

EXHIBIT A



The State University
of New York

Office of the
Board of Trustees

State University Plaza
Albany, New York 12246

www.suny.edu

MEMORANDUM

July 6, 2017

To: Members of the Charter Schools Committee
From: Joseph W. Belluck, Chair, Charter Schools Committee
Subject: Proposed Teacher Certification Compliance Regulations

Action Requested

The proposed resolution, pursuant to New York Education Law § 355(2-a), authorizes the filing of a Notice of Proposed Rulemaking and other action to commence the process of promulgating new regulations regarding teacher certification compliance in accordance with Education Law § 2854(3)(a-1) for charter schools authorized by the Board of Trustees.

Resolution

I recommend that the Charter Schools Committee adopt the following resolution:

Whereas Section 355(2-a) provides the Charter Schools Committee (the "Committee") the authority to regulate governance, structure and operations of charter schools for which the Board of Trustees is the charter entity within the meaning of Education Law § 2851(3); and

Whereas engagement with representatives of charter schools authorized by the Board of Trustees has demonstrated that many schools have had difficulty hiring teachers certified in accordance with Section 2854(3)(a-1); now, therefore, be it

To Learn
To Search
To Serve

the Power of 

Resolved that the Executive Director of the State University of New York Charter Schools Institute (the "Institute"), or designee, be, and hereby is, authorized and directed to prepare, in accordance with the State Administrative Procedure Act ("SAPA"), a Notice of Proposed Rulemaking with respect to a new part 700 of subchapter E of chapter 5 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to read as set forth in the *Proposed Regulations of the SUNY Board of Trustees' Charter Schools Committee* (the "Proposed Regulations") that was distributed to the Board of Trustees (copies on file in the Office of the Secretary of the University and the Albany office of the Institute); and, be it further

Resolved that the Institute be, and hereby is, directed to: 1) take such other and further steps to comply with SAPA including, but not limited to, posting a copy of the Proposed Regulations on the website of the Institute; 2) receive and review any comments resulting from the Notice of Proposed Rulemaking; 3) propose such amendments to the Proposed Regulations as it deems necessary and proper; and, 4) return such Proposed Regulations together with any amendments to the Committee for vote and adoption in accordance with SAPA.

Background

Pursuant to Resolution No. 2012-038 dated June 12, 2012, the Board of Trustees delegated to its Charter Schools Committee (the "Committee") policy matters related to charter school education corporations. Amendments to the New York Charter Schools Act of 1998 (as amended, the "Act"), effective June 23, 2016, permit the Committee to promulgate regulations for charter schools authorized by the Board of Trustees. New York Education Law § 355(2-a).

This resolution authorizes proposed rulemaking to create new regulations of the Committee related to compliance with the teacher certification provisions of the Act for SUNY authorized charter schools. This action will initiate the rulemaking process in accordance with the State Administrative Procedure Act. Final adoption of the new regulations may only occur after a 45 day public comment period in the New York State Register and the adoption by the Committee of a resolution authorizing final rulemaking.

Proposed Regulations of the SUNY Board of Trustees' Charter Schools Committee

NYCRR T. 8, Ch. V, Subch. E, Pt. 700 is added to read as follows:

Subchapter E. Regulations of the Board of Trustees' Charter Schools Committee

Section 700.1 Scope.

These regulations shall constitute rules of the committee with respect to the governance, structure and operations of education corporations for which the board of trustees is the charter entity of such education corporations, and regulating the matters contained herein as authorized by law. Nothing in these regulations contained shall be construed to restrict the power of the board of trustees or the committee from time to time to alter, amend, revise or repeal the provisions hereof in whole or in part.

Section 700.2 Definitions.

For the purposes of this Part, the following terms shall mean:

- (a) Board of trustees. The board of trustees of the State University of New York.
- (b) Committee. The charter schools committee of the board of trustees of the State University of New York, or any committee by whatever name delegated the same functions as the charter schools committee.
- (c) Institute. State University of New York charter schools institute.
- (d) Accountability plan. The student performance accountability plan contained in the education corporation's charter agreement, which is required by paragraph b of subdivision 2 of section 2851 of the education law. Each school within an education corporation has its own accountability plan.
- (e) Accredited institution. An institution holding institutional accreditation by name as a U.S.-based institution from an accreditor recognized by the U.S. Department of Education.
- (f) Act. The New York Charter Schools Act of 1998 (as amended to date) constituting article 56 of the education law.

- (g) Applicant. An education corporation or corporations that wish to operate an instructional program as defined in subdivision (b) of section 700.4 of this Part. As required by context, an approved applicant.
- (h) Candidate. A teacher seeking entry or enrolled in an instructional program as defined in subdivision (b) of section 700.4 of this Part.
- (i) Charter entity. As defined in subdivision 3 of section 2851 of the education law, a charter school authorizer.
- (j) Education corporation. A New York not-for-profit charter school education corporation formed pursuant to subdivision 1 of section 2853 of the education law. An education corporation has the authority to operate one or more charter schools pursuant to its charter agreement. It may operate one charter school for each charter that has been issued to it or which it acquired through merger. An education corporation enters into one charter agreement with the board of trustees to operate all of its schools.
- (k) ELL. English language learner.
- (l) ESOL. English to speakers of other languages.
- (m) IDEA. The federal Individuals with Disabilities Education Act.
- (n) IEP. The "individualized education program" is a written statement for each child with a disability developed, implemented, reviewed and revised in accordance with the Individuals with Disabilities Education Act and accompanying regulations.
- (o) Instructional hour. A credit, point, or other unit granted for the satisfactory completion of at least 50 minutes of instruction. Instruction may be live or blended learning with on-line or video components and real time access to an instructor so long as all of the instruction is not online or via pre-recorded video.
- (p) NYCRR. New York Compilation of Codes, Rules & Regulations.
- (q) NYSED. The education department of the State of New York.
- (r) School. A charter school operated by an education corporation. A school is a vehicle for the delivery of a complete educational program to students that has independent leadership, dedicated staff, defined facilities and encompasses all of the approved

grades for a given charter. A school may be housed in more than one physical site.

(s) State. The State of New York.

Section 700.3 Application.

These regulations shall apply only to education corporations, and the schools they operate, for which the board of trustees is the charter entity.

Section 700.4 Teacher Certification Requirements.

The committee acknowledges that many schools and education corporations it oversees that have demonstrated strong student performance have had difficulty hiring teachers certified in accordance with the requirements of the regulations of the commissioner of education. The committee, therefore, through its authority to adopt regulations with respect to the governance, structure and operations of the charter schools it oversees, desires to provide an alternative teacher certification pathway to charter schools in meeting the requirements of paragraph a-1 of subdivision 3 of section 2854 of the education law.

(a) Teacher Certification Compliance.

Education corporations may submit to the institute an Instructional Program (as defined in subparagraph b, below) for teachers that meets the requirements of this Section. The 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 of the education law.

(b) Instructional Program.

An applicant may at any time submit a proposed Instructional Program (the "Instructional Program") to the institute for approval. If the institute has denied an application or revoked or closed an Instructional Program, the applicant must wait at least 120 days before any reapplication. In order to be eligible to apply, an applicant must be approved to operate at least one school. An Instructional Program shall not be eligible for approval unless it meets the following minimum requirements:

(1) The applicant shall have a demonstrated record of academic success as follows:

(i) at least one of the applicant's schools must have received a renewal of at least three years; or

(ii) if none of the applicant's schools has been renewed, but at least one school has completed its third year of operation, such school must demonstrate that it:

(a) has met 75 percent of its accountability plan measures; or, if that standard is not applicable,

(b) is on track for at least a renewal of three years as determined by the institute.

(iii) If two or more education corporations are applying together, at least one school from each education corporation must meet the standard in subparagraph (b) (1) of this Section.

(2) The applicant shall maintain high standards for candidates including completion of a bachelor's degree from an accredited institution with a cumulative grade point average of 3.0 or higher (or the equivalent thereof). Provided that, an exception may be made for extraordinary candidates with a cumulative grade point average below 3.0, if such candidate has obtained a bachelor's degree from an accredited institution, and has demonstrated exceptional qualities or qualifications.

(3) Certificate titles offered by an Instructional Program may include, but are not limited to:

(i) Childhood education (pre-Kindergarten through grade 6);

(ii) Secondary education (grades 5 through 12) with specialization in primary subject areas which may include, but are not limited to:

(a) Humanities;

(b) Mathematics; and,

(c) Science;

(iii) Childhood students with disabilities (pre-Kindergarten through grade 6);

(iv) Secondary students with disabilities (grades 5 through 12);

(v) Childhood ESOL (pre-Kindergarten through grade 6); and,

(vi) Secondary ESOL (grades 5 through 12).

(4) The Instructional Program shall include:

(i) Classroom Instruction. 30 instructional hours of classroom instruction, including content core study and pedagogical core study, which shall provide the necessary knowledge base, understanding, and skills for teaching students in the respective grade levels, and in the respective subject area(s), for the certification being sought. The 30 instructional hours is in addition to any credit hours earned by candidates as part of the required bachelor's degree referenced in subparagraph (2), above.

(a) A candidate may seek dual certification in two different titles, for which the candidate shall complete 36 total instructional hours appropriate for the dual titles being sought. If one of the titles sought is students with disabilities, at least 12 instructional hours shall include the students with disabilities / training required under paragraph (v) below.

(ii) Field Experience. 100 hours of field experience appropriate to the certification being sought, with the candidate primarily responsible for classroom instruction, and under supervision of an experienced teacher with the following qualifications:

(a) Certified in the subject, area or grade range of instruction, as applicable, or have successfully completed an Instructional Program approved by the institute under this Section; or

(b) Uncertified teachers who:

(1) have at least three years of satisfactory elementary, middle or secondary classroom experience; or

(2) are tenured, tenure track or adjunct college faculty; or,

(3) have two years of satisfactory experience through the Teach for America or similar programs as determined by the institute.

(iii) A candidate may seek a dual certification in two different titles, for which the candidate shall complete 100 total hours, with approximately one-half focused on each certification title sought.

(iv) Additional Coursework / Training:

(a) Completion of a NYSED approved Workshop - Mandated Reporter of Child Abuse and Neglect in accordance with subdivision 2 of section 3004 of the education law.

(b) Completion of a NYSED approved Workshop- School Violence Intervention and Prevention (SAVE) in accordance with subdivision 3 of section 3004 of the education law.

(c) Six hours of coursework or training on harassment, bullying and discrimination prevention and intervention, as those terms are defined in section 11 of the education law (Dignity for All Students Act), in accordance with the purposes of subdivision 5 of section 14 of the education law.

(v) Additional Students with Disabilities and ESOL Coursework / Training. For candidates seeking certification in students with disabilities or ESOL, classroom instruction shall focus on developing knowledge, understanding, and skills for teaching students with disabilities or ELLs, respectively, including enhanced coursework or training in the area of students with autism or ELLs, respectively. Field experience must be completed under the supervision of a teacher certified in students with disabilities or ESOL, respectively, and the candidate seeking certification must spend:

(a) For students with disabilities, a majority of his or her field experience hours in an integrated co-teaching classroom or a classroom otherwise providing special services or programs as that term is defined in section 4401 of the education law and regulations of the state commissioner of education promulgated pursuant thereto.

(b) For ESOL, a majority of his or her required 100 hours of field experience in a bilingual education,

English as a new language or integrated English as a new language classroom as those terms are defined in part 154 of title 8 of the NYCRR or an equivalent classroom providing services to ELLs.

(c) For students with disabilities, in addition to the 100 hours of required field experience, an additional 75 hours observing and working with students with IEPs.

(d) For ESOL, in addition to the 100 hours of required field experience, an additional 75 hours observing and working with students who are ELLs as that term is defined in subdivision 154-2.2(f) of title 8 of the NYCRR.

(e) For students with disabilities, an additional 10 hours of coursework or training in the law, regulations and appropriate techniques to address discipline of students with disabilities in accordance with the IDEA and regulations promulgated thereunder.

(5) Instructional Program Instructors. Instructional Program instructors must:

(i) hold an advanced degree (master's degree or greater) in education or a field related to the instruction they are providing, with the institute to determine whether or not a field is sufficiently related and post same on its website; or

(ii) be certified classroom teachers who have earned at least a bachelor's degree from an accredited institution and have three years teaching experience; or

(iii) be an uncertified teacher with three years teaching experience who possesses a track record of success based on student outcomes; or,

(iv) be an administrator of the applicant.

(6) Assessment. Candidates enrolled in an Instructional Program shall be regularly assessed on all aspects of the proposed course of study. Assessment methods may include, but need not be limited to, testing, portfolio reviews, or demonstration of pedagogical knowledge and skills, and shall include a final assessment utilizing one or more such method to determine whether the candidate has satisfactorily demonstrated the competencies included in the Instructional Program.

(c) Approval of Instructional Program. (1) A proposed Instructional Program shall be approved or denied within 120 days of submission to the institute. If the institute does not approve an Instructional Program within the timeframe set forth in this Section, the application shall not be automatically approved. The institute may, but is not required to, permit the applicant to amend the application during or after the review period. The institute shall state the general reasons for a denial of an application in writing. There shall be no review of a denial by the committee or the board of trustees.

(2) Once the institute approves an applicant's Instructional Program, the applicant can commence instruction of candidates in accordance with the application and the requirements of this Section.

(3) The requirements of an approved Instructional Program shall be considered equivalent to the certification requirements applicable to other public schools of the state for purposes of subdivision (a-1) of section 2854 of the education law.

(d) Teacher Certifications.

(1) Teacher Certification Classifications. A teacher enrolled in an approved Instructional Program shall be granted certification in the following manner and subject to the following conditions:

(i) If a candidate is making adequate progress toward meeting the requirements of an approved Instructional Program, and is being mentored by a qualified Instructional Program instructor pursuant to subparagraph ii of paragraph 4 of subdivision b of this Section, the candidate shall be eligible to receive a certificate as a "certified intern teacher" so long as the candidate stays enrolled in the Instructional Program and the applicant has specified in its application what constitutes "adequate progress" for purposes of this Subparagraph. A certified intern teacher's certificate shall be valid for no longer than six months from the date it is granted, provided that such certificate may be renewed if the candidate is still enrolled in the Instructional Program. To receive such certificate, an approved applicant shall submit the names of teachers so qualified to the institute, whereupon those teachers will be issued such certificate. The applicant shall certify as to the truthfulness of such submission and shall retain all responsibility and liability resulting from such approval.

(ii) A teacher who has met the requirements of an approved Instructional Program in one or more of the titles designated in paragraph 3 of subdivision b of this Section

shall be eligible to receive a teacher's certificate for such title(s). To receive such certificate, the teacher shall submit documentation thereof to an approved applicant, which shall approve or deny the teacher for certification within sixty days of submission. Such determination will be based on:

(a) A review of submitted documentation demonstrating that the teacher has completed an approved Instructional Program for the title sought;

(b) A review of the results of a criminal history record search of the teacher performed by NYSED at the direction of an education corporation as required under paragraph a-2 of subdivision 3 of section 2854 of the education law. For purposes of this Section, the term "criminal history record" shall mean a record of all convictions of crimes and any pending criminal charges maintained on an individual by the division of criminal justice services and the federal bureau of investigation; and,

(c) A recommendation from the approved Instructional Program certifying that the teacher has satisfactorily demonstrated the competencies required by the Instructional Program. For teachers seeking certification as a students with disabilities teacher or ESOL teacher, such recommendation will specifically certify that the teacher has satisfactorily demonstrated the competencies required by the Instructional Program to teach students with disabilities or ELLs, respectively.

(2) Certificates. The approved applicant shall submit the names and supporting documentation of all teachers so approved to the institute, whereupon those teachers will be issued such certificate. The applicant shall certify as to the validity of such approval for certification under this subpart and shall retain all responsibility and liability resulting from such approval.

(3) Teachers Certified in another State. Notwithstanding subdivision one (1) above, a teacher holding a valid teaching certificate in good standing issued by another state that substantially complies with all other requirements of this Section shall be eligible to receive a teacher's certificate under this Section without participation in an approved Instructional Program.

(4) Transferability. The certification created by this Section shall be transferrable to another school within the applicant and

to another education corporation / school authorized by the board of trustees even if the transferee education corporation does not have an approved Instructional Program.

(5) Expiration. A teacher's certificate issued under this Section shall expire three years from the date it is granted. In the case of a teacher who obtains an intern teacher's certificate prior to obtaining a teacher's certificate, the period of time teaching under the intern teacher's certificate prior to obtaining a full teacher's certificate shall be included for purposes of calculating the three year period. Such certification may be renewed and remain valid provided that the teacher is employed by a board of trustees' authorized charter school.

(6) Teacher Acknowledgement. Applicant shall obtain a signed affirmation from each candidate acknowledging that the candidate has been informed by the applicant and is aware 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. Such executed affirmation shall be obtained upon enrollment in an approved Instructional Program and shall be retained by the applicant for a period of not less than 10 years from the date of the latest certificate issuance.

(d) Accounting. Each applicant with an approved Instructional Program must reflect the budgeted costs for the Instructional Program separately in its annual budget, and specifically account for the costs thereof in its financial statements. Applicants may not charge employees or others for access to their Instructional Programs.

(e) Accountability and Revocation. Applicant shall be accountable for the quality of its Instructional Programs leading to exemption from certification. The institute reserves the right to monitor all approved Instructional Programs and may revoke its approval at any time. Failure to comply with any provision of this Section may result in revocation of the approval.

(1) Notice of intent to revoke approval shall be provided to the applicant at least 30 days prior to the effective date of the proposed revocation. Such notice shall include a statement of reasons for the proposed revocation. A school closure for academic reasons shall be deemed notice of intent to review and possibly revoke the approval of an Instructional Program.

(2) If applicable, the applicant shall be allowed at least 30 days to correct the problems associated with the proposed revocation. Non-curable causes of revocation include, but are not

limited to, fraud, creation of false business records and obstruction of investigation or monitoring by the institute. Prior to revocation of the approval, an applicant shall be provided an opportunity to be heard by the institute, consistent with the requirements of due process. There shall be no appeal of such determination to the committee or the board of trustees.

Section 700.5 Record Keeping Requirements.

- (a) Records and information regarding an applicant's Instructional Program must be maintained by the applicant. Upon request by the institute, such records and information shall be available for inspection, or for delivery of copies to the institute. The applicant shall also grant the institute access to electronic databases where records or information are stored regardless of whether the applicant is the custodian of such information.
- (b) Such records shall include, but not be limited to:
- (1) Candidate records including, but not limited to:
- (i) instructional hour attendance;
 - (ii) instructional hour accumulation;
 - (iii) instructional hour instructors;
 - (iv) student teaching dates and classes;
 - (v) student teaching hours accumulation;
 - (vi) student teaching instructors;
 - (vii) workshop attendance records;
 - (viii) records reflecting the number of years of teaching experience;
 - (ix) college transcripts;
 - (x) records reflecting whether a candidate is making adequate progress in the Instructional Program; and,
 - (xi) the date of completion of the Instructional Program and the title of certification earned ("Certification Record").
- (2) Instructor qualification records including, but not limited to:
- (i) college transcripts;
 - (ii) records reflecting the number of years of teaching experience; and,
 - (iii) teacher certification records;
 - (iv) Certification Records.
- (3) Records regarding outside vendors used as part of the Instructional Program including, but not limited to, contracts and financial records.
- (c) Each applicant must provide teachers and former teachers with copies of any Certification Records pursuant to this Section, and at

no more than the cost set forth in the New York Freedom of Information Law.

(d) An applicant must store Certification Records for a minimum of 10 years.

Section 700.6 Additional Provisions.

(a) *Limitations and Conditions.* (1) This Part does not affect any certification approved by NYSED nor does it waive any conditions imposed on holders of such teacher certifications. All teachers in education corporations must still comply with the conditions in an education corporation's charter agreement and any conditions imposed by the Act, such as criminal background check requirements. Nothing in this Part shall permit a students with disabilities or general education teacher who is not state certified to instruct a student whose IEP specifically directs instruction to be by a certified instructor.

(b) *Teachers of Record.* Whether or not an education corporation operates an Instructional Program, when the institute reviews teacher certification, the institute will continue to use the concept of a teacher of record for a classroom of students. By whatever name, if one instructional leader of a classroom is properly certified or exempt from certification under the Act, the other teachers or adults in the classroom, however designated, are not also required to be certified or exempt from certification for the same group of students.

(c) *Non-material Revision.* The approval, revocation or voluntary cessation of an Instructional Program shall not be a material revision to the charter of the applicant requiring formal revision under subdivision 7 of section 2852 of the education law.

Section 700.7 Severability.

If any provision of this Part or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons or circumstances.