

NEVADA DEPARTMENT OF EDUCATION

June 14, 2016

9:00 a.m.

Department of Education
700 East Fifth Street
Board Conference Room
Carson City, Nevada

And

Department of Education
9890 South Maryland
Board Conference Room
Las Vegas, Nevada

SUMMARY MINUTES OF REGULATION PUBLIC HEARINGS

DEPARTMENT STAFF PRESENT:

In Carson City

Steve Canavero, Deputy Superintendent, Student Achievement

Karen Johansen, Administrative Assistant

Donna Wix, Private and Charter School Education Program Professional

In Las Vegas

Jason Dietrich

Michael Arakawa

LEGAL STAFF PRESENT:

In Carson City

Greg Ott, Deputy Attorney General

AUDIENCE IN ATTENDANCE:

In Carson City

Allison Kendrick, President, Washoe School Principal Association

Karen Barreras, Superintendent, Diocese of Reno

Lonnie Karges, Bethlehem School

Virginia Doran, labor Relations Manager, Washoe County School District

In Las Vegas

Matt Fischer, Faith Lutheran Academy

Catherine Thompson, diocese of Las Vegas

Craig Stevens, Clark County School District

Andre Long, Clark County School District

Chris Daly, Nevada State Education Association
Jon Okazaki, Clark County School District
Kris Schneider, Mountain View Lutheran
Moishe Rodman, Desert Torah Academy
Barbara Bidell, New Horizon academy

The meeting was called to order at 9:01 a.m. with attendance as reflected above.

Steve Canavero, superintendent of public instruction, explained the regulation process and stated public comment will be taken after each public hearing.

Public Comment #1

There was no public comment.

Public Hearing and possible adoption of Proposed Amendments R136-15, NAC Chapter 391, to provide a definition of "moral turpitude" for the purpose of implementing NRS 391.033 (Issuance of licenses; fingerprinting of applicants; provisional licensure authorized), NRS 391.100 (Employment of personnel by trustees; certain teachers and paraprofessionals required to possess qualifications prescribed by federal law; school district prohibited from requiring licensed employees on approved leave to submit fingerprints as condition of return to employment; exception; school police officers; contract for police services), NRS 391.31297 (Grounds for suspension, demotion, dismissal and refusal to reemploy teachers and administrators; consideration of evaluations and standards of performance), NRS 391.314 (Suspension of licensed employee; dismissal proceedings; reinstatement; salary during suspension or dismissal proceedings; forfeiture of right of employment for certain offenses; period of suspension), NRS 391.330 (Grounds for suspension or revocation of license), NRS 392A.080 (Composition of governing body; appointment; terms; powers; quarterly meetings), and NRS 392A.107 (Fingerprinting of nonlicensed applicants for employment; review of criminal history by Superintendent of Public Instruction under certain circumstances; prohibition on employment of certain applicants).

The public hearing was opened at 9:04 a.m. There were five individuals present in Carson City and nine individuals present in Las Vegas.

Dr. Canavero explained the intent of this regulation is to define moral turpitude that will extend into the future while considering the initial licensing of teachers and grounds for suspension and revocation of an educators license.

Jason Dietrich, licensure program officer III, noted that over the last 18-24 months extensive study of other states was conducted with a review of federal case law related to moral turpitude. To date the NDE has not had a clear definition of moral turpitude; rather the definition was at the discretion of an individual. It is the goal to clearly define moral turpitude as it relates to the initial and renewal licensure of individuals to be licensed under the NDE and for individuals who may be deemed to need a suspension or revocation of their educator licensure as issued by the NDE.

Dr. Canavero clarified that the first area of the regulation deals with charter schools and the licensing of employees in charter schools. The next area is related to the initial licensing of teachers and the

revocation or suspension of educator licenses. The third section addresses university schools for profoundly gifted students. Within each of the sections two issues occur, one is the definition of an offense of moral turpitude. In the first part twenty-seven instances are listed in each section defining activities or offenses that are determined to be moral turpitude across all three areas. The second part determines whether or not a conviction is related to the position. Further details were provided about the offenses.

Public Comment

Andre Long, chief human resources officer, CCSD, urged the NDE to review the proposed definition of moral turpitude. Clark County School District believes the NDE should establish guidelines to protect their students; however CCSD wants to ensure the proposed guidelines will not unnecessarily restrict the applicant pool for teachers and substitute teachers. The concern is that implementation of these licensure regulations may have a pronounced impact on diverse and minority candidates. He asked for individualized assessments and/or an appeals process only for the lesser offenses, not the most serious type of offenses including felony convictions involving violence, drugs, abuse and crimes where the victims were minors.

It is hoped that for certain misdemeanor or gross misdemeanor offenses the NDE will consider creating and identifying criteria which determine whether or not an individual's past criminal record is likely to have an impact on his or her performance as a licensed professional. The CCSD believes that there should be an individualized assessment and an appeals process for individualized review such as many other licensed professionals have in place to determine if the offense is job related or related to the position for which a license is sought. This would help to determine if there is a pattern of dishonest conduct before disqualification is applied.

With DUI and DWI convictions an individualized assessment could take into consideration if it was a first offense as opposed to subsequent conviction or how old the conviction is to determine if there is a pattern. He asked to consider the request so individuals have an opportunity to have their application individualized with specific history reviewed prior to disqualification for a license. In response to questioning from Dr. Canavero, Mr. Long stated he would like to review the language for DUI, DWI and petty larceny to ensure people do not have to wait five years to be able to get a license. He suggested an individualized review rather than waiting a specific number of years to be licensed.

Greg Ott, deputy attorney general, stated currently when a licensee has subjected their license to revocation or suspension, they are provided with a petition of what they have done to subject their license to revocation or suspension. Then they have a right to request a hearings officer from the hearings and appeals division. If they do, they have an opportunity to present their case to the hearing officer, and the NDE presents its case and the hearing officer issues a ruling. The ruling is an advisory that comes to the State Board. The Board may ask for more information or reject the recommendation from the hearing officer. The Board ultimately determines whether the license is suspended or revoked. That is not the process for initial applicants, there is not a right of appeal, right of a hearing officer or the right to go before the Board.

Chris Daly, deputy director government relations, Nevada State Education Association (NSEA), stated the NSEA represents 24,000 educators across the state working to ensure high quality public education for every Nevada student. He followed up on comments from the October 9, 2015 workshop on this regulation. Specifically, NSEA continues to urge the NDE to reject any formulaic or menu driven approach. They recommend the NDE take an individualized analysis as contemplated both by the Nevada Supreme Court in the Clayborn case and consider factors. He also referenced a case in the California Supreme Court.

Mr. Daly noted that item 17, possession of a controlled substance, is a crime that over one-half of polled Americans have admitted they committed at some point in their lives. A ten year window or restriction for possession of a controlled substance, that in Nevada still includes recreational use of marijuana, is potentially problematic. There are items on the list that proportionally impact communities of color and low income. Not only is this an equity issue but it is actually an educational issue.

In CCSD 45 percent of the student population is Latino, and a quarter of the students are ELL. Item 4 in section 2 is a violation of immigration law and is located in between human trafficking and terrorism. About a quarter of the kids in the district may or may not be documented. We know ELL is a problem, but this is a lifetime restriction on teaching for a crime which we are proposing in this regulation as the highest level of crime of moral turpitude.

Mr. Daly noted many of the immigrant families he knows came here illegally in violation of federal immigration law to make a better life for their family and their children. That is the opposite of moral turpitude. That is his definition of morality. In this case that might harken back to 1966. He asked the superintendent to consider these comments and suggested an appeal mechanism for extenuating circumstances with an explanation and a potential for rehabilitation.

Mr. Dietrich clarified that this regulation is in relation to moral turpitude on convicted offenses, not arrests. To date, over the past 25 months his office has tracked denials of licensure under an in house moral turpitude matrix. Of the 70 denials approximately 63 were initial licensure, the remaining were re-application or renewals for higher level offenses. The majority of denials have been for things such as grand larceny, possession with intent to sell narcotics, and battery. While there have been some DUIs in individuals records, most have not been for convictions. The statewide office of licensure under the NDE issues 18,000 to 20,000 licenses per year. A minimum of 36,000 licenses have been issued in the last two years, and only 70 candidates have been denied. Of those, more than 80 percent of the applicants have been substitute applications. This is not the source of teacher shortages.

Virginia Doran, labor relations manager, Washoe County School District (WCSD), stated the WCSD understands the intent of the NDE is to create a regulation defining moral turpitude in order to identify individuals who may pose harm to our education system. However, the WCSD believes that the regulations as proposed are overly broad and too rigid in application if they are necessary at all. They should include some application for aggravating or mitigating factors to be viewed on a case by case basis. Without such a case by case review, the NDE will likely be rejecting good and qualified individuals that may have an indiscretion earlier in their life, which will now prohibit them from a teaching career and further exacerbate the teacher shortage in Nevada. She recommended a case by case, individualized review of cases.

Mr. Dietrich explained the current process does not require a district to provide an arrest notification to the NDE for any offense that is not child related. That statute would not change by defining moral turpitude, and no process change would be required.

Ms. Doran explained that WCSD has concerns about how the amendments apply to a current employee that is convicted of a DUI. It appears the recommendation is that the NDE could suspend or revoke the license. Also, they have concerns about employees returning from a Leave of Absence and asked if it is the school districts responsibility to re-fingerprint.

Dr. Canavero responded these are open questions that need to be resolved. The districts are under the obligation to protect children. Today he wanted to narrow the definition of moral turpitude related to the ongoing procedures and processes the NDE has on initial licensing as well as the revocation or suspension

of a license, and those related to the university and charter schools. This does not mean the NDE will come into a school district because an employee was convicted of a first offense DUI. That is not the NDEs role.

Allison Kendrick, Principal, WCSO, representing the Washoe School Principals Association membership, asked if a current employee received a conviction for a DUI one year after their license was renewed, would they need to go through an internal process the district has in place for self-reporting? When that person came up for renewal would it be possible that if was within the five year period their license would not be renewed?

Mr. Dietrich responded upon conviction related to moral turpitude, the NDE could, at time of renewal, place that individual for suspension or revocation action should the occurrence they were convicted of fall within the guidelines.

Ms. Kendrick said she they have similar concerns, specifically for a DUI and possession of a controlled substance. She is concerned about employees that when they were 19 or 20 could have had an incidence in their college years that might prohibit licensure. She recommended considering individual mitigating circumstances as opposed to a blanket denial of an educator license.

The hearing closed at 10:22 a.m.

Public Hearing and Possible Adoption of proposed regulation (R027-16) to NAC 385, that provide for the Nevada Educational Choice Scholarship Program (Statutes of Nevada 2015, Chapter 22). Proposed amendments seek to clarify the testing requirements contained in Sec. 11 of the adopted regulations (i.e., R035-15)

The public hearing was opened at 10:22 p.m. There were five individuals present in Carson City and nine individuals present in Las Vegas

Dr. Canavero explained this regulation was adopted in 2015 under Superintendent Erquiaga. Following adoption a concern emerged regarding language about the content, concurrent or criterion validity. The proposed change would delete that language and instead ensure the test has high content validity. The test is the assessment that is provided at registered private schools that receive students as part of the scholarship program. The core academic areas were narrowed to the two subject areas, English language arts and mathematics that require assessments in non-participating public schools in the scholarship program. In addition the meaning of content validity is described to which a test accurately measures the subject area that it purports to measure.

Public Comment

Moishe Rudman, Desert Torah Academy, commented that teachers they interview from CCSD say so much time is spent testing that they do not have time for teaching. In private education they try not to eliminate testing, but keep it to the right amount of testing. In his school, from 3rd through 8th grade the Terra Nova test is widely used. Taking a week long test in K-2 is not beneficial for the children. However, it is important to have some subjective measurement about how students are doing. They introduced the aimesweb as a second test which is slightly different than a standardized test. Now it is used through all the grades K-8 and grades 3-8 have two layers of testing. He would like to be allowed to continue using both tests, especially the aimesweb in the lower grades.

Dr. Canavero clarified it is not the intent of the regulation to affect those tests which have previously been approved.

Kris Schneider, principal, Mountain View Lutheran, asked if there is another level in 2nd or 5th grade within the elementary setting of public schools in which students are required to take additional tests that might necessitate private schools reporting more than just the ELA and math scores.

Dr. Canavero responded the core academic subject areas are narrowed to ELA and math, common across grades 3-12. Mr. Schneider's referral may be about writing which is a specific aspect of the SBAC and science in 5th and 8th grade. Those are not required under this regulation.

Mr. Schneider asked about the form that is being used to provide the scores. As an example, he is giving the Iowa basic skills test in his school. They have scores returned that are a percentile standard and as an educator he does not like percentile scores because they are evaluating students with respect to other students across the country taking the same exam. That may not be an accurate or appropriate measure of progress or growth throughout the years.

Donna Wix, private schools, NDE explained the form for reporting scores for the kids was recently sent out. The first page of the workbook is for grades 3-12 presuming they have used the assessments already approved by the IT assessment team. If they are going to use a lesser strenuous assessment for K1 and 2 there is a second form and all of the scores are raw and scaled scores.

Mr. Schneider said regarding scores for K-1 and 2, does it specify they have to be the same tests given every year, and when looking at the K1 and 2, does it say at what point of the school year they must occur? Could it be what they use as an entrance test for kindergarten? Ms. Wix responded no, the test can change. The entry kindergarten test is not the best for showing students have made progress. It is expected students come in at some level, and they would like to see something later in the year for the young ones. Other than that there is nothing in the regulation or the bill that says the test must be given on a specific date. Mr. Schneider asked to clarify that they need to assess kindergarten towards the end of the year to understand whether or not they have acceptable growth, yet they have nothing in which to compare it on the state level. Ms. Wix said that is correct, at least for the second half of the year for K. None of the scores are going to be comparative because one set of test results is given per child per school year.

Dr. Canavero adopted the regulation. The public hearing was closed at 10:36 a.m.

Public Comment #2

There was no further public comment. The meeting adjourned at 10:36 a.m. m