only, for a period of five years from the date of reissuance, provided that the candidate has met the requirements in subdivision (b) of this section. [The time validity of such reissued initial certificate shall not be extended, pursuant to section 80-1.6 of this Subpart.] Notwithstanding the above, an initial certificate as a school building leader may be reissued a second time if the certificate holder has met all of the requirements for the professional certificate except the experience requirement and has been employed in a school district or BOCES to provide instructional support services as defined in section 80-5.21 of this Subpart during three of the past five school years.

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The purpose of the proposed amendment is to create new tenure areas for teachers performing instructional support services in a BOCES. The Board of Regents promulgated regulations in 2009 to permit teachers employed in instructional support service positions in BOCES and school districts to continue in their existing teacher tenure area or if newly hired, to receive tenure and seniority rights in a tenure area for which they are properly certified.

The Department has now had two years of experience under these 2009 regulations, where many reductions in force have been necessary. The BOCES have experienced many operational problems when teachers hired for their skills in an area of instructional support are bumping a teacher assigned to a classroom. In certain situations the problem is bumping in the reverse direction (from the classroom to instructional support services). These bumping actions have placed teachers into assignments for which they are not prepared. This has resulted in a proposal to create new tenure areas in BOCES to reflect the different nature of instructional support services in a BOCES setting and to adequately provide for instructional support positions on the network teams that many BOCES will provide for component districts to support the Department's Race to the Top Application.

The proposed amendment establishes additional ("new") tenure areas for BOCES that would be appropriate for the most common types of ISS assignments:

- (1) instructional support services in mathematics;

- (2) instructional support services in english language arts and literacy;
- (3) instructional support services in science;
- (4) instructional support services in special education;
- (5) instructional support services in curriculum and differentiated instruction, incorporating the analysis of student performance data;
- (6) instructional support services in the integration of technology into instructional practices;
- (7) instructional support services in technical support for bilingual and English as a second language instruction for English language learners; and
- (8) instructional support services in professional development.

The recommended action is proposed as an emergency measure given the current budget difficulties faced by BOCES in New York State and the possibility of impending lay-offs, it is critical that teachers currently serving in instructional support positions have appropriate tenure protection and that their accrued seniority rights be protected.

Emergency action is also needed to ensure that the proposed amendment remains continuously in effect until it can be adopted as a permanent rule at the September Regents meeting.