
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

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Author: Olsen
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Consultant: Lenin DelCastillo
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Fiscal: Yes

Subject: Special education: substitute teachers

SUMMARY

This bill, until January 1, 2022, authorizes a person holding an emergency 30-day substitute teacher permit to serve as a special education substitute teacher for up to 40 cumulative days during the school year, which is double the maximum time allowed under current law, provided specified conditions are met.

BACKGROUND

Existing law:

- 1) Prohibits a non-credentialed person from substituting for any special education certificated position. (Education Code § 56060)
- 2) Authorizes holders of 30-day emergency substitute teaching permits to serve as a substitute for a credentialed special education teacher for not more than 20 cumulative days for each special education teacher absent during the school year. (EC § 56061)
- 3) Requires holders of 30-day emergency substitute teaching permits to meet the following requirements:
 - a) Possess at least a Bachelor of Arts degree from a regionally accredited college or university;
 - b) Have passed the California Basic Educational Skills Test; and
 - c) Have fingerprint clearance.
- 4) Requires the employing agency to submit a Declaration of Need for Fully Qualified Educators as a condition of employing an emergency substitute teacher. The Declaration of Need shall include the following:
 - a) The number and type of emergency permits that will be needed during the school year;
 - b) A description of the efforts that were undertaken to locate and recruit individuals who hold the needed credentials;

- c) A description of efforts to establish alternative training options; and
- d) A certification that there is an insufficient number of certificated persons who meet the requirements of the positions to be filled by the substitutes. (Education Code § 44300 and California Code of Regulations, Title 5, § 80025)

ANALYSIS

This bill:

- 1) Authorizes a person holding an emergency 30-day substitute teacher permit to serve as a special education substitute teacher for up to 40 cumulative schooldays per vacancy, provided all of the following conditions have been met:
 - a) The permit holder is filling an immediate staffing need due to a vacant position and is not substituting for a teacher who is absent.
 - b) The employing authority has completed and filed a Statement of Need pursuant to Section 80025 of Title 5 of the California Code of Regulations.
 - c) The employing authority has complied with the hiring hierarchy specified in Education Code § 44225.7, which requires that if a suitable fully prepared teacher is not available to the school district, the district shall make reasonable efforts to recruit an individual for the assignment in a particular order with first priority going to a candidate who is qualified to participate and enrolls in an approved internship program in the region of the school district.
 - d) By the time the employing authority has reason to believe that the assignment will last more than 20 schooldays, and by no later than the 20th day of the assignment, the employing authority has developed and implemented a plan to provide not less than six hours of training to the permit holder in all of the following areas:
 - i) Classroom management.
 - ii) Developing and implementing lesson plans.
 - iii) Implementing the requirements of each pupil's individualized education program.
 - iv) Other areas as deemed necessary by the employing authority.
 - e) The employing authority has assigned a credentialed teacher or teachers to provide ongoing support to the permit holder.
- 2) Requires an employing authority to report to its county office of education annually as part of the assignment monitoring requirement specified under

Education Code § 44258.9. Provides that this report shall include the number of permit holders employed and the length of time they were employed.

- 3) Provides that for purposes of this section, employing authority includes school districts, county offices of education, nonpublic, nonsectarian schools and agencies, and charter schools.
- 4) Provides the bill's provisions become inoperative on January 1, 2022.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author's office, "California is facing a teacher shortage crisis. Many school districts began the academic year with vacancies across all subjects, with special education being at the top of the list. Districts seek and in many cases can't find a credentialed teacher to fill these vacancies. In the absence of a fully credentialed teacher, school districts have turned to dedicated substitute teachers to teach special education. However, special education substitute teachers may only serve in one classroom for up to 20 days. This hurts our students by unnecessarily subjecting them to a rotating series of substitute teachers, each with different levels of experience."
- 2) ***Limitations on substitute teachers.*** School districts will typically employ substitute teachers for various reasons, whether it is for a prolonged leave of absence such as bonding time with a new child or for short-term medical leave or illness. For short term periods, school districts are authorized to employ a substitute teacher with a 30-day substitute teaching permit. Current law requires that in order to qualify for this permit, an applicant must have a bachelor's degree, have successfully passed the California Basic Educational Skills Test, and have fingerprint clearance through the California Department of Justice and the Federal Bureau of Investigation. The holder of a substitute teaching permit may substitute for no more than 30 days for any one teacher per school year in a general education setting, and no more than 20 days for any one teacher per school year in a special education setting. These limitations are intended to minimize the length of time that students are taught by a substitute teacher with a short term permit, who is presumably less-prepared or experienced when compared to a fully-credentialed teacher. However, if a substitute teacher is needed for more than 30 days in a general education classroom or more than 20 days in a special education classroom, a school district may elect to replace the initial substitute teacher with a subsequent substitute teacher.

This bill is intended to minimize the disruption that may occur when one short term substitute teacher in a special education classroom is replaced by another short term substitute teacher.

- 3) ***Federal guidance.*** The most recent guidance (updated May 4, 2016) from the United States Department of Education pertaining to the implementation of the transition to the federal Every Student Succeeds Act (ESSA) provides a frequently asked question that states the following:

“Section 9214(d)(2) of the ESSA amended section 612(a)(14)(C) of the Individuals with Disabilities Education Act by incorporating the requirement previously in section 602(10)(B) that a person employed as a special education teacher in elementary school, middle school, or secondary school must: 1) have obtained full certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination and hold a license to teach in the State as a special education teacher, except that a special education teacher teaching in a public charter school must meet the requirements set forth in the State’s public charter school law; 2) not have had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and 3) hold at least a bachelor’s degree. Each State must continue to comply with these certification requirements during the 2016-2017 school year. (Updated May 4, 2016)”

As this bill authorizes a person holding an emergency 30-day substitute teacher permit to serve as a special education substitute teacher for up to 40 cumulative days during the school year, this provision as well as the underlying statute it proposes to amend may be in conflict with the federal guidance. If that interpretation is correct and either state law or school districts are found to be out of compliance, there could potentially be sanctions. However, it is unclear whether the federal government would levy fiscal penalties for such noncompliance. According to the sponsor of this bill, the Association of California School Administrators (ACSA) and the Commission on Teacher Credentialing (CTC), a similar requirement for special education personnel qualifications existed under the previous federal No Child Left Behind (NCLB) Act and that “the only penalty for being out of compliance was that schools had to send parents a letter explaining that their child’s teacher was not up to the federal standard.” Additionally, ACSA and CTC indicate that there are no financial penalties to schools under NCLB or ESSA. Further, the author’s office and sponsor of the bill indicate that the federal guidance only applies to permanent teachers or the teacher of record, not to substitute teachers. However, the guidance is unclear as to who it applies to and who it does not, and the author’s office and the sponsor have not been able to confirm this with the U.S. Department of Education.

While the bill may certainly help address the staffing shortages that many school districts are facing with special education teachers, the Committee may wish to consider whether this measure may be in conflict with federal law.

- 4) ***Is the bill necessary?*** Notwithstanding the federal compliance issue, current law already allows the Superintendent of Public Instruction (SPI) to approve requests from a school district or county office of education for an extension of 20 additional days, for a total of 40 days. Additionally, current law provides that an additional number of days beyond 40 may be granted by the SPI under extraordinary circumstances. Therefore the Committee may wish to consider why these current statutory provisions are insufficient and whether lengthening the amount of time for a substitute teacher with an emergency permit in a special education classroom from 20 to 40 days is necessary.

- 5) **Other alternatives to emergency permits.** Current law also authorizes the issuance of short term staff permits (STSPs) and provisional internship permits (PIPs). A short term staff permit may be requested by a school district with an acute staffing need, which exists when an employer needs to fill a classroom immediately based on an unforeseen need. An example of this is a teacher that is unable to finish the school year due to an approved leave for illness. A provisional internship permit may be requested by an employing agency when there is an anticipated staff need, which exists when a school district is aware that an opening is going to occur and conducts a diligent search for a credentialed teacher but is unable to recruit one. Holders of a STSP or PIP may work up to one full year in the same position and must meet the same basic qualifications as the holder of a short term substitute permit. However, holders of these permits must also have completed additional coursework related to their area of assignment and the school district must also provide them with mentoring and support.

- 6) **Teacher shortage.** The Learning Policy Institute (LPI) recently released a report, “Addressing California’s Emerging Teacher Shortage: An Analysis of Sources and Solutions.” In this report, the LPI included the following summary: “After many years of teacher layoffs in California, school districts around the state are hiring again. With the influx of new K-12 funding, districts are looking to lower student-teacher ratios and reinstate classes and programs that were reduced or eliminated during the Great Recession. However, mounting evidence indicates that teacher supply has not kept pace with the increased demand.” The report included the following findings:
 - a) Enrollment in educator preparation programs has dropped by more than 70 percent over the last decade.
 - b) In 2014-15, provisional and short-term permits nearly tripled from the number issued two years earlier, growing from about 850 to more than 2,400.
 - c) The number teachers hired on substandard permits and credentials nearly doubled in the last two years, to more than 7,700 comprising a third of all the new credentials issued in 2014-15.
 - d) Estimated teacher hires for the 2015-16 school year increased by 25 percent from the previous year while enrollment in the University of California (UC) and the California State University (CSU) teacher education programs increased by only about 3.8 percent.

- 7) **Related budget activity.** The Senate’s version of the proposed 2016-17 budget includes \$7 million in one-time Proposition 98 funding to re-establish the California Center on Teaching Careers and \$60 million in one-time Proposition 98 funding to establish or expand teacher residency programs. Both programs would be required to target chronic teacher shortage areas, including special education and bilingual teachers.

8) ***Fiscal impact.*** The Assembly Appropriations Committee indicates minor or absorbable costs to the Commission on Teacher Credentialing and the California Department of Education to extend existing substitute teaching authorizations to 30-day substitute teachers providing instruction in special education classrooms.

9) ***Related legislation.***

AB 1918 (O'Donnell) authorizes county offices of education to issue temporary certificates to teachers employed at nonpublic schools, including out-of-state teachers, while their credential applications are being processed at the Commission on Teacher Credentialing. This bill is scheduled to be heard by this Committee on June 8, 2016.

SB 62 (Pavley) makes various programmatic changes and issues additional warrants for the existing Assumption Program of Loans for Education. This bill is currently pending in the Assembly Appropriations Committee.

SB 915 (Liu) re-establishes the California Center on Teaching Careers for the purpose of recruiting qualified individuals into the teaching profession. This bill is pending in the Assembly Education Committee.

SB 933 (Allen) establishes the California Teacher Corps program that would provide matching grants to local school districts to create or expand teacher residency programs in which the funds can be used to pay for master teacher stipends, stipends and tuition for residents, and costs of mentoring and induction. This bill is pending in the Assembly Education Committee.

SUPPORT

Association of California School Administrators
 California Association of School Business Officials
 California Catholic Conference, Inc.
 Coalition for Adequate Funding for Special Education
 Kern County Superintendent of Schools
 Los Angeles Unified School District
 Riverside County Superintendent of Schools
 San Francisco Unified School District
 San Mateo County Office of Education
 Small School Districts' Association
 Special Education Local Plan Area Administrators of California

OPPOSITION

None received.

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