

**PROPOSED REGULATION OF THE
STATE BOARD OF EDUCATION**

LCB File No. R111-20

October 13, 2020

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-3 and 5-7, NRS 385.080, 391.330 and 391.355; §§4, 8, 9 and 10, NRS 391.355.

A REGULATION relating to education; authorizing the State Board of Education to issue a public letter of reprimand to a teacher, administrator or other holder of a license in certain circumstances; authorizing the board of trustees of a school district or governing body of a charter school to take part in the hearings process; requiring the holder of a license to pay certain costs relating to a disciplinary hearing; requiring that certain communications relating to the suspension or revocation of a license be submitted to the Hearings Division of the Department of Administration; repealing provisions regarding the payment of certain fees imposed by the American Arbitration Association; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes the State Board of Education to suspend or revoke the license of, or issue a letter of reprimand to, a teacher, administrator or other licensed employee for certain conduct. (NRS 391.350) Existing law requires the State Board to adopt regulations governing the conduct of hearings held to determine whether a license should be suspended or revoked. (NRS 391.355) Existing law also requires the State Board to adopt regulations governing the process by which a letter of reprimand may be issued. (NRS 391.330)

Section 1 of this regulation authorizes the State Board to issue a public letter of reprimand to a teacher, administrator or other licensed employee if: (1) the State Board receives a recommendation for disciplinary action against the holder of a license; (2) the misconduct committed by the holder of a license did not result in a criminal conviction for a felony or involve moral turpitude; and (3) the State Board has not issued a public letter of reprimand against the holder of a license for the same or substantially similar misconduct within the preceding 3 years. **Section 1** requires a public letter of reprimand be: (1) sent via certified mail to the holder of a license; (2) part of the public record of the holder of a license; and (3) removed from the public record of the holder of a license after 3 years if the State Board has not issued another public letter of reprimand or sanctioned any other disciplinary action against the holder within that time. **Section 1** also authorizes the State Board to consider various factors in determining whether to issue a public letter of reprimand.

Existing regulations authorize the board of trustees of a school district or, in certain circumstances, the Superintendent of Public Instruction, to recommend the suspension or revocation of the license of a teacher, administrator or other holder of a license. (NAC 391.500) **Section 2** of this regulation authorizes the governing body of a charter school to also make such a recommendation. **Section 2** also authorizes a recommendation to specify which license held by the holder of a license is being recommended for suspension, revocation or the issuance of a letter of reprimand if the holder holds more than one license.

Existing regulations outline the procedures for a hearing to determine whether a license should be suspended or revoked. (NAC 391.507-391.555) **Sections 3, 5, 6 and 7** of this regulation include consideration of the issuance of a public letter of reprimand in those procedures. **Sections 4 and 6-9** of this regulation authorize the board of trustees of a school district and the governing body of a charter school to participate in those procedures.

Existing regulations make the Superintendent of Public Instruction and the holder of a license equally responsible for the expense and salary of the hearing officer in a hearing regarding disciplinary action against a teacher, administrator or other holder of a license. (NAC 391.520) Senate Bill No. 41 of the 2019 Legislative Session requires the State Board to adopt rules of procedure which provide that a licensed employee is fully responsible for such costs and the expense of the transcript in certain circumstances. (NRS 391.355) **Section 7** makes the holder of a license responsible for such costs in the required circumstances.

Existing regulations require certain communications relating to the suspension or revocation of a license to be submitted to the American Arbitration Association for transmittal to the hearing officer. (NAC 391.513) **Section 5** instead requires that such communications be submitted to the Hearings Division of the Department of Administration. Existing regulations provide that if the holder of a license requests a hearing before a hearing officer and does not pay a fee imposed by the American Arbitration Association within 45 days after the request, the request is considered withdrawn. (NAC 391.503) **Section 10** of this regulation repeals that provision.

Section 1. Chapter 391 of NAC is hereby amended by adding thereto a new section to read as follows:

1. The State Board may issue a public letter of reprimand to a teacher, administrator or other holder of a license if:

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

(b) The misconduct committed by the holder of a license did not result in a criminal conviction in this State 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 reprimand to the holder of a license for the same or substantially similar misconduct within the immediately preceding 3 years.

2. A public letter of reprimand issued by the State Board must:

(a) Be sent via certified mail to the address on file with the Department for the holder of a license;

(b) Become a part of the public record of the holder of the license; and

(c) Be removed from the public record of the holder of the license 3 years after issuance if the State Board has not issued another public letter of reprimand to or taken other disciplinary action against the holder during the 3 years after the issuance of a public letter of reprimand.

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

(a) Whether the 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 past performance of the holder of a license;

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

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

(f) The state of mind of the holder of a license at the time of the misconduct and after the misconduct occurred;

(g) The danger that pupils will imitate the behavior of the holder of a license or use it as a model;

(h) The age and level of maturity of the pupils served by the holder of a license;

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

(j) The deterrent effect of a public letter of reprimand on similar misconduct by the holder of a license or other holders of a license.

Sec. 2. NAC 391.500 is hereby amended to read as follows:

391.500 1. Any recommendation for the suspension or revocation of the state license of *or the issuance of a public letter of reprimand to* a teacher, administrator or other holder *of 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 of Education pursuant to subsection 1 may specify, if the holder of a license holds more than one license, which license is being recommended for suspension, revocation or the issuance of a public letter of reprimand.*

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 *or the issuance of a public letter of reprimand to* a person who has been dismissed or refused reemployment as a teacher or

administrator 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.

~~4.1~~ 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 issuance of a public letter of reprimand to the holder of a license* and shall decide whether to recommend suspension or revocation of the license *or issuance of a public letter of reprimand* to the State Board of Education.

~~4.1~~ 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 *or issuance of a public letter of reprimand* even though the board of trustees *or governing body* has not conducted a proceeding to dismiss him or her from employment or prevent his or her reemployment.

Sec. 3. NAC 391.507 is hereby amended to read as follows:

391.507 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 issuance of a letter of public reprimand* which was submitted to the Board.

Sec. 4. NAC 391.509 is hereby amended to read as follows:

391.509 1. The Superintendent of Public Instruction , *the board of trustees of a school district or the 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 ~~H~~, *and section 1 of this regulation.*

2. A hearing officer may extend any limitation of time imposed pursuant to NAC 391.500 to 391.555, inclusive, *and section 1 of this regulation* 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.

Sec. 5. NAC 391.513 is hereby amended to read as follows:

391.513 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 *or issuance of a public letter of reprimand* 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.

Sec. 6. NAC 391.515 is hereby amended to read as follows:

391.515 1. A hearing before a hearing officer on the suspension or revocation of a license *or the issuance of a public letter of reprimand* must be held:

(a) At a location agreed upon by the Superintendent of Public Instruction *or the 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, *the board of trustees of a school district or the 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, *the board of trustees of a school district or the 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.

Sec. 7. NAC 391.520 is hereby amended to read as follows:

391.520 1. The hearing before the hearing officer is held to determine whether a cause for the suspension or revocation of the license *or the issuance of a public letter of reprimand* exists.

2. The holder of the license and the Superintendent of Public Instruction *or the 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 **H** *and except as otherwise provided in subsection 5*, the Superintendent of Public Instruction *or the 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 licensed employee is fully responsible for the expense of and compensation for the hearing officer selected pursuant to NRS 391.322 and the expense of the official transcript. The Board may bill the licensed employee 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.

Sec. 8. NAC 391.535 is hereby amended to read as follows:

391.535 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 **H**, *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 **H**, *board of trustees of a school district or governing body of a charter school.*

4. Evidence by the holder of the license.

5. Rebuttal evidence by the Superintendent **H**, *board of trustees of a school district or governing body of a charter school.*

6. Surrebuttal evidence by the holder.
7. Closing argument by the Superintendent ~~††~~, *board of trustees of a school district or governing body of a charter school*.
8. Closing argument by the holder.
9. Rebuttal argument by the Superintendent ~~††~~, *board of trustees of a school district or governing body of a charter school*.

Sec. 9. NAC 391.545 is hereby amended to read as follows:

- 391.545 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.

Sec. 10. NAC 391.503 is hereby repealed.

TEXT OF REPEALED SECTION

391.503 Failure of holder of license to pay fee imposed by American Arbitration Association for hearing officer. (NRS 385.080, 391.355)

391.503 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.