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CHAPTER 317
149th GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 234

AN ACT TO AMEND TITLE 14 CHAPTER 12 OF THE DELAWARE CODE RELATING TO THE LIMITATION, SUSPENSION AND REVOCATION OF EDUCATOR LICENSES.

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

Section 1. Amend § 1218, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1218 Limitation, suspension and revocation of licenses.

(a) The Secretary may suspend, revoke, or limit a license or certificate that has been issued to any person pursuant to this chapter, for the following causes:

(6) ~~Being terminated or dismissed for immorality,~~ Immorality, incompetence, misconduct in office, wilful neglect of duty, disloyalty, or misconduct involving any cause for suspension or revocation of a license provided for in this section; or

~~(7) Resigning or retiring pending dismissal for immorality, provided that clear and convincing evidence establishes the underlying misconduct occurred; or~~

~~(8)~~ (7) Having had a license or certificate suspended, revoked, or voluntarily surrendered in another jurisdiction for cause which would be grounds for suspension or revocation under this section.

(b) Notwithstanding the provisions of subsection (a) of this section, the Secretary shall revoke a license or certificate if the license holder does any of the following:

(1) Pleads guilty or nolo contendere with respect to, or is convicted of any of the following:

a. Any crime constituting the manufacture, delivery, possession with intent to manufacture or deliver a controlled substance or a counterfeit controlled substance classified as such in Schedule I, II, III, IV or V of Chapter 47 of Title 16~~;~~ .

b. Any crime constituting a violent felony as defined in § 4201(c) of Title 11~~;~~ .

c. Any crime against a child constituting a felony, or unlawful sexual contact in the third degree [§ 767 of Title 11]~~;~~ .

d. Any crime constituting a felony sexual offense~~; or~~ .

e. Any crime constituting a felony offense against public administration involving bribery, improper influence or abuse of office~~;~~ .

(2) ~~Is terminated or dismissed for~~ Commits a sexual offense against a child~~; or~~ .

~~(3) Resigns or retires after official notice of allegations of a sexual offense against a child, provided that clear and convincing evidence establishes the underlying misconduct occurred.~~

(c) The Secretary 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 or for any crime against a child constituting a felony. A suspension under this subsection is effective on the date of the arrest or grand jury indictment.

(1) For a suspension under this subsection, the Secretary shall issue a written temporary order of suspension to the license holder at that license holder's last known address.

(2) The chief school officer or head of school, on behalf of the local board of education or charter school board of directors, shall report to the Secretary the name and last known address of any license holder employed by the district or charter school who it knows to have been arrested or indicted by a grand jury for a violent felony as defined in § 4201(c) of Title 11 or for any crime against a child constituting a felony.

(3) A license holder whose license has been suspended pursuant to this subsection may request an expedited hearing before the Standards Board within 20 calendar days from the date the notice of the Secretary'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 Standards Board shall convene a hearing within 90 days of the receipt of such a request.

(4) If the license holder pleads guilty or nolo contendere with respect to, or is convicted of, a violent felony as defined in § 4201(c) of Title 11 or any crime against a child constituting a felony, the Secretary shall proceed with revocation under subsection (b) of this section.

(5) If the license holder is found not guilty of the underlying criminal charges, a nolle prosequi is entered on the record by the State, or the charges are otherwise dismissed by the court, the license holder may file a written request for license reinstatement, including documentation of the final status of the judicial proceeding, and their license shall be reinstated. 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 license.

(6) An order of suspension under this subsection shall remain in effect until the final order of the Secretary or the Standards Board becomes effective.

(d) The Secretary may take an action under subsection (a), (b), or (c) of this section 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 subsection (a) or (b) of this section or has been arrested or indicted by a grand jury for a violent felony as defined in § 4201(c) of Title 11 or any crime against a child constituting a felony, shall notify the Secretary 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 Secretary 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 Secretary of such action in writing within 30 days of such action. Failure to do so shall be grounds on which the Secretary may limit, suspend or revoke the holder's license.

(g) The chief school officer or head of school, on behalf of the local board of education or charter school board of directors, shall report to the Secretary the name and last known address of any license holder who is dismissed, resigns, retires or is otherwise separated from employment with that district or charter school after ~~having received~~ the local board of education or charter school board of directors provides to the license holder notice of intent to terminate for misconduct that constitutes grounds for revocation or suspension under subsection (a), (b), or (c) of this section. Such report shall be made within 15 days of the dismissal, resignation, retirement or other separation from employment and is required notwithstanding any termination agreement to the contrary that the local board of education or charter school board of directors may enter into with the license holder. The reasons for the license holder's dismissal, resignation, retirement or other separation from employment with the district or charter school shall also be provided along with all evidence that was reviewed by or is in the possession of the district or charter school relating to the dismissal, resignation, retirement, or other separation from employment. The Department shall give written notice to any license holder of any notification received under this subsection to the license holder's last known address. Such notification shall be made within 15 days of receipt of the district or charter school's report to the Department of misconduct under this subsection. The obligation to report also applies when a chief school officer or head of school acquires relevant information after a license holder's dismissal, resignation, retirement, or other separation from employment. Failure to make such reports shall be grounds on which the Secretary may limit, suspend, or revoke the chief school officer's or head of school's license. All information obtained from the chief school officer or head of school shall be confidential and shall not considered public records under Delaware's Freedom of Information Act [Chapter 100 of Title 29]. If after having received notice of intent to terminate for misconduct in office or immorality, a license holder requests and prevails at a hearing, there is no required report to the Department.

(h) The Secretary may investigate any information received about a person that reasonably appears to be the basis for action under subsections (a) through (c) of this section. The Secretary 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 Secretary shall review the results of each investigation and shall determine whether the results warrant initiating action under subsection (a), (b), or (c) of this section. All final orders issued by either the Secretary or the Professional Standards Board under this Section are public documents pursuant to 29 *Del. C.* § 10002.

(i) Whenever the basis of for action under subsection (a) or (b) of this section 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.

(j) The Secretary may enter a consent agreement with a person against whom action is being taken under subsection (a), (b), or (c) of this section.

(k) ~~The Secretary shall not take~~ No action shall be taken against a person under subsection (a) or (b) of this section without providing the person with written notice of the charges and with an opportunity for a full and fair hearing before the Standards Board. Notice shall be personally delivered or sent by certified mail 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 section, 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 section or otherwise has failed to comply with the applicable laws and regulations relating to the retention of the license. At the conclusion of any such hearing, the Professional Standards Board shall issue a final order finding the facts as determined by the hearing and revoking, suspending, or limiting the license or certificate, if appropriate. If no written request for a hearing is received by the Standards Board, the license holder's license shall be deemed to be revoked, suspended, or limited in the manner set forth in the notice, and the holder shall be so notified.

§ 1218A Temporary suspension pending hearing.

(a) In the event of a complaint concerning the activity of a person licensed or certified that presents a clear and immediate danger to the health, safety, or welfare of students, the Secretary may temporarily suspend the person’s license or certificate, pending a hearing. An order temporarily suspending a license or certificate under this section may not be issued unless the person or the person’s attorney received at least 72 hours' written or oral notice before the temporary suspension so that the person or the person’s attorney can file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing convenes and a decision is rendered.

(b) A person whose license or certificate has been temporarily suspended pursuant to this section must be notified of the temporary suspension immediately and in writing. Notification consists of a description of the complaint and the order of temporary suspension pending a hearing personally served upon the person or sent by certified mail, return receipt requested, to the person’s last known address.

(c) A person whose license or certificate has been temporarily suspended pursuant to this section may request an expedited hearing. The Professional Standards Board shall schedule the hearing on an expedited basis, provided that the Board receives the request within ten calendar days from the date on which the person received notification of the decision to temporarily suspend the person's license or certificate.

(d) As soon as possible after the issuance of an order temporarily suspending a person's license or certificate pending a hearing, the Board shall appoint a hearing examiner. After notice to the person pursuant to subsection (b) of this section, the hearing examiner shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If the person requests in a timely manner an expedited hearing, the hearing examiner shall convene within 15 days of the receipt of the request by the Board. The hearing examiner shall render a decision within 20 days of the hearing.

(e) In addition to making findings of fact, the hearing examiner shall also determine whether the facts found constitute a clear and immediate danger to the health, safety, or welfare of students. If the hearing examiner determines that the facts found constitute a clear and immediate danger to the health, safety, or welfare of students, the order of temporary suspension must remain in effect until the Board deliberates and reaches conclusions of law based upon the findings of fact made by the hearing examiner. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing examiner unless the suspended person requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

§ 1218B Non-Disciplinary Letter of Concern.

(a) If the Secretary determines after the investigation that a violation of this chapter or of regulations enacted pursuant to this chapter which warrants formal disciplinary action has not occurred, but that an act or omission of the person is a matter of concern and that the person's practice may be improved if the person is made aware of the concern, the Secretary may issue a nondisciplinary, confidential letter of concern regarding the person's act or omission.

(b) If a person licensed or certified receives a total of 3 letters of concern pursuant to this section addressing the same or substantially similar conduct, the Secretary may reasonably impose any of the restrictions of Section 1218(m)(3) in order to protect the health, safety, or welfare of the person's current or prospective students.

Approved July 11, 2018