

Readopt with amendment Ed 511, effective 11-9-18 (Document #12661), to read as follows:

PART Ed 511 INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS

Ed 511.01 Complaints, Cases, and Investigations.

(a) All complaints which allege possible educator misconduct or could involve possible educator misconduct shall be reviewed by the department.

(b) After the complaint is reviewed, if the department determines that a possible violation of the code of conduct has occurred, the department shall open a case with an assigned number.

(c) In reviewing the case, if the department determines by preponderance of the evidence that a violation of the code of conduct has occurred, the case shall become an investigation at which point the credential holder shall be placed under investigation, with the following conditions:

(1) Credential holders who are placed under investigation shall be notified in writing, via certified mail, that an investigation has been opened, the nature of the allegation, and a summation of the facts within 15 days of the initiation of the investigation;

(2) Once under investigation, a credential holder who surrenders their credential shall be deemed to be revoked;

(3) The credential status of credential holders who are placed under investigation shall be valid, except for credential holders who are subject to immediate suspension pursuant to Ed 511.05; and

(4) A case that has not become an investigation within 90 days shall be closed.

(d) The credential holder's current superintendent shall be notified in writing by the department that an investigation has been opened, and when it is closed, unless the department determines that the notification might compromise the investigation.

(e) Evaluations of complaints, cases, and investigations into allegations of educator misconduct, as defined in the code of conduct, shall not constitute a disciplinary hearing and shall not constitute a finding of misconduct against a credential holder.

(f) Investigations shall be conducted by department personnel, except if the department determines that there is a need to contract with an independent investigator or needs to conduct the investigation in cooperation with another state or federal agency.

(g) The department shall make every attempt to:

(1) Obtain any and all documentation which might be relevant to the investigation; and

(2) Interview all individuals who may have relevant information which pertains to the investigation including, but not limited to:

a. Parents or guardians;

b. Students, with permission from the parent or guardian if they are under 18;

c. The credential holder;

d. Administration; and

e. Other educational personnel, to include uncredentialed staff.

(h) Once the investigation is complete, the department shall produce a report to inform the credential holder of the findings in one of the following manners:

- (1) The department shall create a report which documents the results of the investigation; or
- (2) The department shall adopt the factual basis of the school district's independent investigative report or law enforcement's investigative report to fulfill the requirement of this subsection.

(i) If the department adopts the factual basis in (h)(2) above, it shall provide a summary statement to the credential holder informing the individual that it has adopted the factual basis of the independent report, and how those facts substantiate a violation of the code of conduct.

(j) If the investigation finds that the credential holder did not violate the code of conduct, the credential holder shall be notified in writing and the investigation closed within 15 days of the termination of the investigation.

Ed 511.02 Post Investigation Procedures.

(a) If the investigation supports a finding that the credential holder violated the code of conduct, the department shall issue a written notice to the credential holder containing:

- (1) A summation of the findings of the investigation, which may include incorporation of other reports as necessary; and
- (2) How they support the proposed sanction, and propose a form of discipline as follows:
 - a. No discipline warranted;
 - b. Reprimand, which shall include a provision to petition the reprimand to be removed from the credential holder's file after a specified period of time;
 - c. Suspension;
 - d. Nonrenewal; or
 - e. Revocation.

(b) The department shall determine the sanctions to be imposed after considering the presence of aggravating or mitigating circumstances as specified in (d) and (e) below.

(c) The following shall be considered aggravating circumstances:

- (1) The seriousness of the offense;
- (2) The credential holder's prior disciplinary record;
- (3) Potential risk of harm to children, public health, and safety; and
- (4) The purpose of the rule violated.

(d) The following shall be considered mitigating circumstances:

- (1) Absence of a prior disciplinary record;
- (2) The credential holder's acknowledgment of wrongdoing; and

(3) The purpose of the rule or statute violated.

(e) If no disciplinary sanction is proposed, the department shall notify the credential holder in writing that there was a finding but no disciplinary sanction, and the investigation shall be closed.

(f) Cases and investigations, inclusive of the department’s investigatory reports, school district reports, law enforcement reports, and all other information gathered during the course of reviewing a case and an investigation shall be confidential, with the following exceptions:

(1) The report shall be made available to the credential holder and their attorney in any adjudicatory proceedings resulting from this section; and

(2) If the department determines it is appropriate after consultation with the AG’s office, the department shall provide information gathered in the disciplinary investigation to the following:

a. Pursuant to a subpoena or warrant from a law enforcement agency when the agency is conducting a criminal investigation of the credential holder;

b. The state board if the matter is appealed to the state board; and

c. A certifying agency of another jurisdiction for:

1. Purposes of certification of the credential holder in the other jurisdiction; or

2. An investigation of the credential holder by the other jurisdiction when:

(i) The credential holder was the subject of an investigation under Ed 511; or

(ii) Disciplinary action was taken against the credential holder by the board pursuant to Ed 511.

Ed 511.03 Reprimand, Suspension, Nonrenewal, or Revocation.

(a) At any time, the credential holder and the department may agree to a proposed disciplinary finding in which case no disciplinary hearing shall be held.

(b) The credential holder and the department shall reduce their agreement to a writing which sets out the terms of the discipline and the section of the code of conduct relevant to the discipline.

(c) The credential holder shall receive a copy of the agreement in (b) above, and a copy shall be placed in the credential holder’s electronic credentialing file at the department once signed.

(d) The department shall notify the credential holder’s superintendent of the discipline that was imposed.

(e) Any credential holder whose credential is revoked, nonrenewed due to disciplinary reasons, or who voluntarily agrees to a revocation shall be prohibited from applying or reapplying for any other credential issued by the state board.

(f) Any suspension or revocation shall be included in the department’s “revoked or suspended educator list,” which is available on the department’s website and provided to school districts.

(g) Any suspension, nonrenewal due to disciplinary reasons, or revocation shall be entered into the National Association of State Director of Teacher Education and Certification (NASDTEC).

(h) Once the suspension period has been served, the credential holder’s name shall be removed from the “revoked or suspended educator list,” but the record of said suspension shall remain in the credential holder’s electronic credentialing file at the department.

Ed 511.04 Disciplinary Hearings.

(a) A credential holder shall have 15 days from the receipt of the written proposed discipline to do one of the following:

(1) Accept the proposed discipline by signing and returning to the department the proposed discipline letter; or

(2) If the credential holder does not agree with the proposed disciplinary finding, request in writing to the department an adjudicatory hearing, which shall commence pursuant to Ed 200.

(b) If after 15 days the credential holder has not completed one of the actions in (a) above, the department shall impose the proposed discipline.

(c) The credential holder may file for an appeal pursuant to Ed 213.

Ed 511.05 Status of a Credential Pending Completion of Disciplinary Proceeding.

(a) When the department receives information indicating that a credential holder has been arrested for one of the offenses enumerated in RSA 189:13-a, V, the credential holder’s credential and any and all endorsements shall, be immediately suspended pursuant to RSA 541-A:30, III, unless the commissioner determines otherwise after reviewing the considerations enumerated in Ed 511.02(c)-(d).

(b) The department shall notify the credential holder and the employing school district that the credential holder’s credential has been suspended pending an investigation by the department.

(c) An adjudicatory hearing shall commence within 10 working days after the suspension of the credential in accordance with RSA 541-A:30, III, unless expressly waived by the credential holder.

Ed 511.06 Grounds for Reinstatement After Suspension. A credential which has been suspended shall be reinstated if:

(a) The period of the suspension has passed and any and all terms and conditions regarding possible reinstatement have been satisfied; or

(b) A credential holder whose credential has been suspended demonstrates by clear and convincing evidence that the credential holder has corrected the deficiencies or conduct which led to the original suspension.

Ed 511.07 Request for Early Reinstatement.

(a) A credential holder who seeks early reinstatement of their teaching credential, prior to the terms of the imposed discipline, shall submit a written request to the state board for review, with consideration for such a request occurring at the next regularly scheduled meeting. The credential holder may appear in front of the state board in support of their request.

(b) Such written request shall include evidence that the credential holder has corrected the deficiencies or conduct which led to the original disciplinary action.

(c) The state board’s determination shall be subject to the appeal process for state board decisions pursuant to Ed 200.