NEVADA DEPARTMENT OF EDUCATION
REGULATION WORKSHOP
FEBRUARY 28, 2017

Meeting Locations:

Office	Address	City	Meeting Room
Department of Education	9890 S. Maryland Pkwy	Las, Vegas	Board Room (2nd
Department of Education	700 E. Fifth St	Carson City	Board Room

DRAFT SUMMARY MINUTES OF THE REGULAR MEETING

(Video Conferenced)

DEPARTMENT STAFF PRESENT:
In Carson City
Steve Canavero, Superintendent of Public Instruction
Karen Johansen, Assistant to the State Board of Education
Joyce Hilley, Licensure Analyst

In Las Vegas
Mike Arakawa, Licensure Program Officer III
Jason Dietrich, Director, Educator Licensure
Kim Bennett, Administrative Assistant

LEGAL STAFF PRESENT
In Carson City
Greg Ott, Deputy Attorney General

AUDIENCE IN ATTENDANCE:
In Las Vegas:
Andre Yates, Human Resources, Clark County School District
Andre Long, Human Resources, Clark County School District
Bill Garis, CCASA
Adam Honey, Clark County School District
David Bechtel, CCASA

Carson City:
Stephen Augspurger, CCASA

Call to Order;
The meeting was called to order at 9:00 a.m. with attendance as reflected above.

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 by Superintendent of Public Instruction under certain circumstances; prohibition on employment of certain applicants).

Dr. Canavero opened the public hearing on regulation R136-15 at 9:02 A.M. He stated there was a lot of discussion at the workshop held on June 14, 2015 and based upon the feedback received; additional changes were requested to the proposed amendments.

Mike Arakawa, licensure program officer, summarized the proposed regulation. Currently under statutory authority the superintendent of public instruction may deny an educators license at the time of application based upon a conviction of a felony or for a crime of moral turpitude. The statute does not define moral turpitude. The intent of the regulation is to define moral turpitude as it would apply for the operation of NRS 391. 033.

After the workshop a major change was made to the disqualifying convictions. A conviction of immigration violation is no longer disqualifying for purposes of educator licensure. An additional major change was added to allow, in the event of an individual appealing the denial of their license, the superintendent will have the ability to solicit other opinions and outside guidance from selected individuals in reviewing the decision.

Dr. Canavero reiterated the changes Mr. Arakawa listed are: Section 2 (4) eliminating a violation of immigration laws, including, without limitation, through Section 5. In addition, a new section was discussed for Section 10 that provides for an applicant whose license has been denied to appeal to a group of individuals the superintendent may select to seek additional opinions.

Dr. Canavero asked how legal recreational marijuana affects the changes. Jason Dietrich, director, Educator Licensure responded that moving forward, misdemeanor convictions for marijuana will no longer be occurring. They will still continue to seek convictions prior to the change in law. A decision will need to be made how those convictions will be handled moving forward.

Dr. Canavero noted there had been many questions related to DUI convictions for individuals that may have a DUI on their record from a number of years ago. He asked how an applicant would be received if they had a DUI on their record. Mr. Arakawa responded a single DUI appearing on an applicant's record would be a disqualifying conviction for a period of 5-years from the date of conviction. After the 5-year period they would be eligible to apply for licensure and it would not be held against them. An individual with multiple DUIs on their record would be excluded for a 10-year period from the date of the most recent conviction.

Dr. Canavero asked about a battery conviction and/or violence. Mr. Arakawa said battery is incorporated within the broad heading of crimes of violence. As such that would be a lifetime disqualification for licensure. Dr. Canavero expressed concern about disproportionality that any time we link back to particular crimes or a criminal justice system, they may by nature of linking back to that system affect a particular demographic of individuals unknowingly. He said it is important to recognize that is not his intent and he thinks the appeal panel may be one way to ensure they are not disproportionally affecting a group of individuals by leaning on a criminal justice system. Mr. Dietrich agreed that the review process would allow that additional level of review, with the superintendent and potentially another individual.

Public Comment

Andre Long, chief human resources officer, Clark County School District (CCSD), said the DUI part is still troubling. He is concerned that a student who makes a poor decision will be penalized and will not be able to obtain an educator license in Nevada. That is five years. If an individual is a college student who made a bad decision in his sophomore or junior year, he cannot apply for a license in Nevada. That is problematic when most applicants are coming from out of state. It is limiting, and if that were not in the way, the school district still has the responsibility to look at applications and make judgement to decide if an applicant is suitable for a position. He asked that this does not impede their process of licensing in Nevada and leave that up to individual school districts to make that judgement call. The same applies for battery. It could be a simple bar room fight and that could block someone for a lifetime of applying as a teacher. Those two penalties are too harsh, especially with the teacher shortage in Nevada. When the school districts run their clearance and scope, those convictions must be reported and a decision could be made at that point. He asked this remain a decision for individual school districts.

Dr. Canavero said he would recommend eliminating the second DUI, but how does one distinguish a bad decision from a series of bad decisions that may justify a 5 or 10-year disqualifier. Mr. Long said he would prefer it is eliminated. Dr. Canavero asked for his suggestion for language in Section 5, subsection 3. Mr. Long responded he is concerned about a lifetime ban and asked if it is going to remain that there is some level so an individual is not prohibited from applying to become a teacher because there was some battery in the past. Mr. Long added they should be able to license applicants and then allow individual school districts to make that decision at the union resources level depending on the advance. It is reported and must be investigated to determine if the applicant has a history. If it was a battery from 12 years ago and the individual has since cleaned up their life and now wants to become a teacher, he does not want that penalty in the way of them moving on with their life to become a good teacher.

Dr. Canavero asked if someone is arrested for domestic violence and pleaded to battery, does Mr. Long want to differentiate the offenses of a violent nature and separate the five and ten year offense. Mr. Long said he was thinking about the level of severity, so the lesser crimes have the opportunity to make the initial license application as to the most severe. As an example, when looking at an applicant in a school district, there may be a charge of domestic battery. If it is recent chances are they will not be hired by the school district. An example may be something that may have happened in 1980. In addition when people are convicted they often make life changes. The fact is that time has moved on he suggested forgiveness because a lifetime ban is too harsh. Dr. Canavero agreed and said an individual often changes over time.

Dr. Canavero asked if we still need to differentiate the scale of the violent offence with either a lifetime ban, 5-years, or something we can live with. Mr. Long said in his opinion this would prohibit someone from making an application and it is a barrier. He would rather language is put in place upfront, with an appeal process, that would still entice individuals to make an application. Mr. Dietrich said that since November 2014 his office has been actively tracking the denials made under the moral turpitude matrix instituted by former Superintendent Erquiaga. They have continued to use that matrix and have denied 90

applicants upon initial licensing since November 14. Approximately 10 of those applicants have been denied due to battery and domestic violence. Mr. Dietrich added the 10 encompass battery and they are likely domestic violence. Dr. Canavero asked for Mr. Long's reaction to the ten individuals denied initial licensure. Mr. Long replied that does not impact his opinion.

Adam Honey, legal department, CCSD, said their concern is that this is likely the strictest definition of an application of moral turpitude in any legal profession. There is no element of intent for a conviction of a DUI. Additionally, a brief review of other boards in the state indicates they look at the person's ability to perform the functions of the job, and question if whether a DUI impedes their ability to do the job? The nursing board looks at mitigating factors, date of offense, conviction, the blood alcohol content, and other offense details. Furthermore, they try to provide further guidance. The nursing field is a good comparison, much like education it is a field where they are always in need of more qualified applicants. The nursing field does not want to limit individuals coming from out of state, which is one of the concerns Mr. Long expressed.

The straight up 5-year ban for one DUI without looking at mitigating factors is a step backwards and is harsher than how the individual would be treated in the criminal context. Without looking at factors for a first time DUI and it being an automatic preclusion from licensure is troubling. There is the possibility the individual will move on to another profession and never come back to education. They could go into another profession, 5-years pass, they are earning more money than a first year teacher, and are 5-years behind in building a retirement through PERS. They may choose to move forward in their established career where they may have already advanced, and will not come back to education.

Individuals that have multiple instances of DUI are troublesome, but that is a factor that HR already looks at. Does this person have a pattern? What is the length of time since the most recent offense? Most of these concerns are addressed at an HR level. Making it a hard fast rule and going away from local control and decision making is a step backwards. Mr. Honey said he appreciates the appeal process because it lends flexibility to the system. Many applicants would look at the process and if they had a DUI two years ago, and if they would have to go through an appeal process it could easily make the individual look towards other employment.

Mr. Honey said he is not aware of any criminal penalty for battery that continues for one's lifetime. A person could have their records sealed after an amount of time, they might have a record expunged, but for the narrow career of a licensed teacher, all of a sudden we are going to carve that out and make it far harsher than any industry he is aware of. Again, it comes down to mitigating factors. There is a big difference in a battery when someone beats a spouse, child or elderly person as opposed to two guys in a bar fight. Further consideration is needed for this process.

Dr. Canavero reiterated that currently he has a recommendation to remove DUI in its entirety. Mr. Honey said he supports that recommendation because there is no intent related to its conviction should this be eliminated in its entirety. Making those determinations should be retained to the control of the HR departments of the various school districts. Dr. Canavero agreed the first offense is different when talking about serial offenders. Also if an individual is recognized as a serial offender with an addiction problem and they have committed to a treatment is they remain sober after a time period they could apply again.

Dr. Canavero asked for specific recommendations in addition to the DUI. Mr. Honey said for battery it needs to be something less than a lifetime ban that automatically goes to an appeal process, because individuals will not apply and will not even get to the appeal process. He does not have a specific

recommendation concerning a time frame for battery. The circumstances behind battery can be very broad. Dr. Canavero asked if he is suggesting a differentiation between battery and domestic violence.

Greg Ott, deputy attorney general, said subsection 3 lists a variety of violent offenses, battery is one of the most common. There are other offenses such as attempted murder, poisoning, and kidnapping. If the recommendation is to pull specific ones out of those, it can be done by pulling the NRS section that is referenced and put it somewhere else. It would be helpful to know if there are other offenses that they are also recommending.

Mr. Honey responded it is a solid start to pull battery out. He commented about a person with a history of multiple DUIs stating he is in agreement with Dr. Canavero. However, in the current set-up, a licensed individual is highly unlikely to be hired by the CCSD because HR would see the DUI record. There are huge red flags in that scenario. His main concern today was about DUIs and taking out the first offense as a compromise so that the local district HR can make a determination on the first offense by looking at mitigating factors.

Dr. Canavero said there is a range of violence related to battery from some cases that have a sympathetic nature to offenses of a violent nature that in no way would the individual be entrusted with the care of children. He asked if there are other areas in the regulation where there is a similar range.

Mr. Honey asked for clarification on thefts and what the licensure effect would be for someone with a conviction of a theft. Mr. Arakawa responded as the regulation is written it provides a petty larceny or the equivalent and in another jurisdiction such as retail theft, petty theft, and shoplifting that would constitute a 5-year exclusion for licensure. Any greater degree of theft, such as grand larceny, would be 10-year exclusion. Mr. Honey said that for some individuals the brain does not fully develop until the late to mid-20s and some just make dumb decisions at that time. Theft and DUI are the only two he has concerns with today. Mr. Long asked to leave that in the hands of HR departments of the state and not allow that be a barrier for obtaining a license in Nevada. Mr. Honey said he differentiates theft from identify theft, which is pre-meditated.

Dr. Canavero re-capped that petty larceny and DUI are similar offenses in terms of exclusion. Petty larceny is stealing items that are valued at less than $650. Mr. Honey said would like that petty larceny for items under $650 is taken out, but theft is a serious crime and is a felony. He does not object to that being part of the definition of moral turpitude.

Dr. Canavero said the law has identified a line between petty larceny and theft. Earlier comments related an offence of a violent nature as being considered the same thing. That there is some differentiation, this not become a problem about how to treat offenses of a violent nature that range from a bar fight to severely injuring another individual. Deputy Ott said earlier specific exceptions were taken to battery and battery constituting domestic violence.

Dr. Canavero said battery in NRS 200. 481 and 485 are the two that would not receive an automatic disqualifier. Deputy Ott agreed. Battery is NRS 200.481 and battery constituting domestic violence is NRS 200.485. Mr. Honey asked if those are felonies. Mr. Arakawa said his understanding is that both are misdemeanors. Mr. Honey said because we are at the starting point of a lifetime ban for battery which appears to be a misdemeanor, making it a definitive time period, shorter than lifetime, would be a good starting point.

Deputy Ott confirmed that battery is a misdemeanor as long as it is not committed with a deadly weapon with no substantial bodily harm to the victim. Mr. Honey said that being the case, instead of discussing the timeframe a differentiation needs to be made between a conviction for the crime whether a misdemeanor or a felony. Mr. Long said a convicted felony is usually an automatic disqualification from being hired by any school district.

Dr. Canavero reiterated there is agreement that a felony offense of a violent nature would be a lifetime disqualifier. He asked for input for misdemeanor convictions such as battery or battery consisting domestic violence. Mr. Honey suggested 2-3-years. Mr. Long asked if someone falls outside of that 3-years and is licensed, that leaves it in the hands of HR to make the decision. Dr. Canavero said the misdemeanor conviction would not exist, similar to the first offense DUI or first offense petty larceny. Mr. Honey agreed.

Dr. Canavero said there is now clarity about felony convictions of a violent nature. Theft would remain 10-years, the first offence of DUI would not appear as an offense of moral turpitude, the first offense of petty larceny would not appear as an offense of moral turpitude and the battery and battery constituting domestic violence first offense would not appear as an offense of moral turpitude. Mr. Honey agreed and said all those issues would be brought forward when the person's application is brought to the local district.

Dr. Canavero asked if multiple or two or more misdemeanors related to battery, DUI or petty larceny would call into question the fitness of the individual to be entrusted with kids. Mr. Honey asked if that discussion could occur at the state level for a license or a local school district level. At that point, individuals that show patterns will not be hired, whether they have a license or not. Mr. Honey said multiple offenses are a cause for concern. It is highly unlikely an individual with two DUIs in ten years will be given a teaching job in CCSD. He said they would not have an opposition to ten year increments for multiple offenses.

Dr. Canavero re-capped the revised moral turpitude language discussed today. The revisions exclude the following from the definition of moral turpitude.

- First offense Misdemeanor battery and misdemeanor battery constituting domestic violence
- First offense misdemeanor DUIs
- First offense misdemeanor petit larceny

Also, a 5-year prohibition for petit larceny has been removed so that second offense of petit larceny would be a ten year disqualification (as would the second offense DUI). The second offense of battery or domestic violence is a crime of violence and that is a lifetime disqualification.

Dr. Canavero adopted the discussed changes and recommended moving the regulation forward for legislative approval.

Public Comment
None

Adjournment
The meeting was adjourned at 10:05 a.m.