



TO: The Honorable Members of the Board of Regents

FROM: William P. Murphy *William Murphy*

SUBJECT: Proposed Amendment of Section 80-5.4 of the Regulations of the Commissioner of Education Relating to the Employment of Substitute Teachers

DATE: August 31, 2023

AUTHORIZATION(S): *Jan M. G. Bellotti*

SUMMARY

Issue for Decision (Consent)

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?

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 2023 meeting. A copy of the proposed amendment is attached (Attachment A).

Procedural History

The proposed amendment was presented to the Higher Education Committee for discussion at its May 2023 meeting. A Notice of Proposed Rule Making was published in the State Register on May 31, 2023, for a 60-day public comment period. Following publication in the State Register, the Department received two comments on the proposed amendment. An Assessment of Public Comment is included (Attachment B). No changes to the proposed amendment are recommended at this time. A Notice of Adoption will be published in the State Register on September 27, 2023. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

The three categories of substitute teachers that may be employed by a school district or board of cooperative educational services (BOCES) are those who (8 NYCRR 80-5.4):

- **Hold a Valid Certificate.** Substitute teachers who hold a valid teaching certificate can work for an unlimited number of days in any capacity. If they are employed for more than 40 days, they must be employed in their certification area.
- **Are Working Towards Certification.** Substitute teachers who do not hold a valid certificate, but who are working towards certification by taking college coursework at a rate of at least six semester hours per year, can work for an unlimited number of days in any capacity. If they are employed for more than 40 days, they must be employed in the area in which they are seeking certification.
- **Do Not Hold a Valid Certificate and Are Not Working Towards Certification.** Substitute teachers who do not hold a valid teaching certificate and are not working towards certification are limited to working up to 40 days in a school district or BOCES in a school year.

At its July 2016 meeting, the Board of Regents adopted regulations allowing substitute teachers who do not hold a valid teaching certificate and are not working towards certification to exceed the 40-day limit:

- Up to 90 total days 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 90 days, if the district superintendent or the superintendent attests that a good faith recruitment search has been conducted, that after 90 days there remain 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 Board amended these regulations at its December 2016 meeting to make them applicable through June 30, 2018. The Board extended the end date of the sunset provision to June 30, 2020, at its May 2018 meeting due to teacher shortages in the State.

At its December 2020 meeting, in response to the COVID-19 pandemic, the Board again extended this provision, this time through the 2020-2021 school year. The Board also added a requirement that substitute teachers who do not hold a valid teaching

certificate and are not working towards certification must also hold a high school diploma or its equivalent to teach beyond the 40-limit.

The Board of Regents continued to extend this provision through the 2021-2022 and 2022-2023 school years at its October 2021 and September 2022 meetings, respectively, in response to the continuing effects of COVID-19 and teacher shortages.

Proposed Amendments

School districts and BOCES have requested the continuation of this substitute teaching flexibility. Given the successful implementation of this flexibility for seven school years, the Department is proposing to remove the end date for this provision that has been in effect since July 27, 2016. Additionally, the proposed amendment would apply to substitute teachers with valid teaching certificates and substitute teachers without a valid certificate but who are working towards certification, as well as substitutes without a valid certificate and who are not working towards certification, providing this option to all substitute teachers.

Thus, substitute teachers who do not hold a valid teaching certificate and are not working towards certification, but who hold a high school diploma or its equivalent, may be employed by a school district or BOCES beyond the 40-day limit during a school year under the conditions outlined above. By no longer having an end date, school districts and BOCES may continue to address persistent teacher shortages and plan for their staffing needs for the upcoming school year with certainty.

The proposal also includes a technical revision to section 80-5.4 of the Commissioner's regulations by deleting a reference to substitute teachers who hold a valid "certificate of qualification." These credentials are no longer issued and there are no longer any teachers who hold a valid certificate of qualification.

Related Regents Items

May 2023: [Proposed Amendment of Section 80-5.4 of the Regulations of the Commissioner of Education Relating to the Employment of Substitute Teachers](https://www.regents.nysed.gov/sites/regents/files/523hed1revised.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/523hed1revised.pdf>)

September 2022: [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](https://www.regents.nysed.gov/sites/regents/files/922brca3.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/922brca3.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)
(<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)
(<https://www.regents.nysed.gov/common/regents/files/1220brca7.pdf>)

January 2019: [Proposed Amendments to 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](https://www.regents.nysed.gov/sites/regents/files/119bra4.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/119bra4.pdf>)

May 2018: [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](https://www.regents.nysed.gov/sites/regents/files/518hea1.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/518hea1.pdf>)

December 2016: [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](https://www.regents.nysed.gov/sites/regents/files/1216brca6.pdf)
(<https://www.regents.nysed.gov/sites/regents/files/1216brca6.pdf>)

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

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 September 27, 2023.

Timetable for Implementation

If adopted at the September meeting, the proposed amendment will become effective on September 27, 2023.

Attachment A

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. Subdivisions (c) and (d) of section 80-5.4 of the Regulations of the Commissioner of Education are amended to read as follows:

(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 except as otherwise provided in paragraph (4).

(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 except as otherwise provided in paragraph (4).

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

[(i) Except as otherwise provided in subparagraph (ii) of this paragraph, service] Service may be rendered for no more than 40 days by a school district or board of cooperative educational services in a school year except as otherwise provided in paragraph (4).

[(ii)] (4) 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] an appropriately 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] 40 days, 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 appropriately 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] certifies that a good faith recruitment search has been conducted and that there are still no available appropriately 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, 2021-2022, and 2022-2023 school years.]

(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 uncertified substitute teachers authorized to be employed beyond [the 40-day limit until June 30, 2018] 40 days for the limited circumstances described in [subparagraph (c)(3)(ii)] paragraph (4) 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] 40 days, certifying that a good faith recruitment search was conducted and that there were no available appropriately certified teachers that could perform the duties of such position. The annual report shall also include the number of uncertified substitute teachers authorized to be employed beyond [the] 90 days [limit until June 30, 2018] for the limited circumstances described in [subparagraph (c)(3)(ii)] paragraph (4) of this section, with the required certification(s) from the district superintendent or superintendents, as applicable, for each uncertified substitute teacher employed beyond [the 90-day limit] 90 days, certifying that a good faith recruitment search was conducted and that there were no available appropriately 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.

ASSESSMENT OF PUBLIC COMMENT

Since publication of the Notice of Proposed Rule Making in the State Register on May 31, 2023, the State Education Department (Department) received the following comments on the proposed amendment:

1. COMMENT: The commenter believes the amended rules for employing substitute teachers will assist public schools in addressing staffing shortages and supports the Department's efforts to examine certification policies.

DEPARTMENT RESPONSE: The commenter is supportive of the proposed rule; therefore, no changes are necessary.

2. COMMENT: The commenter does not support removing the end date for substitute teaching flexibility and requests that the flexibility continue to be revisited annually. The commenter is concerned that creating permanent flexibility for school districts to employ substitute teachers will send a message to the field that there are pathways for uncertified individuals to teach and further opines that the overuse of substitute teachers may affect students.

DEPARTMENT RESPONSE: The proposed amendment makes permanent a flexibility that has been in place on an annual basis since 2016. During the past seven years, the Department has heard consistently from school districts and boards of cooperative educational services (BOCES) that this flexibility is necessary to help address staffing challenges and that having the flexibility in place as a permanent rule will provide greater clarity and certainty to the field related to the employment of substitute teachers. Importantly, the Department's regulations state that a substitute

teacher is one who is employed in place of a regularly appointed teacher and, therefore, does not provide a pathway for an uncertified individual to become a regularly appointed teacher or otherwise teach permanently. Although this flexibility was created in 2016 to address contemporary teacher shortages, school districts, and BOCES have continued to find it necessary to rely on substitute teachers to address short-term staffing needs. Therefore, no changes to the proposed rule are necessary.