

**DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1205(b) 14 **Del.C.** §1205(b))

IMPLEMENTING ORDER

Hearing Procedures and Rules

Background and Context

The Professional Standards Board's *Procedures Manual* includes descriptions of the Board's organization and operations, its meeting procedures and its rules of hearing practice, among other items. On September 1, 2005, the Professional Standards Board adopted the *Procedures Manual* to replace bylaws which were originally adopted in 2000. The Standards Board *Hearing Procedures and Rules*, which were originally adopted on February 8, 2001, were incorporated as an appendix to the *Procedures Manual* and were also amended on September 1, 2005. The Delaware Professional Standards Board concludes it is necessary to amend the *Hearing Procedures and Rules* to:

- (1) Conform to changes in Statute and regulation relative to Delaware educator licensure and certificate denial, revocation limitation and suspension.
- (2) Specify time frames for compliance.
- (3) Clarify various components

These changes are exempted from the procedural requirements of the *Administrative Procedures Act* to 29 **Del.C.** 10113(b)(1), (2), (4) and (5). As a result, the Professional Standards Board may adopt these changes informally.

Final Order

The Delaware Professional Standards Board concludes that it is appropriate to amend the *Professional Standards Board Hearing Procedures and Rules* as described above. The amended manual is attached as Exhibit "A" and is hereby adopted by the Delaware Professional Standards Board as its *Hearing Procedures and Rules*, effective immediately.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD

THE 2ND DAY OF APRIL, 2009

Kathleen Thomas, Chair
Samtra Devard
Karen Gordon
Lori Hudson
Jill Lewandowski
Gretchen Pikus
Karen Schilling-Ross
Carol Vukelich

Joanne Christian
Marilyn Dollard
Cristy Greaves
David Kohan
Wendy Murray
Whitney Price
Michael Thomas
Cathy Zimmerman

Hearing Procedures and Rules

1.0 Scope and Purpose of Procedures and Rules

The Professional Standards Board ("the Standards Board") is authorized by Chapter 12 of the Education Code (Title 14 of the **Delaware Code**) to adopt or approve rules and regulations and to hold hearings related to proposed licensing and certification actions by the Department of Education. The Standards Board is also governed by the Administrative Procedures Act (Chapter 101 Title 29 of the **Delaware Code**).

These Hearing Procedures and Rules ("Rules") shall govern the practice and procedure before the Standards Board in hearings and regulatory proceedings.

2.0 General Provisions

- 2.1 These Rules shall be liberally construed to secure a just, economical, and reasonably expeditious determination of the issues presented in accordance with the Standards Board's statutory responsibilities and with the Administrative Procedures Act.
- 2.2 The Standards Board may, for good cause, and to the extent consistent with law, waive any of these Rules, either upon application or upon its own motion.
- 2.3 Whether a proceeding constitutes an evidentiary hearing or regulatory action shall be decided by the Standards Board on the basis of the applicable laws. A party's designation of the proceeding shall not be controlling on the Standards Board or binding on the party.
- 2.4 The Standards Board may appoint a representative to act as a hearing officer for any proceeding before the Standards Board. Except as otherwise specifically provided, the duties imposed, and the authority provided to the Standards Board by these Rules shall also extend to its hearing officers.
- 2.5 Notwithstanding any part of these Rules to the contrary, the Standards Board, or its counsel, designee or hearing officer, may conduct pre-hearing conferences and tele-conferences to clarify issues, confirm interim relief, specify procedures and otherwise expedite the proceedings.
- 2.6 The Standards Board or its designee or hearing officer may administer oaths, order the taking of depositions, issue subpoenas and compel attendance of witnesses and the production of books, accounts, papers, records, documents and testimony. The Standards Board or its designee or hearing officer may also take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.
- 2.7 The Standards Board may elect to conduct joint hearings with the State Board of Education and other state and local agencies. These Rules may be modified as necessary for joint hearings.
- 2.8 Any party to a proceeding before the Standards Board may be represented by counsel. An attorney representing a party in a proceeding before the Standards Board shall notify the Executive Director of the Standards Board ("Executive Director") of the representation in writing as soon as practical. Attorneys who are not members of the Delaware Bar may be permitted to appear pro hac vice before the Standards Board in accordance with Rule 72 of the Rules of the Delaware Supreme Court.
- 2.9 The Standards Board may continue, adjourn or postpone proceedings for good cause at the request of a party or on its own initiative. Absent a showing of exceptional circumstances, requests for postponements of any matter scheduled to be heard by the Standards Board shall be submitted to the Executive Director in writing at least three (3) business days before the date scheduled for the proceeding. The Chair of the Standards Board shall then decide whether to grant or deny the request for postponement. If a hearing officer has been appointed, the request for postponement shall be submitted to the hearing officer, who shall then decide whether to grant or deny the request.
- 2.10 A copy of any document filed with or submitted to the Standards Board or its hearing officer shall be provided to all other parties in the proceeding, or to their legal counsel.

3.0 Evidentiary Hearings

- 3.1 Section 3.0 governs proceedings where a statute or regulation provides the right to an original hearing before the Standards Board to decide a specific controversy or dispute.
- 3.2 Petitions for Hearing

- 3.2.1 A party may initiate a hearing on matters within the Standards Board's jurisdiction by mailing or delivering a petition for hearing to the Executive Director. The petition shall be in writing, shall be signed by the party making the request (or by the party's authorized representative). It shall set forth the grounds for the action in reasonable detail and shall identify the source of the Standards Board's authority to decide the matter. Petitions may not be delivered to the Executive Director by facsimile or other electronic means.
 - 3.2.2 Unless otherwise provided by statute or regulation, the petition for hearing must be postmarked or delivered to the Executive Director within thirty (30) calendar days of the petitioning party's receipt of notice that official action has been taken by an authorized person, organization, board or agency. If authorized by statute or regulation actual notice may not be necessary and it may be sufficient to mail notice to the party's last known address.
 - 3.2.3 A copy of the petition for hearing shall be sent to all other parties to the proceeding at the time it is mailed or delivered to the Executive Director. A copy of any other paper or document filed with the Standards Board or its hearing officer shall be provided to all other parties to the proceeding at the same time it is mailed or delivered to the Standards Board or its hearing officer. If the party is represented by legal counsel, delivery to legal counsel is sufficient.
 - 3.2.4 Upon receipt of an adequately detailed petition for hearing, the Executive Director shall assign the matter to a hearing officer from a roster of hearing officers approved by the Standards Board. The Executive Director shall provide the petition for hearing and the hearing officer assignment to the Standards Board at its next regularly scheduled meeting.
 - 3.2.5 The Standards Board or hearing officer, in their discretion, may direct the person, organization, board or agency taking official action to file a written response to a Petition for hearing.
 - 3.2.6 A party shall be deemed to have consented to a closed hearing unless the party notifies the Executive Director in writing that a public hearing is requested. Such notice must be delivered to the Executive Director within five (5) business days of the receipt of the notice scheduling the hearing.
 - 3.2.7 Parties shall keep the Standards Board informed of their current addresses and telephone numbers during the pendency of any proceedings.
- 3.3 Formal Hearings
 - 3.3.1 Procedures
 - 3.3.1.1 The hearing will proceed with the party with the burden of proof first presenting its evidence and case. The other party may then present its case. The party with the burden of proof will then have an opportunity to present rebuttal evidence.
 - 3.3.1.2 Opening and closing arguments and post-hearing submissions of briefs or legal memoranda will be permitted at the discretion of the Standards Board or hearing officer.
 - 3.3.1.3 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the Standards Board or its hearing officer.
 - 3.3.2 Evidence
 - 3.3.2.1 Strict rules of evidence shall not apply. Evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs may be admitted into evidence.
 - 3.3.2.2 The Standards Board or its hearing officer may exclude evidence and limit testimony as provided in Section 10125(b) of the Administrative Procedures Act.
 - 3.3.2.3 Objections to the admission of evidence shall be brief and shall state the grounds for the objection. Objections to the form of the question will not be considered.
 - 3.3.2.4 Any document introduced into evidence at the hearing shall be marked by the Standards Board or the hearing officer and shall be made a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties and to each of the Standards Board members present for the hearing unless otherwise directed.

- 3.3.2.5 Requests for subpoenas for witnesses or other sources of evidence shall be delivered to the Executive Director in writing at least fifteen (15) business days before the date of the hearing, unless additional time is allowed for good cause. The Executive Director shall prepare the subpoenas. The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.
 - 3.3.2.6 A written list of witnesses a party intends to call during a hearing shall be delivered to the Executive Director and to all other parties at least five (5) business days prior to a hearing. The Standards Board or its hearing officer, in its discretion, may refuse to receive into evidence any testimony of a witness who has not been named on the witness list.
 - 3.3.2.7 Witnesses may be sequestered at the discretion of the Standards Board or its hearing officer upon request of any party.
- 3.4 Expedited Hearing
- 3.4.1 The PSB or its hearing officer shall hold expedited hearings as required by law or regulation.
- 3.5 Creation of Record before Standards Board
- 3.5.1 Any party may request the presence of a stenographic reporter on notice to the Executive Director at least ten (10) business days prior to the date of the hearing. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.
 - 3.5.2 If a stenographic reporter is not present at the hearing, the Standards Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Director within three (3) months of the conclusion of the proceedings.
- 3.6 Burden of Proof and Standard of Review
- 3.6.1 Unless otherwise provided by statute or regulation, the burden of proof in license or certification actions is on the applicant to show by a preponderance of the evidence that he or she meets the requirements of the applicable laws and regulations relating to the issuance of a license or certificate.
 - 3.6.2 Unless otherwise provided by statute or regulation, the burden of proof in license revocation, limitation or suspension disciplinary actions or certification actions shall be on the person, organization, board or agency taking official action to establish by a preponderance of evidence that the licensee has engaged in misconduct or otherwise has failed to comply with the applicable laws and regulations relating to the retention of the license or certificate.
- 3.7 Standards Board Decision
- 3.7.1 When the Standards Board has appointed a hearing officer, the hearing officer shall submit a proposed written decision for consideration by the Standards Board.
 - 3.7.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. The proposed decision shall be submitted to the Standards Board and the parties within twenty (20) calendar days of the conclusion of the proceedings before the hearing officer.
 - 3.7.3 The parties shall have twenty (20) calendar days from the date the proposed order is delivered to them to submit in writing to the Standards Board and the other party any exceptions, comments and arguments respecting the proposed order. The parties may agree to shorten or waive the comment period, or to consent to the hearing officer's recommendation without additional information. When the parties consent to the hearing officer's recommendation, they shall so advise the Executive Director.
 - 3.7.4 To the extent possible, the Standards Board shall consider a matter conducted by a hearing officer at its next regular meeting following the parties' submissions, if any, or the end of the comment period, whichever comes first.
 - 3.7.5 The Standards Board shall consider the entire record of the case, the hearing officer's proposed decision, and written comments thereto, if any, in reaching its final decision. The Standards Board's decision shall be incorporated in a final order which shall be signed and mailed to the parties by certified mail.

4.0 Public Regulatory Hearings

- 4.1 Section 4.0 governs public hearings before the Standards Board or its hearing officers where the Standards Board decides to hold such hearings before adopting or approving rules and regulations or taking other regulatory action.
- 4.2 Notice that the Standards Board has scheduled a public regulatory hearing shall be provided as required in Section 10115 of the Administrative Procedures Act. Notice of the public hearing shall also be circulated to individuals and agencies on the Standards Board's mailing list for meeting agendas. The notice of the hearing shall indicate whether the Standards Board will conduct the hearing or designate a hearing officer for that purpose.
- 4.3 Creation of record of public hearing
 - 4.3.1 Any party may request the presence of a stenographic reporter on notice to the Executive Director at least ten (10) business days prior to the date of the hearing. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.
 - 4.3.2 If a stenographic reporter is not present at the hearing, the Standards Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Director within three (3) months of the conclusion of the hearing. Any party requesting that a written transcript be made from the recording shall bear the cost of producing the transcript.
- 4.4 Subpoenas
 - 4.4.1 The Standards Board or its hearing officer may to issue subpoenas for witnesses or other evidence for the public hearing. Where possible, such subpoenas shall be delivered to the party to whom they are directed at least ten (10) business days prior to the public hearing.
 - 4.4.2 The Standards Board or its hearing officer may also, in its discretion, issue subpoenas at the request of a person interested in the proceedings. Requests for such subpoenas shall be delivered to the Executive Director at least fifteen (15) business days prior to the date of the hearing, unless additional time is allowed for good cause.
- 4.5 Documents
 - 4.5.1 The Standards Board or its hearing officer shall, at the beginning of the hearing, mark as exhibits any documents it has received from the public as comment and any other documents which it will consider in reaching its decision. Documents received during the hearing shall also be marked as exhibits.
 - 4.5.2 Any person or party submitting a document before or during the public hearing shall provide at least twenty (20) copies of the document to the Standards Board, unless directed otherwise.
- 4.6 Witnesses
 - 4.6.1 The order of witnesses appearing at the hearing shall be determined by the Standards Board or its hearing officer. The Standards Board or its hearing officer may direct an agency or organization to designate a single person to present the agency or organization's position at a public hearing.
 - 4.6.2 The Standards Board or its hearing officer may limit a witness's testimony and the admission of other evidence to exclude irrelevant, insubstantial or unduly repetitious proof.
 - 4.6.3 Any person who testifies at a public hearing shall be subject to examination by the Standards Board or its hearing officer. The Standards Board or its hearing officer may in their discretion allow cross examination of any witness by other participants in the proceedings.
- 4.7 Conclusion
 - 4.7.1 At the conclusion of the public hearing, the Standards Board shall issue its findings and conclusions in a written order in the form provided in Section 10118(b) of the Administrative Procedures Act. The Board's order shall be rendered within a reasonable time after the public hearing.