

**DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS BOARD**

Statutory Authority: 14 Delaware Code, Sections 1203 and 1205(b) (14 **Del.C.** §§1203 & 1205(b))
14 **DE Admin. Code** 1513

FINAL

REGULATORY IMPLEMENTING ORDER

1513 Denial of Licenses

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** Sections 1203 and 1205(b), the Delaware Department of Education ("Department"), in consultation and cooperation with the Professional Standards Board, is amending 14 **DE Admin. Code** 1513 Denial of Licenses. The regulation sets forth rules of practice and procedure used by the Professional Standards Board and is being amended under the provision of 29 **Del.C.** §10113(b)(2). In addition, the regulation is being amended to be consistent with 14 **Del.C.** Ch. 12 under the provision of 29 **Del.C.** §10113(b)(5). The amendments do not otherwise alter the substance of the regulation.

The amendments are exempt from the requirement of public notice and comment and are adopted informally in accordance with 29 **Del.C.** §§10113(b)(2) and (b)(5).

II. FINDINGS OF FACT

The Department finds that the regulation sets forth rules of practice and procedure used by the Professional Standards Board. The Department further finds that the regulation is being amended to be consistent with 14 **Del.C.** Ch. 12 and that the amendments do not otherwise alter the substance of the regulation. Accordingly, the Department finds that it is appropriate to amend 14 **DE Admin. Code** 1513 Denial of Licenses.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Department concludes that it is appropriate to amend 14 **DE Admin. Code** 1513 Denial of Licenses. Therefore, pursuant to 14 **Del.C.** §§1203 and 1205(b), 14 **DE Admin. Code** 1513 Denial of Licenses, attached hereto as Exhibit "A," is hereby amended.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 1513 Denial of Licenses adopted hereby shall be in the form attached hereto as Exhibit "A" and said regulation shall be cited as 14 **DE Admin. Code** 1513 Denial of Licenses and Permits in the Administrative Code of Regulations for the Department.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten days from the date this Order is published in the *Register of Regulations*.

IT IS SO ORDERED the 15th day of November, 2018

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

1513 Denial of Licenses and Permits

1.0 Content

This regulation shall apply to the denial of ~~an Initial License, Continuing License or Advanced License~~ a license for educators pursuant to 14 **Del.C.** §1210, 1211, 1212, 1213, 1214, and §1217 and a permit for paraprofessionals pursuant to 14 Del.C. §1205(b).

7 DE Reg. 161 (08/01/03)

9 DE Reg. 138 (07/01/05)

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Advanced License" means a license issued as part of the three tiered licensure system set forth in 14 **Del.C.** §1213 and §1214.

"Continuing License" means a license issued as part of the three tiered licensure system set forth in 14 **Del.C.** §1211 and §1212.

"Department" means the Delaware Department of Education.

"Educator" means a person licensed and certified by the State under 14 **Del.C.** Ch. 12, to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. For purposes of 14 **Del.C.** Ch. 12, the term 'educator' does not include substitute teachers.

"Good Moral Character" means conduct which is consistent with the rules and principles of morality expected of an educator.

"Immorality" means conduct which is inconsistent with the rules and principles of morality expected of an educator or paraeducator and may reasonably be found to impair an educator's or paraeducator's effectiveness by reason of his or her unfitness or otherwise.

"Initial License" means a license issued as part of the three tiered licensure system set forth in 14 **Del.C.** §1210.

"Nolo Contendere" means a plea by a defendant in a criminal prosecution that, without admitting guilt, subjects him or her to conviction but does not preclude him or her from denying the truth of the charges in a collateral proceeding.

"Paraeducator" means a paraprofessional as it is used in 14 **Del.C.** §1205(b). Paraeducators are not "educators" within the meaning of 14 **Del.C.** §1202(5).

"Permit" means a document issued by the Department that verifies an individual's qualifications and training to serve as a Title I, Instructional, or Service Paraeducator.

"Secretary" means the Secretary of the Delaware Department of Education.

"Standard Certificate" means a credential issued to verify that an educator has the prescribed knowledge, skill or education to practice in a particular area, teach a particular subject, or teach a category of students.

"Standards Board" means the Professional Standards Board established pursuant to 14 **Del.C.** §12051201.

"State" means the State of Delaware.

"Unfit" means lack of good moral character, misconduct in office, incompetence, a pattern of ineffective teaching, wilful neglect of duty, disloyalty or falsification of credentials, or any conduct that would be grounds for revocation of an educator's license.

7 DE Reg. 161 (08/01/03)

9 DE Reg. 138 (07/01/05)

12 DE Reg. 1307 (04/01/09)

3.0 ~~Failure to Meet Licensure Requirements~~ **Grounds for Denial**

3.1 The Department may deny an application and refuse to issue an Initial License, Continuing License, Advanced License or a Standard or Emergency Certificate and deny an applicant's request for a license for failure to meet the statutory or regulatory qualifications for a license. a license or permit based on one or more of the following grounds:

3.1.1 Failure to meet the qualifications for an Initial License as provided in 14 **DE Admin. Code** 1510 Issuance of Initial License;

3.1.2 Failure to meet the qualifications for a Continuing License as provided in 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License;

3.1.3 Failure to meet the qualifications for an Advanced License as provided in 14 **DE Admin. Code** 1512 Issuance and Renewal of Advanced License;

3.1.4 Failure to meet the qualifications for a Paraeducator Permit as provided in 14 **DE Admin. Code** 1517 Paraeducator Permit; or

3.1.5 For any of the following causes:

- 3.1.5.1 Obtaining or attempting to obtain a license, certificate, or permit by fraudulent means or through misrepresentation of material facts;
- 3.1.5.2 Falsifying official school records, documents, statistics, or reports;
- 3.1.5.3 Knowingly violating any of the provisions of the state assessment system set forth in 14 **Del.C.** §172;
- 3.1.5.4 Pleading guilty or Nolo Contendere with respect to, or is convicted of, any crime against a child constituting a misdemeanor, except for unlawful sexual contact in the third degree in violation of 11 **Del.C.** §767;
- 3.1.5.5 Pleading guilty or Nolo Contendere with respect to, or is convicted of, possession of a controlled substance or a counterfeit controlled substance classified as such in Schedule I, II, III, IV, or V of 16 **Del.C.** Ch. 47;
- 3.1.5.6 Immorality, incompetence, misconduct in office, wilful neglect of duty, disloyalty, or misconduct involving any cause for suspension or revocation of a license or permit;
- 3.1.5.7 Having a license, certificate, or permit suspended, revoked, or voluntarily surrendered in another jurisdiction for cause which would be grounds for suspension or revocation;
- 3.1.5.8 Pleading guilty or Nolo Contendere with respect to, or is convicted of, any of the following:
 - 3.1.5.8.1 Any crime constituting the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance or counterfeit controlled substance as classified in Schedule I, II, IV, or V of 16 **Del.C.** Ch. 47;
 - 3.1.5.8.2 Any crime constituting a violent felony as defined in 11 **Del.C.** §4201(c);
 - 3.1.5.8.3 Any crime against a child constituting a felony, or unlawful sexual contact in the third degree in violation of in violation of 11 **Del.C.** §767;
 - 3.1.5.8.4 Any crime constituting a felony sexual offense;
 - 3.1.5.8.5 Any crime constituting a felony offense against public administration involving bribery, improper influence, or abuse of office; or
- 3.1.5.9 Committing a sexual offense against a child.

7 DE Reg. 161 (08/01/03)

9 DE Reg. 138 (07/01/05)

12 DE Reg. 1307 (04/01/09)

4.0 Denial of Unfit Applicants

- 4.1 ~~The Department may refuse to issue an Initial License, Continuing License, Advanced License or a Standard or Emergency Certificate and deny a license to an applicant who otherwise meets the requirements for a license because the applicant is unfit.~~
- 4.2 ~~The Department may refuse to issue an Initial License, Continuing License, Advanced License or a Standard or Emergency Certificate and deny a license to an applicant who otherwise meets the requirements for a license because the applicant has engaged in any misconduct or conduct that would be a basis for revocation under 14 **DE Admin. Code** 1514 Revocation, Limitation or Suspension of Licenses.~~

~~**7 DE Reg. 161 (08/01/03)**~~

~~**9 DE Reg. 138 (07/01/05)**~~

~~**12 DE Reg. 1307 (04/01/09)**~~

5.04.0 Right to Hearing, Burden of Proof, and Standards Board Hearing Procedures

- 5.14.1 ~~The Department shall not take action to deny a license under this section or a permit without providing the applicant with written notice of the reasons for denial and with an opportunity for a full and fair hearing before the Standards Board.~~
 - 5.24.1.1 ~~The notice of denial shall be sent by certified mail, return receipt requested to the applicant's last known mailing address and shall give notice that a full and fair hearing may be requested before the Standards Board.~~
- 5.2.1 ~~The applicant shall report any address changes to the Department and the Standards Board.~~
- 5.3 ~~An applicant who is denied an Initial, Continuing, or Advanced License may appeal the decision, and is entitled to a full and fair hearing before the Standards Board.~~
 - 5.3.1 ~~The applicant's request for a hearing before the Standards Board shall be received by the Standards Board's Executive Director within twenty (20) calendar days of the date the denial notice was mailed.~~

- 5.4 ~~In any hearing before the Standards Board to challenge action taken under this regulation, the Standards Board shall have the power to administer oaths, order the taking of depositions, issue subpoenas and compel attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.~~
- 5.54.2 ~~Unless otherwise provided for in this Section, the~~ The burden of proof in a license ~~or permit~~ denial action shall be on ~~the~~ applicant to show by a preponderance of the evidence that he or she should not be denied a license ~~or permit~~ because he or she meets the ~~qualification~~ qualifications for licensure ~~a license or permit~~ pursuant to the applicable laws and regulations ~~or he or she did not engage in misconduct as provided in subsection 3.1.5.~~
- 5.5.1 ~~Provided however, if the denial of the license is on the basis that the applicant is unfit or otherwise committed conduct or misconduct that would be the basis for revocation of a license, the Department shall specify the particular conduct and circumstances giving rise to the denial.~~
- 5.5.1.1 ~~Prior to a hearing for a license denial under Section 4.0, the Department shall provide full disclosure of the basis of the denial.~~
- 5.5.2 ~~Whenever the basis for an action described within this regulation is a guilty plea, a plea of nolo contendere with respect to, or a conviction of a crime, a copy of the record of the plea, nolo contendere or conviction certified by the Clerk of the Court entering the plea, nolo contendere or conviction shall be conclusive evidence thereof.~~
- 5.64.3 ~~Hearings shall be conducted in accordance with the Standard Board's Hearing Procedures and Rules~~ 14 DE Admin. Code 1515 Hearing Procedures and Rules.

9 DE Reg. 138 (07/01/05)

12 DE Reg. 1307 (04/01/09)

19 DE Reg. 496 (12/01/15)

6.0 Revocation in Another State

~~Notwithstanding any other provisions stated herein or in 14 DE Admin. Code 1510, 1511, and 1512, no license or certificate shall be issued to an applicant for an Initial, Continuing or Advanced License or Standard or Emergency Certificate if:~~

- 6.1 ~~There is legal evidence that the applicant is not of good moral character; or~~
- 6.2 ~~The applicant has had a certificate or license revoked in another state for immorality, misconduct in office, incompetence, willful neglect of duty, disloyalty or falsification of credentials.~~

7 DE Reg. 161 (08/01/03)

9 DE Reg. 138 (07/01/05)

12 DE Reg. 1307 (04/01/09)

19 DE Reg. 496 (12/01/15)

22 DE Reg. 478 (12/01/18) (Final)