

**DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Sections 1203 & 1205(b) and 29 Delaware Code, Section 10113(b)(2) (14 **Del.C.** §§1203 & 1205 and 29 **Del.C.** §10113(b)(2))

FINAL

ORDER

1515 Hearing Procedures and Rules

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §§1203 and 1205 and 29 **Del.C.** §10113(b)(2), the Professional Standards Board proposes to amend 14 **DE Admin. Code** 1515 Hearing Procedures and Rules. The regulation sets forth rules of practice and procedure of the concerning license disciplinary and license denial actions before the Professional Standards Board. The amendments include clarifying Section 2.0 and amending the Professional Standards Board's address in subsection 5.1.2.

The adoption of this regulation is exempt from the requirement of public notice and comment and is adopted informally in accordance with 29 **Del.C.** §10113(b)(2).

II. FINDINGS OF FACTS

On January 5, 2023, the Professional Standards Board proposed 14 **DE Admin. Code** 1515 Hearing Procedures and Rules, in the form attached hereto as Exhibit A, to the Department to adopt informally pursuant to 29 **Del.C.** §10113(b)(2).

The Department finds that the proposed regulation is necessary to implement 14 **Del.C.** Ch. 12. The Department further finds that the proposed regulation sets forth rules of practice and procedure used by the Professional Standards Board. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1515 Hearing Procedures and Rules.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1515 Hearing Procedures and Rules. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205 and 29 **Del.C.** §10113(b)(2), 14 **DE Admin. Code** 1515 Hearing Procedures and Rules, attached hereto as Exhibit A, is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1515 Hearing Procedures and Rules adopted hereby shall be in the form attached hereto as Exhibit A and said regulation shall be cited as 14 **DE Admin. Code** 1515 Hearing Procedures and Rules in the Administrative Code of Regulations for the Department.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 17th day of January, 2023.

Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 17th day of January, 2023.

1515 Hearing Procedures and Rules

1.0 Applicability, Construction, and Waiver

- 1.1 This regulation shall apply to license, certificate, and permit denial actions under 14 **Del.C.** §§1205(b) and 1217 and license, certificate, and permit disciplinary actions under 14 **Del.C.** §§1205(b) and 1218.

- 1.2 The Standards Board may waive any of the procedures and rules in this regulation upon application or upon its own initiative for good cause and to the extent consistent with the law.

22 DE Reg. 489 (12/01/18)

23 DE Reg. 764 (03/01/20)

2.0 Definitions

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

"Department" means the Delaware Department of Education.

"Executive Director" means the Executive Director of the Delaware Professional Standards Board.

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

"Standards Board" means the Delaware Professional Standards Board established pursuant to 14 **Del.C.** §1201 or its designee.

3.0 License, Certificate, and Permit Denial Actions

3.1 Requests for a Hearing

3.1.1 An applicant may request a hearing by sending a request to the Executive Director.

3.1.2 The request must be sent within 20 calendar days from the date that the Department's notice was sent to the applicant.

3.1.3 The hearing will be scheduled in accordance with the Administrative Procedures Act (29 **Del.C.** Ch. 101).

3.1.4 Notice of the date, time, and place of the hearing shall be mailed to the applicant.

3.2 Prehearing Procedures and Rules

3.2.1 Subpoena Requests

3.2.1.1 Requests for subpoenas for witnesses and other sources of evidence shall be mailed or hand-delivered to the Executive Director at least 15 business days before the date of the hearing.

3.2.1.1.1 Requests for subpoenas for witnesses shall specify the witness' name and address.

3.2.1.1.2 Requests for subpoenas for other sources of evidence shall specify the person or entity to whom the subpoena is directed, the person or entity's address, and the date by which the person or entity is to respond to the request.

3.2.1.2 The Standards Board shall issue subpoenas in accordance with the law.

3.2.1.3 The applicant is responsible for delivering the subpoena to the person or entity to whom the subpoena is directed. Proof of service of a subpoena shall be mailed or hand-delivered to the Standards Board.

3.2.2 Witness List. A written list of witnesses the applicant intends to call during a hearing shall be mailed or hand-delivered to the Executive Director at least 5 business days prior to the hearing.

3.2.3 Continuances, Adjournments, and Postponements. The Standards Board may continue, adjourn, or postpone proceedings for good cause at the request of an applicant or on its own initiative.

3.3 Hearing Procedures and Rules

3.3.1 The applicant has the burden of proof.

3.3.2 The Standards Board may permit the applicant to present opening and closing statements.

3.3.3 The Standards Board may take testimony, hear proof, and receive exhibits into evidence at a hearing.

3.3.3.1 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.

3.3.3.2 The Standards Board may exclude plainly irrelevant, immaterial, insubstantial, cumulative, and privileged evidence and limit unduly repetitive proof, rebuttal, and cross-examination in accordance with 29 **Del.C.** §10125(b).

3.3.4 Testimony shall be under oath or affirmation. The Standards Board may administer oaths to witnesses.

3.3.5 Any person who testifies as a witness shall also be subject to questions by the Standards Board.

3.3.6 Any document introduced into evidence at the hearing shall be marked by the Standards Board and shall be made a part of the record of the hearing.

3.4 Post-hearing Rules and Procedures

3.4.1 The Standards Board may direct an applicant to submit a post-hearing brief. Post-hearing briefs shall be filed as directed by the Standards Board.

- 3.4.2 If the Standards Board has designated a hearing officer, the hearing officer shall prepare a proposed order in accordance with 29 Del.C. §10126.
- 3.4.3 The applicant shall have 20 calendar days from the date the proposed order is delivered to the applicant to submit in writing to the Standards Board any exceptions, comments, and arguments respecting the proposed order.
- 3.4.4 The Standards Board shall consider the entire record of the case, the hearing officer's proposed order, and any written exceptions, comments, and arguments thereto in reaching its final decision. The Standards Board's decision shall be incorporated in a final order which is signed and mailed to the applicant.

23 DE Reg. 764 (03/01/20)

4.0 License, Certificate, and Permit Disciplinary Actions

- 4.1 Requests for a Hearing
 - 4.1.1 An educator may request a hearing by mailing or hand-delivering a request to the Executive Director.
 - 4.1.2 The request shall:
 - 4.1.2.1 Be in writing;
 - 4.1.2.2 Be signed by the educator or the educator's counsel;
 - 4.1.2.3 Set forth the grounds for action in reasonable detail; and
 - 4.1.2.4 Provide the educator's preferred mailing address, phone number, and e-mail address.
 - 4.1.3 Requests must be sent within 30 calendar days from the date that the Secretary's notice was sent to the educator.
 - 4.1.4 Upon receipt of a request that meets all of the requirements set forth in subsection 4.1.2, the Standards Board may decide to conduct the hearing itself or designate a hearing officer from a list of hearing officers approved by the Standards Board to conduct the hearing. The hearing officer designated shall have the same authority, powers, and duties as the Standards Board for the purpose of conducting the hearing.
- 4.2 Prehearing Procedures and Rules
 - 4.2.1 Scheduling the Hearing
 - 4.2.1.1 Generally, hearings are scheduled for 1 full day from 8:30 a.m. to 4:30 p.m.
 - 4.2.1.2 Requests for Additional Time
 - 4.2.1.2.1 If a party believes that the presentation of the party's case cannot reasonably be accomplished in one half of the allotted time or less, then the party may mail or hand-deliver a written request for additional time to the Executive Director within 10 days of receipt of the notice of hearing. The request shall specify the reasons for the request. The party shall provide a copy of the request to the other party at the same time.
 - 4.2.1.2.2 The Standards Board may grant the request upon a showing of good cause.
 - 4.2.2 Notice of the Hearing. Notice of the date, time, and place of the hearing shall be mailed to the educator.
 - 4.2.3 Requests for a Public Hearing
 - 4.2.3.1 An educator shall be deemed to have consented to a closed hearing unless the educator notifies the Executive Director in writing that a public hearing is requested.
 - 4.2.3.2 A request for a public hearing must be mailed or hand-delivered to the Executive Director within 5 business days of the receipt of the notice in subsection 4.2.2. A copy of the request shall be provided to the Department at the same time.
 - 4.2.4 Subpoena Requests
 - 4.2.4.1 Requests for subpoenas for witnesses and other sources of evidence shall be mailed or hand-delivered to the Executive Director at least 15 business days before the date of the hearing.
 - 4.2.4.1.1 Requests for subpoenas for witnesses shall specify the witness' name and address.
 - 4.2.4.1.2 Requests for subpoenas for other sources of evidence shall specify the person or entity to whom the subpoena is directed, the person or entity's address, and the date by which the person or entity is to respond to the request.
 - 4.2.4.2 The Standards Board shall issue subpoenas in accordance with the law.
 - 4.2.4.3 The party requesting a subpoena is responsible for delivering the subpoena to the person or entity to whom the subpoena is directed. Proof of service of a subpoena shall be mailed or hand-delivered to the Standards Board.
 - 4.2.5 Witness List. A written list of witnesses a party intends to call during a hearing shall be mailed or hand-delivered to the Executive Director at least 5 business days prior to a hearing. A copy of the list shall be mailed to the other party at the same time.

4.2.6 Exchange of Documents

- 4.2.6.1 The parties shall exchange documents they intend to introduce at the hearing at least 5 business days prior to the hearing.
- 4.2.6.2 The documents shall be labeled "Petitioner" or "Department" and numbered in sequential order (1, 2, 3).

4.2.7 Prehearing Conferences. The Standards Board may hold prehearing conferences and teleconferences for the settlement or simplification of issues by consent, for the disposal of procedural requests or disputes, and to regulate and expedite the course of the hearing.

4.2.8 Continuances, Adjournments, and Postponements

- 4.2.8.1 The Standards Board may continue, adjourn, or postpone proceedings for good cause at the request of a party or on its own initiative.
- 4.2.8.2 Any request to continue, adjourn, or postpone a proceeding shall be submitted to the Executive Director in writing at least 3 business days before the date scheduled for the hearing. A copy of the request shall also be provided to the other party at the same time.

4.3 Hearing Procedures and Rules

4.3.1 The Department is the party with the burden of proof. The hearing will proceed with the Department first presenting its evidence and case. The educator may then present his or her case. The Department will then have an opportunity to present rebuttal evidence.

4.3.2 The Standards Board may permit the parties to present opening and closing statements.

4.3.3 The Standards Board may take testimony, hear proof, and receive exhibits into evidence at a hearing.

4.3.3.1 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.

4.3.3.2 The Standards Board may exclude plainly irrelevant, immaterial, insubstantial, cumulative, and privileged evidence and limit unduly repetitive proof, rebuttal, and cross-examination in accordance with 29 **Del.C.** §10125(b).

4.3.3.3 Objections to the admission of evidence shall be brief and shall state the grounds for the objection.

4.3.4 Testimony shall be under oath or affirmation. The Standards Board may administer oaths to witnesses.

4.3.5 Any person who testifies as a witness shall also be subject to cross examination by the other party and questions from the Standards Board.

4.3.6 Witnesses may be sequestered upon a party's request.

4.3.7 Any document introduced into evidence at the hearing shall be marked by the Standards Board and shall be made a part of the record of the hearing.

4.3.8 The party offering the document into evidence shall provide a copy of the document to the other party, the Standards Board, and counsel for the Standards Board.

4.4 Post-hearing Rules and Procedures

4.4.1 The Standards Board may direct the parties to submit post-hearing briefs. Post-hearing briefs shall be filed as directed by the Standards Board.

4.4.2 If the Standards Board has designated a hearing officer, the hearing officer shall prepare a proposed order in accordance with 29 **Del.C.** §10126.

4.4.3 The parties shall have 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.

4.4.4 The Standards Board shall consider the entire record of the case, the hearing officer's proposed order, and any written exceptions, comments, and arguments thereto in reaching its final decision. The Standards Board's decision shall be incorporated in a final order which is signed and mailed to the parties.

22 DE Reg. 489 (12/01/18)

23 DE Reg. 764 (03/01/20)

5.0 Other Hearing Rules and Procedures

5.1 Communications

5.1.1 In license, certificate, and permit disciplinary actions, a copy of any document filed with or submitted to the Standards Board or the hearing officer shall be provided to the other party or the other party's counsel.

5.1.2 Address of the Standards Board and Parties' Contact Information

5.1.2.1 Hand-delivered submissions shall be delivered to the Standards Board at the ~~Townsend Building, 401 Federal Street, 2nd Floor, Dover, Delaware 19904~~ John W. Collette Education Resource Center, 35 Commerce Way, Dover, Delaware 19904.

~~5.1.2.1~~ 5.1.2.2 Mailed submissions shall be delivered to the Standards Board at ~~401 Federal Street, Suite 2, Dover, Delaware 19904~~ 35 Commerce Way, Suite 1, Dover, Delaware 19904.

5.1.2.3 Applicants and educators shall keep the Standards Board informed of their current mailing addresses, phone numbers, and email addresses.

5.2 Counsel

5.2.1 Applicants and educators may be represented by counsel.

5.2.2 The attorney representing an applicant or an educator in a proceeding before the Standards Board shall notify the Executive Director of the representation in writing as soon as practical. In license, certificate, and permit disciplinary actions, a copy of the notice shall be provided to the Department at the same time.

5.2.3 Attorneys who are not members of the Delaware Bar may be admitted pro hac vice in accordance with Rule 72 of the Rules of the Supreme Court of the State of Delaware.

21 DE Reg. 720 (03/01/18)

22 DE Reg. 489 (12/01/18)

23 DE Reg. 764 (03/01/20)

26 DE Reg. 688 (02/01/23) (Final)