



Office of State Human Resources

ROY COOPER  
Governor

BARBARA GIBSON  
Director, State Human Resources

**MEMORANDUM**

**FROM:** Glenda K. Farrell, Chief Deputy   
**DATE:** February 9, 2022  
**RE:** Exception or Variance —  
Service as a Substitute Teacher or Substitute School Staff During COVID-19  
Pandemic

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**FINDINGS OF FACT**

1. The State Human Resources Act, Chapter 126 of the North Carolina General Statutes, establishes a State “system of personnel administration under the Governor, based on accepted principles of personnel administration and applying the best methods as evolved in government and industry.” N.C.G.S. 126-1.
2. N.C.G.S. 126-4 provides that the State Human Resources Commission (the “Commission”) shall establish policies and rules governing several specific human resources functions, including “[c]ompensation plans ... for all employees subject to the provisions of this Chapter” and “[h]ours and days of work, holidays, vacation, sick leave, and other matters pertaining to the conditions of employment.” G.S. 126-4(2),(5).
3. N.C.G.S. 126-3 provides that the Office of State Human Resources (“OSHR”) shall be responsible for “administering all policies, rules, and procedures established by the Commission.” N.C.G.S. 126-3(1).
4. The Commission has granted the Director of the Office of State Human Resources (the “Director”) “authority to grant exceptions and variances from the policies and rules” of the Commission “where necessary to promote efficiency of administration and to provide for a fair and reasonable system of personnel administration.” 25 NCAC 01A .0104(a).

5. Under the Commission’s rule, the Director shall have authority to grant these exceptions and variances in “limited and special instances,” when “necessary to promote efficiency of administration and provide for a fair and reasonable system of personnel administration.” 25 NCAC 01A .0104(b).
6. 25 NCAC 25 NCAC 01A .0104, gives to the Director the authority to grant exceptions and/or variances to these rules and policies.
7. The COVID-19 pandemic has resulted in a national emergency being declared for the United States and a state of emergency being declared for the State of North Carolina. Those emergencies remain in effect.
8. The omicron variant of COVID-19 has produced a surge in cases across North Carolina. As of Monday, February 7, 2022, there have been more than 2,490,000 reported cases of COVID-19 in North Carolina, and the percentage of positive tests is more than 19%.
9. With the current surge of the omicron variant, K-12 school districts across the state are experiencing staff shortages due to the increased possibility of staff having to isolate and quarantine.
10. For much of the 2021-22 school year, many school districts have also been experiencing a limited availability of substitute teachers, bus drivers, cafeteria staff, and other staff who can fill in for employees who are having to isolate or quarantine.
11. Students benefit from in-person learning academically, mentally, physically, and socially.
12. To keep schools open for in-person learning, it is important that school districts have access to as many substitute teachers and other substitute staff as possible.
13. In the coming weeks, there will be a significant need for substitute teachers, bus drivers, and cafeteria staff in North Carolina’s schools.
14. The Commission’s Community Service Leave Policy provides that employees may be granted paid community service leave. Full-time employees are ordinarily eligible for 24 hours of community service leave each calendar year, which can be used with approval of the supervisor. Part-time employees receive a prorated amount of community service leave. See Community Service Leave Policy, page 3, available at <https://oshr.nc.gov/policies/leave/community-service-leave>.

15. Under the Policy, community service leave may be used by “any employee for volunteer activity in the schools.” Policy, page 1. The Policy further explains that this leave may be used on activities that include “school-approved volunteer service approved by a teacher, school administrator, or program administrator.” Policy, page 4. “School” is defined in the Policy to mean an “organization that is authorized to operate under the laws of the State of North Carolina and is: an elementary school, middle school, high school, or a licensed childcare program.” Policy, page 2.\*
16. Two provisions of the Policy would ordinarily disincentivize state employees from using community service leave in the schools:
  - a. The Policy states, “Time spent training to be a volunteer is not covered by Community Service Leave.” Policy, page 5. However, substitute teachers and other substitute staff often must attend training sessions before they can serve in the schools.
  - b. The Policy does not allow service to qualify for use of community service leave if the employee is “receiving pay for the service.” But requiring people to decline their stipend would discourage state employees from meeting the current, urgent need for substitute teachers, bus drivers, and cafeteria staff in the schools. Moreover, many substitute teachers must pay out-of-pocket for mandatory training sessions, and the stipend pay for substitute teachers will work to compensate for this training expense.

However, on January 12, 2022, an exception and variance from the Community Service Leave Policy was granted that allowed flexibility as to these two provisions.

17. In addition, because of the training and administrative work (such as background checks) required to serve in the schools, the 24 hours normally available for Community Service Leave have sometimes not been enough for state employees who are interested in meeting the current need in schools.
18. Today, in this revised exception or variance, the term of the exception will be extended to April 15, 2022. Moreover, additional flexibility will be granted as to the number of hours of leave. The new number of hours will be 48 (of which 24 hours are available only for use in the schools).

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\* For employees who live in an adjacent state or have a duty station in another state, “the agency may grant community service leave for involvement in the child’s school.” Policy, page 2.

## **CONCLUSIONS**

### **Exceptions**

19. Therefore, based on the findings of fact and conclusions herein, the following exceptions from the Community Service Leave Policy are granted, subject to the terms of the exceptions below:
  - a. State employees are eligible to use community service leave for time spent training to be a substitute teacher, substitute teacher's assistant, or other substitute staff at a school or school district.
  - b. State employees are eligible to use community service leave for activity in the schools (with the exclusion of any time spent in religious activities), regardless of whether they receive pay for the activity.
  - c. State employees who provide service in the schools are eligible for an additional 24 hours of Community Service Leave. This additional 24 hours of Community Service Leave time is available only in the schools.

### **Terms of the Exceptions**

20. These exceptions apply only to service as a substitute teacher or in another role in a school or school district, such as a substitute school bus driver or cafeteria worker, that meets the duties of staff who are temporarily not available.
21. These exceptions apply only to service beginning on the date of this memorandum and ending at the close of the day on April 15, 2022.
22. Other than as described above, all provisions of the Community Service Leave Policy remain in place.
23. The Community Service Leave Policy includes the requirement that eligible activity for community service leave "does not include activities designed to promote religious beliefs such as teaching or leading religious assemblies," although eligible service does "include activities supported by religious organizations such as volunteering in soup kitchens, homeless shelters or other community activities." Policy, page 5. This requirement is rooted in the First Amendment of the United States Constitution, which restricts a governmental "establishment of religion." Therefore, if a state employee is serving under this exception at a private school, the employee will not be eligible to use community service leave for any portion of the

day in which the employee is participating in a religious assembly or promoting religious activities.

24. Also, as provided in the Community Service Leave Policy, "Employees must receive approval from their supervisor to use this leave. The supervisor or other agency/institution manager may require that the leave be taken at a time other than the one requested, based on the needs of the agency." Policy, page 6.
25. Effective immediately, this exception or variance replaces the January 12, 2022 exception or variance on the same subject. It is applicable to all activity from January 12, 2022 through the end of this exception or variance.

#### **Other Conclusions**

26. In the particular circumstances of this request, granting this exception is necessary to promote efficiency of administration and provide for a fair and reasonable system of personnel administration.
27. Pursuant to the Commission's rule, this exception will be reported to the Commission at its upcoming meeting. "Written reports of the granting of exceptions and variances shall be made by the Director to the Commission at its meeting next following the date the same are granted that is more than five business days from such date. Such written reports shall include the Director's findings of facts upon which the exceptions and/or variances granted were based." 25 NCAC 01A .0104(c).
28. This exception is granted under the authority delegated to me by the Director of the Office of State Human Resources.