



# Educator Misconduct Review Process

## Summary of draft changes to 290-3-2-.04

### Revocation and Suspension of Certificates and Unsuitability Determinations; Prohibition on Aiding and Abetting of Sexual Abuse

#### ▶ **Section 1 – Authority of the Alabama State Superintendent of Education**

- ▶ Clarify the authority of the Superintendent.
- ▶ Improve the organization and readability of the section.
- ▶ Reference and incorporate the Alabama Educator Code of Ethics.
- ▶ Specifies that a violation of the Alabama Educator Code of Ethics is grounds for the State Superintendent to impose sanctions upon a person's certification.

#### ▶ **Section 2 - Requirements of Local Superintendents and Boards of Education**

- ▶ Clarify when and what should be reported by local superintendents.
- ▶ Ties the reporting requirement to a violation or possible violation of the Alabama Educator Code of Ethics.
- ▶ Expands the scope of those who should be reported to include third party contractors or agents.
- ▶ Creates a ten-day deadline to provide information requested by the Department of Education.
- ▶ Provides that if the local superintendent is the subject of the allegation that the local board president or his or her designee should ensure compliance with this rule.
- ▶ Specifies that principals or leaders of public charter schools must comply with the same reporting requirement.
- ▶ Incorporates the ESEA prohibition against aiding and abetting sex abuse; requires local superintendents to ensure that their school systems have ESEA compliant policies regarding this prohibition.

## ▶ **Section 3 - Certification and Unsuitability Review Process**

- ▶ Revises the wording to acknowledge that a decision may be made by a designee of a superintendent.
- ▶ Adds wording to note that amended charges need not go through the initial process described in this section.
- ▶ Adds that the rule shall not prohibit the Department from publicly updating its website to reflect the current status of a person's pending background review, even if a final resolution has not been reached.

## ▶ **Section 4 – Hearing Procedures**

- ▶ Improves the organization of the section.
- ▶ Specifies that the hearing officer may allow witness testimony by telephone or video for good cause.
- ▶ Specifies a process for amending allegations against a respondent, including requiring a motion if less than 30 days before a hearing date.
- ▶ Addresses the counting of days and timeliness of filings under a scheduling order.
- ▶ Specifies that the burden of proof for the Department is a preponderance of the evidence.
- ▶ Deletes a confusing sentence regarding local systems and employment decisions.
- ▶ Specifies that a designee of the State Superintendent may make a final decision.

## ▶ **Section 4 – Hearing Procedures (con't)**

- ▶ Encourages prompt decisions by removing a sentence stating that the hearing officer may extend his or her time to decide a case on his or her own accord. Instead, the 30-day deadline may be extended only with the written permission of both parties or their attorneys.
- ▶ Creates a procedure and deadlines for the parties to file post-recommendation motions to alter the hearing officer's recommendation. This provides for a mechanism for the parties to raise issues with the hearing officer before the matter is submitted to the State Superintendent.
- ▶ Clarifies that the State Superintendent has 30 days from the date the hearing officer's recommendation, or a decision regarding a post-recommendation motion, to make a final decision. The hearing officer's recommendation is not automatically adopted even if the State Superintendent takes longer than 30 days to make his decision.
- ▶ Specifies a process that would occur following the issuance of a recommendation from a hearing officer.

## ▶ **Section 5 – Application for Rehearing**

- ▶ Clarifies the process for filing an Application for Rehearing.
- ▶ States that the deadline for filing an application for a rehearing is counted from the date the final decision is placed in the U.S. mail. Currently the date a final order is "entered" is ambiguous.

## ▶ **Section 6 – Summary Proceeding**

- ▶ Clarifies that the Department of Education may serve notice on a potential respondent after locating his or her whereabouts rather than the State Superintendent.

## ▶ **Section 9 – Applications for Reconsideration or Reinstatement**

- ▶ Creates a specific process for “Applications for Reconsideration”. This provides a way forward for those who have been rehabilitated and are not likely to pose a threat in an educational environment.
- ▶ Explains that such applications do not create a right to a hearing.
- ▶ States that such applications may not be considered within seven years of the original decision except at the discretion of the State Superintendent.

## ▶ **Section 10 – The provisions of this Rule are severable**

- ▶ Specifies that if one part of the rule is unenforceable the remaining portions are not affected.

## ▶ **Section 11 – Alabama Educator Code of Ethics**

- ▶ Adopts and incorporates the Alabama Educator Code of Ethics, including any subsequent amendments.

## ▶ **Section 12 – Prohibition on Aiding and Abetting Sexual Abuse**

- ▶ Adds ESEA required provision to prevent the “aiding and abetting of sexual abuse.”
- ▶ Requires all public schools, including public charter schools, to comply with this provision of ESEA.

### **Summary of draft changes to Rule 290-3-2-.02**

## ▶ **Section 8 – Criminal History Background Checks**

- ▶ Revises language to bring administrative code in line with provisions of Child Protection Act of 1999, as amended.
- ▶ More specifically, this change deletes the administrative code provision stating that a criminal history check need not be performed if one was done after 1999.