



September 7, 2017

Mr. Joseph W. Belluck
Charter School Committee Chairman
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RE: Comments on the Governance, Structure and Operations of SUNY Authorized Charter Schools Pertaining to Teacher Compliance (SUN-30-17-00024-P).

Dear Chairman Belluck and Mr. Rossi:

We are writing to express the New York State Board of Regents and the New York State Education Department's ("NYSED" or "the Department") strong opposition to the SUNY Charter Schools Committee's ("SUNY") proposed regulation (SUN-30-17-00024-P) that would enable an alternative certification pathway for teachers employed in SUNY-authorized charter schools. Simply put, such action is an affront to a critical tenet in education: rigorous and high-quality teacher preparation programs foster high-quality teachers who increase the likelihood of students achieving proficiency on state standards. Our efforts should focus on promoting effective teaching and strengthening and supporting the entire educator preparation pipeline, not eroding it.

SUNY cites "challenges in identifying high-quality teachers" as a reason for advancing the proposed regulation. However, Education Law §2854(3)(a-1) already provides charter schools with significant flexibility to hire certain numbers of:

- (i) uncertified teachers with at least three years of elementary, middle or secondary classroom teaching experience;
- (ii) tenured or tenure track college faculty;

- (iii) individuals with two years of satisfactory experience through the Teach for America program; and
- (iv) individuals who possess exceptional business, professional, artistic, athletic, or military experience.

Part 80 of the Regulations of the Commissioner of Education also contain additional important flexibilities for qualified candidates who wish to teach at SUNY charter schools to obtain various types of certification through alternative requirements. For example, any person with a Bachelor's degree can enroll in a Transitional B program. Such programs generally require the individual to complete pedagogical coursework and training during the summer months, and once completed that individual is issued a Transitional B certificate, which allows him/her to become the teacher-of-record in a classroom while he/she continues to actively pursue full certification. Furthermore, there is also a Transitional C program for individuals holding a graduate academic or graduate professional degree, which generally allows the individual to become a teacher-of-record after admission into a program leading to a professional certificate. To receive a Transitional certificate, candidates must also have an employment and support commitment from the employing school and must also achieve a satisfactory passing score on certain teacher certification examinations.

It should be noted that there may be other factors contributing to charter schools' difficulties in hiring trained and qualified teachers. For example, high turnover rates, which could be the result of compensation that is not comparable to public schools; inadequate professional development; and/or a lack of effective mentoring may be contributing factors. The answer to the problem of the lack of high-quality teachers, however, is not to increase the number of uncertified and therefore unprepared teachers in charter schools, but to address the matter holistically so that all students have access to high-quality teachers. Teacher quality is the number one factor that contributes to student academic success; therefore, the preparation of, support for, and access to quality teachers is essential.

It is imperative for policymakers to remember that no parent wants their child to be assigned to a classroom teacher who has not had the best training and demonstrated that he/she has the knowledge, skills, and disposition necessary to ensure their child's success. This training must also include additional workshops so all teachers are trained to work with a very diverse student body. We are concerned that while workshops are required under the proposed regulation, there is no mechanism to determine that they were completed prior to the individual being given the responsibility of leading a diverse classroom.

To this point, SUNY and NYSED have been steadfast in their efforts to enhance the educator preparation pipeline through several efforts including, but not limited to, TeachNY. Since May 2016, Commissioner Elia has partnered with Chancellor Zimpher in a statewide campaign to promote the teaching profession while also improving the state's delivery of teacher preparation programs by expanding clinical practice, generating investment for professional development that spans the career of a teacher, and creating regional councils to ensure future teachers will meet projected demand.

In contrast, the draft regulation proposes a less rigorous educator preparation model for SUNY-authorized charter schools than the existing New York State teacher certification requirements and the requirements for a registered teacher education program in New York, as set forth in the Commissioner's Regulations (see, 8 NYCRR §52.21, Part 80). Indeed, there are many key differences between the teacher certification regulations proposed by SUNY and the requirements for state certification including, but not limited to, the elimination of the requirement to take and pass the NYS teacher certification examinations, which ensure that teachers have the minimum knowledge, skills and abilities in pedagogy and in their content area to enter the classroom and the minimum skills necessary to educate all students, including students with disabilities and English language learners.

The proposed regulations also do not require a prospective teacher to complete any student teaching and only require "30 instructional hours of classroom instruction", as opposed to the minimum of 81 semester hours (at least 30 in liberal arts and sciences, 30 in the certificate title sought and 21 in pedagogy) required for State certification.

The proposed regulations are also in stark contrast to New York's Every Student Succeeds Act (ESSA) plan that is being submitted to the federal Department of Education later this month. In New York's draft ESSA plan, the Department affirms its commitment to ensuring that local educational agencies – school districts and charter schools – provide every student in New York State, regardless of race, gender, demographics, or zip code, with access to great teachers and school leaders. New York State's ESSA plan takes a comprehensive approach to recruiting, preparing, supporting, and retaining the most effective educator workforce possible. Consistent with the findings of the TeachNY Advisory Council and other high-quality research, New York's ESSA plan emphasizes the importance of ensuring that all aspiring teachers complete a rigorous preparation program that includes a rigorous, high-quality clinical practice component – both in the number of hours necessary to earn a degree and in the quality of the experiences. High-quality preparation programs that provide aspiring educators with opportunities to practice their craft during the course of their preparation program in authentic settings are a fundamental element to ensuring that states have excellent educators who are ready for the job on their first day as a teacher of record and that those promising educators remain in the profession for a longer period of time and improve outcomes for all students. In addition, given the increasing diversity of New York's student population, it is critical that prospective teachers enter the classroom well-trained in culturally responsive classroom practices.

The erosion of teacher certification requirements and teacher preparation programs will diminish the number of effective teachers in New York and have a negative impact on student achievement. The greatest impact will be on students of color, those that are economically disadvantaged, and students with disabilities who are served in SUNY-authorized charter schools.

In addition to the policy concerns the Board of Regents and NYSED have with the proposed regulations, there are significant legal issues with the promulgation of these regulations. In June 2016, the Legislature enacted Education Law §355(2-a), which provides as follows:

Notwithstanding any other provision of law, rule or regulation to the contrary, the state university trustees charter school committee, as a charter entity, are further authorized and empowered, to promulgate regulations with respect to governance, structure and operations of charter schools for which they are the charter entity pursuant to section twenty-eight hundred fifty-one of this chapter.

This law authorizes SUNY to promulgate regulations with respect to the governance, structure, and operations of charter schools for which SUNY is the charter entity, notwithstanding any law, rule or regulation that previously prevented SUNY from promulgating regulations in these areas. While Education Law §355(2-a) provided SUNY with new regulatory authority, the law did not provide SUNY with the broad power to promulgate regulations that override any State law or regulation that pertain to the operation of charter schools. Therefore, the proposed regulations exceed SUNY's statutory authority and, in fact, are contrary to State law, as explained more fully below.

Article 56 of the Education Law governs charter schools. Education Law §2854(1)(a) provides as follows:

Notwithstanding any provision of law to the contrary, to the extent that any provision of this article is inconsistent with any other state or local law, rule or regulation, the provisions of this article shall govern and be controlling (emphasis added).

This provision makes it clear that the provisions of Article 56, which govern charter schools, prevail if there is a direct conflict between laws. Therefore, to the extent that Education Law §355(2-a) conflicts with Article 56 of the Education Law, the provisions of Article 56 govern.

Education Law §2854(3)(a-1), which is a provision in Article 56 of the Education Law, provides as follows:

The board of trustees of a charter school shall employ and contract with necessary teachers, administrators and other school personnel. **Such teachers shall be certified in accordance with the requirements applicable to other public schools [except as otherwise provided in this section]....** (emphasis added).

This section makes it clear that all charter school teachers, regardless of authorizer, must meet the certification requirements applicable to other public school teachers (which are outlined in Part 80 of the Commissioner's Regulations), with the exceptions outlined in the statute. It is also clear that this requirement cannot be superseded through statutory or regulatory action outside of Article 56. Here, however, SUNY's regulations directly conflict with the specific language bolded above in Education Law §2854(3)(a-1), which provides that charter school teachers shall be certified in accordance with the requirements applicable to other public schools (except as otherwise provided in that section).

Section 700.4(a) of SUNY's proposed regulations states that "[t]he requirements of an approved Instructional Program under this section are to be considered equivalent to the certification requirements applicable to other public schools of the state for the purposes of paragraph a-1 of subdivision 3 of section 2854." However, the certification requirements outlined in the proposed regulations apply to teachers employed in SUNY-authorized schools are drastically different than the certification requirements for public school teachers as outlined in Part 80 of the Commissioner's Regulations (e.g., no State certification examinations, no student teaching requirement, and significantly less coursework). In fact, section 700.4(d)(6) of SUNY's proposed regulations states that "the certification the candidate will receive pursuant to this Section is not transferrable to any education corporation/charter school not authorized by the board of trustees or to any district school, and may not be recognized as a teacher certification under regulations of the state commissioner of education."

The proposed regulations also attempt to supersede the Commissioner's sole authority to issue teaching certificates, to promulgate regulations for teacher certification in accordance with Education Law §3004(1), and to exclusively approve teacher certification programs under Part 52 of the Commissioner's Regulations. The adoption of these newly proposed regulations erroneously assumes that Education Law §355(2-a) modified or diminished the authority of the Board of Regents, the Commissioner, and NYSED without any legislative action to amend Education Law §§207, 305, 2852 and 3004.

Further, the proposed regulations are in direct conflict with the provisions of Education Law §3602-ee, which govern the Statewide Universal Full-Day Pre-Kindergarten program. Subdivision 8 of Education Law §3602-ee requires that all teachers in the program meet the same teacher certification standards applicable to public schools and subdivision 12 of that section specifies that the limitations on the employment of uncertified teachers under §2854(3)(a-1) also apply to pre-kindergarten programs operated by participating charter schools. As discussed above, the certification standards outlined in the proposed regulations are drastically different than the certification standards for public school teachers as outlined in Part 80 of the Commissioner's Regulations.

SUNY's attempt to dilute the standards and requirements for charter school teachers would have profound consequences, including:

- impeding equity in access to quality teachers;
- creating a system in which teachers participating in these proposed programs do not have appropriate skills or the ability to use this proposed certification in other public schools, thus limiting their employment to SUNY-authorized charter schools only; and
- weakening the gains made through the State's ESSA plan and existing regulations to ensure that all teachers have the training, experience, and credentials necessary to serve all students, especially at-risk students served by charter schools.


For these reasons, the New York State Board of Regents and the New York State Education Department strongly urge the State University of New York Trustees Charter School Committee to withdraw the proposed regulations.

Thank you for considering these comments. If we can be of any further assistance, please do not hesitate to contact the State Education Department at (518) 474-5844 or commissioner@nysed.gov.

Sincerely,



Betty A Rosa
Chancellor
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