

**PROPOSED REGULATION OF THE
COMMISSION ON PROFESSIONAL STANDARDS IN EDUCATION**

LCB FILE NO. R111-20I

**The following document is the initial draft regulation proposed
by the agency submitted on 06/26/2020**

NAC 391.500 Recommendation to Board for suspension or revocation; findings of board of trustees to accept or reject hearing officer's recommendation; complaint for failure to comply with contract. (NRS 385.080, 391.019, 391.355)

1. Any recommendation for the suspension or revocation of the state license of a teacher, administrator or other holder, *or for a public letter of reproof to be issued to the holder of such a license*, and the charge which supports the recommendation must be made to the State Board of Education.

2. Such a charge and recommendation may be made by the board of trustees of a school district, *the governing body of a charter school*, or, unless the case is governed by NRS 391.350, by the Superintendent of Public Instruction.

3. *A recommendation submitted to the State Board pursuant to subsection 1 may specify, in the case of a licensee who holds more than one license, which licenses are being recommended for suspension or revocation, or for a public letter of reproof to be issued.*

4. The board of trustees of a school district *or the governing body of a charter school* may recommend the suspension or revocation of the license of a person who has been dismissed or refused reemployment as a teacher or administrator, *or the issuance of a public letter of reproof to such a person*, only after the person has been afforded an opportunity for a hearing before a hearing officer pursuant to NRS 391.650 to 391.820, inclusive.

~~4.~~ 5. At any meeting in which a board of trustees of a school district *or governing body of a charter school* decides to accept or reject a hearing officer's recommendation to dismiss or not reemploy the holder of a license, the board *or governing body* shall enter its findings regarding the existence of any cause for revocation or suspension of the holder's license *or for the issuance of a public letter of reproof to the licensee* and shall decide whether to recommend suspension or revocation of the license to the State Board of Education.

~~5.~~ 6. The board of trustees of a school district *or governing body of a charter school* may make a formal complaint to the State Board of Education concerning a teacher, administrator or other holder of a license who has failed to comply with his or her contract and may recommend the suspension or revocation of his or her license even though the board of trustees has not conducted a proceeding to dismiss him or her from employment or prevent his or her reemployment.

~~[NAC 391.503—Failure of holder of license to pay fee imposed by American Arbitration Association for hearing officer. (NRS 385.080, 391.355)—If the holder of a license who requests a hearing before a hearing officer pursuant to NRS 391.322 does not pay the fee imposed by the American Arbitration Association within 45 days after requesting the hearing, his or her request for a hearing shall be deemed withdrawn.]~~

NAC 391.507 Answer; time to submit. (NRS 385.080, 391.355) Not later than 10 days after a hearing officer is selected pursuant to NRS 391.322, the holder of the license shall submit to the hearing officer an answer to the allegations set forth in the recommendation for the suspension or revocation of his or her license, *or for issuance of a public letter of reproof*, which was submitted to the Board.

NAC 391.509 Modification of limitations of time. (NRS 385.080, 391.355)

1. The Superintendent of Public Instruction, *board of trustees of a school district or governing body of a charter school* and the holder of a license may agree to modify any limitation of time imposed pursuant to NAC 391.500 to 391.555, inclusive.

2. A hearing officer may extend any limitation of time imposed pursuant to NAC 391.500 to 391.555, inclusive, if he or she determines that the extension is appropriate. As soon as practicable after the hearing officer extends a limitation of time pursuant to this subsection, the hearing officer shall notify the parties, in writing, of the extension and the reason therefor.

NAC 391.513 Hearing: Communication of parties with hearing officer and staff of hearing officer. (NRS 385.080, 391.355)

1. Except as otherwise provided in subsection 3, each party to a hearing before a hearing officer on the suspension or revocation of a license shall not communicate with the hearing officer, except during the hearing, without the approval of the hearing officer and all other parties.
2. Any communication which is approved pursuant to subsection 1 must be submitted to the ~~[American Arbitration Association]~~ **Hearings Division of the Department of Administration** for transmittal to the hearing officer.
3. A party may communicate with a member of the staff of the hearing officer concerning any limitation of time applicable to the hearing.

NAC 391.515 Hearing: Location; notification of time and location. (NRS 385.080, 391.019, 391.355)

1. A hearing before a hearing officer on the suspension or revocation of a license **or the issuance of a public letter of reproof to the licensee** must be held:
 - (a) At a location agreed upon by the Superintendent of Public Instruction, **board of trustees of a school district or governing body of a charter school which initiated the complaint** and the holder of the license; or
 - (b) At a convenient location determined by the hearing officer if the Superintendent of Public Instruction, **board of trustees of a school district or governing body of a charter school** and the holder of the license are unable to agree on a location for the hearing.
2. The hearing officer shall notify the Superintendent of Public Instruction, **board of trustees of a school district or governing body of a charter school** and the holder of the license, in writing, of the time and location of the hearing not less than 10 days before the hearing.

NAC 391.520 Hearing: Purpose; presentation of evidence; recordings and transcripts; responsibility for expenses. (NRS 385.080, 391.019, 391.355)

1. The hearing before the hearing officer is held to determine whether a cause for the suspension or revocation of the license, **or for the issuance of a public letter of reproof to the licensee**, exists.
2. The holder of the license and the Superintendent of Public Instruction, **board of trustees of a school district or governing body of a charter school which initiated the complaint** are entitled to be heard, to be represented by counsel and to call witnesses in their behalf. The parties may offer any evidence which is relevant and material to the matter and shall produce such additional evidence as the hearing officer may require for a determination of the matter.
3. The hearing must be recorded on audiotape or any other means of sound reproduction. If requested by the hearing officer or any party, an official transcript must be made. If a transcript is requested by a party, the party shall ensure that the transcript is prepared and pay the cost of preparing the transcript. Any other party is entitled to a copy of the transcript upon the payment of a fee which is not more than the cost of preparing the transcript. The hearing officer is entitled to receive a copy of the transcript at no charge. If the transcript is requested by the hearing officer, the parties are equally responsible for the cost of preparing the transcript.
4. Unless otherwise agreed upon by the parties, **and except as otherwise provided in subsection 5**, the Superintendent of Public Instruction, **board of trustees of a school district or governing body of a charter school which initiated the complaint** and the holder of the license are equally responsible for the expense and salary of the hearing officer.
5. **If the hearing results from a recommendation to revoke or suspend a license based upon a conviction which is a ground for the suspension or revocation of a license pursuant to paragraph (e) or (f) of subsection 1 of NRS 391.330, the holder of the license is fully responsible for the expense and salary of the hearing officer, and the State Board may bill him or her for such expenses.**

6. The expenses of a witness who testifies at the hearing must be paid by the party who requested the witness to testify at the hearing.

NAC 391.535 Hearing: Order of presentation of statements, evidence and arguments. (NRS 385.080, 391.019, 391.355) Statements, evidence and arguments are normally received in the following order, but the hearing officer may modify the order:

1. Opening statement by the Superintendent of Public Instruction , *board of trustees of a school district or governing body of a charter school* .
2. Opening statement by the holder of the license.
3. Evidence by the Superintendent of Public Instruction , *board of trustees or governing body* .
4. Evidence by the holder of the license.
5. Rebuttal evidence by the Superintendent , *board of trustees or governing body* .
6. Surrebuttal evidence by the holder.
7. Closing argument by the Superintendent , *board of trustees or governing body* .
8. Closing argument by the holder.
9. Rebuttal argument by the Superintendent , *board of trustees or governing body* .

NAC 391.545 Hearing: Conduct of participants; rules of evidence; witnesses; affidavits; exhibits; stipulations; briefs. (NRS 385.080, 391.355)

1. All participants in the hearing shall conduct themselves in a respectful manner.
2. Before the hearing, the parties must exchange copies of any evidence that will be submitted as exhibits during the hearing. Not less than 5 days before the hearing, each party shall provide to the hearing officer and all other parties the name of each witness who will testify at the hearing and a summary of his or her anticipated testimony.
3. The technical rules of evidence do not apply and formal exceptions to the hearing officer's rulings are not necessary. The ground on which a party relies for an objection to or an exclusion of evidence must be briefly stated. Any offer of proof for the record must include a statement of the substance of the evidence to which objection has been sustained. The decision by the hearing officer on the admissibility of evidence is a final administrative action.
4. An affidavit may be admitted as evidence in lieu of oral testimony if the information contained in the affidavit is admissible.
5. Exhibits introduced into evidence by the Superintendent of Public Instruction , *board of trustees of a school district or governing body of a charter school* must be identified numerically in the order in which the exhibits are entered into evidence. The exhibits introduced into evidence by the holder of the license must be identified alphabetically in the order in which they are introduced into evidence.
6. The hearing officer may, upon the motion of a party, order a witness, other than a party to the hearing, to be excluded from the hearing to prevent that witness from hearing the testimony of another witness at the hearing.
7. The hearing officer may approve or reject any stipulation of fact offered by the parties at the hearing, including any written stipulation introduced into evidence as an exhibit or any stipulation in the form of an oral statement. A stipulation is binding on all parties to it and may be regarded by the hearing officer as evidence. The hearing officer may require additional proof by evidence of the facts stipulated.
8. The hearing officer may require the parties to submit briefs on any contested issues of law or fact. If the hearing officer requires the parties to submit briefs, he or she shall not conclude the hearing until after the briefs are required to be submitted.

NAC 391.XXX

1. The State Board of Education may issue a public letter of reproof to a teacher, administrator, or other educational personnel who holds a license issued by the Superintendent of Public Instruction if:

(a) The State Board receives a recommendation for disciplinary action against the license holder pursuant to NAC 391.500;

(b) The act of misconduct committed by the license holder did not result in a criminal conviction in this or any other state for a felony or an offense involving moral turpitude; and

(c) The State Board has not issued a public letter of reproof to the license holder for the same or a substantially similar act of misconduct within the immediately preceding 3 years.

2. A public letter of reproof issued by the State Board pursuant to this section:

(a) Shall be sent via certified mail to the address on file with the Department for the licensee to whom it was issued;

(b) Shall become a part of the public license record of the licensee to whom it was issued; and

(c) Shall be removed from that public record after a period of 3 years if the State Board has not issued another public letter of reproof to the license holder during that time.

3. The State Board of Education may consider one or more of the following factors in determining whether to issue a public letter of reproof to the holder of a license:

(a) If the act of misconduct is an isolated occurrence, part of a continuing pattern, or one of a series of incidents;

(b) The likelihood of a recurrence of the misconduct;

(c) The educator's past performance;

(d) The extent, severity, and imminence of any danger to students, other educators, or the public;

(e) Whether the misconduct was open and notorious or had negative effects on the public image of the school or school district at which the license holder was employed, or on the profession of education generally;

(f) The educator's state of mind at the time of the misconduct and afterwards;

(g) The danger that students will imitate the educator's behavior or use it as a model;

(h) The age and level of maturity of the students served by the educator;

(i) Any extenuating circumstances or other factors bearing on the appropriate nature of a disciplinary sanction; or

(j) The deterrent effect of a public letter of reproof on similar misconduct by the educator or other educators.