

# Teaching Standards Board, Professional

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### Chapter 9: Due Process Procedures

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Chapter 9

**DUE PROCESS PROCEDURES**

**Section 1. Authority.** These rules are promulgated by the Wyoming Professional Teaching Standards Board (Board) pursuant to the Wyoming Administrative Procedure Act, W.S. 16-2-101, et.seq., and W.S. 21-2-802.

**Section 2. Definitions.** The definitions set forth in the Wyoming Administrative Procedure Act are herein incorporated by reference.

**Section 3. Application Review Process.**

(a) Upon receipt of an application, the Director shall:

(i) approve the application if it is complete and the applicant meets all requirements;

(ii) request additional information from the applicant if incomplete;

(iii) forward the application to the Assistant Attorney General assigned to the Board for prosecution for review and potential referral to Application Review Committee (ARC) if the application raises a question as to whether denial may be appropriate under Section 3 (c).

(b) Incomplete Applications.

(i) An application is incomplete if it does not include:

(A) educational requirements;

(B) exam scores; or

(C) any other information requested on the application.

(ii) If the applicant fails to submit the requested additional materials within 30 days of the Director's request, the application shall be considered incomplete and shall be returned to the applicant with no License issued.

(iii) If the applicant submits additional materials the Director may either:

(A) approve the application if all requirements are met;

(B) deny, if after 30 days, requirements are not met;

(C) forward the application to the Assistant Attorney General for review and potential referral to ARC if the application raises questions as to whether denial under Section 3 (c) is appropriate.

(I) Applications are first forwarded to the Assistant Attorney General for cursory review. Upon Assistant Attorney General approval, applications are referred to ARC for review and recommendation.

(II) ARC reviews the application and recommends action.

(c) Denial of Applications

(i) Applications may be denied for the following reasons:

(A) lack of required education;

(B) conviction of a felony;

(C) false representation on the application.

(ii) If, after review, ARC recommends denial of an application a preliminary denial letter shall be sent to applicant. The letter shall:

(A) state the basis for the denial including relevant statutes and rules; and

(B) advise the applicant of the right to request reconsideration.

(iii) If the applicant fails to request reconsideration in writing within 30 days of receipt of the preliminary denial, the preliminary denial becomes final.

(iv) If the applicant requests reconsideration within 30 days, a reconsideration conference shall be held with ARC, the applicant, the Director, and the Assistant Attorney General.

(v) Following a reconsideration conference, ARC shall make a recommendation to either issue the License, Permit, or Exception Authorization applied for or deny the application.

(vi) If denied, the applicant must submit a written request for a hearing, within 30 days of the date of the denial letter.

(d) Hearings

(i) A hearing is a formal contested case hearing conducted pursuant to the Wyoming Administrative Procedure Act, Wyo. Stat. Ann. 16-3-101 et seq., following the procedures in Sections 10 through 22 of this Chapter.

(ii) The hearing is to be conducted in the presence of a quorum of the board, with a hearing officer presiding.

(iii) Applicant has the burden of proving that he/she meets the requirements for the License, Permit, or Exception Authorization for which he/she has applied.

#### **Section 4. Information and Complaint.**

(a) Information. If any information concerning a possible violation of the Act or rules is received or obtained by a board member or members of the staff, the Board may, on its own motion, initiate proceedings under the Act and in accordance with the Wyoming Administrative Procedure Act. License, Permit, and Exception Authorization holders will be notified of the proceedings initiated under this section.

(b) Complaint. In order for persons or entities other than the Board to initiate a disciplinary action against a License, Permit, or Exception Authorization holder, a written complaint shall be submitted to the Board office. Nothing in the section shall be construed to prohibit the Board or the Board's staff from filing a written complaint. The written complaint should provide the following information, as may be applicable:

(i) the name and address of the complainant;

(ii) the name, address, and telephone number of the district superintendent, chairman of the board of trustees, or anyone else designated to be the contact person for a district;

(iii) the name, address, and telephone number of the counsel who will represent the district, if any;

(iv) the name, address, and telephone number of the License, Permit, or Exception Authorization holder against whom the charges are made;

(A) the dates of his/her employment by a district, the positions held, and a copy of his/her contract;

(v) the statutory and regulatory grounds alleged to have been violated;

(vi) the specific conduct alleged to constitute the violation;

(vii) any disciplinary action taken by a district or a prior employer based on this or similar conduct;

(viii) any pending criminal charges or convictions entered and copies of any applicable indictment or information, verdict, judgment, and sentence, or other orders entered by the court;

(ix) the remedy being sought from the Professional Teaching Standards Board;

(x) the name, address, and telephone number of all anticipated witnesses as well as the probable subject matter of their testimony; and

(xi) the signature, address, and telephone numbers of the person or persons making the complaint.

### **Section 5. Review of Written Complaint.**

(a) A written complaint shall be referred to the Investigation Committee (IC). If the IC recommends, the Board may hire an independent investigator to conduct the investigation. License, Permit, or Exception Authorization holders will be advised of the investigation, the names of the IC members, and the nature of the complaint.

(i) The IC members shall not take part in the consideration of any contested case.

(ii) Members of the IC shall not by this rule be barred from attending any disciplinary hearing.

**Section 6. Investigations and Board Action.** The IC shall investigate written complaints received by the Board requiring further investigation.

(a) Upon completion of the investigation, the IC shall:

(i) dismiss the complaint if it finds no evidence of incompetency, conviction of a felony after July 1, 1996, immorality and other reprehensible conduct, or gross neglect of duty; or

(ii) prepare an investigative report.

(b) The report shall include:

(A) the findings of the committee;

(B) recommended action; and

- (C) any additional information that is relevant to the report.
- (c) Upon completion of the investigation, the committee may:
  - (i) send the notice required by Section 8;
  - (ii) prepare and file formal petition and notice of hearing with the Board, setting the matter for a contested case hearing;
    - (A) recommend to the board that an advisory letter be issued to the License, Permit, or Exception Authorization holder;
    - (B) recommend to the Board an offer of conditional terms for settlement which may include educational courses;
    - (C) recommend to the Board that the complaint be dismissed.
- (d) The Board may resolve a complaint at any time by:
  - (i) sending an advisory letter to the License, Permit, or Exception Authorization holder;
  - (ii) accepting a voluntary surrender of a License, Permit, or Exception Authorization;
  - (iii) accepting conditional terms for settlement;
  - (iv) dismissing the complaint.

**Section 7. Actions Which May Result in Suspension or Revocation. A**

License, Permit, or Exception Authorization may be suspended or revoked for the reasons stated in W.S. 21-2-802. For purposes of these rules and for clarification of W.S. 21-2-802 (c):

- (a) Incompetency includes, but is not limited to:
  - (i) a judicial declaration of legal incompetence;
  - (ii) inability to teach suitably and adequately.
- (b) Immorality includes, but is not limited to:
  - (i) committing or soliciting any sexual act with a student;

(ii) soliciting, encouraging, or consummating an inappropriate written, verbal, or physical relationship with a student.

(c) Reprehensible conduct includes, but is not limited to:

(i) committing any act of child abuse, including physical, sexual, or verbal abuse;

(ii) engaging in, encouraging, or supporting harassing or discriminatory behavior on the basis of race, gender, sexual orientation, family, social or cultural background, national origin, political or religious beliefs, or disability;

(iii) sharing confidential information concerning student academic and disciplinary records, personal confidences, health and medical information, family status and/or income, assessment/testing results, unless disclosure is required or permitted by law;

(iv) violating other confidentiality agreements required by state or local policy;

(v) providing false information and/or failing to provide all requested information on documents required by the Professional Teaching Standards Board when applying or renewing any License, Exception Authorization, or Permit;

(vi) misuse of public or school-related funds;

(vii) submitting fraudulent requests for reimbursement of expenses or pay;

(viii) co-mingling public or school-related funds with personal funds or checking accounts;

(ix) using school property without approval of the appropriate designated authority;

(x) having a License or Permit disciplined by other jurisdictions;

(xi) assisting a non-educator in the unauthorized practice of teaching;

(xii) failing to report knowledge of conduct which is incompetent, immoral, or reprehensible as defined by these rules, or which demonstrates gross neglect of duty.

(d) Gross neglect of duty includes, but is not limited to:

(i) unreasonably denying students access to varying points of view, or suppressing or distorting subject matter to promote personal bias;

(ii) failing to fulfill professional development requirements;

(e) Being on school premises and/or at a school sponsored activity involving students while under the influence of alcohol, or possessing, using, or consuming illegal or unauthorized drugs;

(f) Breach of contract.

(e) A certified copy of a judgment and sentence or other court order establishing conviction of a felony shall be conclusive proof of the felony conviction.

### **Section 8. Service of Notice and Opportunity to Show Compliance.**

(a) Prior to commencement of a formal hearing, the Board shall give notice by mail to the License, Permit, or Exception Authorization holder of the facts or conduct which warrant intended action. The notice shall give the License, Permit, or Exception Authorization holder an opportunity to show compliance with all lawful requirements for retention of the License or Permit within twenty (20) days of mailing of the notice. Such notice shall be sent to the individual's last known address both by certified mail with return receipt requested and by first class mail.

### **Section 9. Formal Hearing Procedures.**

(a) Formal proceedings for a hearing before the board regarding action against a License, Permit, or Exception Authorization holder shall be commenced by petition and notice of hearing issued by the Board, served in person, or by both certified mail and first class mail sent to the address last known by the Board at least thirty (30) days prior to the date set for the hearing. The petition and notice shall contain at least:

(i) the name and address of the License, Permit, or Exception Authorization holder;

(ii) a statement, in ordinary and concise language, of the nature of the complaint filed with the Board and the facts upon which the complaint is based, as well as the specific statutory provision(s) or the Board rules and regulations involved;

(iii) the time, place, and nature of the hearing;

(iv) a statement the hearing is being held pursuant to the Board's authority under W.S. 21-2-802.

(b) The License, Permit, or Exception Authorization holder shall file an



Answer or Notice of Appearance, which must be received by the Board at least three (3) working days prior to the date set for hearing in the matter or the holder will be in default.

**Section 10. Docket.**

(a) When formal proceedings are initiated, the case shall be assigned a number and entered upon a docket provided for such purpose.

(b) There shall be established a separate file for each docketed case, in which shall be systematically placed all papers, pleadings, documents, transcripts, evidence, and exhibits pertaining thereto, and all such items shall be noted with the docket number assigned and the date of filing.

**Section 11. Continuance.** For good cause shown, extension and continuance may be granted or denied at the discretion of the Board or its chairperson or the hearing officer.

**Section 12. Default.** The Board may enter an order based on the allegations in a petition or denial letter in a case where the License, Permit, or Exception Authorization holder has not answered or appeared in writing three (3) days before the hearing, or in a case where the License, Permit, Exception Authorization holder or applicant or his/her representative did not appear at a scheduled hearing for which they were provided notice.

**Section 13. Hearing Officer.** The Board may appoint a hearing officer to take evidence at the hearing. The Chairperson or a Board member may serve as the hearing officer.

**Section 14. Discovery.** In all formal proceedings before the Board, discovery shall be afforded in accordance with the Wyoming Administrative Procedure Act.

**Section 15. Subpoenas.**

(a) A Board member or its hearing officer may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths.

(b) Service of a subpoena must be made at the expense of the party applying for it and shall be made in the manner provided by law for service of subpoenas in civil actions.

**Section 16. Witnesses.**

(a) All persons testifying at any hearing before the Board shall stand and be administered a standard oath or affirmation.

(b) No testimony will be received from a witness except under oath or affirmation.

(c) The party calling a witness shall bear the costs associated with the witness's appearance.

(d) The Board and hearing officer retain the right and shall have an opportunity to examine any witness upon the conclusion of all testimony offered by a particular witness.

### **Section 17. Representation.**

(a) Any License, Permit, Exception Authorization holder or applicant may represent him/herself or be represented by counsel, provided that such counsel is licensed to practice law in the State of Wyoming, or is associated at the hearing with one or more attorneys licensed to practice law in the State of Wyoming.

(b) In any case before the Board, an appearance in person or the filing of an answer or other pleading shall constitute an appearance of record by an attorney.

(c) Any request for withdrawal from representation by an attorney shall be submitted to the Board in writing.

(d) A representative of the Attorney General's office may present all matters in a contested case on behalf of the IC or ARC.

### **Section 18. Prehearing Conference.**

(a) At a time on or before the day of any hearing, the hearing officer may direct the parties to appear before the Board to consider:

(i) the simplification of the issues;

(ii) the necessity or desirability of amending the pleadings;

(iii) the possibility of obtaining admissions of fact and of documents to avoid unnecessary proof;

(iv) formulating procedures to govern the hearing; or

(v) such other matters as may aid in the disposition of the case.

(b) Such conferences shall be conducted informally. An order will be prepared which recites the actions taken at the conference, amendments allowed,

agreements of the parties and limitations of the issues to those not previously disposed of by admission or agreements of counsel and the parties.

**Section 19. Order of Procedure at Hearing.** The following activities will occur in substantially the following order during the hearing:

- (a) opening announcements are made by the hearing officer, including case name and docket number, the issue(s) to be considered, parties and counsel present, and subpoenas issued;
- (b) witnesses should be identified and sworn;
- (c) opening statements may be made at the discretion of the hearing officer. In cases of License denial, the applicant should go first. In disciplinary cases, the school district or IC should go first;
- (d) presentation of Evidence. The order listed above will be followed with each party, the hearing officer and the Board having the opportunity to cross-examine the witnesses. Rebuttal evidence may be presented;
- (e) exhibits offered in evidence by the applicant or License, Permit, Exception Authorization holder will be marked with the letters of the alphabet. Those offered by the school district or IC will be marked numerically;
- (f) closing arguments may be made at the discretion of the hearing officer. Time may be limited, the order of presentation is as above, and brief rebuttal time may be allowed. The hearing and the evidence are then closed, unless for good cause shown the hearing officer reopens them.

**Section 20. Decisions.**

- (a) Proposed Decisions:
  - (i) At the discretion and direction of the Board, the parties may file proposed findings of fact, conclusions of law, and order after the hearing and before the deadline announced in the hearing's closing announcements.
  - (ii) At the discretion and direction of the Board, the hearing officer shall file proposed findings of fact, conclusions of law, and order.
- (b) Final Decisions. Proposed decisions will be given consideration but are not binding upon the Board. All final decisions will be issued by the Board and be based exclusively upon the evidence in the record and matters officially noticed. All final decisions issued by the Board will be served to all parties by certified mail with return receipt requested.

**Section 21. Judicial Review.** Judicial Review of the Board decision may be taken to the district court having jurisdiction and proper venue in accordance with applicable statutes and the Wyoming Rules of Appellate Procedure.

**Section 22. Transcript in Case of Judicial Review.** In the case of a petition for judicial review to the district court, the petitioner shall either pay and arrange for the transcript of the testimony or reimburse the Board for the cost of the transcript if previously prepared at Board expense.