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8 NY ADC II C 83 Notes

8 NYCRR II C 83 Notes

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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 8. EDUCATION DEPARTMENT
CHAPTER II. REGULATIONS OF THE COMMISSIONER
SUBCHAPTER C. TEACHERS
PART 83. DETERMINATION OF GOOD MORAL CHARACTER

Current through April 30, 2011

(Statutory authority: Education Law, §§ 207, 305, 3001, 3004,
3004-c,3006, 3009, 3010, 3035)

8 NY ADC II C 83 Notes

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8 NY ADC II C 83 Notes

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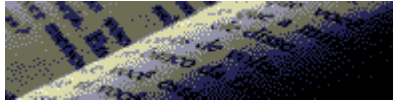
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* Section 83.5.* Appeal.

Within 30 days after receipt of notification of the findings and recommendations of the hearing officer or hearing panel, the certified individual or applicant may commence an appeal to the commissioner pursuant to subdivision (a) of this section or, where applicable, the commissioner may initiate a review proceeding pursuant to subdivision (b) of this section.

(a) Appeal by certified individual or applicant. The certified individual or applicant may commence an appeal of the findings and recommendations of the hearing officer by filing the original appeal papers with the commissioner, with proof of service by regular mail upon the executive director of the Office of Teaching Initiatives. The executive director of the Office of Teaching Initiatives may file a written response with the commissioner within 30 days of being served with such appeal papers, with proof of service by regular mail on the certified individual or applicant or the attorney of record of such certified individual or applicant.

(b) Review proceeding by commissioner.

(1) In cases involving convictions for any of the following acts constituting a crime in New York State, the commissioner may initiate review of the findings and recommendations of the hearing officer or hearing panel to determine whether such findings and recommendations should be adopted as the final determination of the commissioner:

(i) the criminal sale, possession or use of marijuana, a controlled substance, a precursor of a controlled substance or drug paraphernalia as defined in article 220 or 221 of the Penal Law; or

(ii) any crime involving physical or sexual abuse of a minor or student; or

(iii) any crime committed either on school property or while in the performance of teaching duties.

(2) Such review shall be commenced by service of a notice of intent to review on the certified individual or applicant or the attorney of record of the certified individual or applicant, by certified mail, return receipt requested. The certified individual or applicant may file a written response with the commissioner within 30 days of being served with such notice, with proof of service by regular mail on the executive director of the Office of Teaching Initiatives. The executive director of the Office of Teaching Initiatives may file a written response with the commissioner within 30 days of service of such notice, with proof of service by regular mail on the certified individual or applicant. In the event the certified individual or applicant files an appeal on or after the date the commissioner initiates review under this subdivision, the appeal shall be automatically consolidated with the review proceeding and the appeal papers shall constitute the written response of the certified individual or applicant under this subdivision.

(c) The commissioner shall review any appeal papers, or written responses filed, and the transcript and all evidence presented in the proceeding before the hearing officer or hearing panel. Based upon

the record, the commissioner may affirm, adopt, reverse, or modify the findings and recommendations of the hearing officer or the hearing panel. If the commissioner determines to deny an application for certification, the commissioner shall communicate that decision to the applicant. If the commissioner determines to revoke or suspend a certificate, or to impose another penalty upon the certified individual as prescribed in section 83.6 of this Part, the commissioner shall execute an order to that effect and shall have the order served upon the certified individual. If no appeal is taken by a certified individual or applicant within the time prescribed in this section, and no review proceeding has been commenced by the commissioner, the conclusion of the hearing officer or the hearing panel shall be final and in the case of an annulment or suspension of a certificate or the imposition of another penalty upon the certified individual as prescribed in section 83.6 of this Part, the commissioner shall issue an order to that effect.

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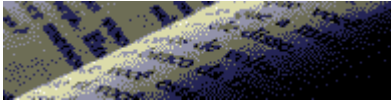
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* Section 83.4.* Hearing.

(a) If requested by the certified individual or applicant, in writing to the professional conduct officer within 30 days after receipt of said notice that a substantial question exists as to the individual's moral character, a hearing shall be held on the issue of whether the individual's certification should be revoked or suspended or whether another penalty should be imposed upon the certified individual as prescribed in section 83.6 of this Part or whether the application for certification should be denied. In the request for a hearing, the certified individual or applicant may request that the hearing be held solely before a hearing officer or, in the alternative, before a hearing officer and a three-member hearing panel. Upon receipt of a request for a hearing, a hearing officer shall be appointed by the commissioner to hear and recommend, and a hearing scheduled. In the order designating a hearing officer, the commissioner shall also designate the place where said hearing will be held. At least 15 days before the hearing, the hearing officer shall give to the certified individual or applicant written notice by mail of the time and place of said hearing.

(b) If a hearing panel has been requested, the members shall be selected in the following manner from the list maintained by the commissioner pursuant to the provisions of Education Law section 3020-a: one member shall be selected by the certified individual or applicant, one member shall be selected by the State professional standards and practices board for teaching or a subcommittee thereof, as determined in the bylaws of the board, and the third member shall be chosen by mutual agreement of the first two, or, if they fail to agree, by the commissioner. In the event that the certified individual or applicant has requested a hearing panel but fails or refuses to choose a hearing panel member within 30 days from the receipt of the panel list, the certified individual or applicant shall be deemed to have waived a hearing panel and the hearing shall be conducted before the hearing officer.

(c) The certified individual or applicant may be represented at the hearing by counsel and may produce witnesses and affidavits in proof of the individual's good moral character. The department shall have the burden of proof of lack of good moral character. The hearing officer may issue subpoenas on request of a party and shall conduct the hearing. A verbatim record shall be kept of the testimony.

(d) Evidence of conviction of a crime shall be admissible in any proceeding conducted pursuant to this Part, but such conviction shall not in and of itself create a conclusive presumption that the person so convicted lacks good moral character. In the case of a certified individual, proof of conviction for any of the following acts constituting a crime in New York State and committed subsequent to certification shall create a rebuttable presumption that the individual so convicted lacks good moral character:

- (1) the criminal sale, possession or use of marijuana, a controlled substance, a precursor of a controlled substance or drug paraphernalia as defined in article 220 or 221 of the Penal Law; or
- (2) any crime involving physical or sexual abuse of a minor or student; or

(3) any crime committed either on school property or while in the performance of teaching duties.

(e) In determining whether a certificate should be revoked or suspended or an application for certification should be denied based on a previous criminal conviction, the hearing officer or panel shall apply the standards for denial of a license application set forth in Correction Law, section 752 and shall consider the factors specified in Correction Law, section 753.

(f) Upon the conclusion of the hearing, the hearing officer shall submit to the commissioner and to the certified individual or applicant a report of the findings and recommendations or, if a hearing panel has been utilized, a report of the findings and recommendations of such panel, together with a copy of the transcript. The findings and recommendations of the hearing officer or the hearing panel shall be based solely upon the record and shall set forth the factual basis therefor.

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* Section 83.3.* Review by board.

If upon review of the report of the professional conduct officer, such board or subcommittee concludes that a certified individual's moral character is adequate to permit continued certification as a teacher, or that an applicant's moral character is adequate to permit certification as a teacher, a report to this effect shall be forwarded by the board or subcommittee to the executive director of the Office of Teaching Initiatives. If upon such review, the board or subcommittee concludes that a substantial question exists as to the moral character of a certified individual or an applicant, notice of the basis for this conclusion and a copy of this Part shall be sent by certified mail, return receipt requested, to the certified individual or applicant.

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* Section 83.2.* Investigation.

The professional conduct officer shall direct that an investigation be done of the circumstances surrounding such conviction or act, and shall submit a report of the findings and a recommendation as to whether to proceed to a formal hearing to the State professional standards and practices board for teaching or to a subcommittee of such board, as determined in the bylaws of the board, composed of no fewer than five members approved by majority vote of the board, to consider such reports.

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* Section 83.1.* Determination of good moral character.

(a) Any information indicating that an individual holding a teaching certificate has been convicted of a crime, or has committed an act which raises a reasonable question as to the individual's moral character, shall be referred by the chief school administrator having knowledge thereof to the professional conduct officer of the department.

(b) The appropriate official in school districts which by statute are empowered to grant teaching licenses shall notify the professional conduct officer of the revocation, annulment or suspension of any license issued under that authority, together with the reasons therefor.

(c) Information in the possession of any person indicating that an applicant for a teaching certificate has been convicted of a crime, or has committed an act which raises a reasonable question as to the individual's moral character, may be referred to the executive director of the Office of Teaching Initiatives of the State Education Department. Information in the possession of any person indicating that an individual holding a teaching certificate has been convicted of a crime, or has committed an act which raises a reasonable question as to the individual's moral character, may be referred to the professional conduct officer of the department.

(d) The department shall review the findings and recommendations of hearing panels in hearings on charges against tenured teachers pursuant to Education Law section 3020-a and all such cases involving criminal convictions shall be referred to the professional conduct officer.

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