

## **CERTIFICATION INVESTIGATIONS' OFFICE**

The purpose of the Certification Investigations' Office is to ensure that individuals who hold a certificate issued by the State Department of Education adhere to the standards of ethical and professional conduct as set forth in Title 92, *Nebraska Administrative Code*, Chapter 27 (Rule 27). Rule 27 sets forth the minimum standards of ethical and professional conduct for all educators holding Nebraska school administrative, teaching, or special services certificates. Title 92, *Nebraska Administrative Code*, Chapter 28 (Rule 28) establishes the procedures for filing complaints and conducting investigations. Rule 28 also establishes the procedures for hearings involving educators holding nonpublic certificates. Title 92, *Nebraska Administrative Code*, Chapter 29 (Rule 29) establishes the procedures for the State Board of Education (Board) to (1) review recommended decisions of a hearing officer or the Professional Practices Commission (PPC), and (2) enter a final order setting forth findings of fact, conclusions of law, and a decision. Rule 29 also establishes procedures for reinstatement of a certificate in those cases where the Board has previously revoked a certificate.

### **THE COMPLAINT PROCESS**

The complaint process is initiated when anyone having an interest in or information about an alleged violation(s) of the standards of Rule 27 files a signed, verified written complaint with the Commissioner of Education against a Nebraska certificate holder. Telephone calls, letters, or other reports to the Commissioner or the Department do not fulfill the formal complaint requirements. However, a complaint may be filed by the Commissioner based upon information reported to him. The party who files the complaint is referred to as the complainant, and the certificate holder who the complaint is filed against is referred to as the respondent.

Once a complaint has been properly filed, the Certification Investigations' Office will contact the Teacher Certification Office to determine whether the respondent holds a Nebraska school certificate. If the respondent does not hold a current Nebraska certificate, the complaint is dismissed for lack of jurisdiction.

The complainant may be contacted to determine if they first attempted to resolve the dispute at a local level. If there has been no attempt to pursue remedies at a local level, the complaint may be dismissed without prejudice to allow the complainant an opportunity to pursue remedies on the local level. This dismissal does not preclude the complainant from refiling if the problem is not resolved.

After it is determined that the respondent holds a current certificate, the Commissioner will evaluate the complaint to determine if the facts alleged are sufficient to constitute a violation of the standards. If there is a reasonable basis to believe that the facts as alleged constitute a violation, then an investigation may be authorized by the Commissioner. In addition, the Commissioner shall serve a copy of the complaint upon the respondent by certified mail within fifteen days of the complaint being filed. It is necessary that the respondent be given notice that a complaint has been filed and an investigation authorized before the investigation is initiated.

The respondent will then have an opportunity to request a personal conference with the investigator. A request for a personal conference must be made in writing and submitted within fifteen days of receipt of the complaint by the respondent. The respondent may file a written response to the complaint at any time prior to the completion of the investigation. The respondent may hire an attorney to act on his/her behalf, but there is no requirement to do so.

## **THE INVESTIGATORY PROCESS**

The initial step of the investigation involves the investigator interviewing the complainant to discuss the allegation(s) made. At this time the complainant can explain, in detail, the facts that relate to the allegation(s) made in the complaint. In addition, the investigator has the opportunity to ask specific questions and gather facts that are legally necessary to prove or disprove the allegation(s). The complainant is also able to identify other individuals that may have firsthand knowledge about the events contained in an allegation.

The investigator will then contact witnesses to determine what information the witnesses have regarding the allegation(s). These witnesses can include any individual identified by either the complainant or the respondent as having relevant information pertaining to the allegation(s). The investigator is looking for individuals who possess firsthand knowledge about the allegation(s). These individuals may be teachers, administrators, other school personnel, law enforcement officials, parents, and students. However, the investigator will not interview a student without first obtaining permission from the parent or guardian. The investigator may also request any written documentation available to support the information given.

When the interviewing process is complete, the investigator will compile all relevant information discovered into a report of investigation. The report of investigation will set forth the allegation(s) in the complaint, the position of the respondent, the facts discovered during the investigation, and an analysis of the legal sufficiency for any disciplinary action. The report is not a public record and will not be released to the public. The report is only made available to the respondent, the investigator, and the Commissioner. In addition, the investigator will not comment on any complaint that may have been filed with the Commissioner or any information discovered during the investigation.

Once completed, the report is submitted to the respondent who then has twelve days to file any exceptions to the report and/or recommendation. The report, plus any exceptions filed by the respondent, is submitted to the Commissioner who will make a decision regarding further action in the matter. The possible actions the Commissioner may take include: 1) recommending that further investigation be conducted, 2) dismissing the complaint because there is insufficient evidence to support the allegation(s), 3) dismissing the complaint because no disciplinary action is warranted, 4) issuing a private admonishment, 5) issuing a public reprimand, or 6) filing a petition for hearing in the matter. If the complaint is dismissed, the matter is closed and no further proceedings will be taken on that matter. The decision by the Commissioner to issue a private admonishment or public reprimand cannot occur unless the respondent agrees to accept such a sanction. If the respondent declines to accept the sanction, the Commissioner may file a petition and have a hearing in the matter.

## **THE HEARING PROCESS FOR PUBLIC CERTIFICATE HOLDERS**

A petition against a public certificate holder is filed with the PPC if the Commissioner determines that a petition is warranted in light of the evidence at the close of an investigation. The petition shall include a caption listing the Commissioner of Education as petitioner, a description of the certificate held by the respondent, a concise statement of the factual allegation(s), and the standard(s) of ethics and conduct, or statute(s) alleged to have been violated by the respondent.

The respondent has twenty-one days upon receipt of the petition to file an answer with the PPC. The answer shall contain: 1) name and address of the respondent, and 2) any specific statements regarding any allegation in the petition that may be in the form of (a) admissions, (b) denials, (c) explanations, (d) mitigating

circumstances, or (e) additional information relevant and of assistance to the ultimate determination of the case. The respondent's failure to file an answer within twenty-one days shall be considered as an admission to the allegations made in the petition and a waiver of the right to a hearing. A default order may be entered and a recommendation made to the Board based upon the record before the PPC.

The Chairperson of the PPC shall appoint seven (7) or more PPC members as a hearing panel when the respondent files an answer. The hearing panel shall handle all preliminary matters, conduct the hearing, and submit a report of the findings of fact, conclusions of law, and a recommendation or decision.

The hearing panel shall set the time and place for a public hearing upon the filing of an answer. All hearings shall be held in Lincoln unless both parties present evidence to the hearing panel that an alternate location would be more convenient. Upon a specific request, the hearing panel may hold a closed hearing if the requesting party can show that needless injury to any individual would occur in a public hearing.

The hearing is conducted like a civil trial in the district court. The parties have the opportunity to call witnesses to testify. Upon application by a party, the hearing panel may issue subpoenas requiring witnesses to appear at a hearing and bring with them any necessary documents. The burden of proof is upon the petitioner to prove by a preponderance of the evidence the allegations made in the petition. Therefore, the petitioner first presents the evidence necessary to meet this burden and the respondent has the opportunity to cross-examine these witnesses. When completed, the respondent then has the opportunity to present his/her evidence, and the petitioner has the opportunity to cross-examine these witnesses. Since the petitioner has the burden of proof, the petitioner has the opportunity to present evidence to rebut any evidence presented by the respondent. At the end of the hearing, each side is given the

opportunity to present a closing argument regarding the evidence.

The hearing panel shall prepare an official record. The record shall include the pleadings, the testimony transcript, exhibits offered, and the hearing panel's final report which includes findings of fact, conclusions of law, and disposition for the case. The parties may obtain a copy of this record.

The PPC may 1) dismiss a petition, 2) issue a private admonishment to the respondent, or 3) issue a public reprimand to the respondent. A PPC report dismissing a petition, issuing a private admonishment, or issuing a public reprimand is a final order. Either party may appeal such a decision to the District Court of Lancaster County within thirty days after adoption. Unlike the action by the Commissioner, the respondent is not given the opportunity to reject a private admonishment or public reprimand issued by the PPC. The only alternative to nonacceptance is an appeal to the District Court.

#### **HEARING PROCESS FOR NONPUBLIC CERTIFICATE HOLDERS**

The procedure for the filing of a petition and a hearing for individuals who hold a nonpublic certificate are slightly different. Title 92, *Nebraska Administrative Code*, Chapter 28 (Rule 28) requires that the Board appoint a hearing officer, who shall not be a regular employee of the Department, to conduct a hearing. The hearing officer performs the same duties and functions as the PPC, except that the decision of the hearing officer is submitted to the Board for determination.

#### **HEARINGS BY THE STATE BOARD OF EDUCATION**

The Board is the only body that can suspend or revoke a certificate. The PPC shall file an official record of the proceedings with the Board in those cases where the PPC recommends a revocation or suspension. The hearing officer in nonpublic

cases shall submit all cases to the Board. Title 92, *Nebraska Administrative Code*, Chapter 29 requires that the Board set the matter for a review hearing and give notice to the parties at least twenty-one days prior to the scheduled review hearing. At the review hearing, the PPC or hearing officer shall be given an opportunity to explain the record and summarize the recommendations. The petitioner and then the respondent have an opportunity to make any statement(s) or argument(s) to the Board. The Board may address questions to any of the individuals appearing, however, no additional evidence shall be received by the Board.

The Board shall then enter an order setting forth findings of fact, conclusions of law, and a decision. The Board is not bound by the PPC's or hearing officer's recommendation in the case. The Board may revoke or suspend a certificate, issue a private admonishment or public reprimand, or dismiss a petition. Any order of suspension or revocation by the Board terminates the employment of the respondent and the Board shall immediately notify the school of the suspension or revocation. All orders by the Board are final. The petitioner or respondent may appeal a final order to the District Court of Lancaster County within thirty days after the adoption of an order by the Board.

Anyone who has questions about the procedures should contact the General Counsel's Office, P.O. Box 94933, Lincoln, NE 68509, [Nde.investigations@nebraska.gov](mailto:Nde.investigations@nebraska.gov).

Information is also available on our website at the following address (case sensitive):

<https://www.education.ne.gov/CC/>

7/2018



## **PROCEDURAL GUIDELINES**

### **CERTIFICATION INVESTIGATIONS**