

OFFICE OF QUALITY PROFESSIONALS AND SPECIAL SCHOOLS
Summary of State Board of Education Agenda Items
June 20-21, 2013

OFFICE OF EDUCATOR LICENSURE

27. Approval to Begin the Administrative Procedures Act process: Approval of Revisions to State Board Policy 1706, Commission, Hearings and Appeals

Background Information:

The Mississippi Code of 1972 Annotated (Revised 1996), Section 37-3-2 (15) authorizes the Commission on Teacher and Administrator Education, Licensure and Development (the Commission), to promulgate procedures for certification hearings delineated under section 37-3-2 of the Code.

The Commission reviewed the Rules of Procedure Governing Disciplinary Proceedings of the Commission on Teacher and Administrator Education, Certification and Licensure and Development during its November Retreat. This review was due to the adoption of the Educator Code of Ethics, increased reporting of violations by school districts and the establishment of the Division of Educator Misconduct within the Office of Educator Licensure. The Commission is requesting several updates to the existing policy to assist the Division of Educator Misconduct.

The State Board of Education (SBE) approved the updates to Policy 1706 on April 19, 2013. However, the Governor signed technical amendments to Section 37-3-2 that require further updates to two of the rules in the policy. The SBE is asked to review and approve the newly requested updates to align with legislation that becomes effective July 1, 2013.

Recommendation: Approval

Back-up material attached

Title 7: Education K-12
Part 3: Policy 1706 Commission, Hearings and Appeals

1. The aggrieved party appealing a decision rendered by the Commission on Teacher and Administrator Education, Certification and Licensure and Development or its subcommittee pursuant to Section 37-3-2, Mississippi Code of 1972 Annotated, as amended, may submit a written notice of appeal to the Executive Secretary of the Mississippi Board of Education within ten days of the decision of the Commission or its subcommittee.
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 or its subcommittee. 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 the next regularly scheduled meeting after the transcript of proceedings is filed with the Executive Secretary. Such appeal will be on the record previously made before the Commission or its subcommittee, and the Board may, at its discretion, afford the aggrieved party the opportunity to appear before the Board to make an oral presentation and respond to questions concerning the appeal. Said presentation will be limited to fifteen (15) minutes.
4. The Mississippi Board of Education may affirm, reverse, or remand with instructions, the decision of the Commission or its subcommittee. The decision of the Mississippi Board of Education shall be final.

Source: *Mississippi Code of 1972 Annotated* § 37-3-2, as amended by 1997 Miss. Laws, Ch. 545, SB 2512

Rules for Procedure for Disciplinary Hearings by the Licensure Commission

1. All controversies involving the issuance, revocation, suspension or any change whatsoever in the certification/license of an educator required to hold a certificate/license 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.
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

4. The Executive Secretary may grant one continuance per party. A written request for the continuance should be sent to the Office of Educator Licensure, *no later than 48 hours prior to the hearing*. Any additional continuances are required to be presented by personal appearance before the Commission and may be granted only by the Commission.
5. 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 born by the party responsible for the attendance of the witnesses. Witnesses who are 18 years of age or younger must be accompanied by a parent or legal guardian to the hearing.
6. At least five (5) days prior to the hearing, parties represented by counsel and/or producing witnesses will provide a list containing the name, address, and telephone number of counsel and/or witnesses, and seven copies of all exhibits that will be produced at the hearing, to the other party or parties and to the Commission.
7. The Commission or its sub-committee, in order to prevent cumulative oral evidence, may require any portion of the evidence to be submitted in the form of 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 (MS Code 25-41-7), enter into executive session for purposes of any hearing held under these rules.
9. The Commission or the sub-committee 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 or sub-committee.
10. In conducting a hearing, the Commission or its sub-committee 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 or its sub-committee.
11. The Commission or its sub-committee shall make its decision on the basis of 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 or its sub-committee shall be final, unless the aggrieved party appeals to the State Board of Education within ten (10) days of the decision of the Commission or its sub-committee. The appeal shall be on the record previously made before the Commission or its sub-committee, unless otherwise provided by rules and regulations adopted by the State Board of Education.
13. An appeal from the action of the State 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 State Board of Education is mailed or served in accordance with 37-3-2, Mississippi Code of 1972.
14. A person whose license has been suspended on any grounds except criminal grounds may petition for reinstatement of the license after one (1) year from the date of suspension, or after one-half (1/2) of the suspended time has lapsed, whichever is greater. A license suspended on criminal grounds may be reinstated upon petition to the commission filed after expiration of the sentence and parole or probationary period imposed upon the conviction as evidenced by a certified court order submitted by the petitioner.
15. A revoked license may be reinstated upon satisfactory showing of evidence of rehabilitation. The commission shall require all who petition for reinstatement to furnish evidence satisfactory to the commission of good character, good mental, emotional and physical health and such other evidence as the commission may deem necessary to establish the petitioner's rehabilitation and fitness to perform the duties authorized by the license.
16. A person may voluntarily surrender a license. The surrender of such license may result in the commission recommending any of the above penalties without the necessity of a hearing. However, any such license which has voluntarily been surrendered by a licensed employee may be reinstated by a unanimous vote of all members of the commission.
17. Prior to being scheduled to appear before the Commission, or its subcommittee, any person who petitions for reinstatement of licensure must file with the 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, or its subcommittee, will grant the petition for reinstatement of the educator's license.
18. 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 born by the party responsible for the attendance of the witnesses. The Commission, or its subcommittee, will consider all evidence presented at the reinstatement hearing.

Source: *Mississippi Code Annotated* § 37-3-2 (Rev. 2013)

Title 7: Education K-12
Part 3: Policy 1706 Commission, Hearings and Appeals

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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, or by any other manner of service authorized by law, a copy of the complaint and notice of the date, time and place for the hearing, which date shall be not less than fifteen (15) days nor more than forty-five (45) days from the date of such notice, unless otherwise agreed.

4. The Executive Secretary may grant one continuance per party. A written request for the continuance should be sent to the Office of Educator Licensure, *no later than 48 hours prior to the hearing*. Any additional continuances are required to be presented by personal appearance before the Commission and may be granted only by the Commission.
5. 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 born by the party responsible for the attendance of the witnesses. Witnesses who are 18 years of age or younger must be accompanied by a parent or legal guardian to the hearing.
6. At least five (5) days prior to the hearing, parties represented by counsel and/or producing witnesses will provide a list containing the name, address, and telephone number of counsel and/or witnesses, and seven copies of all exhibits that will be produced at the hearing, to the other party or parties and to the Commission.
7. The Commission or its sub-committee, in order to prevent cumulative oral evidence, may require any portion of the evidence to be submitted in the form of 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 (MS Code 25-41-7), enter into executive session for purposes of any hearing held under these rules.
9. The Commission or the sub-committee 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 or sub-committee.
10. In conducting a hearing, the Commission or its sub-committee 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 or its sub-committee.
11. The Commission or its sub-committee shall make its decision on the basis of 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.

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14. A person whose license has been ~~suspended~~ revoked or surrendered on any grounds except criminal grounds may petition for reinstatement of the license after one (1) year from the date of ~~suspension~~ revocation or surrender, or after one-half (1/2) of the ~~suspended~~ revoked or surrendered time has lapsed, whichever is greater. A person whose license has been suspended on any grounds or violations under Section 37-3-2 (12) of the MS Code, Annotated as Amended, may be reinstated automatically or approved for a reinstatement hearing, upon submission of a written request to the commission. A license suspended, revoked or surrendered on criminal grounds may be reinstated upon petition to the commission filed after expiration of the sentence and parole or probationary period imposed upon the conviction as evidenced by a certified court order submitted by the petitioner.
15. A revoked, suspended or surrendered license may be reinstated upon satisfactory showing of evidence of rehabilitation. The commission shall require all who petition for reinstatement to furnish evidence satisfactory to the commission of good character, good mental, emotional and physical health and such other evidence as the commission may deem necessary to establish the petitioner's rehabilitation and fitness to perform the duties authorized by the license.
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Source: *Mississippi Code Annotated* § 37-3-2 (Rev. 2013)