



JANET BARRESI
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF OKLAHOMA

MEMORANDUM

TO: The Honorable Members of the State Board of Education

FROM: Janet C. Barresi *JCB*

DATE: October 25, 2012

SUBJECT: Complaint for Revocation of Teaching Certificate and Teaching Number of Mike G. Hestand a/k/a Michael Gene Hestand

The attached Complaint seeks the revocation of the Oklahoma teaching certificate and teaching number 168141 of Mike G. Hestand a/k/a Michael Gene Hestand based upon felony convictions. The State Department of Education requests that action be taken on this request.

ykd

Attachment

BEFORE THE STATE BOARD OF EDUCATION

STATE OF OKLAHOMA, ex. rel.
STATE BOARD OF EDUCATION,

Complainant

vs.

MIKE G. HESTAND,
a/k/a MICHAEL GENE HESTAND,

Respondent

COMPLAINT

COMES NOW, Jeff Smith, an employee of the State Department of Education, being first duly sworn and states as follows:

1. That I, Jeff Smith, an employee of the State Department of Education, did in the course of my employment as Executive Director of Teacher Certification receive information regarding Mike G. Hestand, a/k/a Michael Gene Hestand, as follows:
2. That Mike G. Hestand holds a valid Oklahoma teaching certificate and teacher number 168141.
3. That Mike G. Hestand's teaching certificate will expire on June 30, 2015.
4. That on August 9, 2012, Mr. Hestand entered a plea of guilty to one count of aggravated possession of obscene materials 21 O.S. 1040.12(A), which constitutes a felony, five counts of taking clandestine photographs, 21 O.S. 1171(B), which constitutes felonies, and one count of engaging in a pattern of criminal offenses in two or more counties, 21 O.S. § 425, which constitutes a felony.
5. That Title 70 O. S. § 3-104(6) provides:

"The supervision of the public school system of Oklahoma shall be vested in the State Board of Education and, subject to limitations otherwise provided by law, the State Board of Education shall: ... Have authority in matters pertaining to the licensure and certification of persons for instructional, supervisory and administrative positions and services in the public schools of the state...and shall formulate rules governing the issuance and revocation of certificates...".

The State Board of Education has authority to revoke a teaching certificate after notice and opportunity for a hearing pursuant to


Oklahoma Administrative Code at 210:1-5-6.

6. That Title 70 O. S. § 3-104.1 provides:

"No person shall receive a certificate for instructional, supervisory or administrative position in an accredited school of this state who has been convicted of a felony, any crime involving moral turpitude or a felony violation of the narcotic laws of the United States or the State of Oklahoma, provided the conviction was entered within the preceding ten year period".

7. That based upon the information and evidence presented, cause exists to revoke the teaching certificate and teacher number of Mike G. Hestand.

Wherefore, the Complainant prays that a hearing be held to determine the truth of the allegations set out above and upon proof of the veracity of said Complaint, that the State Board of Education revoke the teaching certificate and teacher number of Mike G. Hestand, a/k/a Michael Gene Hestand.



Joel Robison
Chief of Staff
State Board of Education



Jeff Smith
Executive Director
Teacher Certification

Subscribed and sworn to me on the 5th day of October, 2012.

My Commission Expires: 9-7-2014
My Commission Number: 10007405





Notary Public



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Title 70. Schools

Oklahoma Statutes Citationized

Title 70. Schools

Chapter 1 - School Code of 1971

Article Article III - State Department of Education

Section 3-104 - State Board of Education - Powers and Duties

Cite as: 70 O.S. § 3-104 (OSCN 2012)

The supervision of the public school system of Oklahoma shall be vested in the State Board of Education and, subject to limitations otherwise provided by law, the State Board of Education shall:

1. Adopt policies and make rules for the operation of the public school system of the state;
2. Appoint, prescribe the duties and fix the compensation of a secretary, an attorney and all other personnel necessary for the proper performance of the functions of the State Board of Education. The secretary shall not be a member of the Board;
3. Submit to the Governor a departmental budget based upon major functions of the Department as prepared by the State Superintendent of Public Instruction and supported by detailed data on needs and proposed operations as partially determined by the budgetary needs of local school districts filed with the State Board of Education for the ensuing fiscal year. Appropriations therefor shall be made in lump-sum form for each major item in the budget as follows:
 - a. State Aid to schools,
 - b. the supervision of all other functions of general and special education including general control, free textbooks, school lunch, Indian education and all other functions of the Board and an amount sufficient to adequately staff and administer these services, and
 - c. the Board shall determine the details by which the budget and the appropriations are administered. Annually, the Board shall make preparations to consolidate all of the functions of the Department in such a way that the budget can be based on two items, administration and aid to schools. A maximum amount for administration shall be designated as a part of the total appropriation;
4. On the first day of December preceding each regular session of the Legislature, prepare and deliver to the Governor and the Legislature a report for the year ending June 30 immediately preceding the regular session of the Legislature. The report shall contain:
 - a. detailed statistics and other information concerning enrollment, attendance, expenditures including State Aid, and other pertinent data for all public schools in this state,
 - b. reports from each and every division within the State Department of Education as submitted by the State Superintendent of Public Instruction and any other division, department, institution or other agency under the supervision of the Board,
 - c. recommendations for the improvement of the public school system of the state,
 - d. a statement of the receipts and expenditures of the State Board of Education for the past year, and

e. a statement of plans and recommendations for the management and improvement of public schools and such other information relating to the educational interests of the state as may be deemed necessary and desirable;

5. Provide for the formulation and adoption of curricula, courses of study and other instructional aids necessary for the adequate instruction of pupils in the public schools;

6. Have authority in matters pertaining to the licensure and certification of persons for instructional, supervisory and administrative positions and services in the public schools of the state subject to the provisions of Section 6-184 of this title, and shall formulate rules governing the issuance and revocation of certificates for superintendents of schools, principals, supervisors, librarians, clerical employees, school nurses, school bus drivers, visiting teachers, classroom teachers and for other personnel performing instructional, administrative and supervisory services, but not including members of boards of education and other employees who do not work directly with pupils, and may charge and collect reasonable fees for the issuance of such certificates:

a. the State Department of Education shall not issue a certificate to and shall revoke the certificate of any person who has been convicted, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, or received a suspended sentence or any probationary term for a crime or an attempt to commit a crime provided for in Section 843.5 of Title 21 of the Oklahoma Statutes if the offense involved sexual abuse or sexual exploitation as those terms are defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes, Sections 741, 843.1, if the offense included sexual abuse or sexual exploitation, 865 et seq., 885, 888, 891, 1021, 1021.2, 1021.3, 1040.13a, 1087, 1088, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma Statutes or who enters this state and who has been convicted, received a suspended sentence or received a deferred judgment for a crime or attempted crime which, if committed or attempted in this state, would be a crime or an attempt to commit a crime provided for in any of said laws,

b. all funds collected by the State Department of Education for the issuance of certificates to instructional, supervisory and administrative personnel in the public schools of the state shall be deposited in the "Teachers' Certificate Fund" in the State Treasury and may be expended by the State Board of Education to finance the activities of the State Department of Education necessary to administer the program, for consultative services, publication costs, actual and necessary travel expenses as provided in the State Travel Reimbursement Act incurred by persons performing research work, and other expenses found necessary by the State Board of Education for the improvement of the preparation and certification of teachers in Oklahoma. Provided, any unobligated balance in the Teachers' Certificate Fund in excess of Ten Thousand Dollars (\$10,000.00) on June 30 of any fiscal year shall be transferred to the General Revenue Fund of the State of Oklahoma. Until July 1, 1997, the State Board of Education shall have authority for approval of teacher education programs. The State Board of Education shall also have authority for the administration of teacher residency and professional development, subject to the provisions of the Oklahoma Teacher Preparation Act;

7. Promulgate rules governing the classification, inspection, supervision and accrediting of all public nursery, kindergarten, elementary and secondary schools and on-site educational services provided by public school districts or state-accredited private schools in partial hospitalization programs, day treatment programs, and day hospital programs as defined in this act for persons between the ages of three (3) and twenty-one (21) years of age in the state. However, no school shall be denied accreditation solely on the basis of average daily attendance.

Any school district which maintains an elementary school and faces the necessity of relocating its school facilities because of construction of a lake, either by state or federal authority, which will inundate the school facilities, shall be entitled to receive probationary accreditation from the State Board of Education for a period of five (5) years after the effective date of this act and any school district, otherwise qualified, shall be entitled to receive probationary accreditation from the State Board of Education for a period of two (2) consecutive years to attain the minimum average daily attendance. The Head Start and public nurseries or kindergartens operated from Community Action Program funds shall not be subjected to the accrediting rules of the State Board of Education. Neither will the State Board of Education make rules affecting the operation of the public nurseries and kindergartens operated from federal funds secured through Community Action Programs even though they may be operating in the public schools of the state. However, any of the Head Start or public nurseries or kindergartens operated under federal regulations may make application for accrediting from the State Board of Education but will be accredited only if application for the approval of the programs is made. The status of no school district shall be changed which will reduce it to a lower classification until due notice has been given to the proper authorities thereof and an opportunity given to correct the conditions which otherwise would be the cause of such reduction.

Private and parochial schools may be accredited and classified in like manner as public schools or, if an accrediting

association is approved by the State Board of Education, by procedures established by the State Board of Education to accept accreditation by such accrediting association, if application is made to the State Board of Education for such accrediting;

8. Be the legal agent of the State of Oklahoma to accept, in its discretion, the provisions of any Act of Congress appropriating or apportioning funds which are now, or may hereafter be, provided for use in connection with any phase of the system of public education in Oklahoma. It shall prescribe such rules as it finds necessary to provide for the proper distribution of such funds in accordance with the state and federal laws;
9. Be and is specifically hereby designated as the agency of this state to cooperate and deal with any officer, board or authority of the United States Government under any law of the United States which may require or recommend cooperation with any state board having charge of the administration of public schools unless otherwise provided by law;
10. Be and is hereby designated as the "State Educational Agency" referred to in Public Law 396 of the 79th Congress of the United States, which law states that said act may be cited as the "National School Lunch Act", and said State Board of Education is hereby authorized and directed to accept the terms and provisions of said act and to enter into such agreements, not in conflict with the Constitution of Oklahoma or the Constitution and Statutes of the United States, as may be necessary or appropriate to secure for the State of Oklahoma the benefits of the school lunch program established and referred to in said act;
11. Have authority to secure and administer the benefits of the National School Lunch Act, Public Law 396 of the 79th Congress of the United States, in the State of Oklahoma and is hereby authorized to employ or appoint and fix the compensation of such additional officers or employees and to incur such expenses as may be necessary for the accomplishment of the above purpose, administer the distribution of any state funds appropriated by the Legislature required as federal matching to reimburse on children's meals;
12. Accept and provide for the administration of any land, money, buildings, gifts, donation or other things of value which may be offered or bequeathed to the schools under the supervision or control of said Board;
13. Have authority to require persons having administrative control of all school districts in Oklahoma to make such regular and special reports regarding the activities of the schools in said districts as the Board may deem needful for the proper exercise of its duties and functions. Such authority shall include the right of the State Board of Education to withhold all state funds under its control, to withhold official recognition, including accrediting, until such required reports have been filed and accepted in the office of said Board and to revoke the certificates of persons failing or refusing to make such reports;
14. Have general supervision of the school lunch program. The State Board of Education may sponsor workshops for personnel and participants in the school lunch program and may develop, print and distribute free of charge or sell any materials, books and bulletins to be used in such school lunch programs. There is hereby created in the State Treasury a revolving fund for the Board, to be designated the School Lunch Workshop Revolving Fund. The fund shall consist of all fees derived from or on behalf of any participant in any such workshop sponsored by the State Board of Education, or from the sale of any materials, books and bulletins, and such funds shall be disbursed for expenses of such workshops and for developing, printing and distributing of such materials, books and bulletins relating to the school lunch program. The fund shall be administered in accordance with Section 155 of Title 62 of the Oklahoma Statutes;
15. Prescribe all forms for school district and county officers to report to the State Board of Education where required. The State Board of Education shall also prescribe a list of appropriation accounts by which the funds of school districts shall be budgeted, accounted for and expended; and it shall be the duty of the State Auditor and Inspector in prescribing all budgeting, accounting and reporting forms for school funds to conform to such lists;
16. Provide for the establishment of a uniform system of pupil and personnel accounting, records and reports;
17. Have authority to provide for the health and safety of school children and school personnel while under the jurisdiction of school authorities;
18. Provide for the supervision of the transportation of pupils;
19. Have authority, upon request of the local school board, to act in behalf of the public schools of the state in the

purchase of transportation equipment;

20. Have authority and is hereby required to perform all duties necessary to the administration of the public school system in Oklahoma as specified in the Oklahoma School Code; and, in addition thereto, those duties not specifically mentioned herein if not delegated by law to any other agency or official;

21. Administer the State Public Common School Building Equalization Fund established by Section 32 of Article X of the Oklahoma Constitution. Any royalties, bonuses, rentals or other monies derived from oil and gas and all other mineral leases on lands that have been or may be granted by the United States to the state for the use and benefit of the common schools, or lands that are or may be held by the Commissioners of the Land Office for the use and benefit of the common schools, the proceeds of the sale of easements, improvements and sand and gravel on any such lands, any monies as may be appropriated or designated by the Legislature, other than ad valorem taxes, any other funds identified by the State Department of Education, which may include, but not be limited to, grants-in-aid from the federal government for building purposes, the proceeds of all property that shall fall to the state by escheat, penalties for unlawful holding of real estate by corporations, and capital gains on assets of the permanent school funds, shall be deposited in the State Public Common School Building Equalization Fund. The fund shall be used to aid school districts in acquiring buildings, subject to the limitations fixed by Section 32 of Article X of the Oklahoma Constitution. It is hereby declared that the term "acquiring buildings" as used in Section 32 of Article X of the Oklahoma Constitution shall mean acquiring or improving school sites, constructing, repairing, remodeling or equipping buildings, or acquiring school furniture, fixtures, or equipment. If sufficient monies are available in the fund, the Board shall solicit proposals for grants from school districts and shall determine the process for consideration of proposals. Grants shall be awarded only to school districts which have a total assessed property valuation per average daily membership that is less than the state average total assessed property valuation per average daily membership and, at the time of application, the district has voted the five-mill building fund levy authorized in Section 10 of Article X of the Oklahoma Constitution, and has voted indebtedness through the issuance of new bonds for at least eighty-five percent (85%) within the last three (3) years of the maximum allowable pursuant to the provisions of Section 26 of Article X of the Oklahoma Constitution as shown on the school district budget filed with the State Board of Equalization for the current school year and certifications by the Attorney General prior to April 1 of the school year. The amount of each grant awarded by the Board each year shall not exceed One Million Dollars (\$1,000,000.00). The Board shall give priority consideration to school districts which have a total assessed property valuation per average daily membership that is equal to or less than twenty-five percent (25%) of the state average total assessed property valuation per average daily membership. The Board is authorized to prorate grants awarded if monies are not sufficient in the fund to award grants to qualified districts. The State Board of Education shall prescribe rules for making grants of aid from, and for otherwise administering, the fund pursuant to the provisions of this paragraph, and may employ and fix the duties and compensation of technicians, aides, clerks, stenographers, attorneys and other personnel deemed necessary to carry out the provisions of this paragraph. The cost of administering the fund shall be paid from monies appropriated to the State Board of Education for the operation of the State Department of Education;

22. Recognize that the Director of the Oklahoma Department of Corrections shall be the administrative authority for the schools which are maintained in the state reformatories and shall appoint the principals and teachers in such schools. Provided, that rules of the State Board of Education for the classification, inspection and accreditation of public schools shall be applicable to such schools; and such schools shall comply with standards set by the State Board of Education; and

23. Have authority to administer a revolving fund which is hereby created in the State Treasury, to be designated the Statistical Services Revolving Fund. The fund shall consist of all monies received from the various school districts of the state, the United States Government, and other sources for the purpose of furnishing or financing statistical services and for any other purpose as designated by the Legislature. The State Board of Education is hereby authorized to enter into agreements with school districts, municipalities, the United States Government, foundations and other agencies or individuals for services, programs or research projects. The Statistical Services Revolving Fund shall be administered in accordance with Section 155 of Title 62 of the Oklahoma Statutes.

Historical Data

Laws 1971, HB 1155, c. 281, § 3-104, emerg. eff. July 2, 1971; Amended by Laws 1972, SB 385, c. 241, § 1, emerg. eff. April 7, 1972; Amended by Laws 1973, HB 1219, c. 17, § 1, emerg. eff. March 27, 1973; Amended by Laws 1973,

SB 115, c. 46, § 6, emerg. eff. July 1, 1973; Amended by Laws 1974, HB 1649, c. 146, § 1; Amended by Laws 1975, HB 1227, c. 344, § 1; Amended by Laws 1978, SB 498, c. 85, § 1, eff. January 8, 1979; Amended by Laws 1982, c. 369, § 1, eff. October 1, 1982; Amended by Laws 1984, SB 368, c. 296, § 42, emerg. eff. July 1, 1984; Amended by Laws 1985, HB 1276, c. 13, § 1, eff. November 1, 1985; Amended by Laws 1986, HB 2032, c. 105, § 2, emerg. eff. April 5, 1986; Amended by Laws 1991, HB 1683, c. 240, § 1, eff. September 1, 1991; Amended by Laws 1993, c. 239, § 21 (repealed by Laws 1994, c. 2, § 34, emerg. eff. March 2, 1994); Amended by Laws 1993, HB 1383, c. 361, § 1, emerg. eff. June 11, 1993; Amended by Laws 1994, HB 2299, c. 2, § 26, emerg. eff. March 2, 1994; Amended by Laws 1994, SB 1188, c. 378, § 1, emerg. eff. July 1, 1994; Amended by Laws 1994, SB 1155, c. 344, § 1 (repealed by Laws 1995, HB 1012, c. 1, § 40, emerg. eff. March 2, 1995); Amended by Laws 1995, HB 1012, c. 1, § 25, emerg. eff. March 2, 1995; Amended by Laws 1995, SB 479, c. 226, § 1, emerg. eff. July 1, 1995; Amended by Laws 1995, HB 1549, c. 322, § 23, emerg. eff. July 1, 1995; Amended by Laws 1998, HB 3213, c. 246, § 32, eff. November 1, 1998 (superseded document available); Amended by Laws 1999, HB 1390, c. 336, § 5, eff. November 1, 1999 (superseded document available); Amended by Laws 2009, HB 2029, c. 234, § 155, emerg. eff. May 21, 2009 (repealed by Laws 2010, SB 2113, c. 2, § 74, emerg. eff. March 3, 2010) (superseded document available); Amended by Laws 2009, SB 1169, c. 448, § 1, eff. November 1, 2009 (superseded document available); Amended by Laws 2010, SB 2113, c. 2, § 73, emerg. eff. March 3, 2010 (superseded document available); Amended by Laws 2011, HB 2139, c. 31, § 4 (superseded document available); Amended by Laws 2012, HB 2306, c. 354, § 1 (superseded document available).

Citationizer[®] Summary of Documents Citing This Document

Cite Name	Level
Oklahoma Attorney General's Opinions	
Cite	Name
<u>2006 OK AG 27,</u>	<u>Question Submitted by: The Honorable Bill Nations, State Representative, District 44</u>
	Cited
<u>1981 OK AG 11,</u>	<u>Question Submitted by: The Honorable Helen Arnold, Oklahoma House of Representatives</u>
	Cited
<u>1981 OK AG 118,</u>	<u>Question Submitted by: The Honorable Bill Lancaster, Oklahoma House of Representatives</u>
	Cited
<u>1983 OK AG 133,</u>	<u>Question Submitted by: The Honorable Lonnie L. Abbott, Oklahoma House of Representatives, The Honorable Leslie Fisher, Ed.D., State Superintendent, Department of Education</u>
	Cited
<u>1983 OK AG 5,</u>	<u>Question Submitted by: The Honorable Steve Sill, Oklahoma House of Representatives</u>
	Cited
<u>1984 OK AG 138,</u>	<u>Question Submitted by: The Honorable Don Johnson, Oklahoma House of Representatives</u>
	Discussed
<u>1984 OK AG 14,</u>	<u>Question Submitted by: The Honorable George Nigh, Governor of Oklahoma</u>
	Discussed at Length
<u>1984 OK AG 164,</u>	<u>Question Submitted by: Dr. John M. Folks, State Superintendent, Oklahoma State Department of Education</u>
	Discussed at Length
<u>1991 OK AG 3,</u>	<u>Question Submitted by: Ms. Sandy Garrett, State Superintendent of Public Instruction</u>
	Discussed
<u>1995 OK AG 38,</u>	<u>Question Submitted by: The Honorable Don McCorkell, Oklahoma House of Representatives, District 72</u>
	Cited
<u>1996 OK AG 73,</u>	<u>Question Submitted by: The Honorable Sandy Garrett, State Superintendent of Public Instruction</u>
	Discussed at Length
<u>1997 OK AG 89,</u>	<u>Question Submitted by: The Honorable Al Lindley, State Representative, District 93</u>
	Cited
<u>1999 OK AG 36,</u>	<u>Question Submitted by: The Honorable Sandy Garrett, State Superintendent of Public Instruction</u>
	Cited
<u>1999 OK AG 64,</u>	<u>Question Submitted by: The Honorable Sandy Garrett, State Superintendent of Public Education</u>
	Discussed
Oklahoma Court of Civil Appeals Cases	
Cite	Name
<u>1989 OK CIV APP 84, 789 P.2d 251, 61 OBJ 861,</u>	<u>State ex rel. Pate v. Independent School Dist. No. 67 of LeFlore County, OK.</u>
	Cited
<u>1992 OK CIV APP 153, 842 P.2d 767, 64 OBJ 42,</u>	<u>Patrick v. State ex rel. State Bd. of Educ.</u>
	Discussed

Cite Name	Level	
Oklahoma Supreme Court Cases		
Cite	Name	Level
<u>1989 OK 92, 776 P.2d 553, 60 OBJ 1556,</u>	<u>Jet-Nash School Dist. No. I-4 of Alfalfa County v. Cherokee School Dist. No. I-46 of Alfalfa County</u>	Discussed
<u>1975 OK 154, 543 P.2d 1370,</u>	<u>MARTIN v. HARRAH INDEPENDENT SCHOOL DISTRICT</u>	Cited
<u>1980 OK 91, 613 P.2d 466,</u>	<u>State ex rel. Thompson v. Ekberg</u>	Discussed
<u>1985 OK 54, 711 P.2d 77, 56 OBJ 1554,</u>	<u>State ex rel. May v. Seneca-Cayuga Tribe of Oklahoma</u>	Cited
Title 68. Revenue and Taxation		
Cite	Name	Level
<u>68 O.S. 2357.206,</u>	<u>Taxpayer Credits - Review of Application - Eligibility</u>	Discussed at Length
Title 14A. Consumer Credit Code		
Cite	Name	Level
<u>14A O.S. 1-303,</u>	<u>Index of Definitions in Act</u>	Cited

Citationizer: Table of Authority

Cite Name	Level	
Title 10. Children		
Cite	Name	Level
<u>10 O.S. 7102,</u>	<u>Repealed by Laws 2009, HB 2028, c. 233, § 194, emerg. eff. May 21, 2009</u>	Cited
<u>10 O.S. 7115,</u>	<u>Renumbered as 21 O.S. § 843.5 by Laws 2009, HB 2028, c. 233, § 207, emerg. eff. May 21, 2009</u>	Cited
Title 21. Crimes and Punishments		
Cite	Name	Level
<u>21 O.S. 741,</u>	<u>Kidnapping</u>	Cited
<u>21 O.S. 843.1,</u>	<u>Abuse, Neglect, or Financial Exploitation by Caretaker</u>	Cited
<u>21 O.S. 885,</u>	<u>Incest - Penalty</u>	Cited
<u>21 O.S. 888,</u>	<u>Forcible Sodomy</u>	Cited
<u>21 O.S. 891,</u>	<u>Maliciously, Forcibly or Fraudulently Taking or Enticing Away Children - Punishment</u>	Cited
<u>21 O.S. 1021,</u>	<u>Indecent Exposure - Indecent Exhibitions - Obscene or Indecent Writings, Pictures, Etc. - Solicitation of Minors</u>	Cited
<u>21 O.S. 1021.2,</u>	<u>Minors - Obscene or Indecent Writings, Pictures, Etc.</u>	Cited
<u>21 O.S. 1021.3,</u>	<u>Guardians - Parents - Custodians - Consent to Participation of Minors in Obscene Writings, Pictures, Etc.</u>	Cited
<u>21 O.S. 1040.13a,</u>	<u>Soliciting Sexual Conduct or Communication with Minor by use of Technology - Penalty - Jurisdiction</u>	Cited
<u>21 O.S. 1040.51,</u>	<u>Repealed by Laws 2000, HB 2104, c. 208, § 24, eff. November 1, 2000</u>	Cited
<u>21 O.S. 1087,</u>	<u>Offering or Transporting Child for Purpose of Prostitution - Penalty</u>	Cited
<u>21 O.S. 1088,</u>	<u>Child Prostitution - Unlawful Detainment in Prostitution House - Penalty</u>	Cited
<u>21 O.S. 1111.1,</u>	<u>Rape by Instrumentation - Consent</u>	Cited
<u>21 O.S. 1123,</u>	<u>Lewd or Indecent Proposals or Acts to Child Under 16</u>	Cited
Title 62. Public Finance		
Cite	Name	Level
<u>62 O.S. 155,</u>	<u>State Boards, Commissions and Departments - Revolving Funds Created</u>	Cited
Title 70. Schools		
Cite	Name	Level
<u>70 O.S. 6-184,</u>	<u>Oklahoma Commission for Teacher Preparation, State Board of Education, Oklahoma State Regents for Higher Education, and State Board of Vocational and Technical Education - Duties - Authority</u>	Cited

210:1-5-6. Revocation of certificates

The rules and regulations of the State Board of Education governing the revocation of certificates apply to the following: superintendent of schools, principals, supervisors, librarians, school nurses, school bus drivers, visiting teachers, classroom teachers and other personnel performing instructional, administrative and supervisory services in the public schools.

- (1) Grounds for revocation. A certificate shall be revoked only for a willful violation of a rule or regulation of the State Board of Education, or of any federal or state law, or for other proper cause. [70-3-104] It shall be a violation of State Board of Education rules and regulations for any person holding a valid teaching certificate to be aware of and fail to report, or knowingly participate in any activity deemed illegal while participating in job-related activities of student organizations, athletic and scholastic competitions, fairs, stock shows, field trips, or any other activity related to the instructional program. Violation of this regulation can result in recommendation of revocation of the teaching certificate, or such other penalty, as may be determined after due process by the State Board of Education.
- (2) Right to hearing on certificate revocation. No certificate shall be revoked until a hearing has been held by the State Board of Education. The Board may utilize a hearing officer to conduct the hearing. If utilized, the hearing officer shall be appointed by the Chairperson of the Board. At least twenty (20) days before the hearing the complaint giving rise to the hearing shall be filed with the Chairperson of the Board, showing grounds or reasons for revocation of the certificate. The complaint shall be in writing, and shall be signed by the complaining party, and the chairperson or chairperson's designee.
- (3) Filing of complaint. In an individual proceeding, there shall be filed a complaint containing a statement of the matters asserted setting forth the relief requested, and the facts alleged to give rise to the right to the relief, and naming the persons against whom relief is sought.
- (4) Informal disposition. Informal disposition of any complaint may be made by stipulation, agreed settlement, consent order, or default. Written notice signed by each party or counsel representatives shall be delivered to the Secretary of the State Board of Education prior to the time of the scheduled hearing.
- (5) Notice to parties. Whenever such a charge or complaint is filed with the Chairperson of the State Board of Education, he or she shall send a copy thereof to the holder of the certificate by certified or registered mail, restricted delivery with return receipt requested. Notice of the time and place of the hearing and the name of the hearing officer (if applicable) shall be given by the Chairperson by certified or registered mail, restricted delivery with return receipt requested, to the holder of the certificate.
- (6) Attendance of witnesses. If the complainant, or the holder of the certificate wants any person to attend the hearing and testify as a witness, he/she shall notify the Chairperson, State Board of Education within ten (10) days prior to the hearing, in writing, giving the name and address of the desired witness, and the Chairperson shall thereupon subpoena, by mail, the desired witness to attend. Every person testifying at a revocation hearing shall be sworn to tell the truth. The parties to the hearing shall exchange witness and exhibit lists no later than five (5) days prior to the hearing. The hearing shall be electronically recorded by the State Department of Education. A party to the hearing, upon request, shall be supplied a copy of the tape recording of the hearing. Any transcription cost shall be borne by the party requesting transcription. If a hearing officer is utilized, written recommended findings of fact and conclusions of law shall be

prepared by the hearing officer after conclusion of the hearing and submitted to the parties and the State Board of Education. The parties shall have the opportunities set out in 75 O. S. Supp. 1997, § 311 before action is taken by the Board on the proposed findings of fact and conclusions of law. After the parties have been given notice and an opportunity to file exceptions, present briefs and oral arguments in accordance with 75 O.S. Supp. 1997, § 311, action shall be taken by the State Board of Education to accept, reject, or modify the proposed Findings and Conclusions of the hearing officer.

(7) Issuance of subpoenas. Subpoenas for the attendance of witnesses, or for the furnishing of information required by the Board, or for the production of evidence or records of any kind shall be issued by the Secretary of the Board at the direction of the Chairperson or upon order of the Board. In like manner, and for like purpose, subpoenas shall be issued by the Secretary at the request of any party to a proceeding before the Board for the attendance of witnesses or for the production of evidential materials at a hearing in such proceeding. The signature of the Secretary shall be sufficient authentication for any subpoena. Subpoenas shall be served in any manner prescribed for service of a subpoena in a civil action. [75-315]

(8) Refusal to obey subpoena or to testify. Upon the failure of any person to obey a subpoena, or upon the refusal of any witness to be sworn or make an affirmation or to answer a question put to her or him in the course of a hearing in any rule-making proceeding, proceeding for a declaratory ruling, or in an individual proceeding, or in any other authorized action of the Board, the Board as soon as convenient shall consider the matter. By resolution, it may direct the institution of appropriate judicial proceedings under the law of the state for an order to compel compliance with the subpoena or the giving of testimony, as the case may be. Meanwhile, the hearing or other matters shall proceed, so far as is possible, but the Board at its discretion at any time may continue the proceedings for such time as may be necessary to secure a final ruling in the compliance proceedings.

(9) Costs. The costs covering the issuance and service of subpoenas and all witness fees incurred on behalf of a party to the proceedings, other than the Board, shall be borne by the party on whose behalf they are incurred.

(10) Right to representation. The person or persons signing the charge or complaint, the holder of the certificate, and any other interested person may appear at the hearing personally and/or by legal counsel.

(11) Legal counsel to State Board of Education. The attorney for the State Board of Education or, upon request, the Attorney General's representative shall present evidence to the Board, in furtherance of the Complaint. If deemed necessary by the Chairperson of the Board, a request will be made of the Attorney General to provide counsel to the Board to rule on questions of admissibility of evidence, competence of witnesses, and any other questions of law. In the event that counsel is not requested from the Attorney General the Chairperson of the Board will rule on the evidence, competency of the witness and other questions of law.

(12) Requests for disqualifications. Requests for the disqualification of a member or members of the Board shall be embodied in an affidavit, stating with particularity the grounds alleged therefor. Such requests must be filed prior to the commencement of the hearing unless it appears in the affidavit that the grounds for disqualification were not previously known and that upon such grounds the application to disqualify was promptly filed. Upon the filing of such affidavit, the Chairperson of the Board or the Secretary, if the affidavit is filed against the Chairperson, shall set the matters for hearing at the earliest date at which the Board can be convened, giving notice thereof personally or by telephone to the party or his or her counsel. The Board, or those

members thereof qualified to sit at the hearing, shall take evidence and make prompt decisions. In the event the disqualification is sustained or in the event of a mandamus requiring disqualification, the hearing shall be continued to such time as is necessary for the appointment of members pro tem to proceed with the matters, and due notice of the continuance shall be given to all parties.

(13) Disqualification of Board or Agency member. A Board or Agency member shall withdraw from any individual proceeding in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification on the ground of his or her inability to give a fair and impartial hearing by filing an affidavit promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the Board, or if it affects a member of the Board, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a Board or Agency member, the Governor immediately shall appoint a member pro tem to sit in place of the disqualified member in that proceeding.

(14) Notice of facts. The Board shall give notice to all parties, prior to, or at the hearing, of any facts of which it proposes to take official notice. Any party or her/his attorney may request that official notice be taken of any fact qualified for such notice by the statutes of this state. If such official notice is taken, it shall be stated in the record, and all parties shall have opportunity to contest and give evidence in rebuttal or derogation of the official notice.

(15) Presentation and consideration of evidence. The State Board of Education shall consider only evidence upon the specific cause contained in the notice, and evidence will be heard for such cause. Questions of the admissibility of evidence shall be governed by the provisions of 75-310.

(16) Order of procedure. The order of procedure at the hearing shall be as follows:

(A) Opening statements by legal counsel of both parties;

(B) Presentation of evidence by both parties followed by cross-examination of witnesses, and questions by State Board members;

(C) Closing arguments by legal counsel of both parties; and

(D) Submission of case to the Board for decision.

(17) Decision.

(A) After hearing all evidence, and all witnesses, the State Board of Education shall issue its decision on whether the certificate shall be revoked.

(B) The decision of the State Board of Education shall be announced at the conclusion of the hearing and notification of that decision shall be by certified or registered mail, restricted delivery with return receipt requested to the holder of the certificate.

(18) Findings of fact and conclusions of law. The Board shall render findings of fact and conclusions of law. All findings of fact made by the Board shall be based exclusively on the evidence presented during the course of the hearing or previously filed briefs, (made a part of the record), of the testimony of witnesses taken under oath.

(19) Final order. All final orders in an individual proceeding shall be in writing and made a part of the record. Final orders are to be issued by the Chairperson of the Board or the presiding officer for transmission to the parties by the Secretary of the Board.

(20) Communication with parties. Unless required for the disposition of ex parte matters authorized by law, the Chairperson and the members of the Board or the employees or the agents of the Board shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his or her

representative except upon notice and opportunity for all parties to participate. The Chairperson and members of the Board may communicate with one another and have the aid and advice of one or more personal assistants. Advice may also be secured from the Attorney General's office.

(21) Record of hearing.

(A) The record of a hearing shall be set forth in such form and detail as the Chairperson or the Board may direct. The hearing may also be fully transcribed, and shall be placed on file in the Secretary's office. The record shall include all pleadings, motions, and intermediate rulings; evidence received or considered; a statement of matters officially noticed; questions and offers of proof, objections, and rulings thereon; any decision, opinion, or report by the officer presiding at the hearing; all staff memoranda or data submitted to the Board or members of the Agency in connection with their consideration of the case.

(B) The State Board Secretary shall tape record the proceedings, with the exception of the executive sessions. If the requesting party should desire the tape(s) to be transcribed by a court reporter, the requesting party shall bear the expense.

(22) Rights to a rehearing, reopening or reconsideration.

(A) A petition for rehearing, reopening or reconsideration of a final order must be filed with the Secretary of the State Board within ten (10) days from the entry of the order. It must be signed by the party or his or her attorney, and must set forth with particularity such of the statutory grounds upon which it is based. However, a petition based upon fraud practiced by the prevailing party or upon procurement of the orders by perjured testimony or fictitious evidence may be filed at any time. All petitions for rehearing, reopening, or reconsideration will be considered and ruled upon as soon as the convenient conduct of the Board's business will permit.

(B) The grounds for requesting a rehearing shall be either:

(i) newly discovered or newly available evidence, relevant to the issues;

(ii) need for additional evidence adequately to develop the facts essential to proper decision;

(iii) error committed by the Agency in the proceeding or in its decision such as would be grounds for reversal on judicial review of the order;

(iv) need for further consideration of the issues and the evidence in the public interest; or

(v) a showing that issues not previously considered ought to be examined in order to properly dispose of the matter. The grounds which justify the rehearing shall be set forth by the State Board of Education which grants the order, or in the petition of the individual making the request for the hearing.

(C) It is the burden of the party requesting a rehearing to notify the opposing party of the appeal.

(D) On reconsidering the matter, it may be heard by the State Board of Education or it may be referred to a Board or Agency Member and the hearing must be confined to those grounds on which the recourse was granted. [75-317]

(23) Judicial review. Any person or party aggrieved or adversely affected by a final order in an individual proceeding is entitled to certain judicial review pursuant to 75-318-323 and the procedures set forth therein shall govern appeals.

[Source: Amended at 10 Ok Reg 2695, eff 6-25-93; Amended at 19 Ok Reg 481, eff 12-19-01 (emergency); Amended at 19 Ok Reg 1622, eff 6-13-02; Amended at 21 Ok Reg 395, eff 12-19-03 (emergency); Amended at 21 Ok Reg 1188, eff 5-27-04]



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Title 70. Schools

Oklahoma Statutes Citationized

Title 70. Schools

Chapter 1 - School Code of 1971

Article Article III - State Department of Education

Section 3-104.1 - Convicted Felons Not to Receive Certification for Instructional, Supervisory or Administrative Position

Cite as: O.S. §. ___

No person shall receive a certificate for instructional, supervisory or administrative position in an accredited school of this state who has been convicted of a felony, any crime involving moral turpitude or a felony violation of the narcotic laws of the United States or the State of Oklahoma, provided the conviction was entered within the preceding ten-year period.

Historical Data

Laws 1979, c. 91, § 1.

Citationizer[®] Summary of Documents Citing This Document

Cite Name	Level
Oklahoma Supreme Court Cases	
Cite	Name
2003 OK 76, 77 P.3d 1084.	BALLARD v. INDEP. SCHOOL DIST. NO. 4 OF BRYAN COUNTY
	Level
	Cited

Citationizer: Table of Authority

Cite	Name	Level
None Found.		