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

## **Rationale for Proposed Regulations**

Education Code section 44255 authorizes the Commission to adopt these proposed regulation amendments. The proposed amendments implement, interpret, and make specific Education Code section 80022 pertaining to the Teaching Permit for Statutory Leave (TPSL).

This rulemaking action proposes the following:

* Amend Title 5 of the California Code of Regulations (CCR) section 80022 (f)(19) to allow local education agencies (LEAs) to request a 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.

## **Necessity and Rationale for Adding Military Leave and Administrative Leave to Section 80022**

The TPSL became effective on August 16, 2016. The purpose of the TPSL was to serve as an option for 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.

Currently, the TPSL only allows an individual to provide instructional services beyond the 20 or 30 day substitute teaching limit only when the teacher of record is out on one of the statutory leaves currently specified in Title 5, CCR § 80022, to wit:

* Sick Leave
* Differential Sick Leave
* Pregnancy Disability Leave Act
* Family and Medical Leave
* California Family Rights Act
* Industrial Accident and Illness Leave

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.

*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 leaves of absence. 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 Title 5 of the CCR §80022 (f)(19) 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 Title 5 of the CCR §80022 (f)(19) 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.

## **Summary of Proposed Amendments to Regulations**

Only subsection (f)(19) of Title 5, CCR, section 80022 would need to be amended. (Text proposed to be added is displayed in underline type. Text proposed to be deleted is displayed in ~~strikethrough~~ 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.

## Documents Incorporated by Reference

Teaching Permit for Statutory Leave, CL-902. (rev. 08/2016.):
<https://www.ctc.ca.gov/docs/default-source/leaflets/cl902.pdf?sfvrsn=526b8c66_0>

Documents Relied Upon in Preparing Regulations:February 11, 2016 Agenda Item 2A – Proposed Regulations for Teaching Permit for Statutory Leave [ for document, send email to ArchiveRequest@ctc.ca.gov ]

Approval of February 2016 minutes [ for document, send email to ArchiveRequest@ctc.ca.gov ]

April 2016 – Initial Statement of Reasons for TPSL [ for document, send email to ArchiveRequest@ctc.ca.gov ]

April 19, 2016 Coded Correspondence 16-02: Proposed Addition and Amendments to Title 5 of the California Code of Regulations Pertaining to Teaching Permit for Statutory Leave (TPSL)
<https://www.ctc.ca.gov/docs/default-source/commission/coded/2016/1602.pdf?sfvrsn=1f7a6a31_0>

August 16, 2016 Text Approved by the Office of Administrative Law and Filed with the Secretary of State: [ for document, send email to ArchiveRequest@ctc.ca.gov ]

August 23, 2016 Coded Correspondence 16-10: Approved Addition and Amendment to Title 5 of the California Code of Regulations Pertaining to Teaching Permit for Statutory Leave (TPSL)
<https://www.ctc.ca.gov/docs/default-source/commission/coded/2016/1610.pdf>.

## **Economic Impact Assessment/Analysis**

The proposed amendments implement, interpret, and make specific Education Code section 80022 pertaining to the TPSL.

The purpose of the proposed addition of Military Leave and Administrative Leave into section 80022 is to allow LEAs the option to use the TPSL for these types of leaves instead of having to continually rotate through Emergency 30-Day Substitute Teaching Permit holders because rotating substitute teachers in this manner results in an inconsistent and inadequate learning environment, which can be detrimental to student success.

In accordance with Government Code section 11346.3(b), the Commission has made the following assessments regarding the proposed regulation amendments:

Creation or Elimination of Jobs Within the State of California
The proposed amendments will not create or eliminate any jobs within the State of California.

Creation of New or Elimination of Existing Business Within the State of California
The proposed regulations will not have a significant adverse economic impact upon business. The proposed regulations apply only to individuals seeking a Teaching Permit for Statutory Leave to serve as an interim teacher of record while the teacher of record is out on a statutory leave in California’s public schools and will expand the list of permits that authorize day-to-day substitute teaching.

Benefits of the Regulations
The Commission anticipates that the proposed amendments will benefit the welfare of students attending public schools in the State of California by providing schools with option to use a TPSL in situations where the teacher of record is placed on extended Military Leave or Administrative Leave for periods that extend beyond the service limitation of the Emergency 30-Day Substitute Teaching Permit. The Commission **also** anticipate that the proposed regulations will result in an increase in the protection of public health and safety, worker safety, or the environment, the prevention of social inequity, or an increase in openness and transparency in business.

## **Consideration of Alternatives**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Commission must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory police or other provision of law.

To this end, the Commission already considered the possible alternatives to resolve statutory leave assignments. (See February 2016 Commission agenda item 2A – Proposed Regulations for Teaching Permit for Statutory Leave.) Consequently, we incorporate and adopt the Commission’s original consideration of possible alternatives. The Commission finds that the TPSL is the only document capable of addressing statutory leave assignments related to Military Leave or Administrative leave, as both of these leave types align with the purpose and intent of the TPSL.

## **Evidence Relied Upon to Support the Initial Determination That the Regulation Will Not Have a Significant Adverse Economic Impact on Business:**

The proposed regulations will not have a significant adverse economic impact upon business. The proposed regulations apply only to individuals seeking TPSL that authorize service in California’s public schools.