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Information/Action

Certification Committee

Proposed Amendments to Title 5 of the California Code of Regulations Pertaining to the Teaching Permit for Statutory Leave

Executive Summary: This agenda item presents proposed amendments to Title 5 of the California Code of Regulations section 80022 to allow local employing agencies to request a Teaching Permit for Statutory Leave (TPSL) to be used when a teacher of record is unable to provide instructional services due to being on Military Leave or Administrative Leave.

Recommended Action: That the Commission approve the proposed regulation amendments in order to begin the rulemaking file for submission to the Office of Administrative Law.

Presenters: Thomas Johnson, Analyst, and Tammy Duggan, Consultant, Certification Division

Strategic Plan Goal

I. Educator Quality

- c) Ensure that credential processing and assignment monitoring activities accurately, effectively, and efficiently identify educators who have met high and rigorous certification standards and who are appropriately assigned.

Proposed Amendments to Title 5 of the California Code of Regulations Pertaining to the Teaching Permit for Statutory Leave

Introduction

This agenda item proposes amendments to Title 5 of the California Code of Regulations (CCR), section 80022 to allow local employing agencies to request a Teaching Permit for Statutory Leave (TPSL) to be used when a teacher of record is unable to provide instructional services due to being placed on Military Leave or Administrative Leave.

Background

In February 2016, the Commission proposed regulations to create the TPSL in order to cover statutory leave assignments. The purpose of the TPSL was to serve as an option for local educational agencies (LEAs) to use when faced with staffing classrooms when the teacher of record is out on extended leave, thereby allowing LEAs the benefit of not having to continually rotate Emergency 30-Day Substitute Teaching Permit holders to cover these assignments. A public hearing was held in June 2016, and the Commission approved the proposed regulations to create the TPSL. The addition of §80022 to Title 5 of the CCR creating the TPSL was approved by the Office of Administrative Law and became effective on August 16, 2016.

Currently, the TPSL allows an individual to provide instructional services beyond the 20 or 30 day limit only when the teacher of record is out on one of the statutory leaves specified in regulations, as shown in Table 1 below.

Table 1

| Type of Leave | Length of Leave | Statutory Reference |
|---------------------------------------|---------------------------|--|
| Sick Leave | As accumulated by teacher | Education Code §49978 |
| Differential Sick Leave | 5 months | Education Code §44977 |
| Pregnancy Disability Leave Act | 4 months | Government Code §12945 |
| Family and Medical Leave | 12 workweeks | Government Code §12945.2 and Title 29 U.S. Code §2601, et seq. |
| California Family Rights Act | 12 workweeks | Government Code §12945.2 |
| Industrial Accident and Illness Leave | 60 days | Education Code §44984 |

Recently, however, stakeholder groups have voiced a desire to add new forms of statutory leave to §80022. Specifically, stakeholders have requested that the TPSL be allowed to cover

assignments resulting from teachers of record being placed on extended Military Leave or Administrative Leave.

Currently, Military Leave and Administrative Leave are not recognized in §80022. Consequently, LEAs are faced with the challenge of covering assignments for teachers of record on extended Military Leave or Administrative Leave by continuously rotating through substitute teachers. The proposed amendments to Title 5 of the CRR §80022 will allow LEAs to request a TPSL when a teacher of record is unable to provide instructional services due to being on extended Military Leave or Administrative Leave, as both of these leave types align with the purpose and intent of the permit as created by the Commission.

Necessity and Rationale for Proposed Amendments

Military Leave

“Military Leave” allows public employees, who are also members of the United States armed forces, the ability to receive temporary leaves of absence from their public employment if they are called into active duty, required to attend scheduled reserve services, or required to attend temporary training assignments by their respective military branches. California public school employees, including teachers of record, are often members of the United States armed forces and may need to leave their assigned positions to perform recognized long-term or short-term military service duties (Gov. Code §18540.3; Mil. & Vet. Code §§ 389–395.9).

State and federal regulations currently recognize and enforce Military Leave procedures and (re)employment policies for all public employees that are also members of the United States armed forces. As a general matter, Military Leave shall be granted in accordance with applicable state and federal laws to public employees performing military duties on a voluntary or involuntary basis in a uniformed service, including: active duty, active duty training, initial active duty for training, inactive duty training, full-time National Guard duty, examination to determine fitness for duty, and performance of funeral honors duty (Ed. Code §44800; Mil. & Vet. Code §§ 394.5-395.4, 395.9-395.10; and 38 U.S.C. §§ 4301, *et seq.*). Moreover, upon conclusion of long-term or short-term Military Leave, all public employees are entitled to full restoration of their employment rights with their prior employing agency (Ed. Code §44800; Mil. & Vet. Code §§ 395-395.2; 38 U.S.C. §§ 4304 and 4313; 38 U.S.C. §§ 4301, *et seq.*; and 20 C.F.R § 1002.180-1002.181). Finally, California law prohibits public and private employers from discharging or otherwise discriminating against, an employee because he or she is a member of the United States armed forces or is ordered to duty or training (Mil. & Vet. Code §394-395).

The length of time that a teacher of record may need for Military Leave depends upon whether their military duties are “long-term” or “short-term.” According to the Military and Veterans Code, “short-term” appears to be for military service duties that require a commitment of less than 180 calendar days. Therefore, “long-term” military service would apply to military service duties requiring a commitment that exceeds 180 calendar days. As a result, Military Leave may be necessary for six months or longer (Mil. & Vet. Code §389).

Title 5 of the CCR §80022 does not currently allow LEAs to request a TPSL to be used when a teacher of record is unable to provide instructional services due to being on Military Leave. As noted above, the length of time a teacher of record may need for Military Leave can range from six months for short-term military duties, or, more than six months for long-term military duties. Yet, present restrictions limit an Emergency 30-Day Substitute Teaching Permit holder's service to no more than 30 cumulative days for any one teacher of record during the school year (Title 5 of the CCR §80025), except in special education classrooms, where a substitute may serve no more than 20 cumulative days during a school year for any one teacher (Ed. Code §56061(a)). Thus, because Military Leave may require a teacher of record to leave their position for six months or longer, LEAs often rely on a series of rotating substitute teachers to cover the assignments of teachers on extended Military Leave of absences. Rotating substitute teachers in this manner results in an inconsistent and inadequate learning environment, which can be detrimental to student success.

The proposed amendments to subdivision (f)(19) of §80022 to add Military Leave as a recognized form of "statutory leave" will allow LEAs to request a TPSL to be used when a teacher of record is unable to provide instructional services due to being on a Military Leave of absence for periods less than or equal to 180 calendar days for short-term military service, or exceeding 180 calendar days for long-term military service.

Administrative Leave

"Administrative Leave" is as an employment status that is conferred upon an employee who is suspended, or otherwise removed from their position, for an indefinite length of time pending the results of investigations and evidentiary proceedings related to causes for dismissal or suspension. These include incompetency, insubordination, conviction of crimes involving moral turpitude, failure to comply with reasonable orders, egregious or unprofessional misconduct, allegations of criminal conduct, physical or mental fitness, unsatisfactory performance, or posing an immediate threat to coworkers or to the public. However, Administrative Leave, as it applies to public school employment, is not explicitly defined in the Education Code or CCR. In fact, the definition of this type of leave only appears in the Education Code in relation to employees within California Community Colleges (See Ed. Code §87623, subdivision (d)).

Although Education Code also does not currently codify an LEA's authority to place an employee on Administrative Leave pending the results of investigatory and evidentiary hearings related to causes for dismissal or suspension, this authority is implied by the "scope of permissible bargaining" pursuant to the Educational Employment Relations Act (EERA) (See Gov. Code §3540 *et seq.*). As a general matter, the EERA establishes and governs collective bargaining between teachers unions and school districts. Pursuant to the EERA, school district employers "shall meet and negotiate with and only with representatives of employee organizations selected as exclusive representatives or appropriate units upon request with regard to matters within the scope of representation" (Gov. Code § 3543.3). The scope of representation is limited by statute to "matters relating to wages, hours of employment, and other terms and conditions of employment" as defined (Gov. Code § 3543.3, subd. (a)). Within Government Code §3543.2, the Terms and Conditions of Employment includes: welfare

benefits, *leave*, transfer and reassignment policies, safety conditions of employment, *et seq.* Because *leave* is provided in §3543.2 of the Government Code, this is within the scope of EERA representation. As such, the particular conditions and policies related to Administrative Leave are completely dependent upon the nature of a LEA's bargaining agreement in place at the time an employee is accused of conduct warranting dismissal or suspension.

The length of time that a teacher of record could be placed on Administrative Leave is not established within the Education Code. However, based on a reasonable inference of the procedures currently in place, the time an employee may be placed on Administrative Leave is completely dependent upon how long it takes the investigatory and evidentiary hearing processes to conclude for any individual employee. Given that the procedures are complicated the entire process can take a significant amount of time, especially if an employee or governing school board files appeals or other motions that prolong the process. In summation, it is confidently assumed that the investigatory and evidentiary procedures take longer than thirty days, sometimes even up to more than one year, to conclude.

Title 5 of the CCR §80022 does not currently allow LEAs to request a TPSL to be used when a teacher of record is unable to provide instructional services due to being on Administrative Leave. LEAs currently rely most often on Emergency 30-Day Substitute Teaching Permit holders to cover such assignments when a teacher of record is on Administrative Leave. Rotating substitute teachers in this manner is suboptimal because it does not provide a consistent or stable learning environment for students.

The proposed amendments to subdivision f(19) of §80022 to add Administrative Leave as a recognized form of "statutory leave" will allow LEAs to request a TPSL to be used when a teacher of record is unable to provide instructional services due to being placed on Administrative Leave.

Proposed Regulation Amendments

The entire text of Title 5 of the CCR, section 80022 is provided in Appendix A. Only subsection (f)(19) would need to be amended. (Text proposed to be added is displayed in underline type. Text proposed to be deleted is displayed in ~~striketrough type~~.)

(19) The term "statutory leave" as used in this section shall mean when an employing agency must temporarily fill a position belonging to a teacher of record whose absence is authorized by any leave as defined in Education Code section 44977, Education Code section 44978, Education Code section 44984, Government Code section 12945, Government Code section 12945.2 ~~and~~, 29 U.S.C. Chapter 28, Education Code section 44800, Military and Veterans Code sections 395, 395.01, 395.02, 395.05, 395.1, 395.2, 395.9, 38 U.S.C. section 4301, et seq, and Administrative Leave pursuant to collective bargaining agreements outlined in Government Code section 3543.2 that is related to procedures outlined in Education Code sections 44934 to 44951.

Staff Recommendation

Staff recommends approval of the proposed amendments to Title 5 of the CCR §80022 to allow LEAs to request a TPSL to be used when a teacher of record is unable to provide instructional services due to being on extended Military Leave or Administrative Leave for the purposes of beginning the rulemaking file for submission to the Office of Administrative Law.

A public hearing will be scheduled for this item only if any interested party or his or her duly authorized representative submits in writing, no later than 15 days prior to the close of the 45-day written comment period, a request to hold a public hearing (Gov. Code §11346.5(a)(17)).

Appendix A

CALIFORNIA CODE OF REGULATIONS TITLE 5. EDUCATION DIVISION 8. COMMISSION ON TEACHER CREDENTIALING

Text proposed to be added for the 45-day comment period is displayed in underline type.

Text proposed to be deleted for the 45-day comment period is displayed in ~~striketrough~~ type.

5 CCR § 80022 - Teaching Permit for Statutory Leave.

Local employing agencies may request the Teaching Permit for Statutory Leave to be used when a teacher of record is unable to provide services due to a statutory leave.

(a) If a local employing agency elects to request a Teaching Permit for Statutory Leave, the following shall be required for the initial issuance:

(1) Submission of an application form as defined in §80001; the processing fee as specified in §80487(a)(1); and fingerprint clearance as specified in §80442.

(2) Possession of a baccalaureate or higher degree from a regionally accredited college or university.

(3) Meet the basic skills requirement as described in Education Code section 44252, unless exempt by statutes or regulations.

(4) Successful completion of the subject-matter requirement for the authorization(s) requested as found in (A), (B) or (C):

(A) For any single subject authorization, completion of one of the following:

1. 18 semester units (or 9 upper division units), or equivalent quarter units, of appropriate non-remedial course work taken at a regionally accredited college or university with a grade of "C" or higher, "Pass", or "Credit" in a single subject or subsumed subject area as defined in §80005.

2. A degree major in a statutory single subject or subsumed subject area as defined in §80005.

3. Passage of the appropriate subject-matter examination(s) in the single subject area as provided in Education Code Sections 44280, 44281, and 44282.

(B) For the multiple subject authorization, completion of one of the following:

1. At least 10 semester units of non-remedial course work taken at a regionally accredited college or university with a grade of "C" or higher, "Pass", or "Credit" in each of at least four of the following subject areas or at least 10 semester units of course work in each of three subject areas and an additional 10 semester units of course work in a combination of two of the remaining subject areas. The subject areas are as follows: language studies, history, literature, humanities, mathematics, the arts, science, physical education, social science and human development.

2. A degree major in liberal studies.

3. Passage of the appropriate multiple subject subject-matter examination(s) as provided in Education Code Sections 44280, 44281, and 44282.

(C) For the special education authorization, completion of one of the requirements in either (A) or (B), or one of the following:

1. Verify a minimum of one year of successful full-time classroom experience, or the equivalent in part-time experience, working with special education students.

2. Verify a minimum of 9 semester units of course work in special education or in a combination of special education and regular education that are appropriate to a special education or regular education teaching credential.

(5) The local employing agency shall submit to the Commission verification of completion of 45 hours of pre-service preparation that shall include, but is not limited to, the following:

(A) Foundational level content covering Curriculum and Instruction.

(B) Foundational level content covering Reading and Language Arts.

(C) Foundational level content covering Pedagogy.

(D) Foundational level content covering Human Development.

(E) Foundational level content covering Teaching English Learners.

(F) Foundational level content covering Best Practices in Instruction and Individualized Education Programs.

(G) Foundational, intermediate, and proficient level content for Health, Safety and Hygiene.

(H) Foundational, intermediate, and proficient level content for Ethics.

(I) Foundational, intermediate, and proficient level content for Local Context.

(J) Foundational level content covering Classroom Management and the Learning Environment.

(6) The local employing agency shall submit to the Commission verification of orientation, mentoring, and accountability.

(b) The Teaching Permit for Statutory Leave shall be valid for no less than one year and expires one calendar year from the first day of the month immediately following the date of issuance.

(c) Use of the Teaching Permit for Statutory Leave for statutory leave assignments shall be restricted to the local employing agency(ies) requesting the permit.

(d) If a local employing agency elects to request the reissuance of the Teaching Permit for Statutory Leave, the following shall be required:

(1) For the first reissuance:

(A) Submission of an application form as defined in §80001; the processing fee as specified in §80487(a)(1); and fingerprint clearance as specified in §80442.

(B) The local employing agency shall submit to the Commission verification of continued mentoring and accountability.

(C) The local employing agency shall submit to the Commission verification of completion of an additional 45 hours of preparation that shall include, but is not limited to, the following:

1. Intermediate level content covering Curriculum and Instruction.
2. Intermediate level content covering Reading and Language Arts.
3. Foundational level content covering Relationships Between Theory and Practice.
4. Intermediate level content covering Pedagogy.
5. Intermediate level content covering Teaching English Learners.
6. Foundational and intermediate level content covering Using Technology in the Classroom.
7. Intermediate level content covering Best Practices in Instruction and Individualized Education Programs.
8. Foundational, intermediate, and proficient level content for Local Context.
9. Intermediate level content covering Classroom Management and the Learning Environment.

(2) For the second reissuance:

(A) Submission of an application form as defined in §80001; the processing fee as specified in §80487(a)(1); and fingerprint clearance as specified in §80442.

(B) The local employing agency shall submit to the Commission verification of continued mentoring and accountability.

(C) The local employing agency shall submit to the Commission verification of completion of an additional 45 hours of preparation that shall include, but is not limited to, the following:

1. Proficient level content covering Curriculum and Instruction.
2. Proficient level content covering Reading and Language Arts.
3. Intermediate and proficient level content covering Relationships Between Theory and Practice.
4. Proficient level content covering Pedagogy.
5. Intermediate and proficient level content covering Human Development.
6. Proficient level content covering Teaching English Learners.
7. Proficient level content covering Using Technology in the Classroom.
8. Proficient level content covering Best Practices in Instruction and Individualized Education Programs.
9. Foundational, intermediate, and proficient level content for Local Context.
10. Proficient level content covering Classroom Management and the Learning Environment.

(3) For the third and all subsequent reissuances:

(A) Submission of an application form as defined in §80001; the processing fee as specified in §80487(a)(1); and fingerprint clearance as specified in §80442.

(B) The local employing agency shall submit to the Commission verification of continued mentoring and accountability.

(C) The local employing agency shall submit to the Commission verification of completion of professional learning activities that are offered to the local employing agency's regular teaching staff.

(e) The Teaching Permit for Statutory Leave may be issued with one or more of the following authorizations:

(1) A multiple subject authorization that shall authorize instructional service as the interim teacher of record to students in a self-contained setting as defined for the Multiple Subject Teaching Credential in §80003.

(2) A specific single subject authorization that shall authorize instructional service as the interim teacher of record to students in a departmentalized setting as defined for the Single Subject Teaching Credential in §80004.

(3) A special education authorization that shall authorize instructional service as the interim teacher of record to students with any disability area as is authorized by an Education Specialist Instruction Credential in §80048.6.

(f) Definitions:

(1) The term "accountability" as used in this section shall mean the following:

(A) That the local employing agency has made reasonable efforts in hiring a substitute with a full teaching credential that matches the setting and/or subject for the statutory leave position and that no such candidate is available, and

(B) That documentation verifying the appropriate use of each permit holder's assignment shall be kept on file with the local employing agency and that data on the assignments of the permit holder shall be reported to the local county office of education annually as part of the assignment monitoring specified under Education Code section 44258.9.

Documentation verifying the appropriate use of each permit shall include:

1. name of the permit holder serving in the assignment,
2. teacher of record,
3. specific statutory leave section that justifies use of the TPSL permit,
4. school site of assignment,
5. setting, subject, and grade level of statutory leave assignment,
6. name of mentor assigned to TPSL permit holder, and
7. number of cumulative days the TPSL holder served in specific statutory leave assignment.

(2) The term "Best Practices in Instruction and Individualized Education Programs" as used in this section shall mean the following: federal disability category definitions and specific best practices; basic explanation of individualized education programs and other special education acronyms; how to interpret an individualized education program goal and collect data; how to interpret and implement a behavior plan; differentiated instruction and

universal design for learning including visual supports, applied behavior analysis and positive behavioral interventions and supports; communication with parents; working with related service providers and paraeducators.

(3) The term “Classroom Management and the Learning Environment” as used in this section shall mean the following: research-based strategies for creating and maintaining effective learning environments; classroom organization; behavior management plans that support student engagement and learning; positive behavior supports; and local context (e.g., school-wide behavior management systems, Positive Behavioral Interventions and Support (PBIS), Multi-Tier Systems of Support (MTSS), Response to Instruction and Intervention (RTI2), Restorative Justice Approach).

(4) The term “Curriculum and Instruction” as used in this section shall mean the following: preparation in developing, implementing, adapting, modifying, and evaluating a variety of pedagogical approaches to instruction; using and developing instructional sequences and lesson plans that provide all students with equitable access to the content and experiences found in the state-approved core curriculum.

(5) The term “employing agency” as used in this section shall mean any of the following: public school districts in California; county offices of education or county superintendents of schools in California; schools that operate under the direction of a California state agency; nonpublic, nonsectarian schools and agencies as defined in Education Code sections 56365 and 56366; charter schools as established in Education Code section 47605.

(6) The term “Ethics” as used in this section shall mean the following: confidentiality regarding student information; mandated reporting and child abuse prevention; Americans with Disabilities Act of 1990 (ADA); Individuals with Disabilities Education Act (IDEA); Section 504 of the Rehabilitation Act of 1973; non-discrimination; universal access, designing and implementing equitable and inclusive learning environments for all students.

(7) The term “foundational” as used in this section shall mean the most basic or introductory level.

(8) The term “Health, Safety and Hygiene” as used in this section shall mean the following: emergency behavior interventions and de-escalation strategies; establishing a physically, socially, and emotionally safe classroom environment; specialized health care procedures; injury and illness prevention; lifting, carrying, and use of mechanical lifts and equipment; general and specialized ergonomics; blood-borne pathogens and universal precautions.

(9) The term “Human Development” as used in this section shall mean the following: comprehensive knowledge of typical and atypical human development from the prenatal stage through adulthood; knowledge of developmental stages and development associated with various disabilities and risk conditions (e.g., visual impairment, autism spectrum

disorders, cerebral palsy); resilience and protective factors (e.g., attachment, temperament) and their implications for learning.

(10) The term “intermediate” as used in this section shall mean that which is in advance of or builds upon the foundational level.

(11) The term “Local Context” as used in this section shall mean the following: employer-specific software or programs used for attendance, grading, and individualized education program tracking; school expectations; local educational programs.

(12) The term “mentoring” as used in this section shall mean that for each statutory leave assignment the local employing agency shall provide an average of two hours of mentoring, support, and/or coaching per week through a system of support coordinated and/or provided by a mentor who possesses a valid life or clear credential that would also authorize service in the statutory leave assignment, and that within this system of support the TPSL holder shall be provided lesson plans for the first four weeks of the assignment as well as continued assistance in the development of curriculum, lesson planning, and Individualized Education Programs (IEPs).

(13) The term “orientation” as used in this section shall mean that the local employing agency shall provide early orientation to the assignment before or during the first month of service in the statutory leave assignment.

(14) The term “Pedagogy” as used in this section shall mean the following: introductory coursework in planning and delivering content-specific instruction consistent with state-adopted academic content standards for students and curriculum frameworks; knowledge of the full range of the service delivery system, including special and general education, diversity of grades/ages, and federal disability categories.

(15) The term “professional learning activities” as used in this section shall mean activities that are offered to the local employing agency's regular teaching staff.

(16) The term “proficient” as used in this section shall mean the complete or skilled level.

(17) The term “Reading and Language Arts” as used in this section shall mean the following: systematic instruction in reading, writing, listening, and speaking aligned to the state-adopted English Language Arts Content Standards and the Reading/Language Arts Framework that meets the needs of the full range of learners including struggling readers, students with special needs, typologies of English language learners, speakers of non-standard English, students who have no communication/language system, and advanced learners who have varied reading levels and language backgrounds.

(18) The term “Relationships Between Theory and Practice” as used in this section shall mean the following: exposure to the relationships between foundational issues, theories, and professional practice in relation to the principles of human learning and development,

pedagogical strategies, curriculum, instruction, assessment, student accomplishments, attitudes, and conduct.

(19) The term “statutory leave” as used in this section shall mean when an employing agency must temporarily fill a position belonging to a teacher of record whose absence is authorized by any leave as defined in Education Code section 44977, Education Code section 44978, Education Code section 44984, Government Code section 12945, Government Code section 12945.2 and 29 U.S.C. Chapter 28-, Education Code section 44800, Military and Veterans Code sections 395, 395.01, 395.02, 395.05, 395.1, 395.2, 395.9, 38 U.S.C. section 4301, et seq, and Administrative Leave pursuant to collective bargaining agreements outlined in Government Code section 3543.2 that is related to procedures outlined in Education Code sections 44934 to 44951.

(20) The term “Teaching English Learners” as used in this section shall mean the following: principles of linguistic development; language acquisition; assessment of language proficiency; academic delivery and building strategies for English language learners; knowledge of educational equity, diversity, cultural and linguistic responsiveness and their implementation in curriculum content and school practices for all students.

(21) The term “Using Technology in the Classroom” as used in this section shall mean the following: knowledge in the basic principles of operation of computer hardware and software; use of technology to facilitate the teaching and learning process; legal and ethical issues related to the use of technology; best practices and research on the use of technology to deliver lessons that enhance student learning; integration of technology-related tools into the educational experience.

Note: Authority cited: Section 44225(q), Education Code. Reference: Sections 44225(b), 44225(d), 44225(e), 44225(f), 44252, 44258.9, 44280, 44281, 44282, 44300(i), 44977, 44978, 44984, 47605, 56365 and 56366, Education Code.