

**DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS BOARD**

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

PROPOSED

PUBLIC NOTICE

Educational Impact Analysis Pursuant to 14 Del.C. Section 122(d)

1515 Hearing Procedures and Rules

A. TYPE OF REGULATORY ACTION REQUESTED

Adopt New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board ("Board"), acting in cooperation and consultation with the Department of Education ("Department"), developed a new regulation, 14 **DE Admin. Code** 1515 Hearing Procedures and Rules. The regulation concerns the hearing procedures and rules for license denial actions under 14 **Del.C.** §1217 and license disciplinary actions under 14 **Del.C.** §1218. The proposed regulation was initially published on October 1, 2017. The Board received one written comment that subsection 3.1.2 does not seem to align with modern technology or to be the most efficient, non-burdensome form of communicating a hearing request. The Board believes that the forms of hearing request are those permitted by statute, so no changes were made in response to the comment. On November 2, 2017, the Board voted to republish the regulation with two substantive changes. The Board added a deadline for submitting a written request for additional time for a hearing to subsection 4.1.1.1 and added "stenographic" to subsection 4.5.2.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before January 2, 2018 to Mr. Chris Kenton, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. A copy of this regulation may be viewed online at the Registrar of Regulation's website, http://regulations.delaware.gov/services/current_issue.shtml or obtained at the Professional Standards Board's Office, located at the address above.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation does not address student achievement as measured against state achievement standards.
2. Will the new regulation help ensure that all students receive an equitable education? The new regulation will help to ensure that all students receive an equitable education.
3. Will the new regulation help to ensure all student's health and safety are adequately protected? The new regulation addresses the Board's rules and procedures for hearings, not students' health and safety.
4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses the Board's rules and procedures for hearings, not students' legal rights.
5. Will the new regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The new regulation does not change authority and flexibility of decision makers at the local board and school level.
6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation does not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.
7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing the subject to be regulated will be placed in the same entity.
8. Will the new regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies? The new regulation is consistent with, and not an impediment to, the implementation of other state educational policies, and in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts, and social studies.
9. Is there a less burdensome method for addressing the purpose of the new regulation? There is not a less burdensome method for addressing the purpose of the new regulation.
10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no expected cost to the state and to the local school boards of complying with the new regulation.

1515 Hearing Procedures and Rules

1.0 Applicability, Construction, and Waiver

- 1.1 This regulation shall apply to license denial actions under 14 Del.C. §1217 and license disciplinary actions under 14 Del.C. §1218.
- 1.2 This regulation shall be liberally construed to secure a just, economical, and reasonably expeditious determination of the issues presented in accordance with the Standards Board's authority under 14 Del.C. Ch. 12 and with the Administrative Procedures Act under 29 Del.C. Ch. 101.
- 1.3 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.

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 Requests for a Hearing

- 3.1 A person may request a hearing by mailing or hand-delivering a written request for a hearing to the Executive Director.
 - 3.1.1 Requests shall not be sent by electronic mail, facsimile, or other electronic means.
- 3.2 The request shall:
 - 3.2.1 Be in writing;
 - 3.2.2 Be signed by the person making the request or the person's counsel;
 - 3.2.3 Set forth the grounds for action in reasonable detail;
 - 3.2.4 Identify the source of the Standards Board's authority to decide the matter; and
 - 3.2.5 Provide the person's preferred mailing address, phone number, and e-mail address.
- 3.3 Requests must be submitted to the Executive Director as follows:
 - 3.3.1 For license denial actions, requests must be postmarked or mailed within 20 calendar days from the date that the Department's notice under 14 Del.C. §1217(b) was mailed.
 - 3.3.2 For license disciplinary actions, requests must be submitted within 30 calendar days from the date that the Secretary's notice under 14 Del.C. §1218(k) was mailed.
- 3.4 A copy of the request shall be provided to the Department, in license denial actions, or to the Secretary, in license disciplinary actions.
- 3.5 The Executive Director shall provide the request for a hearing to the Standards Board at its next regularly scheduled meeting.
- 3.6 Upon receipt of a request that meets all of the requirements set forth in subsection 3.2, 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.
 - 3.6.1 The hearing officer designated shall have the same authority, powers, and duties as the Standards Board for the purpose of conducting the hearing.
- 3.7 The Standards Board may direct the person or agency taking official action to file a written response to the request for a hearing.

4.0 Prehearing Procedures and Rules

- 4.1 Scheduling a Hearing
 - 4.1.1 Generally, hearings are scheduled for 1 full day from 8:30 a.m. to 4:30 p.m.
 - 4.1.1.1 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.

4.1.1.2 The Standards Board may grant the request upon a showing of good cause.

4.2 Notice of the Hearing

4.2.1 Notice of the date, time, and place of the hearing shall be mailed to the parties.

4.3 Requests for a Public Hearing

4.3.1 A party shall be deemed to have consented to a closed hearing unless the party notifies the Executive Director in writing that a public hearing is requested.

4.3.1.1 The request must be mailed or hand-delivered to the Executive Director within 5 business days of the receipt of the notice in subsection 4.2. A copy of the request shall be provided to the other party at the same time.

4.4 Subpoena Requests

4.4.1 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. A copy of the request shall be provided to the other party at the same time.

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

4.4.1.2 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.

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

4.4.3 The party requesting a subpoena is responsible for delivering the subpoena to the person or entity to whom the subpoena is directed.

4.4.3.1 Proof of service of a subpoena shall be mailed or hand-delivered to the Standards Board.

4.5 Requests for a Stenographic Reporter

4.5.1 Any party may request the presence of a stenographic reporter at the hearing.

4.5.1.1 The request shall be mailed or hand-delivered to the Executive Director at least 10 business days prior to the date of the hearing. A copy of the request shall be provided to the other party at the same time.

4.5.2 The requesting party shall be liable for the expense of the stenographic reporter and any transcript the party requests.

4.6 Witness List

4.6.1 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.

4.6.2 The Standards Board may refuse to receive into evidence any testimony of a witness who has not been named on the witness list.

4.7 Exchange of Documents

4.7.1 The parties shall exchange documents they intend to introduce at the hearing at least 5 business days prior to the hearing.

4.7.2 The documents shall be labeled "Petitioner" or "Department" and numbered in sequential order (1, 2, 3).

4.8 Prehearing Conferences

4.8.1 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.

4.9 Continuances, Adjournments, and Postponements

4.9.1 The Standards Board may continue, adjourn, or postpone proceedings for good cause at the request of a party or on its or his or her own initiative.

4.9.2 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.

5.0 Hearing Procedures and Rules

5.1 A verbatim record of the proceedings before the Standards Board will be made either electronically or stenographically, if a party submits a request under subsection 4.5.

- 5.2 The hearing will proceed with the party with the burden of proof first presenting its evidence and case. The other party may then present its case. The party with the burden of proof will then have an opportunity to present rebuttal evidence.
- 5.2.1 In license denial actions, the applicant is the party with the burden of proof.
- 5.2.2 In license disciplinary actions, the Department is the party with the burden of proof.
- 5.3 The Standards Board may permit the parties to present opening and closing statements.
- 5.4 The Standards Board may take testimony, hear proof, and receive exhibits into evidence at a hearing.
- 5.4.1 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.
- 5.4.2 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).
- 5.4.3 Objections to the admission of evidence shall be brief and shall state the grounds for the objection.
- 5.5 Testimony shall be under oath or affirmation.
- 5.5.1 The Standards Board may administer oaths to witnesses.
- 5.6 Any person who testifies as a witness shall also be subject to cross examination by the other party and by the Standards Board.
- 5.7 Witnesses may be sequestered upon a party's request.
- 5.8 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.
- 5.8.1 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.

6.0 Post-hearing Rules and Procedures

- 6.1 The Standards Board may direct the parties to submit post-hearing briefs.
- 6.1.1 Post-hearing briefs shall be filed as directed by the Standards Board.
- 6.2 If the Standards Board has designated a hearing officer, the hearing officer shall prepare a proposed order in accordance with 29 Del.C. §10126.
- 6.3 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.
- 6.3.1 The parties may agree to shorten or waive the comment period.
- 6.3.2 The parties may agree to consent to the hearing officer's proposed order.
- 6.3.2.1 When the parties consent to the hearing officer's recommendation, they shall send written notice to the Executive Director.
- 6.4 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.

7.0 Other Hearing Rules and Procedures

- 7.1 Communications
- 7.1.1 Pursuant to 29 Del.C. §10129, no member or employee of the Standards Board assigned to participate in any way in the rendering of a case decision shall discuss or communicate, directly or indirectly, respecting any issue of fact or law with any person or party, except upon notice to and opportunity for all parties to participate.
- 7.1.1.1 Subsection 7.1.1 does not apply to communications required for the disposition of ex parte matters authorized by law or to communications by and among members of the Standards Board, the Standards Board's staff, and the Standards Board's counsel.
- 7.1.2 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.
- 7.1.3 Address of the Standards Board and Parties' Contact Information
- 7.1.3.1 Hand-delivered submissions shall be delivered to the Standards Board at the Townsend Building, 401 Federal Street, 2nd Floor, Dover, Delaware 19901.

7.1.3.2 Mailed submissions shall be delivered to the Standards Board at 401 Federal Street, Suite 2, Dover, Delaware 19901.

7.1.3.3 Parties shall keep the Standards Board informed of their current mailing addresses, phone numbers, and email addresses.

7.2 Counsel

7.2.1 Any party to a proceeding before the Standards Board may be represented by counsel.

7.2.2 The attorney representing a party in a proceeding before the Standards Board shall notify the Executive Director of the representation in writing as soon as practical. A copy of the notice shall be provided to the other party at the same time.

7.2.3 Attorneys who are not members of the Delaware Bar may be admitted pro hac vice before the Standards Board pursuant to Rule 72 of the Rules of the Supreme Court of the State of Delaware.

21 DE Reg. 470 (12/01/17) (Prop.)