

OFFICE OF POLICY AND LEGAL ANALYSIS

To: Members, Joint Standing Committee on Education and Cultural Affairs
From: Hillary Risler, Esq., Legislative Analyst
Date: April 14, 2021
Subj: **LD 1189, “An Act To Amend the Teacher Certification Statutes” (Brennan)**

SUMMARY

During the public hearing, Dan Chuhta, Deputy Commissioner of Education, proposed an amendment to LD 1189. Below, please find a summary of each component; the actual language proposed or repealed is included in the box below each bulleted summary. For the purpose of the analysis, I will refer to the section by its “new” section #, as proposed in the revised, amended version. Portions of the original bill, which the DOE is no longer pursuing (and therefore had a strikethrough in the proposed amendment) are not included.

- It amends the definition of "educational specialist," by removing from the definition “special education consultant” and “speech language clinician.”

Sec. 1. 20-A MRSA §13001-A, sub-§7, as enacted by PL 2017, c. 235, §2 and affected by §41, is amended to read:
7. Educational specialist. "Educational specialist" means an individual who provides professional services to a school, including, but not limited to, an athletic director, school counselor, library-media specialist, literacy specialist, school psychologist, school nurse, ~~special education consultant, speech language clinician~~ or career and technical education evaluator.

- It repeals the requirement for rules adopted by the State Board of Education to include that applicants furnish evidence of good moral character. The language of the current law that would be repealed is as follows:

Sec. 2. 20-A MRSA §13011, sub-§2, as amended by PL 2005, c. 152, §2, is repealed.
2. Moral character. Rules adopted by the state board under this chapter must require that an applicant for certification furnish evidence of:
A. Good moral character.

- It amends the minimum qualifications for a professional teacher certificate. Under current law, a certificate may be issued only to an applicant who, at a minimum, meets the criteria of [20-A MRSA §13013, sub-§2-B](#).
 - The proposed amendment removes the requirement for passing a qualifying exam, by amending both this section:

Sec. 3. 20-A MRSA §13013, sub-§2-B, ¶A, as enacted by PL 2017, c. 235, §12 and affected by §41, is amended to read:
 A. Has graduated from an educator preparation program ~~and has passed a qualifying exam~~;

- And amending Title 20-A Chapter 502-A. Qualifying examination as follows:

Sec. 13. 20-A MRSA §13031, as enacted by PL 1983, c. 859, Pt. I, §§2 and 3, is amended to read:
§13031. Purpose
 The Legislature declares that the purpose of this chapter is to establish standardized qualifying examinations for those persons seeking ~~provisional~~ professional teacher certificates to teach in the State.

Sec. 14. 20-A MRSA §13032, first ¶, as amended by PL 2017, c. 235, §30 and affected by §41, is further amended to read:
 A professional teacher certificate may be issued ~~only~~ to those applicants who have taken and passed the teacher qualifying examination. ~~This limitation does not apply to applicants seeking a certificate under section 13013, subsection 2-B, paragraph B, but such applicants must meet any exam requirement necessary for the endorsement being sought.~~

- The proposed amendment repeals the provision of subject matter competency through work experience. The language of the current law that would be repealed is as follows:

Sec. 4. 20-A MRSA §13013, sub-§2-B, ¶B, as amended by PL 2019, c. 518, §2, is repealed:
 B. Can demonstrate subject matter competency obtained through work experience that is directly related to any endorsements being sought and has held a conditional certificate under [section 13012-A](#) for 3 years;

- And the proposed amendment repeals the requirement for an interstate compact for education preparation programs as follows:

Sec. 5. 20-A MRS §13013, sub-§2-B, ¶C, as amended by PL 2017, c. 381, §15, is further amended to read:

C. Has successfully completed a preparation program in a state ~~with which the State is participating in an interstate compact~~, district, United States Territory or other country, subject to the following: completion of an approved preparation program for the endorsement or certificate being sought with a formal recommendation for certification from the institution.

(1) ~~Completion of an approved preparation program for the endorsement or certificate being sought with a formal recommendation for certification from the institution; and~~

(2) ~~In the 5 years prior to applying for certification in this State, the applicant has 3 years of successful teaching experience under a valid comparable certificate in a state with which the State is participating in the interstate compact.~~

If advanced study or tests are required in the State, the commissioner has the right, as specified in the interstate compact, to issue only a conditional certificate under section 13012-A; or

- It amends the clearance provisions for visiting international teachers as follows:

Sec. 6. 20-A MRS §13019, sub-§1, as amended by PL 2017, c. 235, §18 and affected by §41, is further amended to read:

1. Clearance. A teacher from a country other than the United States who is participating in a visiting teacher program established and administered by the department ~~or~~, a locally established sister-school exchange or a locally established language immersion program may teach in a school as long as the teacher is issued a clearance by the department. The teacher ~~is~~ may be authorized to act as an adjunct to existing staff and may not be used to avoid the hiring of professional, certified teachers.

- It creates an emergency education technician certificate:

Sec. 7. 20-A MRS §13019-H, sub-§ 4, is enacted to read:

4. Emergency Education Technician. The commissioner may issue an emergency certificate pursuant to this section to an applicant who has submitted to a criminal history background check and has successfully completed a Maine program approved for targeting essential skills and knowledge for performing permitted responsibilities. A certificate issued pursuant to this subsection is issued for a 5-year period with no limitations on renewals.

- It amends the basis for which the Commissioner may deny an initial certificate or renewal as follows:

Sec. 8. 20-A MRSA §13020, sub-§3, as amended by PL 2019, c. 165, §2, is further amended to read:

3. Denial of certificate for prior immoral or prohibited conduct. Evidence that an applicant for initial certification or renewal has ~~injured the health or welfare of a child through physical or sexual abuse or exploitation~~ been convicted in any state or federal court of a criminal offense involving the physical or sexual abuse or exploitation of a child, or that any such allegations have been substantiated through a DHHS investigation, is grounds for denial of certification. ~~within 5 years of the application for initial certification or renewal is grounds for a denial of a certificate.~~ Evidence that an applicant for initial certification or renewal as a school psychologist or guidance counselor has advertised, offered or administered conversion therapy as defined in Title 32, section 59-C, subsection 1 to a child is grounds for a denial of a certificate. Notwithstanding Title 5, chapter 341, every person who, within 5 years of the application for initial certification or renewal, has been convicted in any state or federal court of a criminal offense involving the physical or sexual abuse or exploitation of a child may be presumed by the commissioner to lack good moral character for the purposes of this chapter. This presumption is a rebuttable presumption. Notwithstanding Title 5, chapter 341, the commissioner is entitled to consider all records of prior criminal convictions involving child abuse or exploitation in determining an applicant's eligibility for a certificate.

- It amends the definition, qualifications and terms of issuance of a certification for a school psychologist as follows:

Sec. 9. 20-A MRSA §13022, sub-§1, ¶A, as enacted by PL 2011, c. 386, §2, is amended to read:

A. "School psychologist" means a professional certified by the department as a school psychologist who provides school psychological services consistent with the national standards articulated by in current federal and state education regulations and rules and under the domains of practice in the most current Model for Comprehensive and Integrated School Psychological Services as developed and published by the National Association of School Psychologists. "School psychologist" includes a school psychologist - doctoral and a school psychologist - specialist.

Sec. 10. 20-A MRSA §13022, sub-§3, as amended by PL 2011, c. 386, §2, is further amended to read:

3. Qualifications. State board rules governing the qualifications for a school psychologist certificate must require that a certificate be issued only to an applicant who has met the academic and preprofessional requirements established by the state board for the provision of school psychological services and who, at a minimum:

A. Holds a graduate degree from an accredited program in school psychology that was approved by the National Association of School Psychologists/~~National Council for Accreditation of Teacher Education~~ or the American Psychological Association in School Psychology or the department at the time the degree was awarded;

B. Has completed graduate work that is determined by the commissioner to be substantially similar to the programs referred to in paragraph A; or

C. Holds a valid license from the State Board of Examiners of Psychologists with demonstrated competency in the area of school psychology ~~as established by the state board~~ through training and experience.

Sec. 11. 20-A MRSA §13022, sub-§4, as amended by PL 2011, c. 386, §2, is further amended to read:

4. Term of issuance. The commissioner shall issue a school psychologist certificate for a term of years consistent with rules adopted by the state board. ~~The length of the term may vary among certificate holders so as to be coterminous with any other professional license or certificate held by the school psychologist.~~ The school psychologist certificate may be renewed in accordance with academic and professional requirements established by the state board. A certificate holder must be supervised for the first year following initial certification at no additional cost to the school administrative unit or the department. ~~The state board shall require evidence of supervision prior to renewing a first-year certificate.~~ Supervision of the first-year school psychologist must be in accordance with supervision standards established by the National Association of School Psychologists or a successor organization and provided by a person who is certified as a school psychologist ~~under subsection 2 and is:~~

~~A. A member of the Maine Association of School Psychology or a successor organization; or~~

~~B. Employed by or under contract with a school administrative unit.~~

Sec. 12. 20-A MRSA §13022, sub-§8, as amended by PL 2011, c. 386, §2, is further amended to read:

8. Transition. Persons certified as school psychological service providers and school psychological examiners on or after October 13, 1993 may continue to provide the services authorized by their respective certificates until the scheduled expiration of those certificates. ~~The state board's rules must contain a schedule affording all certified school psychological service providers a reasonable amount of time to meet the requirements of the certificate authorized by subsection 2.~~

- It directs the State Board of Education to amend its certification rules in accordance with this act, and designates rules amended for the purpose of implementing this legislation as routine technical rules rather than major substantive rules.

TESTIMONY

- **Proponents**

- The proposed amendments allow for greater ease in attaining certification while maintaining the expectations and standards of the educator workforce
- Support in general for the bill, as amended, but some concern over the scope with little time to review, and 4 areas in particular:
 - The removal of subject matter content obtained through work;
 - The lack of limitation on renewals for emergency educational technicians;
 - The amendment to denial for immoral conduct; and
 - Routine-technical rulemaking process for Ch. 115 rules.

- **Opponents:**

- Specific opposition to the following (based on original, proposed amendment):
 - Removal of a graduate degree in school psychology from a program accredited by the American Psychological Association from the list of minimum academic and preprofessional requirements for 093 certification.
 - Striking the section of statute that permits individuals who have completed graduate programs substantially similar to those approved by the National Association of School Psychologists (NASP) to obtain the 093 credential.

For more information, please see the testimony of Jamie Pratt & the Advisory Committee on School Psychologists:
<https://legislature.maine.gov/testimony/resources/EDU20210407Pratt132622755339493233.pdf>

- **Neither For Nor Against:**

- Suggestion to move forward comprehensively with proposals and DOE's chapter 115 rulemaking process
- The proposed LD 1189 changes seem necessary and appropriate in preparation for the Rule Chapter 115, but without seeing the new Chapter 115 rules, it's difficult to comment on specifics
- Concern regarding the removal of special education consultant and speech language clinician from definition of educational specialist – positions are covered in recognition clauses – DOE believes that individuals with this certification can continue to renew them

ISSUES FOR CONSIDERATION:

- As the proposed amendment was originally drafted, the committee would not have the opportunity to review the new Chapter 115 rules through the legislative oversight of the major substantive rule process; as proposed in the revised amendment, it's not clear if the consensus-based rulemaking provisions will be submitted this legislative session, and if not, what the timeline would be both the routine-technical rule changes and the major substantive rule changes.
- How will certification changes interact with [Title 20-A, section 13006-A, subsection 3](#)? This provision of law provides that an amendment to the certification rules that revises the qualifications for a credential or the grades or subject area endorsements for a professional teacher certificate do not apply to those with active credentials or applicants who are “in the pipeline.” Could this section be interpreted to prevent changes that may be beneficial to those in the pipeline, such as with the qualifying examination from applying to them?
- DOE Rule Chapter 13: Qualifying Examinations for Teachers, Educational Specialists and Administrators, may also need to be amended – Chapter 13 rules are Routine Technical pursuant to [Title 20-A, MRSA §13006-A, sub-§1, ¶ A](#)
- Anticipated or tabled bills that may affect Ch. 115 rulemaking provisions:
 - [LD 1149, An Act To Provide Exemptions from Certain Teacher Certification Examination Requirements](#), which would provide for qualifying examination waivers
 - [LD 1169, An Act To Improve Teacher Certification during Staffing Shortages](#), which would provide for emergency professional teaching and administrator certificates during staffing shortages
 - [LD 350, An Act To Increase the Number of Courses Regarding Autism Spectrum Disorder that Count toward Special Education Certification](#), which would allow for up to 3 courses related to autism spectrum disorder to count toward professional teacher certification with an endorsement for special education (*currently tabled*)
 - [LD 639, An Act To Improve Professional Training for School Counselors](#), which would provide that in addition to the State Board of Education rules for educational specialist certification, an applicant for a certificate as a school counselor must complete a one-time minimum of 6 hours of course work in family or intimate partner violence, including course work in spousal or partner abuse that addresses screening, its impact on children, referral and intervention strategies, including knowledge of community resources, cultural factors, evidence-based risk assessment and same-gender abuse dynamics. (*currently tabled*)

- [LD 975, An Act to Create an Additional Pathway to Certify Industrial Arts Teachers to Foster Career and Technical Subjects in Maine Schools](#), which would create a pathway for a teacher to obtain a conditional certificate or endorsement for a component of industrial arts with an experiential lab (*scheduled for work session this Friday, April 16th*)
- [LD 1379, An Act To Establish a Lifetime Substitute Teacher Certification for Established and Successful Educators](#) (*public hearing scheduled for 4/22/2021*)

COMMITTEE REQUESTS FOR ADDITIONAL INFORMATION:

- Would it be possible to roll some or all of these components from the various bills into one bill?
 - Yes
- Provision of statute that allows SBE to define additional qualifying criteria for certification?
 - 20-A MRSA §13013, sub-§2-B, ¶ D provides:

2-B. Qualifications. State board rules governing the qualifications for a professional teacher certificate must require that the certificate may be issued only to an applicant who, at a minimum, meets one of the following:

D. Is otherwise qualified by having met the criteria established by the state board for teaching in a specified area.

PRELIMINARY FISCAL IMPACT STATEMENT:

- Not yet determined