

**NEBRASKA DEPARTMENT
OF EDUCATION**

RULE 28

**PROFESSIONAL PRACTICES INVESTIGATIONS, HEARINGS, AND
DETERMINATIONS BY THE STATE BOARD**

**TITLE 92, NEBRASKA ADMINISTRATIVE CODE,
CHAPTER 28**

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**State of Nebraska
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P.O. Box 94987
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TITLE 92 - NEBRASKA DEPARTMENT OF EDUCATION
CHAPTER 28 - PROFESSIONAL PRACTICES INVESTIGATIONS, HEARINGS,
AND DETERMINATIONS BY THE STATE BOARD

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01 General Information

01.01 Statutory Authority. Neb. Rev. Stat. §§ 79-859 to 79-870 provide the basis for the State Board of Education (Board) to revoke or suspend any teacher, administrator, or special services certificate for just cause.

01.02 Scope and Application of this Chapter. This chapter governs investigations and hearings involving complaints against holders of teaching, administrative, or special services certificates issued pursuant to Title 92, Nebraska Administrative Code (NAC), Chapter 21, for alleged violations of standards of professional practices applicable to such certificated individuals as contained in 92 NAC 27. This chapter also governs the reinstatement of a certificate after a specified period of revocation. This chapter is not applicable to noncertificated individuals monitoring instruction in exempt schools under 92 NAC 13.

02 Definitions. As used in this chapter:

02.01 Administrator means any holder of a certificate for administration or supervision issued pursuant to 92 NAC 21.

02.02 Admonishment means a private sanction to a certificate holder that further violations of 92 NAC 27 may result in more serious action, including the suspension or revocation of a certificate. This sanction may be imposed by the Commissioner or the Board.

02.03 Board means the State Board of Education.

02.04 Certificate means a certificate or permit issued pursuant to 92 NAC 21.

02.05 Certificate holder means any holder of a certificate .

02.06 Commissioner means the Nebraska State Commissioner of Education.

02.07 Complainant means any individual(s) or organization(s) filing a complaint with the Commissioner.

02.08 Department means the Nebraska State Department of Education, which is comprised of the Board and the Commissioner.

02.09 Permanent Revocation means a public sanction canceling a certificate holder's certificate for the life of the certificate holder.

02.10 Reinstatement means the approval by the Board to apply for a certificate issued pursuant to 92 NAC 21 after a specified period of

revocation.

02.11 Reprimand means a public sanction criticizing or rebuking a certificate holder for violations of 92 NAC 27. This sanction may be imposed by the Commissioner or the Board.

02.12 Respondent means any individual(s) who is charged in a complaint or petition with allegedly violating standards of professional practices as contained in 92 NAC 27.

02.13 Revocation means a public sanction canceling a certificate for a specified period of time. At the expiration of the revocation period, the former certificate holder may apply for reinstatement in accordance with this chapter. This sanction may be imposed by the Board.

02.14 Special services certificate holder means any person holding a special services certificate issued pursuant to 92 NAC 21.

02.15 Suspension means a public sanction withdrawing the authority of a certificate for a specified period of time. This sanction may be imposed by the Board.

02.16 Teacher means any holder of a certificate.

03 Complaints and Investigations

03.01 Complaint Procedures. Anyone having an interest in, or information about, an alleged violation of the standards of professional practices relating to certificate holders, as contained in 92 NAC 27, may file a signed, written complaint with the Commissioner. The complainant must use the form prescribed by the Board.

03.02 Contents of Complaint. The complaint must contain the following information:

003.02A The full name and address of the complainant;

003.02B The full name and address, if known, of the respondent;

003.02C A concise statement of the facts which the complainant believes constitute a violation of professional practices; and

003.02D The full names and addresses of any witnesses able to testify as to the facts alleged.

03.03 Distribution of Complaint. Within fifteen (15) days of the filing of a complaint, the Commissioner must serve a copy of the complaint on the certificate holder by certified mail, return receipt requested, to the last known address of the person. If service cannot be completed in this manner, it may be accomplished in accordance with state law regarding service of summons.

03.04 Response to Complaint. The certificate holder may, within fifteen (15) days of receipt of the complaint, request in writing the opportunity to informally present a position or defense with respect to the allegations in the complaint. This position or defense may be submitted in writing, or a personal conference with an investigator assigned by the Commissioner may be held if the written request is made within fifteen (15) days of the receipt of the complaint.

03.05 Evaluation and Investigation. Upon receipt of a complaint, the Commissioner or his or her designee must evaluate the complaint to determine if the facts alleged are sufficient to constitute a violation of 92 NAC 27. At his or her discretion, the Commissioner may assign an investigator to evaluate the complaint and may cause an investigation to be made into the circumstances surrounding the complaint.

003.05A It is the obligation and responsibility of the investigator to prepare a report for the consideration of the Commissioner, which report must contain the position or defense of the respondent, if any; identify the basis for jurisdiction; and set forth any legal arguments and authorities that appear applicable to the case. The report must include a recommendation as to whether there exists legally sufficient grounds for further proceedings and a recommendation of one of the following: Dismissal, further inquiry, admonishment, reprimand, or the filing of a petition.

003.05B The respondent must be mailed, or sent by electronic mail, a copy of the investigator's report and must be given twelve (12) days from the date of the mailing of the report to file exceptions with the investigator. After the expiration of this time limit, the investigator must file with the Commissioner a report in accordance with the provisions of section 003.05A of this chapter along with the respondent's exceptions, if any.

03.06 Action by the Commissioner. Following the evaluation and investigation, if any, of the complaint, the Commissioner must take one of the following actions:

003.06A Dismiss the Complaint. Such dismissal may be accompanied by an admonishment or reprimand to the certificate holder, or other action the Commissioner deems appropriate, without a hearing, if the Commissioner determines that:

003.06A1 The alleged violation is not serious enough to warrant suspension or revocation;

003.06A2 No public interest would be served by a formal hearing; and

003.06A3 The certificate holder gives written acceptance of or agreement to the admonishment, reprimand, or other action.

003.06B File a petition pursuant to section 004 of this chapter and 92 NAC 61.

03.07 Voluntary Surrender of Certificate(s). A certificate holder may voluntarily surrender his or her certificate(s) if, in writing, the certificate holder either admits or does not contest the truth of any allegation and waives all proceedings against him or her in connection with holding a certificate. Any such voluntary surrender shall be treated as a permanent revocation.

03.08 Dismissal. Any dismissal of a complaint in accordance with section 003.06A of this chapter shall be deemed to be a final resolution of the matter and is not subject to appeal.

04 Petitions

04.01 Petitions by Commissioner. A petition may be filed by the Commissioner if he or she determines, as a result of a complaint, investigation, or as a result of information that he or she receives independent of a complaint or investigation, that:

004.01A The Board has jurisdiction over the parties and subject matter; and

004.01B Either:

004.01B1 The alleged violation is serious enough to warrant suspension or revocation of respondent's certificate;

004.01B2 The public interest would be served by a formal hearing; or

004.01B3 Respondent does not accept an admonishment or reprimand.

04.02 Filing of the Petition. Each petition must be filed in accordance with 92 NAC 61, except as otherwise provided in this chapter, and be based upon the applicable standards of professional practices as contained in 92 NAC 27 at the time of the alleged violation of such standards by the certificate holder.

04.03 Notice to File Answer. Upon the filing of a petition, the Commissioner must send the respondent by certified mail, return receipt requested, a copy of the petition and a notice that the respondent must file an answer within twenty (20) days after the receipt of such notice. Mailing by certified mail of any notice required under this chapter must be to respondent's last known address.

04.04 Answer. The respondent must file an answer to the petition that conforms with 92 NAC 61.

04.05 Default. If no answer is filed pursuant to the requirements of this chapter within twenty (20) days, the respondent will be in default and will have waived any right to a hearing.

004.05A Upon a default, the Commissioner must file supporting information in the form of affidavits, court records, or other documentation regarding the allegations in the petition. Based upon the petition, pleadings, and filed supporting information, the Board must render a final decision without any hearing or further notice to the respondent.

04.06 Petitions for Reinstatement. Upon the expiration of the specified period of a revocation order, a person may petition the Board for reinstatement of his or her certificate under the applicable provisions of this chapter and 92 NAC 61.

05 Hearings

05.01 Hearing Officer. Upon the filing of an answer by the respondent, a hearing officer will be appointed by the Board President. The hearing officer must conduct a hearing on the petition pursuant to 92 NAC 61.

05.02 Recommendations to the Board. The hearing officer must file recommendations with the Board that include recommended findings of fact, recommended conclusions of law, and a recommended decision. Such recommendations must also include a verbatim transcript of the hearing and a copy of all pleadings and exhibits.

05.03 Rules of Evidence. Notwithstanding any provisions in 92 NAC 61, the hearing will be conducted pursuant to the rules of evidence applicable to the district courts of Nebraska, unless mutually waived by the parties.

06 Board Review and Decision

06.01 Scheduling of Review Hearing. The Board must schedule a hearing for the purpose of reviewing the recommendations received from the hearing officer and notify the parties at least ten (10) days prior to such scheduled hearing.

06.02 Conduct of Review Hearing. The review hearing will be conducted as follows:

006.02A The Board President or any other member designated by the Board to preside will open and close the proceedings, enter the recommendations of the hearing officer into the record, and will rule on all matters, although such rulings may be altered or reversed at the time of such rulings by majority vote of the Board members present for the review hearing.

006.02B The petitioner and respondent will each be given an opportunity to present oral arguments regarding the recommendations. The Board may set time limits for such arguments.

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006.02C The Board may not receive additional evidence and will limit case summaries and oral arguments to matters reflected in the record before it.

06.03 Decision and Order. The Board must enter a decision and order as provided in 92 NAC 61.