

*Ensuring a Caring, Competent, Highly Qualified Educator in Every Vermont Classroom to Improve Student Learning*

**LICENSING HEARING PANEL**  
**September 14, 2007**  
**Vermont College, Dewey Lounge, Montpelier**

**REVISED AGENDA**

- 11:00 – 11:30 a.m. Welcome, Introductions, Review of the Agenda  
Election of temporary chair for this meeting
- 11:30 – 11:45 a.m. Richard Cate, Commissioner of Education
- 11:45 – 12:00 p.m. Thomas James, Chair of the State Board of Education
- 12:00 – 12:30 p.m. **LUNCH**
- 12:30 – 1:05 p.m. Powers and Duties of the Hearing Panel, Role of Members  
Mark Oettinger, Esq., DOE General Counsel  
Marta Cambra, Director of Educator Quality  
Bob Gross, Assistant Director of Educator Quality
- 1:05 – 1:30 p.m. Conducting the Investigation  
Marc Eagle, Esq., DOE Legal Counsel  
Matt Raymond, DOE Investigator
- 1:30 – 1:55 p.m. Conducting the Hearing  
Tom Lehner, Esq., Hearing Officer
- 1:55 – 2:15 p.m. Representing the Parties  
Joel Cook, Esq., Vermont NEA Executive Director  
Barbara Crippen, Esq., DOE Legal Counsel
- 2:15 – 2:30 p.m. Hearing Panel and the Presenters – Q&A
- 2:30 – 2:45 p.m. Approval of Hearing Officers  
Election of Administrative Officer
- 2:45 p.m. Adjourn

**LICENSING HEARING PANEL**  
September 13, 2007  
VT College, Dewey Lounge, Montpelier

**MINUTES**

**MEMBERS PRESENT:** Deb Benning, Kathryn Christy, Dana Cole-Levesque, Kevin Endres, Curtis Hier, Cynthia Hinrichsen, Gail Kilmartin, John Pandolfo, Deborah Rathburn, Armando Vilaseca.

**MEMBERS ABSENT:** Roland Burroughs, Cheryl Chedester, Lee Orlando.

**STAFF PRESENT:** Commissioner Richard Cate, Thomas James, Chair of the VT State Board of Education; Marc Eagle, Mark Oettinger, Barbara Crippen, Matt Raymond, John Harvey, Richard Armitage, Marta Cambra, Bob Gross, and Rebecca Otis.

**VISITORS/OTHERS PRESENT:** Tom Lehner, Esq., Hearing Officer; Joel Cook, VT NEA; Angelo Dorta, VT NEA; Jeff Fannon, attorney VT NEA.

**Welcome, Introductions, Review of the Agenda Election of temporary chair for this meeting**

M. Cambra welcomed the Board to their meeting. She asked members and staff to introduce themselves. She went over the packet of information that members received.

A. Vilaseca volunteered to serve as temporary chair for this meeting.

**Powers and Duties of the Hearing Panel, Role of Members**

M. Oettinger introduced himself to the Board. He spoke to the Board about the separate roles the staff attorneys will be fulfilling when litigating a case. He also detailed the role the VT NEA will be fulfilling within this litigation.

He touched briefly on: act 214 and how it changed the VSBPE structure, the adjudicative process and everyone involved, administrative hearing process and those involved (Commissioner of Education, hearing officers, hearing panel, SBE, Washington superior court, VT supreme court), administrative officer, investigation, hearing panel composition, trainings for the LHP, public documents law, open meeting law, confidentiality, publicity that surrounds sanctions for educators.

B. Gross spoke to the Board about the denial of licenses by the DOE and Commissioner. Often denial of a license comes when a person does not have the educational credits required to obtain a license in the state of Vermont. He explained what the regulations and endorsements are.

C. Hier asked if the DOE is involved in relicensing issues.

B. Gross responded that if a relicense or license is denied, the decision could come to the LHP.

M. Oettinger added that the regulatory process takes about eight months until a regulation can take effect; it also takes eight months to remove a regulation.

### **Richard Cate, Commissioner of Education**

Commissioner Cate arrived and the Board introduced themselves to him. He thanked the Board for accepting their appointments to serve on the LHP. He stated that the previous Board used a lot of its time to hear appeals. It is a great improvement that this Board will be solely in charge of deciding these issues. He spoke to the Board about the VSBPE's history and its important role in educator quality.

The Board broke for **lunch** at 12:00 p.m. and reconvened at 12:40 p.m.

M. Cambra mentioned that this Board does not meet every month. Their meeting schedule will depend upon how often they will be receiving trainings. The DOE will set up trainings as often as the Board feels is necessary.

### **Thomas James, Chair of the State Board of Education**

T. James arrived and the Board introduced themselves to him. On behalf of the State Board of Education (SBE) he thanked the Board for accepting their appointment. He further explained the role of the SBE.

### **Conducting the Investigation**

M. Raymond and M. Eagle distributed three handouts for members to review. M. Raymond introduced the members of the investigative team to the Board. He gave a summary of the licensing matters that are handled by the legal division and the LHP. He reviewed the number of investigations that the legal office handles concerning applicants for licensure. He continued by detailing the processing of unprofessional conduct or incompetence complaints. He directed members to section 1698 of act 214 where incompetence is defined as: The inability or incapacity to perform the duties and competencies required by the license.

M. Oettinger interjected with a comment about maintaining an overall view of what incompetence means.

M. Raymond continued explaining the process that takes place when the DOE receives a complaint. He described the investigative committee and the steps that take place within that committee. The committee is comprised of an investigative officer, a prosecuting attorney and a LHP member.

A. Vilaseca asked about the role of the LHP member within the investigative committee. Is the determination to pursue disciplinary action made by one member of the LHP?

M. Raymond clarified that all members of the investigative committee submit an opinion to the Commissioner and those opinions can differ.

M. Raymond described the process in which a licensee is charged with disciplinary action by the Commissioner. This process includes the formation of a three member hearing panel.

K. Endres clarified that in the past year a three member panel would have met 18 times.

M. Raymond responded that yes those were the numbers for the past year.

J. Pandolfo also clarified that in the past year a LHP member would have been assigned to an investigative committee 112 times.

M. Raymond responded yes.

C. Hier said he assumed these investigations were conducted during business hours. How much time would be required for participation on an investigative team?

M. Eagle responded that a lot of work would be done over the phone and hopefully at convenient times for the LHP member.

M. Oettinger clarified that before the three member hearing panel meets, a hearing officer conducts adjudication. When the panel is convened, they will decide to approve, modify or reject the recommendation produced by the hearing officer.

J. Cook interjected with a comment about the purpose of having a teacher participate in the investigation.

J. Pandolfo clarified what happens when an investigative committee submits an opinion to the Commissioner.

M. Raymond responded that this would take place in a meeting with the Commissioner rather than a written opinion.

D. Benning asked about the type of questions that would be asked in an investigation and is there a protocol.

M. Raymond responded that there is no set protocol, the questions change in each investigation.

K. Christy asked about the confidentiality piece and the public record versus non public record.

M. Raymond responded that section 1708 of the statute addresses this. The outcome is publicized when there is a stipulation or order for a sanction.

M. Raymond then detailed the processing of applicant cases. If the DOE denies an application, and this is appealed, the investigative committee begins their processes.

A. Vilaseca asked about a conflict of interest.

M. Eagle responded that LHP members would need to recuse themselves if they have a conflict of interest. He also stated that if all LHP members need to recuse themselves, the DOE can go outside the panel and retain ad hoc members.

### **Conducting the Hearing Tom Lehner, Esq., Hearing Officer**

T. Lehner introduced himself to the Board. He described fundamental fairness and its role in the adjudicative process. He detailed the hearing process with respect to the hearing panel and its role.

C. Hier asked if the panel makes a decision or a recommendation to the SBE.

J. Cook responded that the hearing panel makes the decision. The decision can be appealed to the SBE by the Commissioner or the educator; only if they feel their rights have been violated. Any other reason for appeal would go to the superior court.

### **Representing the Parties Joel Cook, Esq., Vermont NEA Executive Director and Barbara Crippen, Esq., DOE Legal Counsel**

B. Crippen introduced herself to the Board. She described the information that the legal office should explain in regards to the LHP processes. The first is the lack of mandatory sentencing for particular offenses. The next is the lack of connection between the LHP's role and the school's role. The last is the number of cases that are settled or litigated, and in what instance these occur.

J. Cook introduced himself to the Board and spoke about the NEA's role in the appeal process. He stressed the importance of the LHP and their role in self regulating the teaching profession. He distributed a flow chart that in his opinion; shows how the process works. He said that suspension of a teacher's license is a very serious matter.

J. Pandolfo asked what the outcome of a settlement could be.

B. Crippen responded that the agreements will contain things such as professional training or mental health counseling.

C. Hier clarified how these types of agreements would be imposed.

T. Lehner responded that the LHP can sanction an educator's license to include counseling, continuing education etc. They would then have to show proof that they have complied with these stipulations and the sanction is then lifted from their license.

A. Vilaseca further clarified that most often a settlement will occur prior to the point in the process where a hearing panel is appointed.

B. Crippen responded that yes most often the Commissioner chooses to settle with a licensee. If the educator appeals this settlement, that is when a hearing panel will be appointed.

J. Cook introduced Jeff Fannon, attorney for the NEA.

A. Vilaseca asked whether an investigator can interview children involved in a case.

B. Crippen responded that they have the right to subpoena the children involved. She added that she will personally interview children if need be.

G. Kilmartin asked if in some instances, an educator will be charged criminally.

B. Crippen responded that they often work with the state police and the Department of Children and Families in order to resolve a case.

A. Vilaseca added that in this instance a school district would also be going through their due process in order to properly deal with the educator.

M. Oettinger added that the hearing officer will decide whether a witness is subpoenaed.

G. Kilmartin asked who the hearing officers would be.

T. Lehner responded that the officers are approved by the LHP. The officers have to be attorneys.

G. Kilmartin asked about teachers that are not in the NEA.

J. Cook responded that the NEA does not represent administrators. The teachers that do not belong to the NEA are entitled to representation, but this would not come from the union.

M. Oettinger clarified that there are three resumes in the LHP packet. A fourth hearing officer will be appointed at a later date. Because of the types of cases that could be litigated, the DOE will seek a female hearing officer as well.

### **Approval of Hearing Officers Election of Administrative Officer**

**C. Hier moved that the Licensing Hearing Panel accept the recommended hearing officer candidates. A. Vilaseca seconded. Motion passed.**

**C. Hier moved that the Licensing Hearing Panel nominate A. Vilaseca as their Administrative officer. G. Kilmartin seconded. Motion passed.**

The Board discussed the possibility of having half day training as well as a mock hearing.

**There being no further business, the meeting adjourned by consensus at 2:55 p.m.**

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Rebecca Otis, Administrative Assistant

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Armando Vilaseca, Chair