

TITLE 210. STATE DEPARTMENT OF EDUCATION

CHAPTER 1. STATE BOARD OF EDUCATION

SUBCHAPTER 5. DUE PROCESS

210:1-5-6. Suspension and/or revocation of certificates [AMENDED]

(a) **Application.** The rules and regulations of the State Board of Education governing the suspension and revocation of certificates apply to the following: 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.

(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

(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 other proper cause, including but not limited to violation of the Standards of Performance and Conduct for Teachers at Chapter 20, Subchapter 29 of this Title.

(c) **Duty to report and refrain from illegal activity.** 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 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.

(d) **Right to hearing on 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 provided by the State Board of Education in accordance with the following procedures:

(1) **Filing of application to revoke a certificate.** An individual proceeding to revoke a certificate shall be initiated by filing 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:

(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 allegations asserted; and

(D) A statement of the facts alleged to give rise to the revocation. The application shall also state a proposed effective date for the relief requested (e.g., revocation), which shall be set no earlier than forty-five (45) calendar days from the date the complaint is filed.

(2) **Informal disposition.** Informal disposition of 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.

(3) **Notice to parties.** Within three (3) business days of the date the application to revoke a certificate is filed with the Secretary of the State Board of Education, the Secretary shall send a copy of the application along with a notice of intent to revoke the certificate by certified or registered mail, restricted delivery with return receipt requested, to the holder of the certificate. It is the responsibility of every certificate holder to notify the State Department of Education upon a change of address, and the mailing address on file for each certificate holder shall be presumed to be a proper address for service of notice. Service of notice of intent to revoke a certificate shall be deemed complete upon certified or registered mailing of the notice to the certificate holder's last known address. 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.

(4) Response to application. Any respondent intending to contest an application must notify the Secretary of the State Board of Education of their intent to contest the application within twenty-one days of service of the application. If the respondent is represented by counsel, such counsel must file a responsive pleading that substantially complies with the Oklahoma rules of civil procedure regarding an answer. Failure to timely respond will be deemed confession of the allegations in the application unless the State Board of Education excuses the delay.

(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.

(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 fifteen (15) calendar days prior to the hearing, in writing, giving the name and address of the desired witness, and the Chairperson may cause the Secretary to thereupon issue a subpoena, by mail, to 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 and any exhibits no later than fifteen (15) calendar days prior to the hearing.

(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 production of books, records, papers, objects, or other evidence 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; upon order of the Board; or at the request of any party to a proceeding before the Board. 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.

(C) **Objections to and compliance with subpoenas.** Any party to the proceeding may move to 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 motion to quash shall be filed within seven days of the issuance of the subpoena.

(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 any individual proceeding or other authorized action of the Board, the party seeking enforcement may file an appropriate motion for enforcement with the State Board or hearing officer, as applicable, or may seek enforcement in a court of competent jurisdiction. 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 the proceedings for such time as may be necessary to secure a final ruling in the compliance proceedings.

(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.

(4) **Right to representation.** 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.

(5) **Legal counsel to State Board of Education.** The attorney for the State Department of Education shall present evidence to the Board, in furtherance of the application. Should the Board not have legal counsel, and if deemed necessary by the Chairperson

of the Board, a request may be made of the Attorney General to provide counsel to the Board regarding 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.

(6) **Disqualification of a Board member or hearing officer.** A Board 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 member, the Governor immediately shall appoint a member pro tempore to sit in place of the disqualified member in that proceeding.

(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.

(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 O.S. § 310.

(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. A respondent may be granted only one (1) continuance.

(g) **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 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.

(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.

(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.

(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.

(h) Record of hearing.

(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 record shall include:

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

(2) The State Board Secretary shall 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.

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

(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.

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

- (A) Newly discovered or newly available evidence, relevant to the issues;
- (B) Need for additional evidence adequately to develop the facts essential to proper decision;
- (C) 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;
- (D) Need for further consideration of the issues and the evidence in the public interest; or
- (E) 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.

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

(4) Rehearing, reopening, or reconsideration of the matter may be heard by the State Board of Education or may be referred to a hearing officer. The hearing must be confined to those grounds on which the recourse was granted.

(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 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 certificate.** After five (5) years of the effective date of revocation of a certificate, or after expungement of the offense(s) that formed the basis for the revocation by a court of competent jurisdiction, an individual may apply for reinstatement of the certificate in accordance with the application procedures set forth by the State Department of Education.

(l) **Notifications of suspension or revocation.** Upon the suspension or revocation of an individual's certificate, the State Department of Education shall notify the superintendent (or board of education, if the superintendent is the holder of the suspended or revoked certificate) of the district that most recently employed the certified individual based upon the individual's certification number and the personnel reports currently on file with the State Department of Education. In addition, the State Board shall to the extent possible notify the superintendents of all Oklahoma school districts. Notification shall also be provided to the extent possible to certification officers in each state or territory of the United States.