

NEBRASKA LEGISLATURE
EDUCATION COMMITTEE

THE 106TH NEBRASKA LEGISLATURE FIRST SESSION

2020 OCCUPATIONAL
LICENSING REVIEW

- State Substitute Teaching Certificate
- Local Substitute Teaching Certificate

December 15, 2020

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EXECUTIVE SUMMARY

This review is undertaken as a requirement of the Neb. Rev. Stat. §§ [84-933 to 84-948](#), 2017 (known as the “Occupational Board Reform Act” or, hereafter, OBRA). This review examines the following occupational regulations, and includes a recommendation of whether or not they conform to the policy and requirements of OBRA:

OCCUPATIONAL REGULATION	OCCUPATIONAL BOARD AUTHORITY	STATUTORY AUTHORITY
State Substitute Teaching Certificate	Nebraska Department of Education	Neb. Rev. Stat. § 79-802
Local Substitute Teaching Certificate	Nebraska Department of Education	Neb. Rev. Stat. § 79-802

For each of the above regulations, this review includes:

- (1) The statutory authority of the regulating occupational board;
- (2) The number, qualifications, and procedure of the members of the regulating occupational board;
- (3) The annual budget information of the regulating occupational board for the five most recent years;
- (4) The number of government certifications, occupational licenses, and registrations the regulating occupational board has issued, revoked, denied, or assessed penalties against, and reasons for any such negative actions;
- (5) An examination of the policy goals and interests underlying the occupational regulations;
- (6) A statement from the regulating occupational board on the effectiveness of the regulations in question; and
- (7) A comparison of how other states regulate the occupation.

In addition, this review analyzes whether the occupational regulations in question conform to the policies and requirements of OBRA, and gives a recommendation in accordance with Neb. Rev. Stat. § [84-948](#).

The goal of OBRA is to foster a “least restrictive” certification structure. This report notes that several other states have structured their certification processes to include a path for those with “comparable experience,” as determined by their respective state school boards.

Upon review, the Nebraska Education Committee has no changes recommended at this time.

C E R T I F I C A T E D A T A

The following presents the data as required by the Occupational Board Reform Act (OBRA), Neb. Rev. Stat. §§ [84-933 to 84-948](#), with regards to the State and Local Substitute Teaching Certificates.¹

I. Statutory Authority

Each of these certificates are regulated by the Nebraska State Board of Education, per the statutory authority granted in Neb. Rev. Stat. § [79-802](#)^{2 3}. NDE regulations pursuant to this authority can be found in [Title 92 Chapter 21](#) of Nebraska Agency Regulations.

II. Regulating Occupational Board

The Nebraska State Board of Education is composed of eight members, and the Commissioner of Education as the Executive Officer⁴. As of December 2020, the members are as follows⁵:

- Patsy Koch Johns, Vice President
- Lisa Fricke
- Rachel Wise
- John Witzel
- Patricia Timm
- Maureen Nickels, President
- Robin Stevens
- Deborah Neary
- Matthew L. Blomstedt, Ph.D., Commissioner of Education

From the Nebraska Department of Education (NDE) [website](#):

The State Board of Education is an elected, constitutional body that sets policy and ensures that the State Department of Education functions effectively within the framework developed by the state Legislature and the

¹ Per OBRA, each committee is required to annually examine 20% of certificates within their jurisdiction, resulting in 100% of the certificates being examined every five years. For more information, or a general overview of all certificates that NDE administers, see: <https://cdn.education.ne.gov/wp-content/uploads/2018/10/TCERT-Manual.pdf> (Accessed December 2020). Committee jurisdiction was determined by the Legislature following the passage of OBRA.

² Neb. Rev. Stat. § [79-802\(1\)](#) states that such certificates are issued “by the Commissioner of Education.” See also Neb. Rev. Stat. § [79-810](#). However, the Commissioner of Education acts as the “executive officer of the State Board of Education” and acts “under the authority” of the Board. Neb. Rev. Stat. § [79-301](#). The standards for these certificates are also directly set by the Board, per Neb. Rev. Stat. § [79-808](#).

³ Note that the Board of Education is statutorily empowered by many various statutes; however, the section cited here pertains specifically to their authority to regulate the relevant certificates.

⁴ Note that the Commissioner is *not* considered a member of the board of education, per Neb. Rev. Stat. § [79-310](#). The Board chooses the Commissioner. § [79-318](#). The Board and the Commissioner (as head of the staff at NDE) together comprise the Nebraska Department of Education. § [79-301](#).

⁵ Data from: <https://www.education.ne.gov/stateboard/members/#commissionerofeducation> (Accessed December 2020)

board. By law, the board and the department have broad leadership functions to carry out certain regulatory and service activities. . .

The board is elected on a non-partisan ballot, with one member from each district. Board members serve four-year terms. Board members are not paid, but are reimbursed for their expenses.

Note that the term expirations are rotational: Board members representing Districts 1, 2, 3, and 4 are elected in presidential election years, while board members representing Districts 5, 6, 7, and 8 are elected in midterm election years.

The Board is required to meet “regularly and periodically” at least four times annually. Five members shall constitute a quorum. § [79-317](#).

The Board primarily draws its procedural authority from Neb. Rev. Stat. §§ [79-310 – 79-320](#). Qualifications for board members are enumerated in § [79-313](#)⁶:

- They may not be an active teacher
- They may not be a holder of any state office or state board or commission (unless they are only in advisory capacity)
- They must be a citizen of the U.S. and a resident for more than six months prior to the election

The Board of Education has been in place as Nebraska’s education authority since the mid 1950’s.^{7 8}

III. Certificate Overview

A general description of each is as follows:

Nebraska offers two types of substitute teacher certificates, State Substitute Teacher and Local Substitute Teacher. Both certifications require a background check for candidates who have not been a resident of Nebraska for at least five years prior to submitting the application.

The State Substitute Teaching Certificate allows you to teach any subject at any for an unlimited number of days per year, and is valid for five years. The requirements for a State Substitute Teaching Certificate are: a bachelor’s degree, completion of a teacher education program at an approved college or university, a course on Human Relations Training or proof of having met the requirement from experience. State Substitute Teacher Certificates are regulated in [Title 92 Chapter 21](#), primarily 005.21.

The Local Substitute Teaching Certificate authorizes you to teach for a total of ninety (90) days in one school year, and is valid for three years. The license is to be requested by the superintendent of an employing school system and is only valid for schools in that system. The requirements for a Local Substitute Teaching Certificate are: a minimum of 60 semester credit hours of college courses with at least one course in professional education, as well as a formal course or work experience in Human Relations Training. Local Substitute Teacher Certificates are regulated in [Title 92 Chapter 21](#), primarily 005.24.

⁶ See also Nebraska State Constitution, [Neb. Const. Art. VII-3](#).

⁷ Although, note that Administrative certificates were required as a result of §[79-801](#) which became law in 1937. The last several modifications of this section were in 2003, 1996, 1994, and then 1957.

⁸ For more information on the history of Nebraska Department of Education, see: <https://history.nebraska.gov/sites/history.nebraska.gov/files/doc/publications/NH1971JrNormalSchool.pdf> (Accessed December 2020).

The Nebraska Department of Education lists the following requirements on its website for each: the [state substitute certificate](#) and the [local substitute certificate](#).

IV. Annual Budget Information

The budget reporting for the State Substitute Certificates can be viewed online at the statutory survey response from NDE: https://nebraskalegislature.gov/reports/committeesurvey_view.php.

V. Policy Interests

Nebraska is required per Article VII of its Constitution to provide “free instruction in the common schools of this state of all persons between the ages of five and twenty-one years.” [Neb. Const. Art. VII-1](#). The Constitution states that the State Department of Education (comprised of the State Board of Education and the Commissioner) shall have “general supervision and administration of the school system.” [Neb. Const. Art. VII-2](#). Their duties explicitly flow from the Legislature. [Neb. Const. Art. VII-3](#).

As such, the policy interests of the certification are directed firstly by the Constitution, secondly the Legislature, then finally the Nebraska Department of Education. Ergo, NDE looks to the Legislature to determine policy priorities to carry out its duty to provide free public education.

[Nebraska Revised Statute 79-701](#) states:

The Legislature hereby finds and declares that the mission of the State of Nebraska, through its public school system, is to:

- (1) Offer each individual the opportunity to develop competence in the basic skills of communications, computations, and knowledge of basic facts concerning the environment, history, and society;
- (2) Offer each individual the opportunity to develop higher order thinking and problem-solving skills by means of adequate preparation in mathematics, science, the social sciences, and foreign languages and by means of appropriate and progressive use of technology;
- (3) Instill in each individual the ability and desire to continue learning throughout his or her life;
- (4) Encourage knowledge and understanding of political society and democracy in order to foster active participation;
- (5) Encourage the creative potential of each individual through exposure to the fine arts and humanities;
- (6) Encourage a basic understanding of and aid the development of good health habits; and
- (7) Offer each individual the opportunity for career exploration and awareness.

Naturally, the goal of “effective education” as found in §79-701 is a shared priority of all citizens of Nebraska.⁹ To this end, both State and Local Applicants must:

- Complete NDE’s application form.
- Submit an official college transcript that fulfills state requirements.

⁹ Nebraska Branch of the National Conference of School Administrators [Constitution](#), Article II.

- Pay prescribed application fees.
- Not have had any application for certification denied, or revoked or suspended in another jurisdiction; not have a felony conviction or a conviction involving abuse, neglect, or sexual misconduct.
- Be of good moral character.
- Not have a mental or emotional incapacity that would inhibit the practice of the profession.
- Submit a fingerprint set and background check.
- Submit evidence of human relations training.
- Have held a Nebraska teachers certificate, or comparable or equivalent certificate from another jurisdiction (State only).
- Have at least sixty (60) hours of semester hours of college credit with education-related coursework, and submit a written request of the issuance of such permit by the superintendent or governing body of the school district or Local Substitute Teacher Consortium in which the applicant seeks to teach (Local only).

Both State and Local Substitute Teacher certification reflects the same policy interests as full-time teacher certification (a more thorough explanation of each policy interest can be found online at https://nebraskalegislature.gov/FloorDocs/106/PDF/Agencies/Legislative_Council/707_20191213-131109.pdf). Naturally, the requirements for certifying substitute teachers are slightly modified to reflect the more fluid nature of the substitute teacher’s profession.

VI. Comparison with Other States

The following section of this report compares¹⁰ current Nebraska Administrative Certificate requirements to surrounding states¹¹ and states that have unique or notable differences¹². The Nebraska requirements (listed above) are reproduced here for reference:

- Complete NDE’s application form.
- Submit an official college transcript that fulfills state requirements.
- Pay prescribed application fees.
- Not have had any application for certification denied, or revoked or suspended in another jurisdiction; not have a felony conviction or a conviction involving abuse, neglect, or sexual misconduct.
- Be of good moral character.
- Not have a mental or emotional incapacity that would inhibit the practice of the profession.
- Submit a fingerprint set and background check.
- Submit evidence of human relations training.

¹⁰ For a state-by-state “report-card” comparison in reading and mathematics, see <https://www.nationsreportcard.gov/reading/states/scores/?grade=4> (Accessed November 2020).

¹¹ For a more extensive 50-state bullet-point summary comparison, see: <http://ecs.force.com/mbdata/MBQuest2RTANW?rep=SLC1806> (Accessed November 2020). Likewise, for a more in-depth summary of each specific state, see: <https://www.teaching-certification.com/principal-certification.html> (Accessed November 2020).

¹² Given that the statutory intention of this report to evaluate less restrictive regulation, this report includes comparisons with non-adjacent states that are chosen on the basis of having generally less restrictive requirements.

- Have held a Nebraska teachers certificate, or comparable or equivalent certificate from another jurisdiction (State only).
- Have at least sixty (60) hours of semester hours of college credit with education-related coursework, and submit a written request of the issuance of such permit by the superintendent or governing body of the school district or Local Substitute Teacher Consortium in which the applicant seeks to teach (Local only).

STATE	CITATION		REQUIREMENTS	COMMENTS
South Dakota		•	<ul style="list-style-type: none"> • No statewide mandatory education requirements • No statewide mandatory experience requirements • Criminal background check required 	
Iowa		•	<ul style="list-style-type: none"> • Must meet all Iowa requirements for a teaching license (in this case, bachelor's degree + 15 hours of training) • Classroom experience required • Criminal background check required 	
Wyoming		•	<ul style="list-style-type: none"> • Education: either a college degree, or a high school GED and completion of teacher training • Candidates with only a GED must complete approximately 35 hours of training • Criminal background check required • Must complete a course on U.S. and Wyoming Constitutions 	

REVIEW & RECOMMENDATIONS

Neb. Rev. Statutes §§ [84-933](#), [84-948](#), 2017 (OBRA) requires that, beginning in 2019, “each standing committee of the Legislature shall annually review and analyze approximately twenty percent of the occupational regulations within the jurisdiction of the committee and prepare and submit an annual report electronically to the Clerk of the Legislature by December 15 of each year as provided in this section.” Neb. Rev. Statutes § [84-948](#). The statute requires committees to research and evaluate whether existing license certificates conform to Nebraska’s policy as outlined in Neb. Rev. Statute § [84-946\(1\)-\(6\)](#):

- (1) To protect the fundamental right of an individual to pursue a lawful occupation;
- (2) To use the least restrictive regulation which is necessary to protect consumers from undue risk of present, significant, and substantiated harms that clearly threaten or endanger the health, safety, or welfare of the public when competition alone is not sufficient and which is consistent with the public interest;
- (3) To enforce an occupational regulation against an individual only to the extent that the individual sells goods or services that are included explicitly in the statutes that govern the occupation;
- (4) To construe and apply occupational regulations to increase opportunities, promote competition, and encourage innovation;
- (5) To use the least restrictive method of regulation as set out in section 71-6222 for lawful occupations subject to the Nebraska Regulation of Health Professions Act; and
- (6) To provide ongoing legislative review of occupational regulations.

“Least restrictive regulation,” in order of least to most restrictive, is defined in § [84-937](#) as:

- (1) Market competition;
- (2) Third-party or consumer-created ratings and reviews;
- (3) Private certification;
- (4) Specific private civil cause of action to remedy consumer harm;
- (5) Deceptive trade practices under the Uniform Deceptive Trade Practices Act;
- (6) Mandatory disclosure of attributes of the specific goods or services;
- (7) Regulation of the process of providing the specific goods or services to consumers;
- (8) Inspection;
- (9) Bonding or insurance;
- (10) Registration;
- (11) Government certification; and
- (12) Occupational license.

Thus, if an agency finds (or the Legislature determines through statute) that the policy benefits of an occupational license, certificate, or registration can be obtained by a less restrictive method, agencies must change their procedures accordingly.

This report annually examines approximately 20% of occupational regulations under the jurisdiction of the Committee and thereby examines all such regulations within its jurisdiction in a quinquennial cycle. The Committee includes a recommendation on each certificate as to whether or not they appear to conform with the policy and requirements of OBRA. The Committee’s recommendation is not determinative of

compliance with OBRA; an agency may still choose to make, or refrain from making, a change based on the recommendation.

At this time, the committee does not have a recommendation to modify the State or Local Substitute Teaching Certificates.