

OFFICE OF CHIEF ACCOUNTABILITY OFFICER
Summary of State Board of Education Agenda Items
Consent Agenda
November 10, 2022

OFFICE OF TEACHING AND LEADING
DIVISION OF EDUCATOR MISCONDUCT EVALUATIONS

- D. Approval to begin the Administrative Procedures Act Process: To revise Miss. Admin. Code 7 – 3: 14.6, State Board Policy Chapter 14, Rule 14.6 et al., related to Licensure Commission, Discipline Procedures, Hearings and Appeals

Background Information: Rules 14.6, 14.6.1, 14.6.2, 14.6.3, and 14.6.4, currently contain State Board of Education Policies pertaining to the Licensure Commission, Hearings, and Appeals process, which include, but are not limited to, the rules for procedure for disciplinary hearings by the Licensure Commission and the Commission's operations policies. A review of the current State Board Rule 14.6 revealed the presence of certain language that is no longer applicable, practical and/or is erroneous. The Division of Educator Misconduct Evaluations is seeking approval to amend Rule 14.6 to include the following revisions as approved and recommended by the Commission on Teacher and Administrator Education, Certification, and Licensure and Development:

- Striking certain language from Rule 14.6.2(1)(b) and (d)
- correcting citations and language in Rule 14.6.2
- adding language to Rule 14.6.3(a) to include alcohol testing
- striking erroneous language relative to Appeals under Rule 14.6.4(5)
- other minor edits to make language more accurate.

The attached back-up material provides full illustration of the specific changes recommended herein.

Recommendation: Approval

Back-up material attached

State Board Policy Chapter 14, Rules 14.6, 14.6.2, 14.6.3, and 14.6.4

Chapter 14: Certification

Rule 14.6 Licensure Commission, Discipline Procedures, Hearings and Appeals

Rule 14.6.1 Commission on Teacher and Administrator Education, Certification, and Licensure and Development Operations Policy

1. DUTY OF THE COMMISSION

It shall be the purpose and duty of the Commission to make recommendations to the Mississippi Board of Education regarding standards for the certification and licensure and continuing professional development of those who teach or perform tasks of an educational nature in the public schools of Mississippi. The Commission's specific duties are prescribed further in Miss. Code Ann. § 37-3-2(5).

2. MEMBERSHIP OF THE COMMISSION

The Commission shall be composed of fifteen (15) qualified members, with representatives as prescribed in Miss. Code Ann. § 37-3-2(2).

3. APPOINTMENT

Each member of the Commission is appointed by the Mississippi Board of Education after consultation with the State Superintendent of Public Education.

4. TERMS OF OFFICE

The length of a regular term is four (4) years. Upon acceptance of appointment, each member is eligible to serve for two (2) consecutive terms; however, appointment to a second term shall be at the discretion of the Mississippi Board of Education, upon the recommendation of the State Superintendent of Public Education. If a member changes employment or accepts a position that is no longer reflective of the category for which he or she was appointed, that member must resign that position. The Mississippi Board of Education may reassign that member to an open position reflective of their new category. A new member will be appointed to fill the unexpired term. A member of the Commission who is appointed to fill an unexpired term is eligible for appointment to his or her own term of office.

5. OFFICERS and STAFF

- a. The Mississippi Board of Education when making appointments shall designate a Chairperson. The Chairperson shall serve a two (2) year term and shall continue service thereafter until the Mississippi Board of Education designates a new Chairperson, or the Chairperson's membership term expires, whichever occurs first. The Commission may designate a member to serve as presiding officer if the Chairperson is unable to preside.
- b. An appropriate staff member of the Mississippi Department of Education shall be designated and assigned by the State Superintendent of Public Education to serve as Executive Secretary and coordinator for the Commission.
- c. No less than two (2) other appropriate staff members of the Mississippi Department of Education shall be designated and assigned by the State Superintendent of Public Education to serve on the staff of the Commission.

6. MEETINGS

- a. The Commission shall meet in accordance with the requirements prescribed in Miss. Code Ann. § 37-3-2(3).
- b. The Commission shall provide notice of the meetings, which notice shall include the date, time, place, and purpose for the meeting in accordance with Miss. Code Ann. § 25-41-7.
- c. Any member of the Commission may participate in an official meeting of the Commission by teleconference or video means. The public shall have access to the Commission meeting at a location designated in the Notice of Meeting.

7. EXPENSES

Members of the Commission shall be compensated at a rate of per diem as authorized by Miss. Code Ann. § 25-3-69 and be reimbursed for actual and necessary expenses as authorized by Miss. Code Ann. § 25-3-41.

8. AGENDA

- a. The Executive Secretary, in consultation with the Chairperson, shall prepare the agenda which is to be considered by the Commission.
- b. All requests to be placed on the agenda shall be received in writing by the Executive Secretary no later than ten (10) days before a scheduled meeting. Agenda items received after this deadline may be added if approved by a majority vote of the Commission.
- c. The Executive Secretary shall provide the proposed agenda, with supporting documents, to each Commission member no later than eight (8) days prior to a scheduled meeting.
- d. Further distribution of the agenda shall be made to all interested parties, all persons appearing before the Commission, and to the media.

9. MINUTES

- a. The minutes of the Commission shall be prepared by the Executive Secretary. The Executive Secretary may secure such assistance as is necessary for the preparation of the minutes.
- b. All proposed minutes shall be provided to each Commission member within eight (8) days prior to any Commission meeting.
- c. All proposed minutes shall become the Official minutes after adoption by the Commission.

10. CONDUCT OF MEETINGS

- a. The Chairperson or presiding officer shall conduct all meetings in accordance with the recognized rules of procedure and Mississippi law.
- b. Any official action taken by the Commission requires the presence of a quorum, which is defined as a majority of the Commission membership.
- c. A Commission member present may vote for or against any motion, or the member may abstain. An absent member may not vote.

11. RECOMMENDATIONS TO THE STATE BOARD OF EDUCATION

- a. Commission recommendations to the Mississippi Board of Education shall not be changed, revised, or amended prior to forwarding to the Mississippi Board of Education for approval.
- b. Commission recommendations to the Mississippi Board of Education may be presented by the Chairperson of the Commission, or the Executive Secretary or his or her designee, at the appropriate meeting of the Mississippi Board of Education.

12. AD HOC COMMITTEES

Appointment of Commission members and the assignment of Commission staff to an ad hoc committee shall be made by the Chairperson in consultation with the Executive Secretary. Commission members shall participate in sub-committee hearings involving controversies in licensure a minimum of six (6) times per calendar year.

Source: Miss. Code Ann. §§ 25-3-41, 25-3-69, 25-41-7, 37-1-3 and 37-3-2

14.6.2 Disciplinary Process Policy

1. REPORTING AND INVESTIGATIONS

- a. The Office of Educator Misconduct Evaluations is tasked with assisting the Commission in responding to infractions and violations, and in conducting hearings and enforcing the provisions of Miss. Code Ann. §§ 37-3-2 (11), (12), (13), (14) and (15), and violations of the Mississippi Educator Code of Ethics and Standards of Conduct.
- b. Upon receipt of a report of misconduct and/or violations as established in Rule 14.10: Reporting Infractions, the Office of Educator Misconduct Evaluations shall immediately institute an investigation into the allegations of the report. ~~Except for reports of misconduct and/or violations of Miss. Code Ann. § 37-9-57, t~~The Office of Educator Misconduct Evaluations shall have the discretion to request additional information as needed from the reporting party. In the event the reporting party fails to provide said additional information within thirty (30) days of request, the Office of Educator Misconduct Evaluations shall have the authority to dismiss said report due to insufficient information. The Office of Educator Misconduct Evaluations shall have the discretion to extend such window if deemed necessary.
- c. Upon investigation, the Office of Educator Misconduct Evaluations shall have the authority to dismiss any report based on either the sufficiency of local school district response, the severity of the alleged violation or misconduct, or offer settlement of any alleged violation or misconduct, said settlement subject to final approval by the Commission. Such authority of the Office of Educator Misconduct Evaluations is subject to the provisions of this Rule.
- d. The Office of Educator Misconduct Evaluations shall submit any report it has not otherwise disposed of to a Review Committee comprised of three (3) employees of the Mississippi Department of Education not assigned to either the Office of Educator Misconduct Evaluations or the Office of Educator Licensure. ~~Said submission shall occur no later than one hundred twenty (120) days after either receipt of a report or additional requested information. Failure to submit within said timeframe shall result in dismissal of the report.~~ The Office of Educator Misconduct Evaluations, with the assistance of counsel, shall present the report to the Review Committee. The Review Committee shall be tasked with determining if hearing on a report is warranted by the evidence and information provided by the reporting party and/or collected by the Office of Educator Misconduct Evaluations. Upon such a determination supported by a majority vote of the Review Committee, the Office of Educator Misconduct Evaluations shall immediately cause Complaint on the specific allegations of the violation be sworn by affidavit and filed with the Commission.

2. AUTOMATIC SUSPENSIONS-FELONY CONVICTIONS

2. DENIALS/SUSPENSION/REVOCATIONS – FELONY CONVICTIONS

- a. Any report alleging misconduct or violations by a licensee as stated in Miss. Code Ann. §§ 37-3-2(11)(a),(vi) ~~and/or, (vii)(i), (ii), (iii), and (iv) shall may~~ result in the ~~licensee's license being automatically revoked denial or suspension of licensee's license. Upon receipt of such report, supported by appropriate documentation, including by not limited to certified court records and/or criminal history, the Office of Educator Misconduct Evaluations shall inform the Executive Secretary of the Commission. The Executive Secretary shall immediately cause the Educator to be informed of such revocation by way of certified mail.~~

- b. ~~a-~~ Any report alleging misconduct or violations by a licensee as stated in Miss. Code Ann. §§ 37-3-2(11)(b)(a)(i), (ii), (iii), and (iv) shall result in the licensee's license being automatically denied or immediately revoked. Upon receipt of such report, supported by appropriate documentation, including by not limited to certified court records and/or criminal history, the Office of Educator Misconduct Evaluations shall inform the Executive Secretary of the Commission. The Executive Secretary shall immediately cause the Educator to be informed of such denial or revocation by way of certified mail.

3. PROBATION ORDERS

- a. Probation orders of the Commission may include certain requirements or stipulations including, but not limited to, continuing education courses, counseling, community service or outreach, or drug and/or alcohol testing. Failure to abide by said requirements or stipulations shall result in immediate suspension of the license for one (1) year.
- b. For the purposes of a probation order, allegations of misconduct or violation of the Mississippi Educator Code of Ethics and Standards of Conduct while serving probation shall be considered a violation of the probation, resulting in immediate suspension of the licensee's license.

Source: Miss. Code Ann. §§ 37-1-3, 37-3-2, 37-9-57, and 37-61-1

Rule 14.6.3 Rules for Procedure for Disciplinary Hearings by the Licensure Commission

1. All reports of misconduct or violations not previously disposed of by the Office of Educator Misconduct Evaluations and considered by the Review Committee shall be considered a controversy and shall be initially heard in a hearing de novo by the Commission on Teacher and Administrator Education, Certification and Licensure and Development (the Commission), or by a sub-committee established by the Commission and composed of Commission members for the purpose of holding Hearings, or by Hearing Officer as assigned by the Mississippi Attorney General's Office. Controversies heard by Hearing Officer shall be limited to those matters involving discipline pursuant to Miss. Code Ann. §§ 37-3-2(11)(a), (12)(a), 12(d), 12(e), 13(a) and (14)(a).
2. Any complaint seeking the denial of issuance, revocation, or suspension of a certificate/license shall be by sworn affidavit filed with the Commission.
3. Upon receipt of such complaint or of a written appeal from the denial of an application for certification/license, the Executive Secretary, or other designee, of the Commission shall fix a date, time and place for the hearing of the complaint or appeal, and will furnish to the applicant/certificate/license holder by certified mail, whether by the United States Postal Service or other carrier offering an alternative form of delivery providing tracking and/or confirmed receipt, or by any other manner of service authorized by law, a copy of the complaint, if applicable, and notice of the date, time and place for the hearing, which date shall be not less than fifteen (15) days nor more than one hundred twenty (120) days from the confirmed date of the first attempted delivery of such notice, unless otherwise agreed.
4. The Executive Secretary may grant one (1) continuance per party. A written request for the continuance should be sent to the Office of Educator Licensure, no later than five (5) business days prior to the hearing. A request may be granted only for good cause. Any additional continuances are required to be presented by personal appearance before the Commission and may be granted only by the Commission.
5.
 - a. The Office of Educator Misconduct Evaluation may have a representative, in addition to counsel, remain in the hearing room during the entire course of the hearing, even though the representative may testify. The Licensee-party may remain in the hearing room throughout the hearing. The Commission chair, sub-committee chair, or Hearing Officer has authority to control the presence of witnesses in the hearing location.
 - b. Parties appearing at the hearing may be represented by legal counsel, at their own expense, and may produce witnesses and cross examine witnesses. It will be the responsibility of each party to secure the attendance of such witness or witnesses as each party deems necessary or appropriate; and any expense connected with the attendance of such witnesses will be borne by the party responsible for the attendance of the witnesses. Witnesses who are eighteen (18) years of age or younger must be accompanied by a parent or legal guardian to the hearing.

- c. Any request for subpoena to compel attendance of a witness by any party shall be made in writing to the Office of the State Superintendent no less than ten (10) days prior to hearing date and shall include the name of the witness to be compelled and a street address where the witness may be readily found for service of the subpoena. The subpoena may be served in accordance as provided by the Mississippi Rules of Civil Procedure by the requesting party.
6. At least seven (7) days prior to the hearing, the parties shall provide a list containing the name, address, and telephone number of counsel and/or witnesses, and a copy of all exhibits that will be produced at the hearing to the other party or parties. Electronic submission of exhibits is acceptable. All parties are responsible for providing seven copies of all respective exhibits on the date of the hearing. Witness information shall include name, address, phone number, and summary of anticipated testimony.
 7. The Commission, sub-committee or Hearing Officer, to prevent cumulative oral evidence, may require any portion of the evidence to be submitted in the form of transcripts, depositions or affidavits; and in case affidavits are received, an opportunity to present counter-affidavits shall be provided.
 8. The Commission or its sub-committee may, by an affirmative vote of three-fifths of all members present, and pursuant to the Mississippi Open Meetings Act (Miss. Code Ann. § 25-41-7), enter executive session for purposes of any hearing held under these rules. In matters heard by Hearing Officer, the Hearing Officer may declare executive session pursuant to Miss. Code Ann. § 25-41-7.
 9. The Commission, sub-committee, or Hearing Officer shall cause to be made stenographic notes by a certified court reporter of the proceedings, which notes shall **not** be transcribed until and unless an appeal is taken from the decision of the Commission, sub-committee, or Hearing Officer.
 10. In conducting a hearing, the Commission, sub-committee, or Hearing Officer shall not be bound by common law or by statutory rules of evidence or by technical or formal rules of procedure, except those provided herein, but may conduct such hearing in such manner as to best ascertain the rights of the parties; provided, however, hearsay evidence, if admitted, shall not be the sole basis for the determination of facts by the Commission, sub-committee, or Hearing Officer.
 11. The Commission, sub-committee, or Hearing Officer shall make its decision based on the matters presented before it and shall notify all parties by certified mail of its decision and reasons therefore within fifteen (15) days of the conclusion of the hearing. The decision shall specify the date any revocation or suspension of a certificate/license shall be effective.
 12. The decision of the Commission, sub-committee, or Hearing Officer shall be final, unless the aggrieved party appeals to the Mississippi Board of Education pursuant to the procedures of Rule 14.6.4: Appeals.

13. Prior to being scheduled to appear before the Commission, sub-committee, or Hearing Officer, any person who petitions for reinstatement of licensure must file with the Mississippi Department of Education, Office of Educator Licensure a completed Application for Reinstatement including all required documentation. Submission of the completed Application for Reinstatement including all required documentation does not guarantee that the Commission, sub-committee, or Hearing Officer will grant the petition for reinstatement of the educator's license.
14. Reinstatement applicants appearing at the reinstatement hearing may be represented by counsel, at their own expense, and may produce witnesses and cross-examine witnesses. It will be the responsibility of each party to secure the attendance of such witness or witnesses, as each party deems necessary or appropriate, and any expense connected with the attendance of such witnesses will be borne by the party responsible for the attendance of the witnesses. The Commission, subcommittee, or Hearing Officer will consider all evidence presented at the reinstatement hearing.

Source: Miss. Code Ann. §§ 25-41-7, 37-1-3, and 37-3-2 (Revised 7/2017)

Rule 14.6.4 Appeals

1. The aggrieved party appealing any decision rendered by the Commission on Teacher and Administrator Education, Certification and Licensure and Development, a sub-committee thereof, or Hearing Officer pursuant to Miss. Code Ann. § 37-3-2, may submit a written notice of appeal to the Executive Secretary of the Mississippi Board of Education within ten (10) days of receipt of the subject decision.
2. The notice of appeal should state with particularity the matters which, in the opinion of the Appellant, have been overlooked or mistakenly conceived in the decision by the Commission, sub-committee, or Hearing Officer. An appeal to the Mississippi Board of Education is not intended as an opportunity for rearguing the entire case.
3. The Mississippi Board of Education will consider the appeal at a regularly scheduled meeting within sixty (60) days following the perfection of the appeal unless an alternative scheduling is agreed to by the parties. Such appeal will be on the record previously made before the Commission, sub-committee, or Hearing Officer, and may be supplemented by a briefing of the issues by the parties. The Board may, at its discretion, afford the parties an opportunity to present oral presentations and respond to questions concerning the appeal. Such presentations shall not exceed fifteen (15) minutes per party. Failure by the appealing party to perfect the appeal within thirty (30) days of the filing of the notice of the appeal shall be dismissed.
4. The Mississippi Board of Education may affirm, reverse, or remand with instructions, the decision of the Commission, its sub-committee, or Hearing Officer. The Mississippi Board of Education shall not disturb the decision without a finding the decision was not supported by substantial evidence, was arbitrary and capricious, was not within the authority of the Commission, and/or violated a statutory or constitutional right of the Appellant.
5. The decision of the Mississippi Board of Education shall be final. An aggrieved party may appeal unless the aggrieved party appeals to the Chancery Court of the First Judicial District of Hinds County, Mississippi. An appeal from the action of the Mississippi Board of Education shall be filed in the Chancery Court of the First Judicial District of Hinds County, Mississippi, within thirty (30) days after notification of the action by the Mississippi Board of Education is mailed or served in accordance with Miss. Code Ann. § 37-3-2.

Source: Miss. Code Ann. §§ 25-41-7, 37-1-3, and 37-3-2