
SOUTH DAKOTA BOARD OF EDUCATION STANDARDS

OCTOBER 18, 2021

LONG-TERM SUBSTITUTE RULES



south dakota
DEPARTMENT OF EDUCATION

Learning. Leadership. Service.

LONG-TERM SUBSTITUTES

- Prior to 2020 updates to the administrative rules, there was not a state definition for long-term substitutes. It had been based on federal requirements that a long-term substitute was considered someone who was substituting for a teacher 10 or more days. If the teacher of record did not intend to return that school year, then whoever taught the course was the teacher of record and must be certified.
- There were no minimum requirements to be a long-term substitute, including education, experience, etc. It was a local district decision.
- **SDCL 13-42-1.2. Certificate Required for teachers, administrators, and other educational professionals in schools.** No person may draw wages as a teacher, administrator, or other educational professional in any public school or other accredited school who does not have a valid certificate.



CURRENT DEFINITION OF A LONG-TERM SUBSTITUTE



2020 ADMINISTRATIVE RULE UPDATES

- Because there was no clear definition of a long-term substitute, rules were adopted to provide a definition including the length of time an individual could act in the role of a long-term substitute.
 - Updated the length of time to a maximum of 6 weeks.
 - Did not add minimum requirements for a long-term substitute. Continued to be a local decision.
 - Balance the needs of students to have a certified teacher with the reality of school districts struggling to find substitutes.

CURRENT DEFINITION

24:28:01:01. Meaning of terms. As used in this article:

(54) "Long-term substitute" means an individual who is acting as the teacher of record for no more than six weeks when the teacher is on a temporary leave of absence and intends to return to the classroom during the school year.

APPROVAL OF CURRENT RULE

- September 21, 2020 - Proposed rules approved by Board of Education Standards
 - BOES member, Dr. Becky Guffin, commented that many maternity leaves are longer than 6 weeks and this timeline should be reviewed in the future to determine if it needs to be adjusted to better fit FMLA. *(Department began monitoring to determine if this rule had a negative impact on districts.)*
- November 10, 2020 – Approved by Interim Rules Review Committee
- Rules effective December 10, 2020
- May 17, 2021 - The Board of Directors of the South Dakota Council of School Attorneys petitioned the Board of Education Standards to repeal ARSD 24:28:01:01(54), etc.

LONG-TERM SUBSTITUTE WORKGROUP CREATED

- September 10, 2021, a workgroup met to discuss the long-term substitute definition and identify if it needs to be updated.
- Members of the workgroup included:
 - Sam Kerr, School Attorney
 - Rob Monson, School Administrators of South Dakota – Executive Director
 - Lisa Nobles, Rapid City School District - Human Resources Manager
 - Connie Kaltenbach, Oglala Lakota County School District – Curriculum Specialist and Assistant Superintendent
 - Becky Dorman, Sioux Falls School District – Human Resources Director
 - Nick Gottlab, Spearfish School District – Principal
 - Camille Kaul, Aberdeen School District – Assistant Superintendent
 - Holly Farris, South Dakota Board of Regents – Attorney
 - Aaron Weaver – Harrisburg School District – Principal
 - Loren Paul – South Dakota Education Association - President
 - Dan Martin – Timber Lake School District - Superintendent

WORKGROUP – CURRENT ISSUES

- FMLA allows up to 12 weeks of time off
- Consecutive vs cumulative days
- “Intends to return” causes an issue when teachers leave toward the end of the school year or districts cannot find a certified teacher
- Current rule requires a wavier for a certified teacher to be a long-term substitute for more than 6 weeks
- Districts are struggling to find substitutes
- There are no requirements for a long-term substitute which means a non-certificated educator is teaching students for an extended time period.

UPDATED RULE BASED ON LRC STYLE AND FORM

24:28:01:01. Meaning of terms. As used in this article:

(54) "Long-term substitute" means:

(A) an individual ~~who is acting as the~~ a teacher of record for no more than ~~six weeks~~ 45 cumulative school days in a vacant teaching position while a school district pursues a contract for a teacher; or

(B) an individual acting as a teacher of record for more than 45 cumulative school days when ~~the~~ a teacher is on a ~~temporary~~ temporary leave of absence ~~and intends to return to the classroom during the school year, if:~~

(1) the teacher's leave of absence is granted pursuant to the "Family and Medical Leave Act of 1993," 29 U.S.C. § 2601, et seq. by the school; or

(2) the individual has a valid or inactive teaching certificate.

UPDATED RULE

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(1) the teacher's leave of absence is granted pursuant to the "Family and Medical Leave Act of 1993," 29 U.S.C. § 2601, et seq. by the school; or

(2) the individual has a valid or inactive teaching certificate.

ADMINISTRATIVE RULE WAIVER

- There may be times when districts need to request an administrative rule waiver
 - Vacant position that cannot be filled after 45 cumulative school days
 - A long-term substitute is needed for more than 45 cumulative days, the leave is not pursuant to FMLA and the substitute does not have a valid or inactive teaching certificate
 - A teacher with an invalid certificate is needed as a long-term substitute for more than 45 cumulative days and would like to apply for an inactive certificate so they meet the requirement of the definition
- An administrative rule waiver application form will be created specifically for long-term substitutes



PUBLIC COMMENT