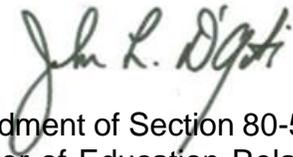




**TO:** Higher Education Committee

**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 Who Do Not Hold a Valid Teaching Certificate and Are Not Working Towards Certification

**DATE:** April 26, 2018

**AUTHORIZATION(S):**



## SUMMARY

### Issue for Decision

Should the Board of Regents adopt the proposed amendment of §80-5.4 of the Regulations of the Commissioner of Education relating to the employment of substitute teachers who do not hold a valid teaching certificate and are not working towards certification?

### Reason(s) for Consideration

Review of Policy.

### Proposed Handling

The proposed amendment is submitted to the Higher Education Committee for emergency adoption at its May 2018 Board of Regents meeting (Attachments A and B are a copy of the proposed amendment and the Statement of Facts and Circumstances Justifying the Emergency Adoption, respectively).

### Procedural History

A Notice of Proposed Rule Making will be published in the State Register on May 23, 2018. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

## **Background Information**

Section 80-5.4 of the Commissioner's Regulations gives school districts the option to hire one of the following three categories of individuals as substitute teachers.

- Individuals with a valid teaching certificate can work for an unlimited number of days in any capacity. If they are employed more than on an itinerant basis, they must be employed in their certification area.
- Individuals without a valid certificate, but who are working towards certification (taking college coursework) at a rate of not less than 6 semester hours per year, can work for an unlimited number of days in any capacity. If they are employed more than on an itinerant basis, they must be employed in the area in which they are seeking certification.
- Individuals who do not hold a valid teaching certificate and are not working towards certification are limited to working no more than 40 days during a school year except in extreme circumstances where there is an urgent need for a substitute teacher and the district or BOCES has undertaken a good faith recruitment search for a properly certified candidate. In these extreme circumstances, a substitute teacher may be employed beyond the 40-day limit for up to 90 days total in a school year. In rare circumstances, a district or BOCES may hire a substitute teacher beyond 90 days when there are still no available certified teachers for a position after a good faith recruitment search and 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 that allow substitutes to work for more than 40 days are applicable until June 30, 2018.

At their July 2016 meeting, the Board of Regents adopted the above provisions for substitute teachers who do not hold a valid teaching certificate and are not working towards certification to be employed beyond the 40-day limit. These provisions addressed the issue of several school districts having difficulty finding certified teachers to serve as substitute teachers and wanting to continue the employment of substitute teachers who were not certified and were not working towards certification but demonstrated competency in the classroom and in covering the curriculum. By continuing to employ these substitute teachers, districts and BOCES would not need 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.

During the July 2016 meeting in which these provisions were adopted, members of the Board raised the concern that the provisions allow uncertified teachers who are not pursuing certification to remain in substitute teacher positions for an extended period of time and requested that the Department create a "sunset provision" at its September 2016 meeting. As a result, the provisions allowing substitute teachers who do not hold a valid teaching certificate and are not working towards certification to work more than 40 days are only applicable through June 30, 2018.

## **Proposed Amendment**

Districts continue to have difficulty finding certified teachers to serve as substitute teachers. To review the hiring patterns for substitute teachers since the provisions went into effect, the Department collected data on the number of substitute teachers employed in the period July 2016 through June 30, 2017, 1) for more than 40 days, but less than or equal to 90 days (the statewide average number of substitute teachers employed for 41-90 days is 13.7), and 2) for more than 90 days (the statewide average number of substitute teachers employed beyond 90 days is 12.1). Upon review, districts did not employ a significant number of substitute teachers in a manner that raises concern. Therefore, the Department is proposing to extend the sunset provision to June 30, 2020. Extending the deadline would continue to provide districts with the flexibility to address their hiring needs and employ substitute teachers who demonstrate competency in the classroom for more than 40 days. However, several districts are outliers: Buffalo reported 159 substitute teachers for 41-90 days and 286 substitute teachers beyond 90 days; Rochester reported 36 substitute teachers for 41-90 days and 185 substitute teachers beyond 90 days; Yonkers reported 34 substitute teachers for 41-90 days and 117 substitute teachers beyond 90 days; and Syracuse reported 145 substitute teachers for 41-90 days and 79 substitute teachers beyond 90 days.

## **Related Regents Items**

[April 2016](https://www.regents.nysed.gov/common/regents/files/416hed1.pdf) (https://www.regents.nysed.gov/common/regents/files/416hed1.pdf)

[July 2016](https://www.regents.nysed.gov/common/regents/files/716hea1.pdf) )https://www.regents.nysed.gov/common/regents/files/716hea1.pdf)

[September 2016](http://www.regents.nysed.gov/common/regents/files/916hed1.pdf) (http://www.regents.nysed.gov/common/regents/files/916hed1.pdf)

## **Recommendation**

VOTED: That §80-5.4 of the Regulations of the Commissioner of Education, be adopted as an emergency action, effective July 1, 2018, to ensure that districts continue to be provided with the flexibility needed to address their hiring needs and employ substitute teachers who demonstrate competency in the classroom for more than 40 days beyond the current sunset date of June 30, 2018 and through the new sunset date of June 30, 2020.

## **Timetable for Implementation**

If adopted at the May 2018 Regents meeting, the proposed amendment will be adopted as an emergency action, effective July 1, 2018. Following the 60-day public comment period required under the State Administrative Procedure Act, it is anticipated that the proposed amendment will be presented to the Board of Regents for adoption at its September 2018 meeting. If adopted at the September 2018 meeting, the proposed amendment will become effective on October 3, 2018.

## **Attachment A**

### AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

Subparagraph (ii) of paragraph (3) of subdivision (c) and subdivision (d) of section 80-5.4 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(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 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. The provisions of this subparagraph shall be applicable until June 30, [2018] 2020.

(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] 2020 for the limited circumstances described in subparagraph (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] 2020 for the limited circumstances described in subparagraph (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.

## **Attachment B**

### STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING THE EMERGENCY ACTION

At their July 2016 meeting, the Board of Regents adopted the provisions for substitute teachers who do not hold a valid teaching certificate and are not working towards certification to be employed beyond the 40-day limit. These provisions addressed the issue of several school districts having difficulty finding certified teachers to serve as substitute teachers and wanting to continue the employment of substitute teachers who were not certified and were not working towards certification, but demonstrated competency in the classroom and in covering the curriculum. By continuing to employ these substitute teachers, districts and BOCES would not need 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.

During the July 2016 meeting in which these provisions were adopted, members of the Board raised the concern that the provisions allow uncertified teachers who are not pursuing certification to remain in substitute teacher positions for an extended period of time and requested that the Department create a “sunset provision” at its September 2016 meeting. As a result, the provisions allowing substitute teachers who do not hold a valid teaching certificate and are not working towards certification to work more than 40 days are only applicable through June 30, 2018.

Districts continue to have difficulty finding certified teachers to serve as substitute teachers. To review the hiring patterns for substitute teachers since the provisions went into effect, the Department collected data on the number of substitute teachers employed 1) for more than 40 days, but less than or equal to 90 days, and 2) for more than 90 days.

In both cases, districts did not employ a significant number of substitute teachers in a manner that raises concern. Therefore, the Department is proposing to extend the sunset provision to June 30, 2020. Extending the deadline would provide districts with the flexibility to address their hiring needs and employ substitute teachers who demonstrate competency in the classroom for more than 40 days.

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) Sections 202(1) and (5), is the September 2018 Regents meeting. Furthermore, pursuant to SAPA Section 203(1), the earliest effective date of the proposed amendment, if adopted at the September Regents meeting, is October 3, 2018, the date a Notice of Adoption would be published in the State Register. However, because the provision allowing substitute teachers in the classroom will expire on June 30, 2018, emergency action is necessary now for the preservation of the general welfare in order to ensure that this provision remains in effect until it can be adopted as a permanent rule to provide districts with the flexibility to address their hiring needs and employ substitute teachers who demonstrate competency in the classroom for more than 40 days.