
Licenses: Denial, Formal Reprimand, Suspension, or Revocation

The Background:

The State Board of Education recently revised its Denial, Formal Reprimand, Suspension, or Revocation Rule. All cases reviewed are acted upon according to the Rule that was in place when the misconduct occurred. Information regarding the State Board's authority to take licensure actions under each version of the rule follows the recommendations.

The Recommendations:

Board action is required. State Board staff recommends approval of the recommended actions noted below.

- A. Nicholas Colbaugh – Suspension, 3 months retroactive – Removed from agenda during meeting
- B. Billy Ray Duncan – Restoration – Removed from agenda during meeting
- C. Chase Helton – Voluntary Surrender*
- D. Walter Hite – Suspension, 3 months retroactive
- E. Jermaine Johnson – Restoration
- F. Melissa Lamb – Formal Reprimand
- G. Martin McFarlane – Revocation, automatic
- H. Timothy Mercer – Revocation, automatic, permanent
- I. Michael Miles – Voluntary Surrender
- J. Jason Moore – Revocation, automatic, permanent
- K. Larry Nidiffer – Suspension, 3 months – Removed from agenda during meeting
- L. Leeona Oszust (Acuff) – Suspension, 1 year retroactive** - Removed from agenda during meeting
- M. Whitney Roberson – Formal Reprimand
- N. Velita Smith – Voluntary Surrender
- O. Emily Tubb – Restoration
- P. Lonnie Vann – Revocation, automatic*
- Q. Jameka Ward – Revocation, automatic
- R. Michael Warwick – Revocation, automatic, permanent
- S. Johnny Washington – Voluntary Surrender
- T. Meghan Wilson – Revocation, automatic

*Items C and P are subject to the Board Rule filed on January 25, 2016, and expired on September 4, 2017.

**Item L is subject to the Emergency Board Rule filed on September 5, 2017, and expired on March 4, 2018.

The following information pertains to cases reviewed based on the previous version of the rule in effect from January 25, 2016 through September 4, 2017.

Pursuant to State Board of Education Rule 0520-02-03-.09(1):

The State Board of Education shall automatically revoke the license of a licensed teacher or administrator without the right to a hearing upon receiving verification of the identity of the teacher or administrator together with a certified copy of a criminal record showing that the teacher or school administrator has been convicted of any felony or offense listed at T.C.A. §§ 40-35-501(i)(2), 39-17-417, a sexual offense or a violent sexual offense as defined in 40-39-202, any offense in title 39, chapter 13, 39-14-301 and 39-14-302, 39-14-401 and 39-14-404, 39-15-401 and 39-15-402, 39-17-1320, or any other offense in title 39, chapter 17, part 13 (including conviction on a plea of guilty or nolo contendere, conviction for the same or similar offense in any jurisdiction, or conviction for the solicitation of, attempt to commit, conspiracy, or acting as an accessory to such offenses).

Pursuant to State Board of Education Rule 0520-02-03.09(2), the State Board of Education may revoke, suspend, reprimand formally, or refuse to issue or renew a license for the following reasons:

- (a) Conviction of a felony;

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- (e) Denial, suspension, or revocation of a license or certificate in another jurisdiction for reasons which would justify denial, suspension or revocation under this rule; or
- (f) Other good cause.

A person whose license has been denied, suspended, or revoked may not serve as a volunteer or be employed, directly or indirectly, as an educator, paraprofessional, aide, substitute teacher, or in any other position during the period of the denial, suspension, or revocation.

The following information pertains to cases reviewed based on the emergency version of the rule filed on September 5, 2017 and expired on March 4, 2018.

Pursuant to State Board of Education Rule 0520-02-03-.09(3) the State Board of Education may revoke, suspend, formally reprimand, or refuse to issue or renew an educator's license for the following reasons:

- (a) Conviction of a felony;

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- (g) Other good cause as defined in section (1)(k)* of this rule; or

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*Part (1) Definitions -

Falsification of Licensure Documentation								
Unprofessionalism - Inappropriate Communication (Explicit)								

The following information pertains to cases reviewed based on the version of the rule filed on March 5, 2018.

Pursuant to State Board of Education Rule 0520-02-03-.09(3) the State Board of Education may revoke, suspend, formally reprimand, or refuse to issue or renew an educator’s license for the following reasons:

- (a) Conviction of a felony;

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- (b) Being on school premises, at a school-related activity involving students, or on official school business, while possessing or consuming alcohol or illegal drugs;

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- (e) Inappropriate physical contact with a student;

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- (g) Other good cause as defined in section (1)(k)* of this rule; or

- (h) Any offense contained in part (4) of this rule.

Part (4) Automatic Revocation and Suspension –

- (a) Automatic Revocation of License – The State Board of Education shall automatically revoke, without the right to a hearing, the license of an educator for the following:

1. Upon receiving verification of the identity of the licensed educator together with a certified copy of a criminal record showing that the licensed educator has been convicted of any the following offenses listed at T.C.A. § 39-17-417, a sexual offense or a violent sexual offense as defined in T.C.A. § 40-39-202, any offense in title 39, chapter 13, T.C.A. § 39-14-301 and T.C.A. § 39-14-302, T.C.A. § 39- 14-401 and T.C.A. § 39-14-404, T.C.A. § 39-15-401 and T.C.A. § 39-15-402, T.C.A. § 39-17-1320, or any other offense in title 39, chapter 17, part 13 (including conviction for the same or similar offense in any jurisdiction).

Part (5) Disciplinary Actions -

(a) For the following categories of offenses, the State Board of Education shall impose uniform disciplinary action as detailed below:

1. Conviction of a felony

(i) Upon receiving notification that an individual has been convicted of a felony, the board may revoke or permanently revoke the convicted individual's educator license.

2. Use or possession of alcohol or illicit substances

(i) An individual holding an educator's license who is found to be in possession of, or otherwise using, alcohol or illicit substances while on school premises or property when children are present shall be subject to a disciplinary action within the range of suspension for not less than one (1) year up to and including revocation.

(ii) An individual holding an educator's license who is found to be in possession of or consuming alcohol, or using illegal substances while on school premises or property without children present shall be subject to a disciplinary action within the range of suspension for not less than one (1) year up to and including revocation.

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4. Testing breaches

(i) An individual holding an educator's license who is found to have committed a major testing breach shall be subject to a disciplinary action within the range of a suspension of no less than one (1) year up to and including revocation.

(ii) An individual holding an educator's license who is found to have committed a major testing breach shall be subject to a disciplinary action within the range of a suspension of no less than one (1) year up to and including revocation.

5. Unprofessionalism

(i) An individual holding an educator's license who is found to have engaged in non-explicit inappropriate communication with a student shall be subject to a disciplinary action within the range of a suspension for no less than three (3) months up to and including revocation.

(ii) An individual holding an educator's license who is found to have engaged in non-explicit inappropriate communication with a student shall be subject to a disciplinary action within the range of a suspension for no less than three (3) months up to and including revocation.

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8. Violation of Teacher Code of Ethics – An individual holding an educator license who is found to have violated the teacher code of ethics shall be subject to a disciplinary action within the range of one (1) year up to and including revocation.

(e) Nothing in this rule shall prohibit the State Board from imposing a disciplinary action outside of the uniform discipline range upon good cause shown in extraordinary circumstances.

Falsification of Licensure Documentation								
Unprofessionalism - Inappropriate Communication (Explicit)								

Board Policy 5.500 License Restoration.

Guidelines for Consideration of License Restoration Applications

Restoration after Suspension of License:

A person whose license has been suspended shall have the license restored after the period of suspension has been completed and the person has complied with any terms prescribed by the Board. Proof of such compliance shall be provided to Board counsel. Suspended licenses are subject to expiration and renewal rules of the Board. A suspended license may not be restored if an action against a person’s license is pending in another state.

Restoration after Denial or Revocation of License:

Board Rule 0520-02-03-.09(3) allows a person whose teaching license was denied or revoked to apply for restoration of that license. Before the application is considered, the applicant must show “that the cause for denial or revocation no longer exists and that the person has complied with any terms imposed in the order of denial or revocation. In the case of a felony conviction, before an application will be considered, the person must also show that any sentence imposed, including any pre-trial diversion or probationary period, has been completed.” Applications also may not be considered if an action against a license is pending in another state.

Restoration of a denied or revoked license is discretionary and considered on a case-by-case basis. The burden of proof rests with the applicant. To show that the “cause no longer exists,” an applicant must show why the license should be restored despite the misconduct that resulted in the disciplinary action. An applicant must provide evidence of rehabilitation and fitness to perform the duties authorized by the license sought.

When an application for restoration is received from the Office of Educator Licensing and forwarded to Board counsel, a panel of Board staff reviews the application and the file to make a recommendation regarding whether restoration should be granted, or if additional investigation is necessary. This panel consists of the executive or deputy executive director, counsel to the Board, and at least one other staff member. If the panel decides not to recommend restoration of the license, Board counsel will notify the applicant of the Board’s intent and the applicant’s right to request a hearing.

If the applicant waives the right to a hearing or does not request a hearing within thirty (30) days of notification, Board counsel will submit the proposed denial of restoration to the Board for roll-call vote at its next regularly scheduled meeting. Counsel will include a proposed order for the Board to approve. If the applicant requests a hearing within thirty (30) days of notification, then Board counsel will

schedule a hearing with an Administrative Law Judge (ALJ) from the Secretary of State's office, sitting on behalf of the Board.

If the ALJ, sitting on behalf of the Board, finds that denial of the restoration application is not warranted, Board counsel will direct the Office of Teacher Licensing (OTL) to restore the applicant's license. The Board may, however, appeal the ALJ's decision at its discretion. The applicant may also appeal the action of the ALJ or the Board to Chancery Court in Davidson County.

The panel of Board staff and/or the Board may consider the following in reviewing restoration applications:

1. Likelihood of present harm or potential for continuing harm to students, parents of students or school personnel.
2. Details of the offense(s) which led to the disciplinary action:
 - i. Terms of any sentence imposed, including probation, community service, etc.;
 - ii. Age of the applicant at the time of arrest;
 - iii. The relationship between the offense and the duties and responsibilities of the education profession; and
 - iv. Likelihood of recurrence (as shown, for example, by lack of remorse or lack of rehabilitative motivation or potential).
3. Attempted concealment of misconduct, including failure to report any criminal charges on an initial license application.
4. Prior misconduct of a similar or related nature (including prior criminal history).
5. Compliance with any terms imposed in a voluntary withdrawal of a license application, voluntary surrender of a license or suspension.
6. Rulings on restoration applications under similar circumstances.*
7. Evidence of rehabilitation relevant to the conduct that resulted in disciplinary action, such as:
 - i. Completion of any sentence imposed, including probation;
 - ii. Participation in counseling, self-help support groups, community service;
 - iii. Gainful employment subsequent to the conduct; and
 - iv. Family and community support (shown, for example, through affidavits or letters of character from leaders of organizations, including religious groups).
8. Fitness for practice as an educator:
 - i. Continuing education since the discipline was imposed;
 - ii. Offers of employment for educational positions; and
 - iii. Letters of recommendation for educational positions.
9. Any other relevant factors.

* To assist in deliberations, Board staff shall maintain a list of all restoration requests, along with the following information:

1. Grounds for disciplinary action;
2. Time elapsed since denial or revocation;
3. Supporting material provided by applicant; and
4. Whether the application was granted or denied.