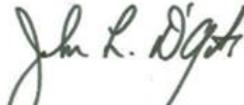




**TO:** Higher Education Committee

**FROM:** John L. D'Agati 

**SUBJECT:** Proposed Amendment of Section 80-5.4 of the Regulations of the Commissioner of Education Relating to the Employment of Substitute Teachers Without a Valid Teaching Certificate

**DATE:** July 5, 2016 

**AUTHORIZATION(S):** 

### SUMMARY

#### Issue for Decision

Should the Board of Regents adopt the proposed amendment of Section 80-5.4 of the Regulations of the Commissioner of Education relating to the employment of substitute teachers without a valid teaching certificate?

#### Reason(s) for Consideration

Review of Policy.

#### Proposed Handling

The proposed amendment is submitted to the Higher Education Committee for permanent adoption at its July 2016 meeting (see Attachment A - Amendment to Section 80-5.4 of the Regulations of the Commissioner).

#### Procedural History

A Notice of Proposed Rule Making was published in the State Register on May 4, 2016. Supporting materials are available upon request from the Secretary to the Board of Regents. Following the 45-day public comment period required under the State Administrative Procedure Act, the Department received comments on the proposed amendment (see Attachment B - Assessment of Public Comment).

## **Background Information**

Based on feedback from the field, it appears that several school districts are having difficulty finding certified teachers to serve as substitute teachers in their districts. Currently, section 80-5.4 of the Commissioner's regulations gives school districts three options when hiring substitute teachers. They may hire one of the following categories of individuals as substitute teachers:

- individuals with a valid teaching certificate who can work for an unlimited number of days in any capacity unless employed more than on an itinerant basis in which case they must be employed in their certification area;
- individuals without a valid certificate, but who are working towards certification (taking college coursework) of a rate of not less than 6 semester hours per year. Service may be rendered in any capacity. If employed more than an itinerant basis, such employee must be employed in the area they are seeking certification; or
- individuals who are not certified or pursuing certification, however, these individuals are currently limited to work in a school district for 40 days during a school year.

In many instances, the substitute teachers in category #3 have been recognized by the teachers in the district for their competency in the classroom and in covering the curriculum. Upon reaching the 40 day limit, the district is then forced to find a replacement substitute teacher who may not have the same expertise and familiarity with the classroom and curriculum as the former substitute teacher demonstrated.

In order to address this issue, the proposed amendment to 80-5.4 would allow a district or board of cooperative educational services to employ an individual without a valid teaching certificate as a substitute teacher beyond the 40 day limit, for up to an additional 50 days (90 days total) in limited circumstances where the district superintendent (for districts that are a component district of a board of cooperative educational services or a BOCES) or the superintendent (for districts that are not a component district of a board of cooperative education services) certifies that the district or BOCES, as applicable, has conducted a good faith recruitment search and there are no available certified teachers that can perform the duties of such position. In rare circumstances, a district or BOCES may hire a substitute teacher beyond the 90 days if a district superintendent or superintendent attests that a good faith recruitment search has been conducted and that there are still no available certified teachers who can perform the duties of such position and that a particular substitute teacher is needed to work with a specific class or group of students until the end of the school year.

Additionally, the amendment includes a provision that will extend the reporting requirements in section 80-5.4(e) of the Commissioner's regulations to require school districts or BOCES to report the number of substitute teachers without a valid certificate

that were authorized to work over the 40 day limit and the number authorized to work over the 90 day limit in the limited circumstances described above and provide the required certifications to the Department.

### **Recommendation**

It is recommended that the Board of Regents take the following action:

VOTED: That section 80-5.4 of the Regulations of the Commissioner of Education be amended, as submitted, effective July 27, 2016.

### **Timetable for Implementation**

If adopted at the July 2016 meeting, the proposed amendment will become effective as a permanent rule on July 27, 2016.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 101, 207, 210, 305, 3001, 3004, and 3009.

Section 80-5.4 of the Regulations of the Commissioner of Education is amended, effective July 27, 2016 to read as follows:

§ 80-5.4 Substitute teachers.

(a) Definitions.

As used in this section:

(1) *Substitute teacher* means one who is employed in place of a regularly appointed teacher who is absent but is expected to return.

(2) *Long-term basis* means employment for more than 40 days by a school district or board of cooperative educational services in a school year.

(3) *Itinerant basis* means employment for 40 days or less by a school district or board of cooperative educational services in a school year.

(b) Responsibility.

The responsibility for the employment of appropriately qualified substitutes rests with the chief school officer. Persons employed on a long-term basis shall have the proper certification for the position, except as provided in [paragraph] paragraphs (c)(2) and (3) of this section.

(c) Length of employment.

There shall be three categories of substitutes as follows:

(1) Substitutes with valid teaching certificates or certificates of qualification.

Service may be rendered in any capacity, for any number of days. If employed on more

than an itinerant basis, such persons will be employed in an area for which they are certified.

(2) Substitutes without a valid certificate, but who are completing collegiate study toward certification at the rate of not less than six semester hours per year. Service may be rendered in any capacity, for any number of days, in any number of school districts. If employed on more than an itinerant basis, such persons will be employed in the area for which they are seeking certification.

(3) Substitutes without a valid certificate and who are not working towards certification. Service may be rendered for no more than 40 days by a school district or board of cooperative educational services in a school year. Provided, however, that in extreme circumstances where there is an urgent need for a substitute teacher and the district has undertaken a good faith recruitment search for a properly certified candidate, and determined that there are no available certified teachers to perform the duties of such position, a substitute teacher, without a valid teaching certificate and who is not working towards certification, may be employed by the school district or board of cooperative educational services beyond the 40-day limit, for up to an additional 50 days (90 days total in a school year), if the district superintendent (for districts that are a component district of a board of cooperative educational services and boards of cooperative educational services) or the superintendent (for school districts that are not a component district of a board of cooperative educational services) certifies that the district or board of cooperative educational services, as applicable, has conducted a good faith recruitment search and there are no available certified teachers that can perform the duties of such position. In rare circumstances, a district or BOCES may hire a substitute teacher beyond the 90 days, if a district superintendent or

superintendent attests that a good faith recruitment search has been conducted and that there are still no available certified teachers who can perform the duties of such position and that a particular substitute teacher is needed to work with a specific class or group of students until the end of the school year.

(d) Reporting.

The chief school officer of each school district and the district superintendent of each board of cooperative educational services shall submit an annual report concerning the employment of all uncertified substitute teachers to the commissioner on forms prescribed by the commissioner, which shall include the number of substitute teachers authorized to be employed beyond the 40 day limit for the limited circumstances described in paragraph (c)(3) of this section, with the required certification(s) from the district superintendent or superintendent, as applicable, for each substitute teacher employed beyond the 40 day limit, certifying that a good faith recruitment search was conducted and that there were no available certified teachers that could perform the duties of such position. The annual report shall also include the number of substitute teachers authorized to be employed beyond the 90 days limit for the limited circumstances described in paragraph (c)(3) of this section, with the required certification(s) from the district superintendent or superintendents, as applicable, for each substitute teacher employed beyond the 90 day limit, certifying that a good faith recruitment search was conducted and that there were no available certified teachers that could perform the duties of such position and that a particular substitute teacher is needed to work with a specific class or group of students until the end of the school year.

**8 NYCRR Subpart 80-5.4**

**ASSESSMENT OF PUBLIC COMMENT**

Since publication of a Notice of Proposed Rule Making in the State Register on May 4, 2016, the State Education Department (SED) received the following comments:

**1. COMMENT:**

One commenter urges the Board of Regents to reject the amendment because allowing uncertified and unqualified individuals to substitute teach for a longer time is not the best approach to solving the current shortage of certified teachers and because it will have a negative impact on students. The commenter referenced a previous move by the Board to eliminate the use of unqualified teachers (when NYC had over 10,000 temporarily licensed teachers employed). They pointed to the low pay rate for substitutes as a cause of the shortage and suggested that districts should look to their retirees as a solution to the shortage. They also suggest that districts return to the practice of attracting substitutes by ensuring them several days of employment per week.

**DEPARTMENT RESPONSE:**

The proposed amendment addresses the certified substitute teacher shortages that have been expressed by the field. Extending the length of a substitute teacher is only allowed by the amendment in limited circumstances where the district superintendent (for districts that are a component district of a board of cooperative educational services or a BOCES) or the superintendent (for districts that are not a component district of a board of cooperative educational services) certifies that the district or BOCES, as applicable, has conducted a good faith recruitment search and

there are no available certified teachers that can perform the duties of such position. In rare circumstances, a district or BOCES may hire a substitute teacher beyond the 90 days if a district superintendent or superintendent attests that a good faith recruitment search has been conducted and that there are still no available certified teachers who can perform the duties of such position and that a particular substitute teacher is needed to work with a specific class or group of students until the end of the school year.

It continues to remain up to the individual district or BOCES to decide whether to hire an uncertified substitute teacher, and then whether the district is experiencing a shortage to allow for the additional 50 days that a substitute teacher may be employed. Districts and BOCES are free to employ the suggestions raised by the comment - encouraging district/BOCES retirees to work as substitutes and/or ensuring substitute teachers several days of work per week as a means of attracting certified individuals (or those pursuing certification).

## 2. COMMENT:

One commenter, a district superintendent, strongly supports the amendment to 80-5.4. The commenter explains that the amendment is critical to small rural school districts which are already challenged with hiring substitute teachers in general, and who often spend the second half of the school year working to cover absent teachers. They point out that they are often left unable to cover classes.

## DEPARTMENT RESPONSE:

Since the comment is supportive, no response is necessary.