



SENIOR DEPUTY COMMISSIONER OF EDUCATION – P-16
Office of Elementary, Middle, Secondary and Continuing Education
Office of Higher Education

May 6, 2009

TO: District Superintendents
Superintendents of Public Schools
Superintendents of State-Operated and State-Supported Schools
School Personnel Administrators
New York State Council of School Superintendents (NYSCOSS)
School Administrators Association of New York State (SAANYS)
New York State United Teachers
New York State School Boards Association (NYSSBA)
Big 5 Conference
Other Interested Parties

FROM: Johanna Duncan-Poitier

SUBJECT: Tenure for Teachers in Instructional Support Service Positions

I write in follow-up to our previous communications regarding teachers on special assignment. As mentioned, the Board of Regents would work on a resolution to this longstanding issue. This memo is to inform you of recent changes the Board of Regents made regarding tenure for teachers providing instructional support services in school districts and BOCES and to provide guidance in the application of these new rules. First, I want to thank all of you who have worked closely with staff from the Office of Higher Education to provide advice and reactions to the various potential solutions that parties suggested. You have been helpful with working with us to evaluate different courses of action and providing the Regents with a well vetted proposal.

In April, the Board of Regents, by emergency action, added provisions to address tenure and seniority rights for teachers currently employed in instructional support service positions in BOCES and public school districts, as well as for new appointments. The emergency adoption took effect on May 1, 2009 and is anticipated to become a permanent rule on August 20, 2009.

Regents action was necessary because, while the number of individuals serving in these types of positions has grown considerably in the past three decades, these positions have never been formally recognized as being educational in nature under section 35-g of the Civil Service Law. Existing regulations required teachers to be engaged in classroom instruction in their tenure area at least 40% of their time in order to accrue seniority in that tenure area. When a teacher takes on an instructional support assignment that prevents the teacher from teaching at least 40% of the time, seniority is not earned. The effect is that teachers appointed to such positions were not required to have a teaching certificate and teachers in these positions have not been able to acquire tenure and/or seniority rights while serving as instructional support service providers.

Based upon this Regents action, the Commissioner has certified to the New York State Civil Service Commission that positions providing direct instructional support to other educators for the purpose of enhancing instruction and improving student performance are part of the teaching staff

of a public school. These positions are now in the unclassified service, require an appropriate teaching certificate, and are subject to statutes, rules and regulations regarding appointment and tenure.

The actions taken by the Board of Regents:

- 1) Establish qualifications for individuals to be appointed to a position where they perform instructional support services. These qualifications are: a valid Permanent or Professional teaching certificate and at least three years of satisfactory teaching experience, or a valid Initial, Provisional, Permanent or Professional certificate and an educational degree(s) beyond the baccalaureate level that qualifies an individual to be competent to deliver instructional support services in a specific area. (Districts or BOCES may establish additional requirements for a specific position beyond these minimum certification requirements.)
- 2) Authorize teachers who are performing instructional support services in a school district or BOCES to accrue tenure and/or seniority rights in a tenure area for which they are properly certified.
- 3) Permit teachers who did not provide knowing consent to an instructional support assignment outside of their previous tenure to receive retroactive credit for their prior service in such instructional support position and continue to receive credit in their previous tenure area while assigned to perform instructional support services.
- 4) Authorize teachers who were appointed to an improper tenure area (e.g. a teacher assigned to an administrative tenure area without requiring an administrative certificate) or a tenure area not authorized by Part 30 of the Rules of the Board of Regents (e.g. a professional development tenure area) to receive retroactive credit for their prior service in instructional support services in a tenure area for which they are properly certified and to continue to receive such credit while assigned to perform instructional support services.
- 5) Require that by July 1, 2009, any school district or BOCES that currently employs certified individuals who are not appointed to tenure or a probationary period and who are working in an instructional support service position make a probationary appointment for these individuals in a tenure area in which they are properly certified if the district/BOCES intends to continue to employ such individuals.
- 6) For professional educators appointed to a position in instructional support services on or after May 1, 2009, the regulation provides for an exception to the general rule that, to earn seniority credit, teachers must devote at least 40% of their time working in classroom instruction in their tenure area and allow teachers to accrue tenure and seniority rights for the performance of instructional support duties in any tenure area where they are properly certified.

The Regents decision is based upon the following principles:

- Instructional support services duties should be considered an extension of teachers' duties and, therefore, teachers should earn seniority credit in their existing tenure area while performing instructional support duties. This approach provides flexibility of assignments

within the same tenure area that allows school leaders to best utilize the teaching work force.

- Grand-parenting provisions provide equitable relief to tenured teachers who accepted instructional support positions in good faith.
- Certified individuals hired solely for instructional support who were hired by a BOCES or a district with the clear understanding that they were not being appointed to a tenured position are not grand-parented and not given tenure or seniority credit for past service.

Application of Tenure Rules

Teachers who were assigned to perform instructional support services prior to May 1, 2009, will be grand-parented, as follows (and in chart form in Attachment A):

Situation 1: Teachers already employed in a district/BOCES who were appointed prior to May 1, 2009 to instructional support duties outside of their former tenure area without their knowing consent to leaving their prior tenure area:

Teachers will be given credit for their past and future service in instructional support services by accruing tenure and seniority rights in their previous tenure area from the date of their initial assignment to instructional support services.

Situation 2: Teachers hired for instructional support positions prior to May 1, 2009, and appointed with their knowing consent to either an improper or nonexistent tenure area.

Teachers will have their past and future service in instructional support services applied to a tenure area in which they are properly certified.

Situation 3: Certified individuals hired for instructional support positions prior to May 1, 2009, but not appointed to a tenured position.

For each teacher the district or BOCES wishes to continue to employ, the district or BOCES will need to make a probationary appointment by July 1, 2009 to a tenure area for which the teacher is properly certified. The new Regents rules do not require these teachers be credited for any past service prior to their probationary appointment.

Teachers who are appointed to an instructional support position on or after May 1, 2009 will be appointed as follows:

Situation 1: Teachers already employed in a district/ BOCES and serving in a proper tenure area:

Teacher will continue to accrue tenure and seniority rights in the same tenure area while performing the new instructional support duties.

Situation 2: Teachers newly hired for instructional support positions by a district/ BOCES:

Teachers will receive a probationary appointment to a tenure area for which they are certified.

The full text of the amendments to 30-1 of the Rules of the Board of Regents and sections 80-1 and 80-5 of the Regulations of the Commissioner of Education are available on the Board of Regents web page, under Regents Meetings.

The link is <http://www.regents.nysed.gov/meetings/2009Meetings/April2009/0409hea2.doc>.

Attachment B provides Q&As designed to address questions regarding implementation of these requirements. The Q&As will be posted on the Office of Teaching Initiatives web site and added to as we receive additional questions from the field.

We very much appreciate the involvement and input that helped us to arrive at a solution, which we believe will provide a fair and workable system for both school districts and BOVCES and the teachers they employ. If you have any additional questions, please contact Robert Bentley at (518) 474-4661.

Attachments

cc: Joseph P. Frey
Robert G. Bentley
Rebecca Cort
Erin O'Grady-Parent
Shannon Tahoe
Raymond Kesper
Jean Stevens
Shelia Evans-Tranumn

CIRCUMSTANCES	OUTCOMES
1. Teacher hired for instructional support position <u>PRIOR TO</u> May 1, 2009 and still employed as of that date	
<ul style="list-style-type: none"> a. Outside of former tenure area (without teacher's knowing consent) b. To improper or non-existent tenure area (with teacher's consent) c. Certified, but not appointed to a tenure area (e.g., teacher on leave) 	<ul style="list-style-type: none"> a. Past and future service applied to prior tenure area b. Past and future service applied to tenure area in which certified c. Probationary appointment to tenure area for which certified, by July 1, 2009 (for teacher that the district/BOCES desires to continue to employ); future service applied to this tenure area; <u>and</u> regulation does not require any credit for past service prior to probationary appointment
2. Teacher hired for instructional support position <u>ON or AFTER</u> May 1, 2009	
<ul style="list-style-type: none"> a. Currently employed and serving in a proper tenure area b. New hire 	<ul style="list-style-type: none"> a. Continues to accrue tenure and seniority in that area b. Probationary appointment to tenure area for which certified

Questions & Answers

WHAT ARE INSTRUCTIONAL SUPPORT SERVICES?

Q: What types of duties are included in the designation “instructional support services”?

A: Instructional support services are those services that provide support to school personnel through training workshops, study groups, demonstration lessons, mentoring, modeling of instruction, presiding over CSE/CPSE meetings and related functions, coaching, and similar services. They include providing technical assistance on the development, delivery, and assessment of programs in specific content areas; providing information on best practices and current research; making curriculum resources available; supporting a culture of reflective practice; assisting teachers in analyzing student performance data; providing technical assistance on technology tools to extend and support student learning, and a host of other such services. Job titles vary widely and include, but are not limited to, teacher trainer, curriculum development specialist, subject coach, professional development specialist, and CSE/CPSE chairpersons.

Q: The definition of instructional support services includes providing “technical assistance on technology tools to extend and support student learning”. Does this include anyone with technical expertise in computers who helps teachers?

A: No. It is not the technical expertise alone that is important. To be considered an instructional support service position, the duties must be focused on teaching classroom teachers how technology tools may be integrated into the teacher’s instructional practices to improve student learning. A teacher assisting K-12 students in using technology tools as part of the student’s classroom work would also be performing instructional support services duties.

WHO IS COVERED BY THE NEW RULE / REGULATION?

Q: Who is covered by the new rule/regulation?

A: Individuals employed by a school district or BOCES as of 5/1/09 who have been performing instructional support services, as well as individuals hired or assigned to perform instructional support services after 5/1/09, are affected by the Regents action. The chart in Attachment A to this field guidance memo explains how individuals in these two major categories are affected.

Q: Does a job title or job duties dictate whether an individual is providing instructional support services and covered by the rule/regulation adopted by the Regents in April?

A: The job duties, rather than the job title, are the operative factor in determining whether a teacher is performing instructional support services as defined in the emergency rule/regulation.

Q: If a teacher who previously spent a substantial portion of time performing instructional support services has since left employment in our district, are they covered by this action? Are they entitled to any consideration for past service in terms of tenure and seniority?

A: No, individuals must be employed as of May 1, 2009, in order to be covered by the grandparenting provisions of the rule/regulation adopted by the Regents in April.

Q: Our school district has an “attendance reporting” position that does not require the expertise of a teacher with School Attendance Teacher certification. Does this position now fall under these new requirements and must we employ a certified teacher regardless?

A: No, if the duties of this “attendance reporting” position are not included in the definition of instructional support, and it does not require a teaching certificate, it is not an instructional support position covered by these new rules. The position should be designated as a civil service position.

Q: In some districts, the chairperson of the Committee on Special Education is designated as an administrative position; in other districts, it is designated as a teacher position. Is this allowable and is the position of CSE and/or CPSE chairperson affected by these new rules?

A: Yes, this is allowable. Administrators may perform instructional support tasks appropriate to their positions, such as serving as CSE and/or CPSE chairperson, and consistent with Section 200.3(a)(1) of Commissioner’s Regulations. In districts in which the CSE and/or CPSE chairperson is not an administrative position, a teacher may perform this function, again consistent with the regulation cited above, and these duties would be considered to be instructional support.

Q: We have teachers on special assignment (TOSAs) who work in our vocational program as work study coordinators and who hold an extension as a work study coordinator. Should these teachers be treated in the same manner as other teachers?

A: Yes, these teachers accrue seniority in the tenure area of their base teaching certificate, not their extension area. This extension is provided for teachers to work with students in apprenticeship or internship situations. Accordingly, duties consistent with this extension are not considered to be instructional support.

Q: Could the position “deans of students” be considered instructional support?

A: It is important to look at the duties rather than the title of the position. The position of “dean of students” may cover a variety of duties and these may vary widely from district to district. Duties such as providing assistance to teachers in student management and professional support to teachers may fall within the definition of instructional support services.

Q: A teacher who had been providing instructional support services (and not accruing seniority in an authorized tenure area) was laid off prior to this Regents action. Does this teacher have any rights under the new rule/regulation to seniority in a proper tenure area and/or bumping rights for this past service?

A: No, individuals must be employed as of May 1, 2009, in order to be covered by the provisions of the emergency rule/regulation adopted by the Regents in April.

WHO IS COVERED UNDER THE “GRANDPARENTING” PROVISION?

Q: Is any minimum percent of service in instructional support services required to be eligible for the grandparenting provisions of the new rule/regulation?

A: Yes, in order to receive seniority credit in a tenure area under the grandparenting provisions of the rule/ regulation, a teacher must be devoting at least 40% of his/her time to instructional support services or to a combination of duties in instructional support services and duties in the designated tenure area.

For example, a teacher certified in Mathematics 7-12 and tenured in Mathematics who teaches one class of Math in grade 9 for 20% of his worktime and serves as a Math coach for 20% of his time would satisfy the requirement of working at least 40% of his time in the Math tenure area and, therefore, would be eligible to earn seniority in that area.

Q: Can a teacher performing instructional support services at least 40% of her time earn seniority for this service even if she engages in other activities or provides services to other groups such as students and parents?

A: Yes, if the time she spends performing instructional support duties (combined with any time she may spend teaching in her designated tenure area) amounts to 40% or more of her work time, she will earn seniority credit for the combined service. She may perform other duties including services to other groups such as students and parents for the remaining portion of her work time.

Q: If a school district assigned a teacher to perform full-time duties in the area of instructional support, but appointed that teacher to one of the administrative tenure areas and did not require an administrator’s certificate, how is that teacher affected by these new rules?

A: This is an instance of assigning a teacher to an improper tenure area. Teachers who are employed in a school district as of May 1, 2009 who were assigned to an improper or

nonexistent tenure area, would have their past and future service applied to a tenure area for which they are properly certified. (See the chart in Attachment A, #1B.)

In general, when there is a question as to whether an individual is earning tenure as a teacher or as an administrator, the duties of the position are analyzed to determine whether the majority of duties are administrative or teaching. While administrators may, in fact, perform instructional support tasks as appropriate to their positions, there must also be other more common elements of an administrator's job typically having to do with supervision of teachers and other school personnel, evaluation of the performance of pedagogical staff, budgetary responsibility, etc.

Q: I am a tenured teacher employed by a school district on May 1, 2009. Two years ago, from September 1, 2005 until June 30, 2007, I provided instructional support services for my school district. Will I now be eligible for seniority credit for the time I performed instructional support duties?

A: It depends. If you knowingly consented to the assignment outside your tenure area to a non-tenured position, you would not receive seniority credit for such service. However, if you did not provide knowing consent to this assignment outside your tenure area, the time spent performing instructional support services duties during that period from September 1, 2005 through June 30, 2007 would be counted toward seniority in your prior tenure area.

HOW ARE TEACHERS PERFORMING INSTRUCTIONAL SUPPORT SERVICES AFFECTED BY THE NEW RULE / REGULATION?

Q: What if I am a teacher performing instructional support services duties and earning tenure in the area of English 7-12, where I am properly certified, and I am laid off because my position is abolished? Am I only eligible for reemployment in instructional support services positions?

A: No, if you are earning tenure in the English 7-12 tenure area, you would have the same reappointment rights as other teachers in this tenure area.

Q: What if I am a teacher performing instructional support services duties and earning tenure in the area of English 7-12, where I am properly certified, and there is a reduction in force but I do not lose my position because I am not the least senior teacher within my tenure area? Do I continue to perform instructional support services duties or can I be required to perform classroom instruction services on a full-time basis?

A: You could be reassigned. The school district or BOCES has the authority to assign such teachers to serve in any assignment encompassed within their tenure area. This is true at all times, not just during periods where positions are abolished.

WHO IS QUALIFIED TO PROVIDE INSTRUCTIONAL SUPPORT SERVICES?

Q: What are the certification requirements for teachers providing instructional support services?

A: In general, teachers must have a Permanent or Professional certificate and at least three years of satisfactory teaching experience in order to provide instructional support services. However, there is an exception to those requirements. A candidate who holds a valid Initial, Provisional, Permanent or Professional certificate who has achieved an advanced educational degree beyond the baccalaureate level may be eligible to provide instructional support services if the superintendent of schools or district superintendent finds this teacher is sufficiently competent and qualified to provide such services. For example, a teacher with only one year of experience but who has earned a Ph.D. specializing in literacy, might be determined by a school superintendent to be competent and qualified to provide instructional support services in the area of literacy.

WHAT IF I HAVE MORE QUESTIONS?

A school district official with a question about the application of the new Regents Rule/Regulation may call the Office of Teaching Initiatives at (518) 474-4661, send an e-mail inquiry to NYSED Supt_Ten or send a fax to (518) 473-0271.

While the Office of Teaching Initiatives will provide general guidance on the intent and interpretation of the new Regents Rule/Regulation, questions about specific actions involving the abolition of positions in a school district/BOCES should be posed to the district's counsel.