

CHAPTER 114
FORMERLY
SENATE BILL NO. 149

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO LICENSURE AND CERTIFICATION OF NONPUBLIC SCHOOL TEACHERS, SPECIALISTS AND ADMINISTRATORS, AND PUBLIC EDUCATION EMPLOYEES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 121(b)(4), Title 14 of the Delaware Code by deleting the same in its entirety and substituting in lieu thereof the following:

“(4) The Department, through the Associate Secretary, Administration and Innovation, may deny an applicant's application for a license for failure to meet the qualifications for a license. The Department may further deny a license to an applicant who otherwise meets the requirements of this subsection for any of the causes enumerated in § 1218(a) or (b) of this title. The Department shall not take action to deny a license under this subsection without providing the applicant with written notice of the reasons for denial and with an opportunity for a full and fair hearing before the Secretary of Education or designee. The burden of proof in a license denial action is on the applicant to show by a preponderance of the evidence that the applicant should not be denied a license because that applicant meets the qualifications for licensure pursuant to the applicable laws and regulations.”

Section 2. Amend § 121(b)(5), Title 14 of the Delaware Code by deleting the same in its entirety and substituting in lieu thereof the following:

“(5)a. Except as otherwise provided in subsection b. and c., the Department, through the Associate Secretary, Administration and Innovation, may suspend, revoke or limit a license issued under the provisions of this subsection for any of the causes set forth in § 1218(a) of this title.

b. The Department, through the Associate Secretary, Administration and Innovation, shall revoke a license issued under the provisions of this subsection for any of the causes set forth in § 1218(b) of this title.

c. The Department, through the Associate Secretary, Administration and Innovation, may automatically suspend any license without a prior hearing if the license holder is arrested or indicted by a grand jury for a violent felony as defined in § 4201(c) of Title 11. A suspension under this paragraph is effective on the date of the arrest or grand jury indictment. The provisions of § 1218(c) of this title shall apply to any automatic suspension under this subsection with the exception that the license holder may request an expedited hearing before the Secretary of Education within 20 calendar days from the date the notice of the Department's decision to temporarily suspend the license holder's license was mailed. In the event that the license holder requests an expedited hearing in a timely manner, the Secretary of Education or designee shall convene a hearing within 90 days of the receipt of such a request. An order of suspension under this subsection shall remain in effect until the final order of the Associate Secretary, Administration and Innovation or the Secretary of Education becomes effective.

d. The Department, through the Associate Secretary, Administration and Innovation, may take an action under paragraph a., b., or c. of this subsection on the basis of substantially

comparable conduct occurring in a jurisdiction outside this state or occurring before a person applies for or receives any license.

e. Any license holder who has pled guilty or nolo contendere to, or has been convicted of, a crime in a court of law which would constitute grounds for revocation, suspension or limitation of license under § 1218(a) or (b) of this title or has been arrested or indicted by a grand jury for a violent felony as defined in § 4201(c) of Title 11, shall notify the Department of such action in writing within 20 days of such conviction, arrest or indictment, whether or not a sentence has been imposed. Failure to do so shall be grounds on which the Department may limit, suspend, or revoke the holder's license.

f. Any license holder who has surrendered an educator license or any professional license or certificate or who has had such a license or certificate revoked, suspended, or limited in any jurisdiction or by any agency shall notify the Department of such action in writing within 30 days of such action. Failure to do so shall be grounds on which the Department may limit, suspend or revoke the holder's license.

g. The Department may investigate any information received about a person that reasonably appears to be the basis for action under paragraphs a. through c. of this subsection. The Department shall not investigate anonymous complaints. The Department shall give written notice within a reasonable period of time to a license holder of any investigation initiated hereunder to the license holder's last known address. All information obtained during an investigation is confidential and shall not be considered public records under Delaware's Freedom of Information Act [Chapter 100 of Title 29]. The Associate Secretary, Administration and Innovation, shall review the results of each investigation and shall determine whether the results warrant initiating action under paragraph a., b. or c. of this subsection

h. Whenever the basis of for action under paragraph a. or b. of this subsection is a guilty plea, nolo contendere with respect to, or a conviction of a crime, a copy of the record of the plea, nolo contendere or conviction certified by the clerk of the court entering the plea, nolo contendere or conviction shall be conclusive evidence thereof.

i. The Department, through the Associate Secretary, Administration and Innovation, may enter a consent agreement with a person against whom action is being taken under paragraph a., b. or c. of this subsection.

j. The Associate Secretary, Administration and Innovation, shall not take action against a person under paragraph a. or b. of this subsection without providing the person with written notice of the charges and with an opportunity for a full and fair hearing before the Secretary of Education. Notice shall be sent to the person's last known address. The license holder shall have 30 calendar days from the date the notice of the charges was mailed to make a written request for a hearing. Unless otherwise provided for in this subsection, the burden of proof in a license disciplinary action shall be on the agency taking official action to establish by preponderance of the evidence that the license holder has engaged in misconduct as defined by subsections a. and b. of this subsection or otherwise has failed to comply with the applicable laws and regulations relating to the retention of the license. If no written request for a hearing is received by the Secretary of Education, the license holder's license shall be deemed to be revoked, suspended, or limited and the holder shall be so notified.

k. A license may be suspended for a period of time not to exceed 5 years. The license may be reinstated by the Department, upon written request, with verification that all requirements for license renewal have been satisfied. If the license expired during the period of suspension, the holder of the former license may reapply for the same tier license that was suspended but shall meet the license requirements that are in effect at the time of the application for the license.

l. If any of the causes listed in § 1218(a) or (b) of this title are determined, the Associate Secretary, Administration and Innovation or the Secretary of Education after a hearing, may put limitations on a license that may include but are not limited to:

(A) Restrictions on the ages of students with whom the license holder may work;

(B) Additional supervision requirements; or

(C) Education, counseling, or psychiatric examination requirements.

m. If a decision of license limitation, suspension or revocation is based on paragraph (a)(4), (a)(5), or (b)(1) of § 1218 of this title, and if the plea or conviction is overturned and there is no subsequent proceeding leading to a plea or conviction, the individual whose license is limited, suspended or revoked may file a written request for reinstatement, including documentation of the final status of the judicial proceeding, and the license shall be reinstated.

n. An individual whose license has been revoked under paragraph a. of this subsection may petition the Department for reinstatement of the license not sooner than 5 years from the date of revocation. The individual shall submit to the Department a written petition showing credible evidence, by affidavit or otherwise, of the factors set forth in paragraph (A) of this subsection.

(A) The Department shall consider all of the following criteria in evaluating a petition for reinstatement and shall only grant such a petition if it is in the best interest of the public schools of the State:

i. The nature and circumstances of the individual's original misconduct;

ii. The individual's subsequent conduct and rehabilitation;

iii. The individual's present character; and

iv. The individual's present qualifications and competence to engage in the practice of instruction, administration or other related professional support services.

(B) A former license holder is entitled to a full and fair hearing before the Secretary of Education or designee to challenge a denial of reinstatement pursuant to this subsection.

(C) A license revoked under paragraph b. of this subsection or suspended under paragraph c. of this subsection may not be reinstated under this section. A license revoked under paragraph (b)(1) of § 1218 of this title may only be reinstated pursuant to paragraph n. of this subsection and a license suspended under paragraph c. of this subsection may only be reinstated pursuant to paragraph (c)(5) of § 1218 of this title or after a hearing before the Secretary of Education or designee.

o. All communications between a license holder and the Department provided for in this subsection shall be by certified mail, return receipt requested.”

Section 3. Amend § 121(c)(5), Title 14 of the Delaware Code by deleting the same in its entirety and substituting in lieu thereof the following:

“(5) The Department, through the Associate Secretary, Administration and Innovation, may deny an applicant's application for a license for failure to meet the qualifications for a license. The Department may further deny a license to an applicant who otherwise meets the requirements of this subsection for any of the causes enumerated in § 1218(a) or (b) of this title. The Department shall not take action to deny a license under this subsection without providing the applicant with written notice of the reasons for denial and with an opportunity for a full and fair hearing before the Secretary of Education or designee. The burden of proof in a license denial action is on the applicant to show by a preponderance of the evidence that the applicant should not be denied a license because that applicant meets the qualifications for licensure pursuant to the applicable laws and regulations.”

Section 4. Amend § 121(c)(6), Title 14 of the Delaware Code by deleting the same in its entirety and substituting in lieu thereof the following:

“(6)a. Except as otherwise provided in subsection b. and c., the Department, through the Associate Secretary, Administration and Innovation, may suspend, revoke or limit a license issued under the provisions of this subsection for any of the causes set forth in § 1218(a) of this title.

b. The Department, through the Associate Secretary, Administration and Innovation, shall revoke a license issued under the provisions of this subsection for any of the causes set forth in § 1218(b) of this title.

c. The Department, through the Associate Secretary, Administration and Innovation, may automatically suspend any license without a prior hearing if the license holder is arrested or indicted by a grand jury for a violent felony as defined in § 4201(c) of Title 11. A suspension under this paragraph is effective on the date of the arrest or grand jury indictment. The provisions of § 1218(c) of this title shall apply to any automatic suspension under this subsection with the exception that the license holder may request an expedited hearing before the Secretary of Education within 20 calendar days from the date the notice of the Department’s decision to temporarily suspend the license holder's license was mailed. In the event that the license holder requests an expedited hearing in a timely manner, the Secretary of Education or designee shall convene a hearing within 90 days of the receipt of such a request. An order of suspension under this subsection shall remain in effect until the final order of the Associate Secretary, Administration and Innovation or the Secretary of Education becomes effective.

d. The Department, through the Associate Secretary, Administration and Innovation, may take an action under paragraph a., b., or c. of this subsection on the basis of substantially comparable conduct occurring in a jurisdiction outside this state or occurring before a person applies for or receives any license.

e. Any license holder who has pled guilty or nolo contendere to, or has been convicted of, a crime in a court of law which would constitute grounds for revocation, suspension or limitation of license under § 1218(a) or (b) of this title or has been arrested or indicted by a grand jury for a violent felony as defined in § 4201(c) of Title 11, shall notify

the Department of such action in writing within 20 days of such conviction, arrest or indictment, whether or not a sentence has been imposed. Failure to do so shall be grounds on which the Department may limit, suspend, or revoke the holder's license.

f. Any license holder who has surrendered an educator license or any professional license or certificate or who has had such a license or certificate revoked, suspended, or limited in any jurisdiction or by any agency shall notify the Department of such action in writing within 30 days of such action. Failure to do so shall be grounds on which the Department may limit, suspend or revoke the holder's license.

g. The Department may investigate any information received about a person that reasonably appears to be the basis for action under paragraphs a. through c. of this subsection. The Department shall not investigate anonymous complaints. The Department shall give written notice within a reasonable period of time to a license holder of any investigation initiated hereunder to the license holder's last known address. All information obtained during an investigation is confidential and shall not be considered public records under Delaware's Freedom of Information Act [Chapter 100 of Title 29]. The Associate Secretary, Administration and Innovation, shall review the results of each investigation and shall determine whether the results warrant initiating action under paragraph a., b. or c. of this subsection

h. Whenever the basis of for action under paragraph a. or b. of this subsection is a guilty plea, nolo contendere with respect to, or a conviction of a crime, a copy of the record of the plea, nolo contendere or conviction certified by the clerk of the court entering the plea, nolo contendere or conviction shall be conclusive evidence thereof.

i. The Department, through the Associate Secretary, Administration and Innovation, may enter a consent agreement with a person against whom action is being taken under paragraph a., b. or c. of this subsection.

j. The Associate Secretary, Administration and Innovation, shall not take action against a person under paragraph a. or b. of this subsection without providing the person with written notice of the charges and with an opportunity for a full and fair hearing before the Secretary of Education. Notice shall be sent to the person's last known address. The license holder shall have 30 calendar days from the date the notice of the charges was mailed to make a written request for a hearing. Unless otherwise provided for in this subsection, the burden of proof in a license disciplinary action shall be on the agency taking official action to establish by preponderance of the evidence that the license holder has engaged in misconduct as defined by subsections a. and b. of this subsection or otherwise has failed to comply with the applicable laws and regulations relating to the retention of the license. If no written request for a hearing is received by the Secretary of Education, the license holder's license shall be deemed to be revoked, suspended, or limited and the holder shall be so notified.

k. A license may be suspended for a period of time not to exceed 5 years. The license may be reinstated by the Department, upon written request, with verification that all requirements for license renewal have been satisfied. If the license expired during the period of suspension, the holder of the former license may reapply for the same tier license that was suspended but shall meet the license requirements that are in effect at the time of the application for the license.

l. If any of the causes listed in § 1218(a) or (b) of this title are determined, the Associate Secretary, Administration and Innovation or the Secretary of Education after a hearing, may put limitations on a license that may include but are not limited to:

(A) Restrictions on the ages of students with whom the license holder may work;

(B) Additional supervision requirements; or

(C) Education, counseling, or psychiatric examination requirements.

m. If a decision of license limitation, suspension or revocation is based on paragraph (a)(4), (a)(5), or (b)(1) of § 1218 of this title, and if the plea or conviction is overturned and there is no subsequent proceeding leading to a plea or conviction, the individual whose license is limited, suspended or revoked may file a written request for reinstatement, including documentation of the final status of the judicial proceeding, and the license shall be reinstated.

n. An individual whose license has been revoked under paragraph a. of this subsection may petition the Department for reinstatement of the license not sooner than 5 years from the date of revocation. The individual shall submit to the Department a written petition showing credible evidence, by affidavit or otherwise, of the factors set forth in paragraph (A) of this subsection.

(A) The Department shall consider all of the following criteria in evaluating a petition for reinstatement and shall only grant such a petition if it is in the best interest of the public schools of the State:

i. The nature and circumstances of the individual's original misconduct;

ii. The individual's subsequent conduct and rehabilitation;

iii. The individual's present character; and

iv. The individual's present qualifications and competence to engage in the practice of instruction, administration or other related professional support services.

(B) A former license holder is entitled to a full and fair hearing before the Secretary of Education or designee to challenge a denial of reinstatement pursuant to this subsection.

(C) A license revoked under paragraph b. of this subsection or suspended under paragraph c. of this subsection may not be reinstated under this section. A license revoked under paragraph (b)(1) of § 1218 of this title may only be reinstated pursuant to paragraph n. of this subsection and a license suspended under paragraph c. of this subsection may only be reinstated pursuant to paragraph (c)(5) of § 1218 of this title or after a hearing before the Secretary of Education or designee.

o. All communications between a license holder and the Department provided for in this subsection shall be by certified mail, return receipt requested.”

Approved July 06, 2009