

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 EDC 02046

<p>Brian Johnson Petitioner,</p> <p>v.</p> <p>North Carolina Department of Public Instruction Catherine Truitt Superintendent of Public Instruction Respondent.</p>	<p>FINAL DECISION</p>
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This contested case came on for hearing before John C. Evans, Administrative Law Judge, on October 24, 2022 at the Office of Administrative Hearings in Raleigh, NC.

APPEARANCES

For Petitioner: J. Michael McGuinness
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Elizabethtown, NC 28337

For Respondents: Zach Padget
Special Deputy Attorney General
North Carolina Department of Justice
P.O. Box 629
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WITNESSES

For Petitioner: Catherine Truitt, Superintendent of Public Instruction
Brian Johnson, Petitioner

For Respondents: Brandon Walker, Agency Legal Consultant, State Board of
Education

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner:

EXHIBIT #	EXHIBIT DESCRIPTION
1	April 1, 2022, Respondent's Final Decision
2	Petitioner's Submission to the Education Ethics Advisory Committee

For Respondent:

EXHIBIT #	EXHIBIT DESCRIPTION
1	N.C. Gen. Stat. § 115C-270.5
2	N.C. Gen. Stat. § 115C-270.5
3	State Board of Education (SBE) Policy GOVR-005
4	16 NCAC 06C .0601
5	16 NCAC 06 .0602
6	SBE Policy EVAL-14
7	NC Teacher Evaluation Rubric
8	December 2, 2021, Initial Letter to Petitioner
9	Wake County Public School System Investigation File
10	Granville County Schools Petitioner Personnel File
11	Petitioner's Submission to the Education Ethics Advisory Committee
12	January 14, 2022, Ethics Advisory Committee Meeting Minutes
13	April 1, 2022, Respondent's Final Decision

Official Notice was taken of Respondent's Response to Interrogatory No. 5 listing the authorities Respondent relied on when evaluating Petitioner's conduct that gave rise to the formal reprimand on Petitioner's teaching license. *See* December 22, 2022, Notice of Intent to Take

Official Notice. The notice provided both parties on opportunity to object and be heard. No objection was asserted and no request to be heard was made.

APPLICABLE STATUTES AND RULES

N.C. Gen. Stat. §§ 115C-19, 115C-21, 115C-270.5, 115C-270.35, 143A-44-3, and 150B-23. 16 NCAC 06C .0601, .0602, .0372, .0374.

ISSUE

Whether Respondent exceeded its delegated authority, acted unlawfully, or acted in an arbitrary or capricious manner when issuing a “formal reprimand” on Petitioner’s teaching license?

FINDINGS OF FACT

BASED UPON careful consideration of the sworn credible testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, the Parties’ Proposed Final Decisions, Supplemental Authority, and the entire record in this proceeding, the Undersigned makes the following Findings of Fact and Conclusions of Law.

In making the Findings of Fact, the Undersigned has weighed all the evidence and assessed the credibility of the witnesses. The Undersigned has considered the appropriate factors for judging credibility of witnesses, including but not limited to the demeanor of the witness, and any interests, bias, or prejudice the witness may have. Further, the Undersigned has carefully considered the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other believable evidence in the case. After careful consideration of the sworn witness testimony presented at the hearing, the documents and exhibits admitted into evidence, the credible evidence, and the entire record in this proceeding, the Undersigned makes the following:

Parties

1. Petitioner Brian Johnson (“Petitioner”) is a licensed teacher in North Carolina. Petitioner has been a licensed teacher in North Carolina since 2007. (T p 61)
2. Respondent Department of Public Instruction (DPI) is a state regulatory agency which, among other duties and responsibilities, is responsible for licensing North Carolina public school teachers.
3. Respondent Catherine Truitt is the Superintendent of the North Carolina Department of Public Instruction. Ms. Truitt issued a formal reprimand on Petitioner’s teaching license on behalf of DPI.
4. From 2015 through 2021, Petitioner worked as a high school math teacher at South Granville High School. In 2021, Petitioner began working as a teacher at Southeast Raleigh High School in Wake County. (T pp 61-62)

5. In July 2019, approximately two months after a student graduated, the former student initiated a relationship with Petitioner. (T pp 65, 68)

6. In 2021, the Wake County Public School System (WCPSS) became aware of this relationship.

7. The WCPSS investigated the matter but did not make any finding regarding any sexual misconduct by Petitioner.

8. In July 2021, the WCPSS submitted their investigation report to Respondent “out of an abundance of caution.”

9. By letter dated December 2, 2021, Respondent informed Petitioner the State Board of Education, Legal Office, had received a report from WCPSS alleging Petitioner had “engaged in a long-term romantic and sexual relationship with a former student” and he had “taught the student while the student was in their junior and senior years at Granville County Schools.” (R. Ex. 8, hereinafter “Initial Notification Letter”). The letter requested that Petitioner attend a meeting with the Educator Ethics Advisory Committee on January 14, 2022.

10. The December 2, 2021, Initial Notification Letter did not identify or allege a violation of any provisions contained in 16 NCAC 06C .0602, .0372, or .0374.

11. On January 14, 2022, Petitioner appeared, virtually, before the Educator Ethics Advisory Committee. At this meeting, Petitioner submitted evidence and argument in opposition to proposed discipline. This evidence included but is not limited to the executed statement of the former student, evidence from the WCPSS investigative file, performance evaluations, and character letters/statements. (T p 16)

12. The January 14, 2022, Educator Ethics Advisory Committee Meeting Minutes summarizing Petitioner’s case are approximately two and one-half pages in length. (R. Ex. 12, hereinafter “Ethics Committee Meeting Minutes”). The meeting minutes did not identify or allege a violation of any provisions contained in 16 NCAC 06C .0602, .0372, or .0374.

13. According to both Petitioner and the former student, there was no personal or romantic relationship while there was an ongoing teacher-student relationship. (R. Ex. 9)

14. In July 2021, the former student initiated the relationship with Petitioner approximately two months after the former student graduated from high school. (T p 25)

15. The relationship ended in June 2021. (R. Ex. 9)

16. At the close of the January 14, 2022, Educator Ethics Advisory Committee meeting, the Committee passed a motion “to issue a letter of reprimand.” (R. Ex. 12)

17. On April 1, 2022, Respondent sent a letter the subject line “Re: License Decision” (hereinafter “Final Decision Letter”) to Petitioner. (R. Ex. 13) The Final Decision Letter stated,

“Based on your interview with the [Educator Ethics Advisory] committee and review of the documents related to this matter, the Committee recommended issuing a formal reprimand. I agree with the Committee’s recommendation. Therefore, I find that cause exists to issue a formal reprimand on your teacher’s license as you did not exercise sound professional judgement in pursuing a romantic relationship with a former student and that you do not feel that there is anything wrong in pursuing a romantic relationship with former students shortly after graduation.

Please take time to review the standards of professional conduct for teachers set forth in our Administrative Code at 16A NCAC 06C .0502, including [16 NCAC 06C .0602(b)(2)]”

18. The Final Decision Letter further stated, “Based on North Carolina’s interstate licensure agreement, this reprimand will be reported to the National Association of State Directors of Teacher Education and Certification (NASDTEC).”

19. The April 1, 2022, Final Decision Letter did not identify or allege a violation of any provisions contained in 16 NCAC 06C .0602, .0372, or .0374.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction of the parties and the subject matter of the contested case.

2. To the extent the foregoing Findings of Fact contain Conclusions of Law, or that these Conclusions of Law are Findings of Fact, they should be so considered without regard to their given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E.2d 600, 604 (1946); *Warren v. Dep’t of Crime Control*, 221 N.C. App. 376, 377, 726 S.E.2d 920, 923 (2012).

3. In educator licensure cases, Petitioner bears the burden of proving at an administrative hearing, by a preponderance of the evidence, that he or she is entitled to relief from the action of the administrative agency. *Richardson v. N.C. Dep’t of Pub. Instr.*, 199 N.C. App. 219, 228, 681 S.E.2d 479, 485 (2009); *Overcash v. N.C. Dep’t of Env’t & Natural Res.*, 179 N.C. App. 697, 635 S.E.2d 442 (2006); *Peace v. Employment Sec. Comm’n*, 349 N.C. 315, 507 S.E.2d 272 (1988); N.C. Gen. Stat. §§ 150B-25.1(a), 150B-34(a).

4. Respondent relied on the following authorities in taking the action to issue a formal reprimand on Petitioner’s teaching license: N.C. Gen. Stat. §§ 115C-19, 115C-21, 115C-270.5, 115C-270.35, 143A-44-3; 16 NCAC 06C .0601, .0602, .0372, .0374; and SBE Policy ID GOVR-005. See Respondent’s Response to Interrogatory No. 5. Each of the relevant provisions is discussed below.

16 NCAC 06C.0602

5. The “Standards of Professional Conduct” are contained at 16 NCAC 06C .0602.
6. Subparagraph (a) provides that a violation of any of the Standards of Professional Conduct listed under subparagraph (b) “shall subject an educator to investigation and disciplinary action by the SBE or LEA [Local Education Agency].”
7. The Standards of Professional Conduct listed under subparagraph (b) contain thirteen enumerated items, not including subparagraphs therein.
8. On December 2, 2021, Respondent sent an Initial Notification Letter to Petitioner. The letter does not cite to any provision of 16 NCAC 06C .0602 and does not allege any violation of any of the Standards of Professional Conduct listed under 16 NCAC 06C .0602(b).
9. The January 14, 2022, Ethics Committee Meeting Minutes that documented the meeting to discuss Petitioner’s conduct do not identify or allege a violation of any of the Standards of Professional Conduct listed under 16 NCAC 06C .0602(b).
10. The April 1, 2022, Final Decision Letter informing Petitioner that a decision was made to issue a “formal reprimand” on Petitioner’s license does not cite to a violation or breach of the Standards of Professional Conduct as listed in 16 NCAC 06C .0602(b). Instead, Respondent’s sole basis for its decision to issue a formal reprimand on Petitioner’s license was a failure to “exercise sound professional judgement” in “pursuing a romantic relationship with a former student.” A “failure to exercise sound professional judgement” is not one of the Standards of Professional Conduct listed in 16 NCAC 06C .0602.¹
11. At no point in the entire investigatory process, beginning with the Initial Notification Letter, the Educator Ethics Advisory Committee meeting, and the Final Decision Letter, did Respondent allege or identify a breach or violation of any of the Standards of Professional Conduct listed under 16 NCAC 06C .0602(b).
12. By the plain language of 16 NCAC 06C .0602(a), a violation of the Standards of Professional Conduct listed under 16 NCAC 06C .0602(b) is a prerequisite for investigation and if warranted, disciplinary action.
13. The failure to identify or allege a single violation of the Standards of Professional Conduct under 16 NCAC 06C .0602(b) before investigating and disciplining Petitioner undermines notions of due process. Petitioner has a fundamental right to know what regulation, policy, or standard he stands accused of violating. “Procedural due process requires that an individual receive adequate notice and a meaningful opportunity to be heard before being deprived of life, liberty, or property.” *In re Magee*, 87 N.C. App. 650, 654, 362 S.E.2d 564, 566 (1987).

¹ The only mention of the Standards of Professional Conduct in the April 1, 2022, Final Decision Letter is a statement requesting Petitioner review the Standards. (“Please take time to review the standards of professional conduct for teachers set forth in our Administrative Code at 16 NCAC 06C .0602, including the following requirement [citing to 16 NCAC 06C.0602(b)(2)].”)

Moreover, a professional license, such as a teacher's license, is a property interest, and is thus protected by due process. *Id.* The right to a hearing includes not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party thereby giving the opportunity to meet them. *Morgan v. United States*, 304 U.S. 1 (1938); *see also In re Trulove*, 54 N.C. App. 218, 223-24, 282 S.E.2d. 544, 547-48 (1981) (failure to provide factual allegations was sufficient to vacate an order finding professional misconduct); *Parrish v. N.C. Real Estate Licensing Board*, 41 N.C. App. 102, 105-06, 254 S.E.2d 268, 270 (1979) ("The notice did not adequately apprise the respondent of the charges against him so as to enable him to prepare his defense.").

14. Finally, the Undersigned notes the statutory authority for 16 NCAC 06C .0602 is N.C. Gen. Stat. § 115C-295.3. That statute was repealed effective May 27, 1999. See S.L. 1999-96, s. 6. Importantly, N.C. Gen. Stat. § 150B-21.7(a) provides that "[w]hen a law that authorizes an agency to adopt a rule is repealed and another law does not give the same or another agency substantially the same authority to adopt a rule, a rule adopted under the repealed law is repealed as of the date the law is repealed." It is unclear whether another law gives the Respondent "substantially the same authority to adopt" 16 NCAC 06C .0602.

16 NCAC 06C .0372

15. Respondent relied on 16 NCAC 06C .0372, "when making a decision in Petitioner's matter." Respondent's Response to Interrogatory No. 5.

16. 16 NCAC 06C .0372(a) lists nine reasons that authorize disciplinary action on a teacher's license issued by the North Carolina DPI.

The State Board of Education (SBE), with regard to a license issued by the North Carolina Department of Public Instruction (DPI), may deny an application, suspend a license pending an investigation, or revoke a license due to findings of fact related to such an investigation for the following reasons:

- (1) fraud, material misrepresentation, or concealment in the application for the license;
- (2) changes in or corrections of the license documentation that make the individual ineligible to hold a license;
- (3) conviction or entry of a plea of no contest, as an adult, to a crime if there is reasonable and adverse relationship between the underlying crime and the continuing ability of the person to perform any of their professional functions;
- (4) final dismissal of a person by a local board pursuant to G.S. 115C.325(e)(1)b if there is a reasonable and adverse relationship between the underlying misconduct and the continuing ability of the person to perform any of their professional functions;
- (5) final dismissal of a person by a Local Education Agency (LEA) due to physical or mental incapacity under G.S.115C.325(e)(1)e;

(6) resignation from employment with an LEA without thirty calendar days' notice, except with the prior consent of the local superintendent;

(7) revocation of a license by another state;

(8) any other illegal, unethical, or lascivious conduct by a person if there is a reasonable and adverse relationship between the underlying conduct and the continuing ability of the person to perform any of their professional functions in an effective manner; and

(9) failure to report revocable conduct as required by law as referenced in Rule .0373 of this Section.

17. Respondent's December 2, 2021, Initial Notification Letter does not cite to 16 NCAC 06C .0372 and more importantly does not identify or allege a breach of any of the nine (9) reasons listed in 16 NCAC 06C .0372(a). Petitioner did not receive notice of the specific allegations against him as required by 16 NCAC 06C .0372(a). Having failed to provide such notice, Respondent was not authorized to act under this provision.

18. Even assuming Respondent had alleged a breach or violation of one or more of the provisions of 16 NCAC 06C .0372(a), subparagraph (b) states,

When deciding to deny, suspend, or revoke a license, the SBE **shall consider**, among other factors, the severity of the infraction; the impact of misconduct on students, teachers, and school community; the degree of culpability; the degree of remorse; the evidence of reformed behavior; subsequent incidents of misconduct; the probability of recidivism; and the continuing effect of the infraction on ability to perform duties. (emphasis added)

19. The factors that must be considered when deciding to take disciplinary action on a teacher license are not mere suggestions. "As used in statutes, the word 'shall' is generally imperative or mandatory." *Silver v. Halifax Cty. Bd. of Commissioners*, 371 N.C. 855, 863-64, 821 S.E.2d 755, 761 (2018). Respondent is required to consider these factors and provide facts in support thereof. *See House of Raeford Farms, Inc. v. N.C. Dept. of Env't & Nat. Res.*, 224 N.C. App. 294, 308, 774 S.E.2d 911, 920 (2015) ("[W]e remand to the superior court with instructions to remand to the finder of fact, to make specific findings with regard to the eight statutory factors set forth in N.C. Gen. Stat. § 143B-282.1(b) and to formulate the amount of any civil penalty to be imposed.").

20. The Superintendent relied exclusively on only two documents in making her decision to issue a "formal reprimand" on Petitioner's teaching license. The first document was the January 14, 2022, Ethics Committee Meeting Minutes, and the second document was the final draft of the April 1, 2022, Final Decision Letter that the Superintendent ultimately signed without making any changes.

21. Moreover, the Superintendent stated that she made her decision based only on these two documents and that there was no need for her “to go deeper.”

22. The Ethics Committee Meeting Minutes did not reference any of the factors 16 NCAC 06C .0372(b). Even if these factors were discussed at the Committee meeting, not a single member of the Committee appeared at the hearing and therefore there was no testimonial evidence to support whether or how these factors were considered.

23. With respect to the second document, the draft April 1, 2022, Formal Reprimand Letter, it did not contain any information about whether and how the 16 NCAC 06C .0372(b) factors were considered.

24. The requirement under 16 NCAC 06C .0372(b) to consider certain factors before taking disciplinary action on a teacher’s license is critical to ensuring not only that Respondent’s disciplinary decisions are uniform, but more importantly they provide Petitioner with a basic understanding of how Respondent arrived at the decision to take disciplinary action and the level of the discipline (e.g., suspension or revocation). Without knowledge of how these mandatory factors were considered, Petitioner cannot reasonably mount a defense to challenge the disciplinary action.

25. Not only did Respondent fail to identify any of the nine reasons listed in 16 NCAC 06C .0372 that could authorize disciplinary action, but Respondent also failed to follow the requirement to consider the factors listed in 16 NCAC 06C .0372(b) when taking such action.

26. Finally, assuming *arguendo*, Respondent identified one of more of the reasons listed in 16 NCAC 06C .0372(a) and further assuming Respondent considered the mandatory factors listed under 16 NCAC 06C .0372(b), Respondent’s decision to issue a formal reprimand on Petitioner’s teaching license is not a disciplinary action authorized under this regulation.

27. 16 NCAC 06C .0372 authorizes Respondent to “suspend a license pending an investigation, or revoke a license due to finding of fact related to such an investigation for the [9 reasons listed at 16 NCAC 06C .0372(a)(1)-(9)].” A “formal reprimand” on a teacher license is simply not one of the two available disciplinary options authorized under 16 NCAC 06C .0372.

16 NCAC 06C .0374

28. Respondent also relied on 16 NCAC 06C .0374, “Investigation Requirements to Determine Reasonable Cause to Suspend or Revoke an Educator’s License” when deciding to issue a formal reprimand on the Petitioner’s license. Respondent’s Response to Interrogatory No. 5.

29. Brandon Walker is a legal consultant for the State Board of Education. According to Mr. Walker, 16 NCAC 06C .0374 is the “starting point” for an investigation. Mr. Walker outlined the process detailed in this regulation for the investigation and disciplining of potential teacher misconduct.

30. 16 NCAC 06C .0374(b) states, “If the Superintendent determines that cause exists to believe that the person’s license should be suspended or revoked on one or more of the grounds specified in Rule .0372 of this Section, the Superintendent shall prepare written charges on behalf of the State Board of Education.”

31. Respondent never identified any of the nine reasons listed in 16 NCAC 06C .0372(a) that would authorize Respondent to act under 16 NCAC 06C .0374.

32. 16 NCAC 06C .0374(c) states that the “SBE shall provide the person with a copy of the written charges”

33. Respondent’s December 2, 2021, Initial Notification Letter did not cite to 16 NCAC 06 .0374 and more importantly did not identify any of the nine (9) reasons listed in 16 NCAC 06C .0372(a).

34. Respondent’s April 1, 2022, Final Decision Letter did **not** include a “copy of the written charges.” In fact, the letter did not cite to a violation of any “of the [nine] grounds specified in Rule .0372.” as required by 16 NCAC 06C .0374(c). Instead, the letter stated, “Therefore, I [Superintendent] find that cause to issue a formal reprimand on your teaching license as you did not exercise sound professional judgement” The failure to “exercise sound professional judgement” is not one of the nine grounds authorizing disciplinary action under 16 NCAC 06C .0372.

35. 16 NCAC 06C .0374(d) states, “If the person initiates administrative proceedings, the SBE shall defer action on the matter until receipt of a final decision as provided for in G.S. 150B-34.” Respondent included this provision in the April 1, 2022, Formal Reprimand Letter. The inclusion of language is consistent with Respondent’s confirmation that they relied on 16 NCAC 06C .0374 when taking this action.

36. Even assuming *arguendo* that Respondent identified one or more of the reasons listed in 16 NCAC 06C .0372, and further assuming Respondent provided Petitioner with written notification, 16 NCAC 06C .0374(e) states, “The SBE may suspend an individual’s license for a stated period of time or may revoke the license, depending upon such factors as: the severity of the infraction, the impact of the infraction on the individual’s ability to perform duties, and rehabilitation efforts and activities.”

37. The disciplinary action is dependent on consideration of the factors listed in 16 NCAC 06C .0374(d). Respondent produced no evidence regarding whether and how the factors listed in 16 NCAC 06C .0374(e) were considered when deciding to act under 16 NCAC 06C .0374.

38. Finally, 16 NCAC 06C .0374 does not authorize Respondent to issue a formal reprimand on a teacher’s license. Rather, 16 NCAC 06C .0374 establishes two options in the event the Superintendent determines that cause exists. Those two options are revocation or suspension.

N.C. Gen. Stat. § 115C-19

39. Respondent relied on N.C. Gen. Stat. § 115C-19, “when making a decision in Petitioner’s matter.” Respondent’s Response to Interrogatory No. 5.

40. N.C. Gen. Stat. § 115C-19 provides, *inter alia*, that “[t]he Superintendent of Public Instruction shall administer all needed rules and regulations adopted by the State Board of Education through the Department of Public Instruction.” As detailed above, the regulations that Respondent relied on - 16 NCAC 06C .0602, .0372, and .0374 – do not authorize the issuance of a formal reprimand on a teacher’s license. Rather, these regulations circumscribe the authority to take disciplinary action on a teacher’s license to suspension or revocation.

N.C. Gen. Stat. § 115C-21

41. Respondent relied on N.C. Gen. Stat. § 115C-21, “when making a decision in Petitioner’s matter.” Respondent’s Response to Interrogatory No. 5.

42. N.C. Gen. Stat. § 115C-21 details the “Administrative Duties” of the Superintendent and Superintendent’s “Duties as Secretary to the State Board of Education.” As it relates to this matter, N.C. Gen. Stat. § 115-21(a)(8) provides that it is the duty of the Superintendent “[t]o administer, through the Department of Public Instruction, all needed rules and regulations established by the State Board of Education.” In this regard, the Superintendent is expressly authorized to administer the regulations dealing with the discipline of licensed teachers. However, the relevant regulations - 16 NCAC 06C .0602, .0372, and .0374, - allow the Superintendent to suspend or revoke a teacher license. These regulations do not authorize the issuance of a formal reprimand on a teacher’s license.

N.C. Gen. Stat. § 115C-270.5

43. Respondent relied on N.C. Gen. Stat. § 115C-270.5 “when making a decision in Petitioner’s matter.” Respondent’s Response to Interrogatory No. 5.

44. The relevant portion of this statute is Subsection (a). Subsection (a) states, “The State Board of Education shall have entire control of licensing all applicants for professional educator positions in all public schools of North Carolina, subject to the requirements of this Article. The State Board shall adopt rules for the issuance, renewal, and extension of all licenses and shall determine and fix the salary for each grade and type of license which it authorizes.”

45. The State Board of Education did adopt rules for discipline of teacher licenses. These rules, 16 NCAC 06C .0602, .0372, and .0374, allow the Superintendent to suspend or revoke a teacher’s license but they do not authorize the issuance of a formal reprimand on a teacher’s license.

N.C. Gen. Stat. § 115C-270.35

46. Respondent relied on N.C. Gen. Stat. § 115C-270.35, “License suspension and revocation” “when making a decision in Petitioner’s matter.” Respondent’s Response to Interrogatory No. 5.

47. The relevant portion of this statute is Subsection (a). This Subsection provides, “The State Board shall adopt rules to establish the reasons and procedures for the suspension and revocation of licenses, subject to the requirements of this section.”

48. The SBE has in fact adopted rules consistent with this requirement -16 NCAC 06C .0602, .0372, and .0374. However, Respondent did not follow these rules when taking this action and its final decision to issue a formal reprimand on Petitioner’s licenses is not authorized under these regulations.

N.C. Gen. Stat. § 143A-44.3

49. Respondent relied on N.C. Gen. Stat. § 143A-44.3 “when making a decision in Petitioner’s matter.” Respondent’s Response to Interrogatory No. 5.

50. Respondent’s reliance on N.C. Gen. Stat. § 143A-44.3, “Superintendent of Public Instruction; creation; transfer of powers and duties,” does not authorize the issue of a “formal reprimand” on a teacher’s license.

51. N.C. Gen. Stat. § 143A-44.3 delineates the respective powers and duties between the SBE and the Superintendent. Regardless of which entity, the SBE or the Superintendent, has the power to act, the power to take disciplinary action on teacher license is circumscribed by the rules the SBE was required to establish related to teacher licensure. *See* N.C. Gen. Stat. § 115C-270.5. The SBE established rules, 16 NCAC 06C .0602, .0372, and .0374, do not authorize a “formal reprimand” on a teach license.

SBE Policy ID GOVR-005

52. Respondent relied on SBE Policy ID GOVR-005 “when making a decision in Petitioner’s matter.” Respondent’s Response to Interrogatory No. 5.

53. SBE Policy ID GOVR-005, entitled, “Superintendent Duties Related to Professional Educator Licensure” delegates to the Superintendent of Public Instruction the SBE’s authority to execute and issue all disciplinary documents relating to teachers’ professional licenses. (R. Ex. 3)

54. It is axiomatic that one can only delegate the authority that one possesses. As detailed above, a review of the statutory and regulatory provisions demonstrates there is no authority for the SBE to issue a “formal reprimand” on a teacher’s license. The statutes and regulations consistently and unambiguously provide that the disciplinary options on teacher’s license available to the SBE, and delegated to the Superintendent, are limited to suspension or revocation.

Regulatory Authority to Report a “Formal Reprimand”

55. Respondent’s April 1, 2022, Final Decision Letter informed Petitioner that a “formal reprimand” was to be made on his teaching license, and that “[b]ased on North Carolina’s interstate licensure agreement, this reprimand will be reported to the National Association of State Directors of Teacher Certification (NASDTEC).” (R. Ex. 13, p.2)

56. Respondent has no regulatory authority to report a “formal reprimand” to the NASDTEC. The authority to report licensure suspension and revocations was contained in a prior version of the regulations authorizing Respondent to take actions related to a teacher’s license.

57. 16 NCAC 06C .0372 and .0372 went into effect on October 1, 2020. This brace of regulations replaced 16 NCAC 06C .0312, entitled, “License Suspension or Revocation.” One critical difference between the now repealed 16 NCAC 06C .0312 and current regulations circumscribing Respondent’s authority to act on a teacher’s license, is that the former included a provision stating, “The SBE shall notify all other states of all actions that involve the suspension, revocation, surrender, or reinstatement of a certificate” while the later regulations include no such provision. Moreover, to the extent that 16 NCAC 06C .0312 historically authorized Respondent to report teacher license disciplinary actions to other states, that authorization expressly applies to “actions that involve the suspension, revocation, surrender, or reinstatement of a certificate” and does not extend to other disciplinary actions like letters of reprimand or formal reprimands on teacher’s licenses.

Conclusion

58. Respondent established regulations setting forth both substantive and procedure requirements when taking disciplinary action on a teacher’s license. Respondent is required to follow the administrative regulations where its authority to act is described and in fact circumscribed. *Simonel v. N.C. Sch. of the Arts*, 119 N.C. App. 772, 776, 460 S.E.2d 194, 197 (1994) (affirming trial court decision that agency’s decision was based upon unlawful procedure where procedure did not comport with procedures expressly set forth in the administrative rules created and adopted by the agency, noting that the Court’s construction was “compelled by the express language” of the rules.) *See also United States v. Heffner*, 420 F.2d 809 (4th Cir. 1969); *Poarch v. N.C. Dep’t of Crime Control & Pub. Safety*, 223 N.C. App. 125, 133, 741 S.E.2d 315, 320 (2012). Moreover, because the regulations at issue in this matter are punitive in nature, they must be strictly construed. *Elliot v N.C. Psychology Bd.*, 348 N.C. 230, 235, 498, S.E.2d. 616, 619 (1998). As detailed above, Respondent repeatedly failed to follow the regulations it claimed to have relied on when issuing a formal reprimand on Petitioner’s teacher license.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned finds that Respondent’s decision to issue a formal reprimand on Petitioner’s teaching license is based upon unlawful procedure and is not authorized by any existing legal authority. Respondent’s action is, therefore, REVERSED.

NOTICE OF APPEAL

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 2nd day of March, 2023.

A handwritten signature in blue ink that reads "John C Evans". The signature is written in a cursive style and is positioned above a solid blue horizontal line.

John C Evans
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service.

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This the 2nd day of March, 2023.



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