

Higher Education Hearing Follow-Up Information

1. SED staffing levels

Number of vacancies Department-wide.

- A Total of **353** vacancies currently exist in the Department (backfills, promotions and new positions). This includes all waivers that could not be submitted since last April due to DOB restrictions related to New York State's budget freeze. The 353 also includes waivers currently pending at DOB (highlighted in yellow on attached spreadsheet). See attached spreadsheet labeled "SED Vacancies" for a complete listing.

Recent Waiver Approvals

- Since October 9, 2020 (120 days ago, which is the time period allowed to fill a waiver), we have received **93** waiver approvals. Out of that number, **56** waivers were approved within the last 30 days. Out of the **93** waivers, a total of **18** have been filled and **2** were closed out without being filled. The rest remain under recruitment. Of note, **39** of the **93** approved waivers were federally funded.

Breakdown of vacancies by grade level.

- See attached.

The average time it takes to fill a vacancy.

- Agencies have 120 days from the waiver approval date to fill a position.

The number of vacancies in the Office of Higher Education's Office of College and University Evaluation (OCUE).

- There are **4** vacant positions in OCUE: Administrative Specialist 1 (G-18), Associate in Higher Education (G-26), Associate in Teacher Education (G-26) and Education Credentials Specialist 1 (G-18).

The number of vacancies in the Office of the Professions' Professional Education Program Review Bureau.

- The total number of vacancies in the Professional Education Program Review Bureau is **3** (Associate in Nursing Education, G-26, Associate in Professional Education, G-26 and Supervisor of Professional Education Programs, G-28).

The number of vacancies in the Office of the Professions.

- The total number of vacancies in the Office of the Profession is **50**.

The number of Auditors in ACCES's Bureau of Proprietary School Supervision and any current vacancies (BPSS).

- There are currently no Auditing positions in BPSS. One G-23 Education Financial Specialist and one G-18 Education Financial Specialist are being requested from DOB to support BPSS activities. These positions will reside in ACCES' Fiscal and Administrative Services Team and will serve along side Auditors, Accountants and other Education Financial Specialists.

- BPSS has a total of **5** vacancies: In addition to the Education Finance Specialist 2, G-23 and the Education Finance Specialist 1, G-18, there are 3 remaining vacancies which are as follows: 2 G-22 Assistant in Occupational School Supervision and 1 G-18 Investigative Specialist 1.

2. Opportunity Program Withholdings

On 2/8 and 2/10, SED received approval from DOB to pay the remaining 20% of payments withheld for all programs except for the following DOB directed withholdings, which SED was directed by DOB to hold until further notice:

- Bundy Aid
- Payments withheld pursuant to Executive Order 202.69.

Below is a chart showing the amounts DOB has directed SED to withhold by program. DOB has directed NYSED to withhold 20% of 2019-20 claims and 20% of 2020-21 initial payments for these programs. DOB has yet to approve any 2020-21 initial payments for Teachers of Tomorrow (\$5,261,650) or for Teacher Diversity Pipeline (\$500,000).

3. Program Approval

The Executive Budget would provide that proposals for new degree programs that do not require master plan amendments or charter amendments, or lead to professional licensure, from SUNY, CUNY and Independent Colleges, which have been: physically located in NYS, operated by the same governing body and accredited by either Middle States or the Department, for the last 10 years, are "deemed registered" with the Department 30 days after notification of approval by the institution's governing body.

- This would mean that the majority of new program proposals would no longer be reviewed and approved by the SED.
- The current program approval process protects the educational and financial interests of students as well as the investment of tax dollars in student financial aid programs.
- Institutional Accreditation by bodies like Middle States is not the same as program approval by SED. Accreditation is a voluntary process that is an assessment of the institution as a whole, in terms of quality and operations and largely makes colleges and universities eligible for financial aid. Accreditation does not include a quality review of each academic program that the institution offers that program registration does.
- **SED has implemented several improvements and efficiencies** in our program registration processes. **In 2020:**
 - **62% of the programs were registered in 30 business days or less.**
 - **77% of the programs were registered in 45 business days or less.**
 - **84% of the programs were registered in 60 business days or less.**
 - **95% of the programs were registered in 90 business days or less.**
- Lengthier timelines for some proposals are often related to the complexity of a particular proposal, incomplete applications and extended response time by colleges to SED questions.
- Issues that cause delays in new program proposals include:
 - Assigned faculty is not appropriately qualified to teach course;
 - Faculty has not yet been hired by college/university;
 - Failure to meet required instructional time per credit awarded;

- Failure to meet semester hour requirements which could jeopardize student financial aid eligibility; and
 - Proposed content is not accurately described which could mislead students.
- At a time when colleges are facing new and significant fiscal challenges, it is critical that SED maintains its program approval authority and oversight. SED requires yearly financial data from colleges, and monitors financial responsibility composite scores which may prompt follow up reports, and can inform programmatic reviews related to resource standards.
- Proposals for new degree programs that lead to **educator certification** are currently reviewed by SED to ensure that they satisfy the educator preparation program requirements listed in the Commissioner’s regulations. If SED determines that a proposal satisfies the requirements, the new degree program is registered and program faculty are permitted to submit college recommendations for certification to SED for candidates who complete the program. Candidates who receive a **college recommendation for certification** meet the education requirements for certification. If SED no longer reviews proposals for new degree programs that lead to educator certification, SED cannot be confident that the programs satisfy the educator preparation program requirements listed in the Commissioner’s regulations. As such, SED would need to consider whether program faculty can submit college recommendations for certification and may need to develop a mechanism for evaluating program completer’s applications for educator certification (e.g., review transcripts through the Individual Evaluation pathway to certification).
- Educator Preparation programs will begin to require enhanced clinical student teaching experience requirements when the effective regulation dates occur, including MOUs with school districts, and SED must ensure all programs include the necessary student teaching experiences and acceptable plans for MOUs with school district partners.
- Education Law includes several statutes that refers to SED approving programs that lead to **educator certification**, such as those listed below. Part 80 of the Commissioner’s regulations includes multiple references to candidates meeting the education requirements for certification by completing a program registered pursuant to section 52.21.
 - - [Education Law 3001\(2\)](#): “...cadet teacher enrolled in an approved teacher education program...”
 - [Education Law 3004\(1-5\)](#): “...course work or training shall be obtained from an institution or provider which has been approved by the department to provide such course work or training...”
 - [Education Law 3004\(6\)](#): “The regents and the commissioner shall review the alternative teacher preparation programs available to candidates for teaching certificates under the regulations of the commissioner...”

4. Professions Issues in the HMM Bill

- Telehealth- Requires SED, in consultation with the Commissioners of DOH, OMH, OASAS and OPWDD, to issue regulations for the creation of an interstate licensure program which authorizes practitioners licensed by contiguous states or states in the Northeast region to provide telehealth services to patients located in NYS, taking into

consideration the need for specialty practice areas with historical access issues. The regulations would need to be promulgated no later than March 31, 2022.

- The expectations are not clear in the language of this proposal. More detail is needed about how SED would be recognizing any of the designated licensed professionals for practice in NYS via telehealth and how NYS would hold those professionals accountable for professional conduct.
 - The interstate licensure provisions fail to address how SED should handle differences in professional education, licensure, and professional scope and practice standards between New York and other states, particularly when another state's standards are lower than New York's.
 - General requirements for licensure vary from state to state and these differences would need to be addressed. For instance, NYS law does not require a Social Security number or a background check for licensure.
 - SED could not implement these regulations by March 31, 2022. At least 18 months would be needed to promulgate regulations after consultation and agreement with the other agencies and impacted states.
- Pharmacists Scope/Immunization/CDTM- The Executive Budget would add licensed pharmacists to the list of qualified professionals who are able to direct limited service labs and administer tests approved by the FDA and allow pharmacists to act as referring healthcare providers for diabetes self-management and asthma self-management training; expand the list of adult immunizations that pharmacists can administer to include other immunizations approved by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention; and expand CDTM.
 - Unlike other “qualified health professionals” identified in NYS law, it is outside of a pharmacist's scope of practice to medically diagnose or determine medical treatments for patients who have or are at risk of having these medical conditions.
 - Some ACIP immunization recommendations may not be suitable for implementation by pharmacists or in pharmacy settings. Many of these immunizations require assessment and diagnosis of patients, and have complex administration protocols requiring periods of observation, and/or specified administration schedules.
 - The CDTM provisions represent a very broad expansion of settings and of the scope of practice of pharmacists. SED would be required to certify an unknown number of pharmacists to engage in CDTM.
 - Patient safety should be the primary consideration in weighing any expansion of current law in regards to the pharmacist scope of practice.
- Physician Licensure and OPMC Reforms- The Executive Budget would revoke licenses of physicians who have failed to register for two registration periods, require fingerprinting of physicians, and add several restrictions for professional misconduct for physicians.
 - Licenses in all professions are currently issued for life and considered a property right. Removing a license for failure to register could be challenged

in court, especially if there is not a clear and easy method by which one could re-instate or re-issue such a license if revoked.

- Fingerprinting is not required in any of the other 54 Title VIII professions.
- This proposal would require additional staff and resources for SED to implement as we currently do not have an office set up in the Office of Professions to process and review fingerprints or fingerprint-generated criminal history results.
- This may delay licensure for physicians if information is not timely received from DCJS.
- OPD's authority regarding the investigation and prosecution of professional misconduct is more limited than that of OPMC currently. (See attached Regents Legislative Priority for Enhanced Disciplinary Authority for the licensed professions).

5. Bureau of Proprietary School Supervision (BPSS) Audit

OSC audited BPSS from January to July 2020. The audit covered the period of January 1, 2016, to July 2020. The audit found deficiencies in BPSS' evaluating the financial viability of schools; collection and use of data; and inspection reporting.

- SED is committed to fully implementing OSC's recommendations and any additional actions that may be required to improve the Bureau's licensing and monitoring of proprietary schools.
- SED agrees with the findings which were largely due to the lack of staff. Key staff were hired and had completed an internal review at the time the OSC audit began. BPSS is also currently under new leadership that is highly capable of driving these changes.
- The Department will continue to advance efforts to fill vacant positions within the Bureau to support its oversight and monitoring efforts.
- SED has created a plan to address the issues raised in the audit, including the creation of new regulations. The regulations will build on BPSS' strong foundation of oversight and consumer protection.
- Improvements made as the result of the OSC audit will add to an already strong oversight framework.

6. Enhancing Supports and Services for Postsecondary Success of Students with Disabilities- see attached Regents Priority Proposal

7. Elimination of Teacher Support Programs

- The Executive Budget eliminates the following programs, starting in the 2021-22 school year:
 - Teachers of Tomorrow Program (\$25 million);
 - Teacher Mentor Intern Program (\$2 million); and
 - Albert Shanker Grant Program (\$0.4 million).
- These cuts would lead to a decreased investment in increasing teacher recruitment and retention in high-need areas and high-need schools, many of which are underperforming and serving predominantly students of color.
- These programs have a significant impact on the development and retention of teachers, translating to the improvement of student learning in classrooms.

Thank you,

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