

Notices of Final Rulemaking

- B. Subsection (B)(9): Delete the subsection in its entirety in response to public comment.
- C. Subsection (B)(10) and (11): Combine the two subsections, moving “be under the influence” from (11) to (10), and deleting “without a prescription authorizing such use”; add statute citation for clarification of intent and based on legal advice.
- D. Subsection (B)(9) through (14): Renumber to conform.

11. A summary of the principal comments and the agency response to them:

Comment

Reference subsection (B)(1)—prohibited discrimination/harassment should be based on one of several legal bases: race, national origin, religion, sex, or disability.

Agency Response

Subsection (B)(1) amended as suggested.

Comment

Reference subsection (B)(4)—the restriction is over broad, and illegal harassment is covered in subsection (B)(1).

Agency Response

The State Board felt that since subsection (B)(1) was being changed to include a specific basis for discrimination or harassment, that subsection (B)(4) was necessary to cover behavior which could be deemed to be unprofessional or immoral that did not fall within the definition included in subsection (B)(1).

Comment

Reference subsection (B)(9)—the requirement seems over broad and likely to lead to baseless investigation. Defamation is already actionable under law and a remedy is available.

Agency Response

The State Board concurred and subsection (B)(9) was deleted prior to adoption.

Comment

Reference subsection (B)(10) and (11)—the proposed rule would appear to tacitly permit certificated personnel to possess, consume, or use prohibited substances on school premises provided such personnel have a prescription authorizing such use. Also, the proposed rule would wholly contravene A.R.S. § 13-3411, which establishes drug-free school zones.

Agency Response

The Board agreed, and did not intend to allow the use of alcohol, marijuana, narcotic, or dangerous drugs on school premises or at school-sponsored activities. In addition, legal counsel has advised that physicians are prohibited from issuing prescriptions for the substances mentioned in the subsection.

Comment

Reference subsection (B)(12) and (13)—the subsections should refer only to “pupil” and not include “child,” as the implications of addressing any written, verbal, or physical activity toward a child, unless the person is charged with abuse, are overwhelming.

Agency Response

The Board disagreed and felt strongly that sexual advances, sexual activity, relationships, or dating constituting immoral or unprofessional conduct should not be limited to pupils, but include all children.

Comment

Reference subsection (B)(15)—“pornographic” is not a legally defined term and encompasses speech that is constitutionally protected.

Agency Response

The Board disagreed and felt strongly that it could identify and label materials as “pornographic” when such materials had been provided to them as part of a complaint against a certificated individual.

Comment

Reference subsection (B)(16)—it was suggested that this be changed to say, “engage in conduct which would both discredit the teaching profession and impair the ability of the individual to teach.”

Agency Response

The Board disagreed, stating that it did not believe that it was appropriate that the conduct would need to meet both thresholds (discredit the profession and impair the ability to teach). In addition, the Board felt that impairment of the

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ability of an individual to teach should not necessarily be a relevant factor in determining whether someone's conduct constitutes an immoral or unprofessional act.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rule follows:

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 13. CONDUCT

Section

R7-2-1308. Unprofessional and Immoral Conduct

ARTICLE 13. CONDUCT

R7-2-1308. Unprofessional and Immoral Conduct

A. Individuals holding certificates issued by the Board pursuant to R7-2-601 et seq. and individuals applying for certificates issued by the Board pursuant to R7-2-601 et seq. shall:

1. Make reasonable efforts to protect pupils from conditions harmful to learning, health, or safety;
2. Account for all funds collected from pupils, parents, or school personnel;
3. Adhere to provisions of the Uniform System of Financial Records related to use of school property, resources, or equipment; and
4. Abide by copyright restrictions, security, or administration procedures for a test or assessment.

B. Individuals holding certificates issued by the Board pursuant to R7-2-601 et seq. and individuals applying for certificates issued by the Board pursuant to R7-2-601 et seq. shall not:

1. Discriminate against or harass any pupil or school employee on the basis of race, national origin, religion, sex, including sexual orientation, disability, color or age;
2. Deliberately suppress or distort information or facts relevant to a pupil's academic progress;
3. Misrepresent or falsify pupil, classroom, school, or district-level data from the administration of a test or assessment;
4. Engage in a pattern of conduct for the sole purpose or with the sole intent of embarrassing or disparaging a pupil;
5. Use professional position or relationships with pupils, parents, or colleagues for improper personal gain or advantage;
6. Falsify or misrepresent documents, records, or facts related to professional qualifications or educational history or character;
7. Assist in the professional certification or employment of a person the certificate holder knows to be unqualified to hold a position;
8. Accept gratuities or gifts that influence judgment in the exercise of professional duties;
9. Possess, consume, or be under the influence of alcohol on school premises or at school-sponsored activities;
10. Illegally possess, use, or be under the influence of marijuana, dangerous drugs, or narcotic drugs, as each is defined in A.R.S. § 13-3401;
11. Make any sexual advance towards a pupil or child, either verbal, written, or physical;
12. Engage in sexual activity, a romantic relationship, or dating of a pupil or child;
13. Submit fraudulent requests for reimbursement of expenses or for pay;
14. Use school equipment to access pornographic, obscene, or illegal materials; or
15. Engage in conduct which would discredit the teaching profession.

C. Individuals found to have engaged in unprofessional or immoral conduct shall be subject to, and may be disciplined by, the Board.

D. Procedures for making allegations, complaints, and investigation of unprofessional or immoral conduct shall be as set forth in this Article.