
Educator Licensure Rule 0520-02-03-.09

The Background:

Pursuant to Tenn. Code Ann. § 49-1-302, the State Board of Education (State Board) has the duty and power to adopt policies governing the qualifications, requirements, and standards of the licenses and certificates for all public school teachers, principals, assistant principals, supervisors and directors of schools. Pursuant to that code section, the State Board has promulgated an Educator Licensure rule, which includes provisions for formal reprimand of educators as well as the denial, suspension, and revocation of educator licenses for certain instances of misconduct.

Included in the Educator Licensure rule is the ability for an educator to request a hearing before an administrative law judge and/or appeal the licensure action decisions of the State Board to a state court. The judges before which these cases are heard are bound by the principle of *stare decisis*, which is the doctrine of precedent. Courts cite to *stare decisis* when an issue has been previously brought to the court and a ruling already issued. As it relates to educator licenses, courts have followed the precedent set in other licensure decisions that were decided by prior State Boards. This makes the decision of the current State Board harder to defend and educator license decisions unpredictable and inconsistent.

This item repeals the prior Educator Licensure rule 0520-02-03-.09 and replaces it with a rule with a clearly defined discipline schedule that imposes a specified range of discipline for the enumerated offenses. By doing so, both the State Board and those persons holding educator licenses will have a clear understanding and expectation of the discipline imposed for education indiscretions.

Section 1 of the rule lists the reasons for which the State Board may revoke, suspend, reprimand formally, or refuse to issue or renew an educator license. The new rule adds the prohibition of an educator being under the influence of, possessing, or consuming alcohol or illegal drugs while on official school business, in addition to while on school premises or at a school-related activity involving students. This section also adds the inclusion of a violation of the Teacher Code of Ethics contained in Tenn. Code Ann. § 49-5-1003 et seq. under "Other good cause."

Section 2 of the rule identifies the disciplinary actions that the State Board shall take for certain instances of misconduct. The new rule adds uniform disciplinary actions for various categories of educator misconduct by establishing a range of punishment for the offenses. Notably, the new rule distinguishes between possession and/or consumption of alcohol and drugs on and off school property and related activities with or without students present. This revised section of the rule also imposes stricter penalties for negligence that results in harm to a student. It also differentiates between types of unprofessional behavior and imposes strict punishment for inappropriate discipline and explicit communication with students. Finally, the new section mandates that educators who are subject to multiple disciplinary actions will face disciplinary actions in excess of the suggested ranges and any educator who has a fourth disciplinary action will have his or her license revoked.

The new rule adds a discipline schedule in part 3, which is a chart of the various classes of offenses and the punishment ranges in which they fall. This chart was added as an easy reference tool for educators. One of the goals in revising the educator license rule was to enable educators to have clear expectations of the disciplinary action he or she might face if found to have engaged in misconduct.

Finally, the new rule, changes the way revoked licenses are restored. Prior to this new rule, an educator whose license the State Board has revoked could theoretically apply for reinstatement immediately. Under the new rule, an educator whose license the State Board has revoked must wait a minimum of five (5) years before reapplying for licensure. The rule makes it clear that there is no guarantee that the license will be restored and the applicant must overcome a rebuttable presumption that he or she is unfit for licensure.

The Recommendation:

The SBE Staff recommends acceptance of this item on first reading.