



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents

FROM: John L. D'Agati *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: December 1, 2016

AUTHORIZATION(S): *[Handwritten signature]*

MaryEllen Elia

SUMMARY

Issue for Decision (Consent Agenda)

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 Full Board for adoption as a permanent rule at its December 2016 meeting (see Attachment A - Amendment to Section 80-5.4 of the Regulations of the Commissioner). A Notice of Proposed Rule Making was published in the State Register on September 28, 2016. Following the 45-day public comment period required under the State Administrative Procedure Act, the Department received no comments on the proposed amendment. Supporting materials are available upon request.

Background Information

At its April 2016 meeting, the Board of Regents discussed amendments to §80-5.4 of the Commissioner's Regulations relating to substitute teachers. Based on feedback from the field, it appeared that several school districts were having difficulty finding certified teachers to serve as substitute teachers in their districts because, at that time, Section 80-5.4 of the Commissioner's Regulations only authorized school districts to hire one of the following categories of individuals to serve as substitute teachers:

1. 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;
2. individuals without a valid certificate, but who are working towards certification (taking college coursework) of a rate of not less than six semester hours per year. Service may be rendered in any capacity. If employed more than on an itinerant basis, such employee must be employed in the area they are seeking certification; or
3. individuals who are not certified or pursuing certification, however, these individuals were limited to work in a school district for 40 days during a school year.

In many instances, the substitute teachers in category #3 were recognized by the teachers in the district for their competency in the classroom and their ability to effectively cover the curriculum. Upon reaching the 40 day limit, however, the district was 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, at its July 2016 meeting, the Board of Regents adopted an amendment to Section 80-5.4 that would allow a district or board of cooperative educational services (BOCES) 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 BOCES or a component district of a BOCES) or the superintendent (for districts that are not a component district of a BOCES) 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 positon 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 included a provision to extend the reporting requirements in Section 80-5.4(e) of the Commissioner's Regulations to require school districts and 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.

These regulations were adopted by the Board of Regents at its July 2016 meeting. In response to requests by members of the Board who raised the concern that the proposed amendment allows uncertified teachers to remain in substitute teacher positions for a lengthened period of time, the Board requested that the Department amend these regulations and create a "sunset provision" at its September 2016 meeting. As a result, while the current regulation allows uncertified teachers to work up to 90 days as a substitute teacher, the proposed amendment sunsets this provision after two years - June 30, 2018.

Related Regents Items

April 2016 <https://www.regents.nysed.gov/common/regents/files/416hed1.pdf>

July 2016 <https://www.regents.nysed.gov/common/regents/files/716hea1.pdf>

September 2016 <http://www.regents.nysed.gov/common/regents/files/916hed1.pdf>

Recommendation

Not applicable.

Timetable for Implementation

If adopted at the December meeting, the proposed amendment will become effective on December 28, 2016.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

Paragraph (3) of subdivision (c) and subdivision (d) of section 80-5.4 of the Regulations of the Commissioner of Education are amended, effective December 28, 2016 to read as follows:

(3) Substitutes without a valid certificate and who are not working towards certification.

(i) [Service] Except as otherwise provided in subparagraph (ii) of this paragraph, 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]

(ii) 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 positon 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. The provisions of this subparagraph shall be applicable until June 30, 2018.

(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 until June 30, 2018 for the limited circumstances described in paragraph [(c)(3)] (c)(3)(ii) 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 until June 30, 2018 for the limited circumstances described in paragraph [(c)(3)] (c)(3)(ii) 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.