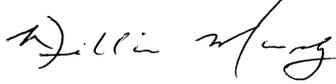




THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable Members of the Board of Regents

FROM: William P. Murphy 

SUBJECT: Proposed Amendments of Sections 80-5.3 and 80-5.4 of the Regulations of the Commissioner of Education Relating to Extending Flexibilities for Incidental and Substitute Teaching

DATE: September 1, 2022

AUTHORIZATION(S): 

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed amendment of sections 80-5.3 and 80-5.4 of the Regulations of the Commissioner of Education relating to extending flexibilities for incidental and substitute teaching?

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 September 2022 meeting. A copy of the proposed rule is included (Attachment A).

Procedural History

The proposed amendment was presented to the Higher Education Committee for recommendation to the Full Board for adoption as an emergency rule at the May 2022 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 1, 2022, for a 60-day public comment period.

Because the May emergency action was set to expire on August 14, 2022, a second emergency action was necessary at the July 2022 meeting, effective August 15, 2022, to ensure the emergency rule remained continuously in effect until it could be permanently adopted at the September 2022 Regents meeting. A Notice of Emergency Adoption was published in the State Register on August 31, 2022.

Following the 60-day public comment period required under the State Administrative Procedure Act, the Department received no comments on the proposed amendment. Therefore, an Assessment of Public Comment is not required and no changes to the proposed amendment are needed. A Notice of Adoption will be published in the State Register on September 28, 2022. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

In response to the COVID-19 pandemic and a statewide teacher shortage, the Board of Regents expanded opportunities for incidental and substitute teaching as described below. The Department now proposes to extend these flexibilities into the 2022-2023 school year.

Incidental Teaching

At its December 2020 meeting, the Board of Regents permanently adopted regulatory amendments to increase the amount of incidental teaching permitted in schools from up to five classroom hours a week to up to 10 classroom hours a week during the 2020-2021 school year in response to the COVID-19 pandemic.

At its October 2021 meeting, the Board of Regents permanently adopted regulatory amendments to extend this flexibility to the 2021-2022 school year. Through incidental teaching, certified teachers can teach a subject not covered by their certificate when no certified or qualified teachers are available after extensive and documented recruitment.

Substitute Teaching

The Board of Regents permanently adopted regulatory amendments at its December 2020 meeting allowing a school district or BOCES to employ certain substitute teachers—those who did not hold a valid certificate and were not working towards certification but held a high school diploma or its equivalent—to be employed for more than 40 days during the 2020-2021 school year. The regulation permitted the employment of these substitute teachers beyond this period under the following extraordinary circumstances:

- Up to an additional 50 days (90 days total in a school year) if the district superintendent or the superintendent (for school districts that are not a component district of a BOCES) certifies that the employer has conducted a

good faith recruitment search for a properly certified candidate and determined that there are no available certified teachers that can perform the duties of such position; or

- Beyond the 90 days, if a district superintendent or the superintendent attests that a good faith recruitment search has been conducted, 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.

At its October 2021 meeting, the Board of Regents permanently adopted regulatory amendments to extend this flexibility to the 2021-2022 school year.

The Department now proposes to extend these flexibilities for incidental teaching and substitute teaching again to the 2022-2023 school year. This proposal enables school districts to address their continuing teacher shortages by providing them with flexibility in making teaching assignments.

Related Regents Items

July 2022: [Proposed Amendment of Sections 80-5.3 and 80-5.4 of the Regulations of the Commissioner of Education Relating to Extending Flexibilities for Incidental and Substitute Teaching](#)

(<https://www.regents.nysed.gov/common/regents/files/722brca4.pdf>)

May 2022: [Proposed Amendment of Sections 80-5.3 and 80-5.4 of the Regulations of the Commissioner of Education Relating to Extending Flexibilities for Incidental and Substitute Teaching](#)

(<http://www.regents.nysed.gov/common/regents/files/522hea1.pdf>)

October 2021: [Proposed Amendment to Sections 52.30, 63.9, 70.4, 74.6, 75.2, 75.5, 76.2, 79-9.3, 79-10.3, 79-11.3, 79-12.3, 80-5.3, 80-5.4, 83.5, 87.2, 87.5, 145-2.15, 155.17, 200.5, 200.6, and 279.15 of the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis](#)

(<https://www.regents.nysed.gov/common/regents/files/1021brca7.pdf>)

December 2020: [Proposed Amendments to Sections 80-5.3, 80-5.4, 100.1, 100.2, 100.5, 100.6, 100.10, 117.3, 136.3, 145-2.1, 151-1.3, 154-2.2, 154-2.3, 156.3, and 200.4 of the Regulations of the Commissioner of Education Relating to Addressing the COVID19 Crisis and the Reopening of Schools](#)

(<https://www.regents.nysed.gov/common/regents/files/1220brca7.pdf>)

Recommendation

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

VOTED: That the Board of Regents adopt the proposed amendment of sections 80-5.3 and 80-5.4 of the Regulations of the Commissioner of Education, as submitted, effective September 28, 2022.

Timetable for Implementation

If adopted at the September 2022 meeting, the proposed amendment will become effective as a permanent rule on September 28, 2022.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, 208, 305, 308, 3001, 3004, and 3009 of the Education Law.

1. The opening paragraph of section 80-5.3 of the Regulations of the Commissioner of Education shall be amended to read as follows:

A superintendent of schools may assign a teacher to teach a subject not covered by such a teacher's certificate or license for a period not to exceed five classroom hours a week, and [due to the COVID-19 crisis] during the 2020-2021[and/or] 2021-2022, and 2022-2023 school years for a period not to exceed ten classroom hours a week, when no certified or qualified teacher is available after extensive and documented recruitment and provided that approval of the commissioner is obtained in accordance with the following requirements:

2. Subparagraph (ii) of paragraph (3) of subdivision (c) 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, but who holds a high school diploma or its equivalent, 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 during the 2020-2021[and], 2021-2022, and 2022-2023 school years[due to the COVID-19 crisis].