
Licenses: Denial, Formal Reprimand, Suspension, or Revocation

The Background:

The State Board of Education recently revised its Denial, Formal Reprimand, Suspension, or Revocation Rule. All cases reviewed are acted upon according to the Rule that was in place when the misconduct occurred. Information regarding the State Board’s authority to take licensure actions under each version of the rule follows the recommendations.

The Recommendations:

Board action is required. State Board staff recommends approval of the recommended actions noted below.

- A. George Cook – Voluntary Surrender
- B. Philip Davis – Voluntary Surrender
- C. Ansley Gooden – Suspension, 2 Years
- D. Baron Hill – Formal Reprimand
- E. Erin Laming – Suspension, 18 Months
- F. Walter McCrimmon – Voluntary Surrender*
- G. Dawn Melton – Suspension, 3 Months
- H. Leeona Oszust – Suspension, 1 Year**
- I. Vikki Phillips – Suspension, 3 Months Retroactive
- J. Alice Polonsky – Suspension, 6 Months
- K. Carlos Shaw – Restoration
- L. Joseph Smith – Revocation, Automatic, Permanent
- M. Monrita Tate – Restoration

*Item F is subject to the Board Rule filed on January 25, 2016, and expired on September 4, 2017.

**Item H is subject to the Emergency Board Rule filed on September 5, 2017, and expired on March 4, 2018.

The following information pertains to cases reviewed based on the previous version of the rule in effect from January 25, 2016 through September 4, 2017.

Pursuant to State Board of Education Rule 0520-02-03.09(2), the State Board of Education may revoke, suspend, reprimand formally, or refuse to issue or renew a license for the following reasons:

- (a) Conviction of a felony;

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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)								

The following information pertains to cases reviewed based on the version of the rule filed on March 5, 2018.

Part (1) Definitions and Examples –

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- (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. This shall not be construed to prevent an educator from communication regarding sexual or illicit activities for educational purposes such as in teaching family- life curriculum pursuant to T.C.A. §§ 49-6-1307 et seq. or drug abuse resistance education pursuant to T.C.A. § 49-1-402.

- (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 an inappropriate 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 – Unlawful, unnecessary, and/or 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 subparagraph (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, as determined by the Department of Education.
 - (h) Minor Testing Breach – A breach of test security that does not result in nullification of any test scores, as determined by the Department of Education.
 - (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. Examples include, but are not limited to, conferences, professional development, trainings, and seminars.
 - (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 of the Teacher Code of Ethics as contained in T.C.A. § 49-5-1003.
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- (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.

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Part (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:

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(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;

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(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.

Part (4) Automatic Revocation and Suspension –

(a) Automatic Revocation of License – The State Board of Education shall automatically revoke, without the right to a hearing, the license of an educator for the following:

1. 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 the following offenses listed at T.C.A. § 39-17-417, a sexual offense or a violent sexual offense as defined in T.C.A. § 40-39-202, any offense in title 39, chapter 13, T.C.A. § 39-14-301 and T.C.A. § 39-14-302, T.C.A. § 39- 14-401 and T.C.A. § 39-14-404, T.C.A. § 39-15-401 and T.C.A. § 39-15-402, T.C.A. § 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).

Part (5) Disciplinary Actions -

(a) For the following categories of offenses, the State Board of Education shall impose uniform disciplinary action as detailed below:

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2. Use or possession of alcohol or illegal substances

- (i) An individual holding an educator’s license who is found to be in possession of or consuming, alcohol, or using illegal 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.

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- (iii) An individual holding an educator's license who is found to be in possession of or consuming alcohol or using illegal 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 consuming alcohol or illegal 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 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.
- (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

Possession/Use - On School Premises/Property w/ Children								
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Board Policy 5.500 License Restoration.

Guidelines for Consideration of License Restoration Applications

Restoration after Suspension of License:

A person whose license has been suspended shall have the license restored after the period of suspension has been completed and the person has complied with any terms prescribed by the Board. Proof of such compliance shall be provided to Board counsel. Suspended licenses are subject to expiration and renewal rules of the Board. A suspended license may not be restored if an action against a person’s license is pending in another state.

Restoration after Denial or Revocation of License:

Board Rule 0520-02-03-.09(3) allows a person whose teaching license was denied or revoked to apply for restoration of that license. Before the application is considered, the applicant must show “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.” Applications also may not be considered if an action against a license is pending in another state.

Restoration of a denied or revoked license is discretionary and considered on a case-by-case basis. The burden of proof rests with the applicant. To show that the “cause no longer exists,” an applicant must show why the license should be restored despite the misconduct that resulted in the disciplinary action. An applicant must provide evidence of rehabilitation and fitness to perform the duties authorized by the license sought.

When an application for restoration is received from the Office of Educator Licensing and forwarded to Board counsel, a panel of Board staff reviews the application and the file to make a recommendation regarding whether restoration should be granted, or if additional investigation is necessary. This panel consists of the executive or deputy executive director, counsel to the Board, and at least one other staff member. If the panel decides not to recommend restoration of the license, Board counsel will notify the applicant of the Board's intent and the applicant's right to request a hearing.

If the applicant waives the right to a hearing or does not request a hearing within thirty (30) days of notification, Board counsel will submit the proposed denial of restoration to the Board for roll-call vote at its next regularly scheduled meeting. Counsel will include a proposed order for the Board to approve.

If the applicant requests a hearing within thirty (30) days of notification, then Board counsel will schedule a hearing with an Administrative Law Judge (ALJ) from the Secretary of State's office, sitting on behalf of the Board.

If the ALJ, sitting on behalf of the Board, finds that denial of the restoration application is not warranted, Board counsel will direct the Office of Teacher Licensing (OTL) to restore the applicant's license. The Board may, however, appeal the ALJ's decision at its discretion. The applicant may also appeal the action of the ALJ or the Board to Chancery Court in Davidson County.

The panel of Board staff and/or the Board may consider the following in reviewing restoration applications:

1. Likelihood of present harm or potential for continuing harm to students, parents of students or school personnel.
2. Details of the offense(s) which led to the disciplinary action:
 - a. Terms of any sentence imposed, including probation, community service, etc.;
 - b. Age of the applicant at the time of arrest;
 - c. The relationship between the offense and the duties and responsibilities of the education profession; and
 - d. Likelihood of recurrence (as shown, for example, by lack of remorse or lack or rehabilitative motivation or potential).
3. Attempted concealment of misconduct, including failure to report any criminal charges on an initial license application.
4. Prior misconduct of a similar or related nature (including prior criminal history).
5. Compliance with any terms imposed in a voluntary withdrawal of a license application, voluntary surrender of a license or suspension.
6. Rulings on restoration applications under similar circumstances.*
7. Evidence of rehabilitation relevant to the conduct that resulted in disciplinary action, such as:
 - a. Completion of any sentence imposed, including probation;
 - b. Participation in counseling, self-help support groups, community service;
 - c. Gainful employment subsequent to the conduct; and

- d. Family and community support (shown, for example, through affidavits or letters of character from leaders of organizations, including religious groups).
8. Fitness for practice as an educator:
- a. Continuing education since the discipline was imposed;
 - b. Offers of employment for educational positions; and
 - c. Letters of recommendation for educational positions.

9. Any other relevant factors.

* To assist in deliberations, Board staff shall maintain a list of all restoration requests, along with the following information:

- 1. Grounds for disciplinary action;
- 2. Time elapsed since denial or revocation;
- 3. Supporting material provided by applicant; and
- 4. Whether the application was granted or denied.