



STATE OF NORTH DAKOTA
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Drew H. Wrigley
ATTORNEY GENERAL

August 9, 2023

Ms. Liz Fordahl
Assistant Code Revisor
North Dakota Legislative Council
State Capitol
600 East Boulevard, 2nd Floor
Bismarck, ND 58505-0360

RE: *Education Standards and Practices Board Emergency Rules*

Dear Ms. Fordahl,

Attached please find the following documents related to the Education Standards and Practices Board ("Board") emergency rules regarding student teachers, as required by North Dakota Century Code (N.D.C.C.) § 28-32-03:

1. The Board's request for emergency rules to the Governor. This request contains the justification for emergency rulemaking and the language of the emergency rule.
2. The minutes of the Board's July 27, 2023, meeting wherein the Board voted finding such emergency conditions exist to justify the emergency rulemaking and the reasons for such findings.
3. The Governor's approval of emergency rulemaking as required by N.D.C.C. § 28-32-03(1).
4. Full notice of administrative rulemaking pursuant to N.D.C.C. § 28-32-10.
5. The proposed amendment and administrative rule.

The effective date of the emergency rule is August 9, 2023. Please contact me with any questions or concerns.

Sincerely,

A handwritten signature in blue ink that reads "Allyson M. Hicks".

Allyson M. Hicks
Assistant Attorney General

cc: Education Standards and Practices Board
Rep. Brandy Pyle, Chairman of Administrative Rules Committee (bpyle@ndlegis.gov)

FULL NOTICE OF INTENT TO ADOPT AND AMEND ADMINISTRATIVE RULES

TAKE NOTICE that the Education Standards and Practices Board will hold a public hearing to address proposed new N.D. Admin Code § 67.1-02-01-06, related to Pre-Service Teacher Authorizations, and proposed amendments to N.D. Admin. Code § 67.1-02-01-01, related to Student Teachers, at 10:00 a.m. on October 3, 2023, at the Pioneer Room of the State Capitol, 600 E. Boulevard Ave., Bismarck, ND 58505. The purpose of the proposed rule and amendment is to create a pre-service teacher authorization to allow student teachers to serve in a limited capacity as a teacher of record for a single semester.

The proposed rule and amendment are not expected to have an impact on the regulated community in excess of \$50,000.

These rules are emergency rules with an effective date of August 9, 2023.

The proposed rules may be reviewed at the office of the Education Standards and Practices Board, 2718 Gateway Avenue, Suite 204, Bismarck, ND 58503. A copy of the proposed rules may be requested by writing the above address, emailing espinfo@nd.gov, or calling (701) 328-9641. Written or oral comments on the proposed rules sent to the above address or telephone number and received by October 14, 2023, will be fully considered.

If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the Education Standards and Practices Board at the above telephone number or address at least 10 days prior to the public hearing.

Dated this 9th day of August, 2023.

Dr. Rebecca Pitkin
Executive Director
Education Standards and Practices Board



August 8, 2023

Executive Director Rebecca Pitkin
Education Standards and Practices Board
2718 Gateway Ave #204
Bismarck, ND 58503

Dear Executive Director Pitkin and members of the Education Standards and Practices Board,

On July 27, our administration received a request from the Education Standards and Practices Board for approval of emergency rulemaking to amend North Dakota Administrative Rule 67.1-02-01 regarding requirements for student teachers to be the teacher of record.

State leaders, superintendents, school boards and administrators all recognize that the pipeline for teacher applicants has severely diminished and that focused district-by-district strategies to recruit and retain talent and inspire our young people to enter the education profession are essential. We also know the teacher shortage is not affecting all districts equally: Of 167 public school districts in North Dakota, more than 75 districts have **all** teaching positions for 2023-24 filled, according to data provided by ESPB.

Our administration has reviewed the request pursuant to N.D.C.C. § 28-32-03, sought and received input from districts across the state, and agrees that emergency rulemaking is reasonably necessary. Therefore, your request is granted. As the ESPB executive director has stated, this is a Band-Aid, not a permanent solution. This emergency action simply gives local school boards and administrators additional flexibility and retains local control in determining how to fill teacher openings with the best interests of students in mind.

In addition, our administration will be developing a statewide task force through executive order that will focus on teacher recruitment and retention strategies, programs and policies with the necessary voices around the table, including representation from the local level. With support of a facilitator, this task force will have a very clear purpose: to identify policies and practices that will help establish a pipeline of quality professional educators who receive the support they need to be their best so that our students receive the world-class, taxpayer-efficient education they deserve.

Sincerely,

A handwritten signature in blue ink that reads "Doug Burgum".

Doug Burgum
Governor

July 25, 2023

Dear Governor Burgum,

The Education Standards and Practices Board (“Board”) respectfully requests your consideration of emergency administrative rules relating to the teacher shortage. The Board requests emergency administrative rules creating an authorization for individuals who have completed their entire education sequence and are ready to pre-service teach. The rules would allow these individuals to be listed as the teacher of record for a semester, instead of having a limited 10-week internship, as indicated in the drafted rules below.

CHAPTER 67.1-02-01 PROGRAM APPROVAL

Section

67.1-02-01-01	Student Teachers
67.1-02-01-02	Cooperating Teachers
67.1-02-01-03	College Supervisors
67.1-02-01-04	Program Approval of Teacher Education for Licensure
67.1-02-01-05	Program Approval Standards
<u>67.1-02-01-06</u>	<u>Pre-Service Teacher Authorization</u>

67.1-02-01-01. Student teachers.

A student teacher is one who teaches in a regular classroom situation as part of the requirements in professional preparation.

1. All college students in education must have classroom-related preprofessional experience prior to student teaching. A criminal background investigation including the bureau of criminal investigation and federal bureau of investigation must be completed prior to any student teaching experience.
2. The student teacher should be assigned by a college or university to a cooperating school on a full-time block. A full-time block is construed as a full day for ten consecutive weeks with exceptions documented through program approval. The student teacher must be placed in a classroom where the cooperating teacher is regularly assigned. Additional student teaching experiences shall be determined by the training institution. Participation in one continuous semester of classroom teaching as authorized by section 67.1-02-01-06 shall be considered a qualifying student teaching experience.
3. In the event of an emergency, the student teacher may be placed as a substitute in the student teacher’s regularly assigned classroom for a period of time not to exceed two consecutive days, one time, except as otherwise authorized by 67.1-02-01-06.
4. Student teachers may be placed only in accredited schools.
5. Teaching experience cannot be used for a waiver of student teaching, except as specified in section 67.1-02-01-06 or subdivision d of subsection 1 of section 67.1-02-02-02.

6. Student teachers may receive a stipend from the school where they have student taught.
7. A student teacher will be eligible for a forty-day provisional license upon completion of all requirements for the student teacher's bachelor's degree minus the awarding of the degree and the official transcript as documented by the institution of higher education registrar. Once the degree has been awarded and the official transcript has been received, the student teacher must complete the initial application process.

67.1-02-01-06. Pre-Service Teacher Authorization (Effective through June 30, 2025).

A student teacher may be eligible for a pre-service teacher authorization to be the teacher of record for one semester upon completion of the following:

- a. Teacher education coursework;
- b. Evidence of a positive evaluation from a field experience;
- c. Letter of recommendation from the university or college;
- d. Letter of request from a district indicating they were not able to find a regularly licensed individual, and evidence of an onsite collaborating teacher.

This section is effective through June 30, 2025, and after that date is ineffective.

The urgency of the current teacher shortage situation has increased in recent months and not only are rural schools being impacted, but also larger schools. For example, Bismarck Public Schools reported today they currently have nine (9) elementary certified openings. On average, they have less than ten (10) applicants. Secondary has eight (8) openings in various teaching areas with most having less than five (5) applicants. They state there is a significant decrease in applicants. Dickinson Public Schools has twelve (12) teacher openings, and no applicants. Rugby Public Schools has had a music position open for four (4) months with no applicants. Williston Public Schools currently has sixty-four (64) open teaching positions. Pre-service teachers are far more qualified than most substitute teachers who are often used as classroom teachers. The goal of the emergency rule is to encourage and enable districts to utilize the most qualified individuals, outside of regularly licensed teachers, to fill the openings as opposed to utilizing other, less qualified options. Although the Board does not have exact numbers regarding the number of unfilled fall openings in all North Dakota school districts, based upon the information provided by the larger districts polled, it is estimated that the number is increased from the 2022-23 school year. The North Dakota Council for Educational Leaders website currently has 202 positions listed as “open until filled.”

The Board feels that the teacher shortage is an emergency such that “imminent peril” threatens public welfare of the education system moving into the 2023-24 school year.

Data gathered on July 26, 2023, from the Department of Public Instruction (“DPI”) indicates an increase in the number of schools who were unable to find qualified teachers from 2022 to 2023. This past year there were twenty-nine (29) schools that entered exceptions for either out of field teachers or were missing required personnel. There were sixty-eight (68) schools with out of field

of staff. The previous year DPI reported there were twenty-five (25) schools that did not find qualified staff.

The Board addressed sixteen (16) cases of teachers, and six (6) cases of administrators who were not fully licensed or had hired an unqualified teacher during the 2022 calendar year. To date, for 2023 the number of disciplinary cases against teachers is ten (10) and ten (10) administrators who were not fully licensed or had hired an unqualified teacher. Board cases suggest the challenge to find qualified teachers is increasing. Having a teacher who is not qualified is not an equitable situation for children and can be detrimental to a student's learning; repeated ineffective teachers can result in poorly educated students, thus impacting the economic growth of a state.

A July 25, 2023, poll of higher education institutions who have pre-service teachers ready for fall indicates the following institutions were approached by districts asking if they could use the pre-service teacher as the teacher of record.

Dickinson State University	Minot State University
University of North Dakota	Sitting Bull College
Valley City State University	University of Mary
University of Jamestown	Minot State University
Trinity Bible College	

Current administrative rules prohibit this, however, this would be the workforce that would be mobilized by the emergency administrative rule. There was not one area of need that was identified as greater than another.

The Board has promulgated administrative rules in the past few years to assist the shortage and allow increased flexibility for schools without lowering the standards of qualification for teachers. Based upon the phone calls and emails to Board personnel and the information collected from other entities, the Board has determined that the emergency rules will benefit teachers, families, and children.

The Board is requesting approval from the Governor that the proposed rule meets the requirements of North Dakota Century Code § 28-32-03, and that emergency rulemaking is necessary such that the Board may declare the proposed rule to be an interim final rule effective as authorized by law.

Respectfully,



Rebecca Pitkin

Executive Director

MINUTES – Special Meeting
Tuesday, July 27, 2023
Teams Meeting

The Education Standards and Practices Board (ESPB) meeting was called to order at 8:00am by Patti Stedman. Board members present by video conference were Jenny Bladow, Siri Coleman, Amber Fridley, Deb Follman, Sonya Hansana, Evan Kritzberger, Kathy Lentz, Angela Nagel, Patti Stedman, and Superintendent Kirsten Baesler. Cory Steiner was absent.

Siri Coleman left the meeting at 8:36am. Kathy Lentz left at 8:45am. Deb Follman left at 9:06am.

Also present were ESPB Executive Director Rebecca Pitkin, Assistant Director Mari Riehl, and Amy Bigelow from ESPB, Allyson Hicks and Mark Openshaw from Office of Attorney General, Meghan Salyers from University of Mary, Robin Huebner from The Forum, Pam Johnson from Mayville State University, and other online guests.

Sonya Hansana made a motion to approve the agenda as written, seconded by Siri Coleman. All voted in favor, none opposed. Motion carried.

Discussion Items

The purpose of the meeting is for the Board to review some options for licensure, in response to the teacher shortage. This summer the office has received higher than normal requests for licensure, due to the number of unfilled teaching positions. The law is provided to individuals. As the Board holds their discussion today, Becky asked them to remember the non-negotiables that have been established as some possible solutions to this year's shortage are explored:

- We do what's best for children.
- We do not make decisions based on money.
- We work with our stakeholders.

Currently written in law is when someone completes their teacher education sequence they must student teach. The office has received questions if those student teachers can be the teacher of record. At this time, no, they cannot. The information that's been provided to the Board for review would propose a new section of rule that would allow for a student teacher authorization. Section of law that requires student teaching would not be removed. The student teacher authorization would allow individuals holding this license to be listed as the teacher of record for a semester, instead of having a minimum of 10-week student teaching internship.

To be eligible for the pre-service teacher authorization the individual would need to submit documentation of completion of the following:

- Teacher education coursework
- Evidence of a positive evaluation from a field experience
- Letter of recommendation from the university or college
- Letter of request from a district indicating they were not able to find a regularly licensed individual, and evidence of an onsite collaborating teacher.

Board attorney Allyson Hicks said emergency rule making is a different process from the normal route to administrative rule. Typically, rules are drafted, published, and

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reviewed by Legislative Council. Drafting emergency rule is done to address “imminent peril” that threatens public welfare. Data has been included in the request to indicate the shortage. Allyson reminded the Board they have two things to discuss – does the Board think an emergency exists that rules need to be in place before school year starts whether or not a shortage exists, and does the Board like the rules. Ultimately, it’s the Governor Burgum’s decision and it’s up to him to approve or deny the request for emergency rules if the Board votes to move forward. If the Board doesn’t like the rules and decides to move through the normal process, it would be March or April before the rules would be effective.

Superintendent Baesler asked Becky if this is a recommendation to the Board. Becky said staff has been asked numerous times over the course of the summer months if having a student teacher as the teacher of record is an option, and so that’s why it’s being presented to the Board. Superintendent Baesler also asked if the Board feels they need to take this action. Becky has been participating in NASDTEC discussions with other states and other states are exploring these options as well. Superintendent Baesler said as an ex-officio member, she can’t vote, but she wants to express that she wants to support what the staff recommends. She does have concerns that as stakeholder groups talk about teacher retention, one of the biggest determining factors to retention is an individual’s first experience as a classroom teacher. As ND continues to work toward the apprenticeship program, and first and second year mentoring program, this seems like it may be a short term fix for this fall. She is concerned ND could lose this whole group of teachers if they don’t get the support they need. She’s concerned if it doesn’t go through the full administrative rules process it won’t be vetted appropriately.

Patti Stedman asked the number of students that may be approved under this option. Becky asked Board member Dr. Jenny Bladow from University of North Dakota to answer. UND has 50 student teachers for fall – Jenny feels there may be two or three ready for a challenge like this. She feels it won’t be an issue to get all of the documentation submitted, as they already know who will be ready and who won’t. Patti also asked how EPB knows if there’s an emergency in a district or if it’s a small percentage of schools this would apply to. A survey was not sent to every district to ask this information, but the calls have been coming in all summer asking the questions. Data was gathered from a handful of school and education job posting websites regarding their current open positions.

Sonya Hansana asked for clarification on the rules – right now it’s written that someone who holds the pre-service teacher authorization could be teacher of record for one semester. What happens after that? Also, how is the student teacher paid and a contract issued? Becky said at the end of the semester the individual would complete pre-service teaching and graduate, and would then be eligible to obtain their initial license. Administrative rule does currently allow for student teacher to be paid a stipend. ESPB doesn’t advise on contracts, so that portion would be up to the school district.

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Kathy Lentz commented that she's had a number of student teachers over the years. Many have been excellent and many have not. Even the great ones have struggled with classroom management, and she's concerned this could drive people out of the profession. She's wondering if more oversight can be added to support classroom management. Becky said yes, things can be added to the proposed emergency rule and that's the decision of the Board. Allyson Hicks also clarified that the collaboration language that's included in the proposed rule came from other professions, such as the medical profession. In their oversight, a certain number of charts have to be reviewed per week. The Board could choose to add a requirement that things like lesson plans have to be reviewed by collaborating teachers, ect. The Board has the option to add, change language in rule, scrap it entirely, or other things.

Amber Fridley asked if there's an additional component on the university side for oversight, as teachers in the field are already busy so additional oversight by a teacher would be difficult. Patti Stedman said she feels it's important that language in rule is very clear about what oversight is required.

Evan Kritzberger believes another thing to point out is that when he student taught, it was an option for him to earn his university studies degree so he could get an alternative access license, then complete his student teaching under that alternative access license. He wanted to point out this is already happening, just in different ways. He asked if the Board wants it just happening, or to have more oversight by having individuals who are ready being selected by the universities?

Patti Stedman wondered if things like this are already happening by substitute teachers in districts as well. It most likely is, but no feedback is being provided. She also asked if this has been vetted through any districts to gain feedback? Becky said it's not been through the regular administrative rules comment process, but she's received feedback from many stakeholder groups. Feedback has been mixed, as to be expected.

Jenny Bladow also spoke to timing – student teachers have already been placed for Fall 2023. In September or October student teachers will start to be placed for Spring 2024. As the Board talks about the possibility of waiting to have this proposal go through the regular rules process, if it doesn't go into effect until March or April, that won't help districts for Spring 2024.

Patti Stedman said after much discussion, she does agree with Superintendent Baesler's comments about teacher retention.

Dr. Deb Follman said she has mixed feelings about all of this as a principal. She wonders, based on the information Jenny provided, how many positions this would fill. If the Board would move forward with emergency rule making, would the rule be forever, or is there something that could be done to clean it up after a year? Allyson said no rule is forever and a sunset clause could be added. Pros would be if the program is working

well, the Board would have to pay for the administrative rules process to pull the sunset clause. If no sunset clause is included and the Board doesn't like the program and it's not working, the rule could be repealed, but would have to pay for rules process to remove it. Also, if it's not working well in a district, the administrator would have the option to pull a person and say it's not working.

Superintendent Baesler wanted to clarify with Allyson about fees for administrative rule and if that's charged with emergency rule making. Allyson said emergency rule is issued for 180 days and then if the Board want to keep it the regular rule making steps need to be completed to make it permanent and administrative rule cost would still be incurred. Becky did remind the Board that we don't make decisions based on money and we are always in rule making process.

Sonya Hansana asked if emergency rule is implemented, would there be some tracking to see if it's actually making a difference – how many will take advantage and how many positions is it filling? Yes, we could collect that. Superintendent Baseler asked if this could also be included in Teacher Support System data that's tracked to see how many individuals who may have had the pre-service teacher authorization are still in the profession after a certain number of years. Yes, that could be done.

Becky also reminded the Board that if they decide to make a motion to approve, this is just a recommendation to Governor Burgum and he could choose not to approve. Patti Stedman asked Board members if they feel like there should be a sunset clause and if so, when that should end. Deb Follman said she feels that when the Board opens this door, there will be more that will do it and more data could be gathered in two years. This is new to the education field and we need to be open to changes and hope for the best.

Jenny Bladow is still hearing from schools asking if they have student teachers they can use to fill positions for the upcoming school year. They don't want to pull student teachers from their placements for the Fall. She isn't sure if other universities are receiving the same questions. Patti Stedman is still wondering how many positions this would truly fill for fall.

Sonya Hansana said she feels like all of these points are really good and is wondering if anyone has a feel for what Governor Burgum may do. Governor Burgum's Education Policy Advisor has been provided the information the Board is considering, but the decision is ultimately his.

Kathy Lentz did ask if more time is needed to make a decision and if it could be postponed until the Board meeting next week. Patti Stedman said she feels if it's postponed a week it very well could not happen for this fall. Allyson did convey the timeliness to the governor's office, so they are aware. Deb Follman believes the governor is hearing about the need for teachers from stakeholders as well. Patti said

she does feel comfortable moving forward at this time. Evan Krizberger felt the Board also needs to keep in mind there are multiple checks in places – ESPB, teacher ed programs, and administrators.

The Emergency Request – Attorney Allyson Hicks recommended that if the Board feels the teacher shortage is an emergency such that imminent peril exists that threatens the public welfare of the education system for the 2023-2024 school year, they need to make a motion stating such.

Evan Krizberger made a motion to move forward with the emergency request such that imminent peril exists that threatens the public welfare of the education system for the 2023-2024 school year. Motion seconded by Amber Fridley. Board members who voted yes were Jenny Bladow, Amber Fridley, Deb Follman, Sonya Hansana, Evan Krizberger, Angela Nagel, and Patti Stedman. None opposed. Motion carried.

The Language of the Rule – Much Board discussion on the proposed rule has already occurred. Patti Stedman asked if a sunset clause should be added. Sonya Hansana made a motion to approve the emergency rules as written, with addition of sunset clause at the end of 2024-2025 school year (6/30/2025). Motion seconded by Deb Follman. Board members who voted yes were Jenny Bladow, Amber Fridley, Deb Follman, Sonya Hansana, Evan Krizberger, Angela Nagel, and Patti Stedman. None opposed. Motion carried.

The Policy for Substitute Licenses as noted by the “diagram” – ESPB Assistant Director Mari Riehl reviewed the chart that’s presented regarding interim substitute licenses. This is nothing different from what’s already in place and will just help explain the restrictions on the interim substitute license better.

She asked the Board if it would be helpful to collect more accurate data about school districts that need to start a school year without a regular classroom teacher? Can districts find those Level I or Level II subs that are allowed to substitute teach for more than 30 consecutive days to begin the school year? If they would be able to indicate an exception on MIS03/annual compliance report that a substitute is in the classroom, would it be helpful to note? Mari has visited with DPI and they are willing to entertain this idea of adding a new personnel type as long-term substitute on the MIS03 with the option to indicate an exception. Level I or II interim substitute license holders could be used at most for a semester. Patti Stedman commented there doesn’t seem to be a downside to this.

Currently in rule, it does address the 30-day restriction for those with less than a bachelor’s degree. There is no maximum amount of time outlined in rule for those who have a bachelor’s degree and do not have the 30-day restriction on their interim substitute license. Policy would need to be developed to basically explain the Board’s interpretation of this. It would say that if someone has a bachelor’s degree or above, the

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longest they could substitute teach while holding an interim substitute license would be a semester. Sonya Hansana agreed that she doesn't see this as a bad thing, would be a step in the right direction, and would allow more time for districts to find a qualified teacher. Patti asked if there is urgency on this, as she would like to have a conversation with her school's HR department to get their input.

Evan Kritzberger clarified if this proposal would just be to gather additional data. Mari said yes, it would include that, as well as include policy about maximum amount of time a person with a Level I or Level II interim substitute could be in a classroom.

Attorney Allyson Hicks wanted to explain a couple things – the Board is offering guidance. The rule is still the rule and the rule is silent at this time. ESPB cannot penalize someone for violating policy, but still bound by language in the rule. If this policy is written, it would eventually need to be included with administrative rule.

Patti Stedman would like to take some time for more clarification. Evan Kritzberger said he feels this is good guidance, and would help administrators make more informed decisions. Patti also said she would like to have input from administrators on the Board, and they are not present at this time. This item will be continued at the Board meeting next week.

The meeting was adjourned at 9:20am.

Chair

Secretary/Executive Director