

**TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 1. STATE BOARD OF EDUCATION**

SUBCHAPTER 5. DUE PROCESS

210:1-5-6. Suspension and/or revocation ~~Revocation~~ of certificates

(a) **Application.** The rules and regulations of the State Board of Education governing the suspension and revocation of certificates apply to the following: ~~superintendent~~ superintendents of schools, principals, supervisors, librarians, school nurses, school bus drivers, visiting teachers, classroom teachers and other personnel performing instructional, administrative and supervisory services in the public schools. Except as otherwise specifically provided by law, the issuance or denial of a new certificate shall not be considered an individual proceeding subject to the process and procedures set forth in this Section.

~~(1)(b)~~ **Grounds for revocation.** A certificate shall be revoked only for:

(1) A willful violation of a rule or regulation of the State Board of Education, or the United States Department of Education; or

(2) A willful violation of any federal or state law, or ~~for other proper cause;~~

(3) A conviction for any of the offenses or bases for revocation set forth in 70 O.S. §§ 3-104 or 3-104.1; or

(4) For ~~for~~ other proper cause. ~~[70-3-104]~~

(c) It shall be a violation of State Board of Education rules and regulations for any person holding a valid teaching certificate to be aware of and fail to report, or knowingly participate in any activity deemed illegal while participating in job-related activities of student organizations, athletic and scholastic competitions, fairs, stock shows, field trips, or any other activity related to the instructional program. Willful violation of (b)(1)-(b)(4) of this regulation or the failure to report or ~~knowingly participate~~ knowing participation in any activity deemed illegal may result in recommendation of revocation or suspension of the certificate, or such other penalty, as may be determined after due process by the State Board of Education.

~~(2)(d)~~ **Right to hearing on certificate revocation of an existing certificate.** No certificate shall be revoked until the holder of the certificate has been provided with a copy of the application to revoke the certificate and opportunity for a hearing ~~has been held~~ provided by the State Board of Education in accordance with the following procedures:

~~The Board may utilize a hearing officer to conduct the hearing. If utilized, the hearing officer shall be appointed by the Chairperson of the Board. At least twenty (20) days before the hearing, the complaint giving rise to the hearing shall be filed with the Chairperson of the Board, showing grounds or reasons for revocation of the certificate. The complaint shall be in writing, and shall be signed by the complaining party, and the chairperson or chairperson's designee.~~

~~(3)(1)~~ **Filing of complaint application to revoke a certificate.** ~~In an~~ An individual proceeding to revoke a certificate shall be initiated by filing; ~~there shall be filed a complaint~~ an application to revoke a certificate. An application to revoke a certificate shall be filed with the Secretary of the State Board of Education by the State Department of Education. The application shall name the holder of the certificate to be revoked as the respondent in the action, and shall contain: ~~containing~~

(A) A statement of the legal authority and jurisdiction under which the applicant seeks to initiate the proceeding and the hearing is to be held;

(B) A reference to each particular statute and/or rule involved;

(C) A short and plain statement of the ~~matters~~ allegations asserted; and

(D) A statement of the facts alleged to give rise to the revocation; ~~the right to the relief, and naming the persons against whom relief is sought.~~

The application shall also state a proposed effective date for the relief requested (e.g., revocation), which shall be set no earlier than thirty (30) days from the date the complaint is filed.

~~(4)~~**(2) Informal disposition.** Informal disposition of any complaint the application to revoke a certificate may be made by stipulation, agreed settlement, consent order, or default, unless otherwise precluded by law. Written notice signed by each party or counsel representatives shall be delivered to the Secretary of the State Board of Education prior to the time of the scheduled hearing.

~~(5)~~**(3) Notice to parties.** Whenever such a charge or complaint is filed, Within three (3) business days of the date the application to revoke a certificate is filed with the Chairperson Secretary of the State Board of Education, he or she shall send a copy thereof to the holder of the certificate by certified or registered mail, restricted delivery with return receipt requested. the Secretary shall send a copy of the application along with a notice of intent to revoke the certificate. Notice of the time and place of the hearing and the name of the hearing officer (if applicable) shall be given by the Chairperson by certified or registered mail, restricted delivery with return receipt requested, to the holder of the certificate. In addition to the requirements of notice set forth at 75 O.S. § 309, the notice of intent to revoke the certificate shall include:

(A) A statement setting forth the proposed effective date of revocation of the certificate; and

(B) A statement advising the holder that if the holder fails to appear for a hearing and contest the revocation, the allegations in the application for revocation will be deemed confessed and the Board may issue a final order to effect revocation of the certificate as of the effective date proposed in the notice.

(e) Emergency Action. Pursuant to 75 O.S. § 314, in the event the State Board of Education finds that public health, safety, or welfare imperatively requires emergency action, the State Board of Education may issue an emergency order summarily suspending a certificate pending an individual proceeding for revocation or other action. Such proceedings shall be promptly instituted and determined. Such an order shall include specific findings of fact specifying the grounds for the emergency action. Within three (3) business days of the issuance of the order by the Board, a copy of the order shall be sent to the holder of the certificate via certified or registered mail, delivery restricted to the certificate holder, with return receipt requested.

(f) Hearing procedures.

(1) Hearing and appointment of a hearing officer. Upon filing the application with the Secretary of the Board, the Secretary shall set the matter for a hearing. The Board, at its discretion, may utilize a hearing officer to conduct the hearing. If utilized, the hearing officer shall be appointed by the Chairperson of the Board.

~~(6)~~**(2) Attendance of witnesses.** If the complainant, or the holder of the certificate wants any person to attend the hearing and testify as a witness, he/she shall notify the Chairperson of the State Board of Education at least ten (10) calendar days prior to the hearing, in writing, giving the name and address of the desired witness, and the Chairperson shall thereupon subpoena, by mail, the desired witness to attend in accordance with the provisions of this subsection. Every person testifying at a revocation hearing shall be sworn to tell the truth. The parties to the hearing shall exchange witness and exhibit lists no later than five (5) days prior to the hearing. The hearing shall be electronically recorded by the State Department of Education. A party to the hearing, upon request, shall be supplied a copy of the tape recording of the hearing. Any transcription cost shall be borne by the party requesting

transcription. If a hearing officer is utilized, written recommended findings of fact and conclusions of law shall be prepared by the hearing officer after conclusion of the hearing and submitted to the parties and the State Board of Education. The parties shall have the opportunities set out in 75 O.S. Supp. 1997, § 311 before action is taken by the Board on the proposed findings of fact and conclusions of law. After the parties have been given notice and an opportunity to file exceptions, present briefs and oral arguments in accordance with 75 O.S. Supp. 1997, § 311, action shall be taken by the State Board of Education to accept, reject, or modify the proposed Findings and Conclusions of the hearing officer.

~~(7)~~**(3) Subpoenas.** Subpoenas and/or subpoenas duces tecum may be issued in accordance with the following procedures:

(A) Issuance of subpoenas. Subpoenas for the attendance of witnesses, or ~~for the furnishing of information required by the Board, or for the production of books, records, papers, objects, or other evidence or records of any kind as may be necessary and proper for the purposes of a proceeding~~ shall be issued by the Secretary of the Board at the direction of the Chairperson; ~~or upon order of the Board; or in like manner, and for like purpose, subpoenas shall be issued by the Secretary at the request of any party to a proceeding before the Board for the attendance of witnesses or for the production of evidential materials at a hearing in such proceeding.~~ The signature of the Secretary shall be sufficient authentication for any subpoena.

(B) Service of subpoenas. Subpoenas shall be served in any manner prescribed for service of a subpoena in a civil action in the district courts of the State of Oklahoma. ~~[75-315]~~

~~(8)~~**(C) Objections to and compliance with subpoenas.** Any party to the proceeding may move to quash ~~Quash~~ a subpoena or subpoenas duces tecum issued in accordance with the provisions of this Section, provided that, prior to quashing a subpoena or subpoenas duces tecum the agency shall give notice to all parties. A subpoena or subpoenas duces tecum may not be quashed if any party objects.

(D) Enforcement of subpoenas. Upon the failure of any person to obey a subpoena, or upon the refusal of any witness to be sworn or make an affirmation or to answer a question put to her or him in the course of ~~a hearing in any rule-making proceeding, proceeding for a declaratory ruling, or in an~~ any individual proceeding, or in any other authorized action of the Board, the Board as soon as convenient shall consider the matter the issue of enforcement of the subpoena. By resolution, it may direct application to the district or superior court of the county of such person's residence or to any judge thereof for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. ~~the institution of appropriate judicial proceedings under the law of the state for an order to compel compliance with the subpoena or the giving of testimony, as the case may be.~~ Meanwhile, the hearing or other matters shall proceed, so far as is possible, but the Board at its discretion at any time may order a stay or continuance of ~~continue~~ the proceedings for such time as may be necessary to secure a final ruling in the compliance proceedings.

~~(9)~~**(E) Costs of issuance and service of subpoenas.** The costs covering the issuance and service of subpoenas and all witness fees incurred on behalf of a party to the proceedings, other than the Board, shall be borne by the party on whose behalf they are incurred.

~~(10)~~**(4) Right to representation.** ~~The person or persons signing the charge or complaint, the holder of the certificate, and any other interested person may appear at the hearing personally and/or by legal counsel.~~ Any party to the individual proceeding shall at all times

have the right to representation by counsel, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma, and provided further that counsel shall have the right to appear and act for and on behalf of the party represented.

~~(11)~~**(5) Legal counsel to State Board of Education.** The attorney for the State Board of Education ~~or, upon request, the Attorney General's representative~~ shall present evidence to the Board, in furtherance of the ~~Complaint~~ application. If deemed necessary by the Chairperson of the Board, a request ~~will~~ may be made of the Attorney General to provide counsel to the Board to rule on questions of admissibility of evidence, competency of witnesses, and any other questions of law. In the event that counsel is not requested from the Attorney General the Chairperson of the Board will rule on the evidence, competency of the witness and other questions of law.

~~(12)~~**Requests for disqualifications.** ~~Requests for the disqualification of a member or members of the Board shall be embodied in an affidavit, stating with particularity the grounds alleged therefor. Such requests must be filed prior to the commencement of the hearing unless it appears in the affidavit that the grounds for disqualification were not previously known and that upon such grounds the application to disqualify was promptly filed. Upon the filing of such affidavit, the Chairperson of the Board or the Secretary, if the affidavit is filed against the Chairperson, shall set the matters for hearing at the earliest date at which the Board can be convened, giving notice thereof personally or by telephone to the party or his or her counsel. The Board, or those members thereof qualified to sit at the hearing, shall take evidence and make prompt decisions. In the event the disqualification is sustained or in the event of a mandamus requiring disqualification, the hearing shall be continued to such time as is necessary for the appointment of members pro tem to proceed with the matters, and due notice of the continuance shall be given to all parties.~~

~~(13)~~**(6) Disqualification of a Board or Agency member or hearing officer.** A Board ~~or~~ Agency member or hearing officer shall withdraw from any individual proceeding in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification on the ground of his or her inability to give a fair and impartial hearing by filing an affidavit promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the Board, or if it affects a member of the Board, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a hearing officer, the Board shall either assign a replacement hearing officer, or conduct the hearing itself. Upon the entry of an order of disqualification affecting a Board ~~or Agency~~ member, the Governor immediately shall appoint a member pro tempore ~~tem~~ to sit in place of the disqualified member in that proceeding.

~~(14)~~**(7) Notice of facts.** The Board shall give notice to all parties, prior to, or at the hearing, of any facts of which it proposes to take official notice. Any party or her/his attorney may request that official notice be taken of any fact qualified for such notice by the statutes of this state. If such official notice is taken, it shall be stated in the record, and all parties shall have opportunity to contest and give evidence in rebuttal or derogation of the official notice.

~~(15)~~**(8) Presentation and consideration of evidence.** The State Board of Education shall consider only evidence upon the specific cause contained in the notice, and evidence will be heard for such cause. Questions of the admissibility of evidence shall be governed by the provisions of ~~75-310~~ 75 O.S. § 310.

~~(16)~~**(9) Order of procedure.** The order of procedure at the hearing shall be as follows:

(A) Opening statements by legal counsel of both parties;

- (B) Presentation of evidence by both parties followed by cross-examination of witnesses, and questions by State Board members or the hearing officer;
- (C) Closing arguments by legal counsel of both parties; and
- (D) Submission of case to the Board or the hearing officer for decision.

(10) Continuance of a hearing. The Board or hearing officer may continue or adjourn the hearing at any time for a specified time by notice or motion. The Board or hearing officer may grant a continuance upon motion of a party for good cause shown if written request is filed and served on all parties of record and filed with the Secretary of the Board at least five (5) days prior to the date set for hearing.

~~(17)~~**(g) Decision Deliberations and decisions.** Deliberations by the Board or the hearing officer in an individual proceeding may be held in executive session pursuant to the provisions of the Open Meeting Act set forth at 25 O.S. § 307.

(1) Decision. Decisions shall be issued in accordance with the following procedures:

(A) After hearing all evidence, and all witnesses, the State Board of Education or, if applicable, the hearing officer, shall ~~issue~~ render its decision on whether the certificate shall be revoked.

(B) The decision of the State Board of Education or a hearing officer presiding at the hearing shall be announced at the conclusion of the hearing and notification of that decision shall be by certified or registered mail, restricted delivery with return receipt requested to the holder of the certificate.

(C) If the holder of the certificate fails to appear at the scheduled hearing without prior notification within the time frame to request a stay or continuance set forth in (f)(10) of this Section, demonstration of good cause, the Board or hearing officer shall hold the party in default and issue an order sustaining the allegations set forth in the application.

(D) If the applicant fails to appear at the scheduled hearing without prior notification within the time frame to request a stay or continuance set forth in subsection (f)(10) of this Section, demonstration of good cause, or fails to prove the allegations by clear and convincing evidence, the application shall be dismissed.

~~(18)~~**(2) Findings of fact and conclusions of law.** After the decision is announced, but before issuance of the final order, if the Board has not heard the case or read the record of the individual proceeding, the hearing officer shall provide the parties with an opportunity to prepare and submit proposed findings of fact and conclusions of law in accordance with the provisions of 75 O.S. § 311. After the parties have been given notice and an opportunity to file exceptions, present briefs and oral arguments to the proposed findings of fact and conclusions of law, the Board may take action to accept, reject, or modify the proposed Findings and Conclusions of the hearing officer. The Board shall render findings of fact and conclusions of law. All findings of fact made by the Board shall be based exclusively on the evidence presented during the course of the hearing or previously filed briefs, (made a part of the record), of the testimony of witnesses taken under oath.

~~(19)~~**(3) Final order.** As the final determination of the matter, the final order shall constitute the final agency order and shall comply with the requirements set forth at 75 O.S. § 312. If no motion for rehearing, reopening or reconsideration of the order is filed in accordance with (h) of this Section, the final agency order shall represent exhaustion of all administrative remedies by the State Board of Education. All final orders in an individual proceeding shall be in writing and made a part of the record. Final orders are to be issued by the Chairperson of the Board or the presiding officer for transmission to the parties by the Secretary of the Board. Within five (5) business days of the date of issuance of the final order, parties shall

be notified of a final order either personally or by certified mail, return receipt requested. Upon request, a copy of the order shall be delivered or mailed to each party and the party's attorney of record, if any.

~~(20)~~(4) **Communication with parties.** Unless required for the disposition of ex parte matters authorized by law, the Chairperson and the members of the Board, the hearing officer, or the employees or the agents of the Board shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his or her representative except upon notice and opportunity for all parties to participate. The Chairperson and members of the Board or their employees may communicate with one another and have the aid and advice of one or more personal assistants. Advice may also be secured from the Attorney General's office.

~~(21)~~(h) **Record of hearing.**

~~(A)~~(1) The record of a hearing shall be set forth in such form and detail as the Chairperson or the Board may direct. The hearing may also be fully transcribed, and shall be placed on file in the Secretary's office. Parties to the proceeding may have the proceedings transcribed by a court reporter at their own expense. In accordance with the requirements of 75 O.S. § 309, the ~~The~~ record shall include:

- (A) All ~~all~~ pleadings, motions, and intermediate rulings;
- (B) Evidence ~~evidence~~ received or considered during the individual proceeding;
- (C) A ~~a~~ statement of matters officially noticed;
- (D) Questions ~~questions~~ and offers of proof, objections, and rulings thereon;
- (E) Proposed findings and exceptions;
- (F) Any ~~any~~ decision, opinion, or report by the Board or a hearing officer presiding at the hearing; and
- (G) All other evidence ~~all staff memoranda~~ or data submitted to the Board or hearing officer ~~members of the Agency~~ in connection with their consideration of the case.

~~(B)~~(2) The State Board Secretary shall tape electronically record the proceedings, with the exception of the executive sessions. The recording shall be made and maintained in accordance with the requirements of 75 O.S. § 309, and a copy shall be provided to any party to the proceeding upon request. If the requesting party should desire the tape(s) to be transcribed by a court reporter, the requesting party shall bear the expense.

~~(22)~~(i) **Rights to a rehearing, reopening or reconsideration.**

~~(A)~~(1) A petition for rehearing, reopening or reconsideration of a final order must be filed with the Secretary of the State Board within ten (10) days from the entry of the order. It must be signed by the party or his or her attorney, and must set forth with particularity the statutory grounds upon which it is based. However, a petition based upon fraud practiced by the prevailing party or upon procurement of the orders by perjured testimony or fictitious evidence may be filed at any time. All petitions for rehearing, reopening, or reconsideration will be considered and ruled upon as soon as the convenient conduct of the Board's business will permit.

~~(B)~~(2) A petition for The grounds for requesting a rehearing, reopening, or reconsideration shall set forth the grounds for the request. The grounds for such a petition shall be either:

- (i) newly ~~Newly~~ discovered or newly available evidence, relevant to the issues;
- (ii) need ~~Need~~ for additional evidence adequately to develop the facts essential to proper decision;
- (iii) Probable error committed by the Agency in the proceeding or in its decision such as would be grounds for reversal on judicial review of the order;

(iv) ~~need~~ Need for further consideration of the issues and the evidence in the public interest; or

(v) ~~a~~ A showing that issues not previously considered ought to be examined in order to properly dispose of the matter. The grounds which justify the rehearing shall be set forth by the State Board of Education which grants the order, or in the petition of the individual making the request for the hearing.

~~(C)~~(3) It is the burden of the party requesting a rehearing to notify the opposing party of the appeal.

~~(D)~~(4) ~~On reconsidering~~ Rehearing, reopening, or reconsideration of the matter, ~~it~~ may be heard by the State Board of Education or ~~it~~ may be referred to a hearing officer. ~~Board or Agency Member and the~~ The hearing must be confined to those grounds on which the recourse was granted. ~~[75-317]~~

~~(23)~~(j) **Judicial review.** Any person or party aggrieved or adversely affected by a final order in an individual proceeding is entitled to certain judicial review ~~pursuant to 75-318-323~~ in accordance with the provisions of the Oklahoma Administrative Procedures Act, and the procedures set forth therein shall govern appeals.

(k) Applications for reinstatement of a license. After five (5) years of the effective date of revocation of a license, an individual may apply for reinstatement of the license in accordance with the application procedures set forth by the State Department of Education.