

**DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Section 1205(b) (14 **Del.C.** §1205(b))
14 **DE Admin. Code** 1514

PROPOSED

Educational Impact Analysis Pursuant to 14 Del.C. Section 122(d)

1514 Revocation, Limitation, or Suspension of Licenses

A. TYPE OF REGULATORY ACTION REQUESTED

Reauthorization of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to reauthorize regulation 14 **DE Admin. Code** 1514 Revocation of Licenses and Certificates. This regulation sets forth the criteria for the suspension, limitation and revocation of Delaware educator licenses, pursuant to 14 **Del.C.** §1220(a). It is necessary to reauthorize this regulation due to the regulation being out of its five year review cycle.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on Tuesday, December 2, 2014 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The regulation addresses student achievement by establishing standards for the issuance of a standard certificate to educators who have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students to help ensure that students are instructed by educators who are highly qualified.

2. Will the amended regulation help ensure that all students receive an equitable education? The regulation helps to ensure that all teachers employed to teach students meet high standards and have acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The regulation addresses educator certification, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The regulation addresses educator certification, not students' legal rights.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The regulation will be consistent with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation? 14 **Del.C.** requires that we promulgate this regulation.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation.

1514 Revocation, Limitation, or Suspension of Licenses

1.0 Content

This regulation shall apply to the revocation, limitation, or suspension of an Initial License, Continuing License or Advanced License issued pursuant to 14 **Del.C.** Ch. 12; or a Limited Standard, Standard or Professional Status Certificate issued prior to August 31, 2003 for educators, pursuant to 14 **Del.C.** §1218.

7 DE Reg. 161 (08/01/03)

7 DE Reg. 627 (11/01/03)

12 DE Reg. 1311 (04/01/09)

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Advanced License" means a license issued as part of the three-tiered licensure system set forth in 14 **Del.C.** §1213 and §1214.

"Continuing License" means a license issued as part of the three-tiered license system set forth in 14 **Del.C.** §1211 and §1212.

"Department" means the Delaware Department of Education.

"Educator" means a person licensed and certified by the State under 14 **Del.C.** Ch. 12, to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. For purposes of 14 **Del.C.** Ch. 12, the term 'educator' does not include substitute teachers.

"Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness or otherwise.

"Initial License" means a license issued as part of the three-tiered licensure system set forth in 14 **Del.C.** §1210.

"License Holder" or **"Licensee"** means any individual who holds an Initial License, Continuing License or Advanced License, and until a Continuing License is issued, a Limited Standard, Standard, or Professional Status Certificate.

"Nolo Contendere" means a plea by the defendant in a criminal prosecution that without admitting guilt subjects him to conviction but does not preclude him from denying the truth of the charges in a collateral proceeding.

"Nollo Prosequi" means an entry on the record of a legal action denoting that the prosecutor or plaintiff will proceed no further in his action or suit either as a whole or as to some count or as to one or more of several defendants.

"Secretary" means the Secretary of the Delaware Department of Education.

"Standards Board" means the Professional Standards Board established pursuant to 14 **Del.C.** §1205.

"State" means the State of Delaware.

7 DE Reg. 161 (08/01/03)

7 DE Reg. 627 (11/01/03)

9 DE Reg. 542 (10/01/05)

12 DE Reg. 1311 (04/01/09)

3.0 Revocation of License

3.1 Discretionary Revocations

The Secretary may revoke an Initial, Continuing or Advanced License that has been issued, for the following causes if the license holder:

3.1.1 Obtained or attempted to obtain or renew a license or certificate by fraudulent means or through misrepresentation of material facts; or

3.1.2 Falsified official school records, documents, statistics or reports; or

3.1.3 Knowingly violated any of the provisions of the Student Testing Program set forth in 14 **Del.C.** §172; or

- 3.1.4 Plead guilty or nolo contendere with respect to, or is convicted of, any crime against a child constituting a misdemeanor, except for Unlawful Sexual Conduct in the Third Degree; or
- 3.1.5 Plead guilty or nolo contendere with respect to, or is convicted of, possession of a controlled substance or a counterfeit controlled substance classified as such in 16 **Del.C.** Ch. 47, Schedule I, II, III, IV, or V; or
- 3.1.6 Was terminated or dismissed for immorality, incompetence, misconduct in office, willful neglect of duty, disloyalty or misconduct involving any cause for suspension or revocation of a license; or
- 3.1.7 Resigned or retired pending dismissal for immorality, provided that clear and convincing evidence establishes the underlying misconduct occurred; or
- 3.1.8 Had a license or certificate revoked or voluntarily surrendered in another jurisdiction for cause which would be grounds for revocation; or
- 3.1.9 Failed to comply with any of the mandatory notice provisions of this regulation.
- 3.1.10 Failed to comply with any of the statutory or regulatory requirements for maintaining a license.

3.2 Mandatory Revocations

The Secretary shall revoke a license if the license holder:

3.2.1 Pleads guilty or nolo contendere with respect to, or is convicted of:

- 3.2.1.1 Any crime constituting the manufacture, delivery, possession with intent to manufacture or deliver a controlled substance or a counterfeit controlled substance classified as such in of 16 **Del.C.** Ch. 47, Schedule I, II, III, IV or V; or
- 3.2.1.2 Any crime constituting a violent felony as defined in 11 **Del.C.** §4201(c); or
- 3.2.1.3 Any crime against a child constituting a felony, or Unlawful Sexual Contact in the Third Degree; or
- 3.2.1.4 Any crime constituting a felony sexual offense; or
- 3.2.1.5 Any crime constituting a felony offense against public administration involving bribery, improper influence or abuse of office; or

3.2.2 Is terminated or dismissed for a sexual offense against a child; or

3.2.3 Resigns or retires after official notice of allegations of a sexual offense against a child, provided that clear and convincing evidence establishes the underlying misconduct occurred.

7 DE Reg. 161 (8/1/03)

7 DE Reg. 627 (11/1/03)

9 DE Reg. 553 (10/1/05)

12 DE Reg. 1311 (04/01/09)

4.0 Limitation of Licenses

4.1 The Secretary may limit an Initial, Continuing or Advanced License that has been issued, for any of the grounds for revocation.

4.2 If any of the causes listed in Sections 3, 4, 5, or 6 are determined, the Secretary or the Standards Board after a hearing, may put limitations on a license that may include but are not limited to:

- 4.2.1 Restrictions on the ages of students with whom the license holder may work; or
- 4.2.2 Additional supervision requirements; or
- 4.2.3 Education, counseling or psychiatric examination requirements.

7 DE Reg. 161 (8/1/03)

7 DE Reg. 627 (11/1/03)

9 DE Reg. 542 (10/1/05)

12 DE Reg. 1311 (04/01/09)

5.0 Suspension of Licenses

5.1 The Secretary may suspend an Initial, Continuing or Advanced License that has been issued, for any of the grounds for revocation.

5.2 A license may be suspended for a period of time not to exceed five (5) years.

5.2.1 The license may be reinstated by the Secretary, upon written request, with verification that all requirements for license renewal have been satisfied.

5.2.2 If the license expired during the period of suspension, the holder of the former license may reapply for the same tier license that was suspended but shall meet the license requirements that are in effect at the time of the application for the license.

7 DE Reg. 161 (8/1/03)

7 DE Reg. 627 (11/1/03)
9 DE Reg. 542 (10/1/05)
12 DE Reg. 1311 (04/01/09)

6.0 Automatic Suspension after Arrest or Indictment

- 6.1 The Secretary may automatically suspend any license without a prior hearing if the license holder is arrested or indicted by a Grand Jury for a violent felony as defined in 11 **Del.C.** §4201(c). A suspension under this subsection is effective on the date of the arrest or Grand Jury indictment.
- 6.2 Temporary Order
- 6.2.1 For a suspension under this subsection, the Secretary shall issue a written temporary order of suspension to the license holder at his or her last known address.
- 6.2.1.1 The chief school officer or head of school, on behalf of the local board of education or charter school board of directors, shall report to the Secretary the name and last known address of any license holder employed by the district or charter school who it knows to have been arrested or indicted by a Grand Jury for a violent felony as defined in 11 **Del.C.** §4201(c).
- 6.2.1.2 An order of suspension under this Section shall remain in effect until the final order of the Secretary or the Standards Board becomes effective.
- 6.3 Expedited Hearing
- 6.3.1 A license holder whose license has been suspended pursuant to this Section may request an expedited hearing before the Standards Board within 20 calendar days from the date the notice of the Secretary's decision to temporarily suspend the license holder's license was mailed. The request shall be sent to the Standards Board's Executive Director.
- 6.3.2 In the event that the license holder requests an expedited hearing, the Standards Board shall convene a hearing within 90 calendar days of the receipt of such a request.
- 6.3.3 The order of suspension is temporary pending resolution of the criminal charges. Therefore, an expedited hearing under this subsection shall be limited to whether the license holder had been arrested or indicted for a violent felony.
- 6.4 Revocation after Conviction
- 6.4.1 If the license holder pleads guilty or nolo contendere with respect to, or is convicted of, a violent felony as defined in 11 **Del.C.** §4201(c), the Secretary shall proceed with revocation.
- 6.5 Resolution of Charges without Conviction
- 6.5.1 If the license holder is found not guilty of the underlying criminal charges, a nollo prosequi is entered on the record by the State, or the charges are otherwise dismissed by the Court, the license holder may file a written request for license reinstatement, including documentation of the final status of the judicial proceeding, and their license shall be reinstated if still valid.
- 6.5.2 If the license expired during the period of suspension, the holder of the former license may reapply for the same tier license that was suspended, but shall meet the license requirements that are in effect at the time of the application for license.
- 6.5.3 The Secretary may however, continue to pursue revocation under any alternative ground including but not limited to termination of employment for immorality, incompetence, misconduct in office, willful neglect of duty, disloyalty, or misconduct; or resignation or retirement pending dismissal for immorality under the standards provided herein.

12 DE Reg. 1311 (04/01/09)

7.0 Substantially Comparable Conduct

The Secretary may take any action under this regulation on the basis of substantially comparable conduct occurring in a jurisdiction outside this State or occurring before a person applies for or receives any license.

12 DE Reg. 1311 (04/01/09)

8.0 Mandatory Notification Requirements

- 8.1 License Holder
- 8.1.1 Any license holder who has pled guilty or nolo contendere to, or has been convicted of, a crime in a court of law which would constitute grounds for revocation, limitation or suspension of license under this regulation or has been arrested or indicted by a Grand Jury for a violent felony as defined in 11 **Del.C.** §4201(c), shall notify the Secretary of such action in writing within twenty (20) calendar days of such

conviction, arrest or indictment, whether or not a sentence has been imposed. Failure to do so shall be grounds on which the Secretary may revoke, limit or suspend the holder's license.

8.1.2 Any license holder who has surrendered an educator license or any professional license or certificate or who has had such a license or certificate revoked, limited or suspended in any jurisdiction or by any agency shall notify the Secretary of such action in writing within thirty (30) calendar days of such action. Failure to do so shall be grounds on which the Secretary may revoke, limit or suspend the holder's license.

8.2 Chief School Officer, Head of School, Local Board or Charter School Board of Directors Responsibilities

8.2.1 The chief school officer or head of school, on behalf of the local board of education or charter school board of directors, shall report to the Secretary the name and last known address of any license holder who is dismissed, resigns, retires or is otherwise separated from employment with that district or charter school after having received notice of misconduct that constitutes grounds for revocation or suspension this regulation.

8.2.1.1 Such report shall be made within fifteen (15) calendar days of the dismissal, resignation, retirement or other separation from employment and is required notwithstanding any termination agreement to the contrary that the local board of education or charter school board of directors may enter into with the license holder.

8.2.1.2 The reasons for the license holder's dismissal, resignation, retirement or other separation from employment with the district or charter school shall also be provided along with all evidence that was reviewed by or is in the possession of the district or charter school relating to the dismissal, resignation, retirement or other separation from employment.

8.2.1.3 The Department shall give written notice to any license holder of any notification received under this subsection to the license holder's last known address. Such notification shall be made with fifteen (15) calendar days of receipt of the district or charter school's report to the Department of misconduct under this Section.

8.2.1.4 The obligation to report also applies when a chief school officer or head of school acquires relevant information after a license holder's dismissal, resignation, retirement or other separation from employment.

8.2.2 The chief school officer or head of school, on behalf of the local board of education or charter school board of directors, shall report to the Secretary the name and last known address of any license holder employed by the district or charter school who it knows to have been arrested or indicted by a Grand Jury for a violent felony as defined in 11 **Del.C.** §4201(c).

8.2.3 All information obtained from the chief school officer or head of school shall be confidential and shall not be considered public records under Delaware's Freedom of Information Act.

8.2.4 Failure to make the mandatory reports shall be grounds on which the Secretary may limit, suspend or revoke the chief school officer's or head of school's license.

8.3 Notice of Action

The Secretary shall not take action against a person under Sections 3, 4 or 5 without providing the person with written notice of the charges and with an opportunity for a full and fair hearing before the Standards Board.

8.3.1 Notice shall be sent to the person's last known address.

8.3.2 The license holder shall have thirty (30) calendar days from the date the notice of the charges was mailed to make a written request for a hearing.

8.3.3 If no written request for a hearing is received by the Standards Board within thirty (30) calendar days of receipt of notification, the license holder's license shall be deemed to be revoked, limited or suspended and the holder shall be so notified.

8.3.4 Notice of the revocation, limitation, suspension or reinstatement of a license shall be made by the Secretary, or his or her designee, to all chief state school officers of the other states and territories of the United States.

8.4 All communications between a license holder and the Department or Standards Board provided for in this Section shall be by certified mail, with a return receipt requested.

12 DE Reg. 1311 (04/01/09)

9.0 Investigations

9.1 The Secretary may investigate any information received about a person that reasonably appears to be the basis for action under this regulation.

9.1.1 The Secretary shall not investigate anonymous complaints.

- 9.1.2 The Department shall give written notice within a reasonable period of time to a license holder of any investigation initiated hereunder to the license holder's last known address.
- 9.1.3 All information obtained during an investigation is confidential and shall not be considered public records under Delaware's Freedom of Information Act.
- 9.1.4 The Secretary shall review the results of each investigation conducted pursuant to this regulation and shall determine whether the results warrant initiating action under this regulation.

12 DE Reg. 1311 (04/01/09)

10.0 License Reinstatement

- 10.1 Subject to the limitation contained herein, an individual whose license has been revoked under Section 3.1 Discretionary Revocation of this regulation may petition the Secretary for reinstatement of the license no sooner than five (5) years from the date of revocation. The individual shall submit to the Secretary a written petition showing credible evidence, by affidavit or otherwise, of the factors set forth in subsection 10.1.1.
 - 10.1.1 The Secretary shall consider all of the following criteria in evaluating a petition for reinstatement and shall only grant such a petition if it is in the best interest of the public schools of the State of Delaware:
 - 10.1.1.1 The nature and circumstances of the individual's original misconduct;
 - 10.1.1.2 The individual's subsequent conduct and rehabilitation;
 - 10.1.1.3 The individual's present character; and
 - 10.1.1.4 The individual's present qualifications and competence to engage in the practice of instruction, administration or other related professional support services.
 - 10.1.2 A former license holder is entitled to a full and fair hearing before the Standards Board to challenge a denial of reinstatement pursuant to this subsection.
- 10.2 A license revoked under Section 3.2 Mandatory Revocations or suspended under Section 6.0 of this regulation may not be reinstated under this subsection.
 - 10.2.1 A license suspended under Section 6.0 may only be reinstated pursuant to that section.
 - 10.2.2 A license revoked under Section 3.2 Mandatory Revocation may only be reinstated under Section 10.3.
- 10.3 If a decision of license revocation, limitation or suspension is solely based on the conviction of a crime enumerated within this regulation, and if the plea or conviction is overturned and there is no subsequent proceeding leading to a plea or conviction, the individual whose license is revoked, limited or suspended may file a written request for reinstatement, including documentation of the final status of the judicial proceeding, and the license shall be reinstated.
 - 10.3.1 The Secretary may continue to pursue revocation under an alternative basis.

12 DE Reg. 1311 (04/01/09)

11.0 Standards Board Hearings and Procedures

- 11.1 In any hearing before the Standards Board to challenge action taken under this regulation, the Standards Board shall have the power to 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.
- 11.2 Unless otherwise provided for in this Section, the burden of proof in a license disciplinary action shall be on the agency taking official action to establish by preponderance of the evidence that the license holder has engaged in misconduct as defined by Sections 3, 4 and 5 or otherwise has failed to comply with the applicable laws and regulations relating to the retention of the license.
- 11.3 Whenever the basis for an action described within this regulation is a guilty plea, a plea of nolo contendere with respect to, or a conviction of a crime, a copy of the record of the plea, nolo contendere or conviction certified by the Clerk of the Court entering the plea, nolo contendere or conviction shall be conclusive evidence thereof.
- 11.4 After a hearing, the Standards Board may take any action and impose any limitation or suspension that could have been taken by the Secretary.
- 11.5 Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules.

12 DE Reg. 1311 (04/01/09)

12.0 Resolution by Consent Agreement

The Secretary may enter into a written consent agreement with a person against whom action is being taken under this regulation.

12 DE Reg. 1311 (04/01/09)

13.0 Certification

All Standard Certificates issued to the license holder shall also be revoked upon the revocation of the license.

12 DE Reg. 1311 (04/01/09)

18 DE Reg. 349 (11/01/14) (Prop.)