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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	State Board of Education
Division:	
Contact Person:	Elizabeth Taylor
Address:	1st Floor, 710 James Robertson Parkway, Andrew Johnson Tower, Nashville, TN
Phone:	615-253-5707
Email:	Elizabeth.Taylor@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Elizabeth Taylor
Address:	1st Floor, 710 James Robertson Parkway, Andrew Johnson Tower, Nashville, TN
Phone:	615-253-5707
Email:	Elizabeth.Taylor@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Multipurpose Room, 1st Floor, Andrew Johnson Tower
Address 2:	710 James Robertson Parkway
City:	Nashville
Zip:	37243
Hearing Date :	09/19/2017
Hearing Time:	10:00 AM <input checked="" type="checkbox"/> CST/CDT <input type="checkbox"/> EST/EDT

Additional Hearing Information:

Please bring a government issued photo identification to gain access into the building.
Written comments may be submitted to Elizabeth Taylor via the contact information above up until October 1, 2017.
Those interested in speaking at the hearing may sign up the day of the hearing.

Revision Type (check all that apply):

☒ Amendment
☐ New
☐ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0520-02-03	Educator Licensure
Rule Number	Rule Title
0520-02-03-.09	Denial, Formal Reprimand, Suspension, and Revocation

CHAPTER 0520-02-03
EDUCATOR LICENSURE

Amendment

Rule 0520-02-03.09 of the Rules of the State Board of Education Chapter 0520-02-03.09 Educator Licensure, is deleted in its entirety and amended so that as rewritten it shall read:

0520-02-03-.09 DENIAL, FORMAL REPRIMAND, SUSPENSION, AND REVOCATION.

(1) Definitions and Examples:

- (a) Conviction - Conviction resulting from a judgment of conviction or on a plea of guilty, a plea of no contest, or an order granting diversion under T.C.A. §§ 40-15-101 *et seq.* or 40-35-313.
- (b) Formal Reprimand - A less harsh licensing action than the suspension, revocation, or denial of a license, which admonishes an educator for certain conduct under this rule. An educator who has been reprimanded by the Board will receive a letter from the State Board of Education, which will become part of the educator's state and local record, indicating that the inappropriate conduct is discouraged and shall be subject to further disciplinary action if repeated.
- (c) Inappropriate Communication (Explicit) - Any communication between an educator and a student that describes, represents, or alludes to sexual activity or any other illicit activity.
- (d) Inappropriate Communication (Non-Explicit) – Any communication between an educator and a student that is beyond the scope of the educator's professional responsibilities. Examples of such non-explicit inappropriate communications include, but are not limited to, those communications that discuss the teaching staff member's or student's past or current romantic relationships; those that include the use of profanities or obscene language; those that are harassing, intimidating, or bullying; those that attempt to establish a personal relationship with a student; and those that are related to personal or confidential information regarding another school staff member or student.
- (e) Inappropriate Physical Contact - Unnecessary and unjustified physical contact with a student. Examples of such unnecessary and unjustified contact include, but are not limited to sexual contact, physical altercations, horseplay, tickling, improper use of corporal punishment, and rough housing.
- (f) Inappropriate Physical Contact With Harm – Inappropriate physical contact as described in subsection (e) above that results in physical or mental harm or the potential of physical or mental harm to a student.
- (g) Major Testing Breach - A breach of test security that results in nullification of test scores.
- (h) Minor Testing Breach - A breach of test security that does not result in nullification of any test scores.
- (i) Negligence - Failure to exercise the care toward others that a reasonable or prudent person would exercise under the circumstances or taking action that a reasonable person would not.
- (j) Official School Business – Any activity undertaken by an educator in an official capacity and in connection with the educator's employment.

- (k) Other Good Cause – Conduct that calls into question the fitness of an educator to hold a license including, but not limited to, noncompliance with security guidelines for Tennessee Comprehensive Assessment Program (TCAP) or successor tests pursuant to T.C.A. § 49-1-607, failure to report licensure actions under parts (3) or (4), or violation of any provision in the Teacher Code of Ethics as contained in T.C.A. § 49-5-1003.
 - (l) Permanent Revocation – The nullification of an educator's license without eligibility for future reinstatement.
 - (m) School Premises – Any real property and/or land owned, leased, managed, controlled, or under the custody of a state or local education agency, school system, or school.
 - (n) School Property – Any property owned, leased, managed, controlled, or under the custody of a state or local education agency, school system, or school.
 - (o) School Related Activity – Any activity in which a student participates, including but not limited to classes, meetings, extracurricular activities, clubs, athletics, and field trips, sponsored by the school, state educational agency, or local educational agency.
 - (p) Suspension – The nullification of an educator's license for a predetermined term, after which the license is automatically reinstated. Reinstatement may be subject to the completion of terms and conditions contained in the order of suspension.
 - (q) Revocation – The nullification of an educator's license for a period of at least five (5) years, after which an educator may petition the State Board for reinstatement.
- (2) Notification of Office of Educator Licensing - It is the responsibility of the Director of Schools of the employing public or non-public school or school system or his or her designee to inform the Office of Educator Licensing of licensed educators who have been suspended or dismissed, or who have resigned, following allegations of conduct which, if substantiated, would warrant consideration for license suspension or revocation under parts (3) or (4). The report shall be submitted within thirty (30) days of the suspension, dismissal, or resignation. The Director of Schools or his or her designee shall also report felony convictions of licensed educators within thirty (30) days of receiving knowledge of the conviction. School systems have a duty to respond to State Board inquiries and provide to the State Board any available documentation requested concerning the allegations contained in the notice.
- (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;
 - (b) Conviction of possession of illegal drugs;
 - (c) Being on school premises, at a school-related activity involving students, or on official school business, while possessing or consuming alcohol or illegal drugs;
 - (d) Falsification or altering of a license or documentation required for licensure;
 - (e) Inappropriate physical contact with a student;
 - (f) Denial, suspension, or revocation of a license or certificate in another jurisdiction for reasons which would justify denial, suspension, or revocation under this rule;
 - (g) Other good cause as defined in section (1)(k) of this rule; or

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

(4) Disciplinary Actions

- (a) Automatic Revocation of License – The State Board of Education shall automatically revoke, without the right to a hearing, the license of an educator 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 offense listed at T.C.A. §§ 40-35-501(j)(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 for the same or similar offense in any jurisdiction). The Board will notify persons whose licenses are subject to automatic revocation at least thirty (30) days prior to the Board meeting at which such revocation shall occur.
- (b) Automatic Suspension of License - The State Board of Education shall automatically suspend the license of an educator for the following offenses:
1. Default on a student loan pursuant to T.C.A. § 49-5-108(d)(2); or
 2. Failure to comply with an order of support for alimony or child support, pursuant to T.C.A. § 36-5-706.
- (c) 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 otherwise using, alcohol or illicit 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.
 - (iii) An individual holding an educator's license who is found to be in possession of, or otherwise using, alcohol or illicit substances while not on school premises or property, but while participating in school related activities with 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.
 - (iv) An individual holding an educator's license who is found to be in possession of, or otherwise using, alcohol or illicit substances while not on school premises or property, but participating in school related activities without children present, shall be subject to a disciplinary action within the range of suspension for not less than six (6) months up to and including a two (2) - year suspension.

3. Negligence in the commission of duties as an educator

- (i) An individual holding an educator's license who is found to be negligent in his or her commission of duties as an educator in such a manner that does not result in harm to a child shall be subject to a disciplinary action within the range of a letter of formal reprimand up to and including a two (2)-year suspension.
- (ii) An individual holding an educator's license who is found to be negligent in their commission of duties as an educator in such a manner that results in harm to a child, shall be subject to a disciplinary action within the range of suspension for no less than one (1) year up to and including permanent revocation.

4. Testing breaches

- (i) An individual holding an educator's license who is found to have committed a minor testing breach shall be subject to a disciplinary action within the range of a letter of formal reprimand up to and including a suspension not to exceed one (1) year.
- (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 administered inappropriate disciplinary measures to a student shall be subject to a disciplinary action within the range of a suspension for no less than one (1) year up to and including permanent 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.
- (iii) An individual holding an educator's license who is found to have engaged in inappropriate communication of an explicit nature with a student shall be subject to permanent revocation.
- (iv) An individual holding an educator's license who is found to have inappropriately used school property 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.

6. Inappropriate Physical Contact

- (i) An individual holding an educator's license who is found to have engaged in inappropriate physical contact with a student that does not result in harm or potential harm to the student shall be subject to a disciplinary action within the range of a formal reprimand up to and including suspension for two (2) years.
- (ii) An individual holding an educator's license who is found to have engaged in inappropriate physical contact with a student that results in harm or potential harm to the student shall be subject to a disciplinary action within the range of a suspension for not less than two (2) years up to and including permanent revocation.

7. Falsification of Licensure Documentation - An individual holding an educator's license who is found to have falsified licensure documentation shall be subject to a disciplinary action within the range of revocation or permanent revocation.
8. Violation of the Teacher Code of Ethics - An individual holding an educator's 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.

- (d) Similar offenses – Actions related or similar to the above-enumerated offenses shall carry recommended disciplinary action commensurate with the range established for the similar offense.
- (e) Nothing in this part shall prevent an educator from exercising his or her lawful authority to use reasonable force when necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another person pursuant to T.C.A. § 49-6-4107.
- (f) Repeated violations – Individuals holding an educator's license who are subject to multiple disciplinary actions by the Board shall face disciplinary action in excess of the recommended ranges. A third violation, regardless of severity, shall be subject to a recommendation of revocation.
- (g) 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.

(5) Restoration of License

(a) Suspension

1. A person whose license has been suspended under parts (3) or (4) of this rule shall have his or her educator's license restored after the period of suspension has been completed, and, where applicable, the person has complied with all terms prescribed by the State Board. Suspended licenses are subject to the expiration and renewal rules of the State Board.

(b) Denial or Revocation

1. A person whose license has been denied or revoked under parts (3) or (4) of this rule may apply to the State Board to have the license issued or restored upon application showing 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. Application for such issuance or restoration shall be made to the Office of Educator Licensing and forwarded to State Board counsel.
2. A person whose license has been revoked under parts (3) or (4) of this rule shall not be eligible to reapply for licensure for a period of no less than five (5) years from the time at which the license was initially revoked.
3. In any deliberation by the Board of Education to restore a license that has been revoked, there will be a rebuttable presumption that an educator whose license has been revoked is unfit for licensure. Nothing in this section is intended to guarantee restoration of a license.

- (6) Presumptive Denial – There shall be a rebuttable presumption that any person applying for an educator's license who has committed an offense that would subject him or her to revocation if licensed shall be ineligible to receive a Tennessee educator's license.

- (7) Scope of Disciplinary Action – 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.
- (8) Notice of Hearing – Any person who is formally reprimanded or whose license is to be denied, suspended, or revoked under parts (3) or (4) of this rule shall be entitled to written notice and an opportunity for a hearing to be conducted as a contested case under the Uniform Administrative Procedures Act, T.C.A. § 4-5- 301, *et seq.*
- (9) Discipline Schedule – The following chart outlines the least and greatest first-time disciplinary ranges for the offenses listed as indicated by the shaded squares.

	Letter of Formal Reprimand	Suspension of 3 months up to and including 6 months	Suspension of 6 months up to and including 1 Year	Suspension of 1 Year up to and including 18 Months	Suspension of 18 months up to and including 2 Years	Suspension of 2 years up to and including Revocation	Revocation	Permanent Revocation
Minor Testing Breach								
Negligence w/o Harm or Potential Harm								
Inappropriate Physical Contact w/o Harm								
Unprofessionalism — Inappropriate Communication (Non- Explicit)								
Unprofessionalism — Inappropriate Use of School Property								
Possession/Use - Off School Premises/Property w/o Children Present During School Related Activity								
Possession/Use - Off School Premises/Property w/ Children								
Possession/Use - On School Premises/Property w/o Children								
Possession/Use - On School Premises/Property w/ Children								
Major Testing Breach								
Violation of Teacher Code of Ethics								
Negligence w/ Harm or Potential Harm to a Student								
Inappropriate Disciplinary Measures								
Inappropriate Physical Contact with Harm								
Felony Conviction								
Falsification of Licensure Documentation								
Unprofessionalism - Inappropriate Communication (Explicit)								

Authority: T.C.A. § 49-1-302. **Administrative History:** Repeal and new rule filed December 18, 2015; effective March 18, 2015. A stay of the rule was filed January 28, 2015; new effective date June 1, 2015. Amendment filed May 29, 2015; effective August 27, 2015. Emergency rule filed August 27, 2015; effective through February 23, 2016. Repeal and new rules filed October 27, 2015; effective January 25, 2016.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.



Date: July 25, 2017

Signature: *Elizabeth Taylor*

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

Subscribed and sworn to before me on: July 25, 2017

Notary Public Signature: *Tabatha J. Bolding*

My commission expires on: 4/21/2020

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Filed with the Department of State on: 7/28/17

Tre Hargett

Tre Hargett
Secretary of State

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