
Educator Licensure Emergency 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.

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.

At the April 2016 State Board meeting, Chairman Fielding Rolston appointed a subcommittee of three board members to make further revisions to the rule. The subcommittee met on two occasions to consider revision to the rule and made the following changes after first reading (page numbers refer to the redline version):

- Pages 1-2:** Adds definitions and examples.
- Page 2:** Adds a permanent revocation category that applies to certain egregious offenses.
- Page 2:** Moves the district notification requirement to the beginning of the rule for prominence and added director's designee as someone who may report.
- Page 2:** Changes "teachers or administrators" to "educators" for consistency.
- Page 2:** (3)(c) – Removes "under the influence of" based on our previous discussions surrounding the burden of proof for intoxication/being under the influence.
- Page 3:** (3)(h) - Adds this subsection, which incorporates the offenses contained in section (4) as reasons for which the Board may revoke, suspend, formally reprimand, etc.
- Pages 4-7:** Makes the ranges of punishment inclusive of the higher end by adding "up to and including."
- Page 4:** (4)(a) – Changes "revoke" to "permanently revoke" because these are the offenses that warranted permanent revocation. Changes "teachers or administrators" to "educators" for consistency.
- Page 4:** Changes the disciplinary range for a felony conviction to include permanent revocation.
- Page 5:** Establishes differentiated discipline ranges for "major testing breaches" and "minor testing breaches."
- Page 6:** (4)(c)(6) – For consistency with other sections, adds an "inappropriate physical contact" section header and adds subsections (i) and (ii) to address inappropriate physical contact with and without harm, respectively.

- Page 6:** (4)(c)(7) – Adds “Falsification of Licensure” section to address the disciplinary range for falsification, which was previously in the schedule but not in the text of the rule.
- Page 7:** (4)(c)(8) – Adds this section to address violations of the teacher code of ethics, which was previously in the schedule but not in the text of the rule.
- Page 7:** (4)(c)9.-12 – Changes the numbering in these sections to letters (d) – (g) as the numbering system was for the disciplinary ranges and these do not fall into that section.
- Page 7:** Moves the section that allows educators to act within the scope of T.C.A. § 49-6-4107 so that it applies to more than just negligence.
- Page 7:** Adds section 9, which allows the Board to depart from the presumptive discipline ranges upon good cause shown in extraordinary circumstances.
- Page 8:** Adds language to correct the license restoration process.
- Page 9:** Adds presumptive denial for applicants who have committed offenses that would subject them to revocation if they had a license at the time they committed the prior offense.
- Page 10:** Moves the discipline schedule so that it could exist on one page instead of carrying over to the next page.

These changes were approved by the board on final reading at the October 2016 Board meeting. A proposed rule was filed with the Secretary of State; however, prior to the effective date, a rulemaking hearing was requested, thereby converting the Proposed Rule to a Rulemaking Hearing rule and restarting the promulgation process. To ensure that board is able to take licensure actions to protect the health, safety and welfare of students, the Board must re-approve the rule as an emergency rule, which will ensure that the rule language is in effect until the permanent rule can complete its way through the rule promulgation process. Re-approval of the permanent rule on teacher licensure is also required and will require a rulemaking hearing to be conducted at a later date.

The Recommendation:

The SBE Staff recommends adoption of this item as an emergency rule and on first reading as a rulemaking hearing rule.