

2023 South Dakota Legislature

Senate Bill 39**AMENDMENT 39A
FOR THE INTRODUCED BILL**

1 **An Act to modify provisions regarding educator complaints.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That chapter 13-10 be amended with a NEW SECTION:**

4 ~~If the board of a school district, governing board of an accredited school, a~~
5 ~~superintendent,~~ or chief administrator has reasonable cause to suspect an employee has
6 ~~violated the code of professional ethics adopted by the Professional Educators Practices~~
7 ~~and Standards Commission pursuant to § 13-43-25, the superintendent or chief~~
8 ~~administrator shall, within fifteen days, report the alleged violation and the name of the~~
9 ~~employee to the director of certification within the Department of Education. Any~~
10 ~~superintendent or chief administrator who fails to report under this section is subject to~~
11 ~~sanctions found in § 13-8-48 information reported under this section is not a public record~~
12 ~~under chapter 1-27 unless otherwise specified in this chapter.~~

13 **Section 2. That § 13-42-1 be AMENDED:**

14 **13-42-1.** Terms used in this chapter and ~~§§ 13-43-16 to 13-43-49, inclusive,~~
15 ~~chapter 13-43~~ mean:

- 16 (1) "Administrator," a superintendent, principal, or other person whose assigned duties
17 require the person to be issued a certificate as an administrator;
- 18 (2) "Applicant," an individual who has applied for a certificate, either through an initial
19 application or a renewal application;
- 20 (3) "Certificate," a certificate and endorsements required by the South Dakota Board
21 of Education Standards pursuant to § 13-42-3 for a teacher, administrator, or other
22 educational professional ~~which that~~ authorize the certificate holder to work in
23 assigned grades and fields;
- 24 (4) "Department," the South Dakota Department of Education;

- 1 (5) "Other educational professional," an instructor, school service specialist, or other
 2 person whose duties require the person to be issued a certificate;
 3 (6) "Secretary," the secretary of the department;
 4 (7) "Teacher," a person whose assigned duties require the person to be issued a
 5 certificate as a teacher.

6 **Section 3. That § 13-42-9 be AMENDED:**

7 **13-42-9.** The secretary may refuse to issue or renew, or may revoke or suspend,
 8 any certificate for:

- 9 (1) Incompetency;
 10 (2) A determination by the Professional ~~Teachers~~ Educators Practices and Standards
 11 Commission ~~or the Professional Administrators Practices and Standards~~
 12 ~~Commission~~ that a violation of the code of ethics established pursuant to § 13-43-
 13 25 ~~or 13-43-45~~ exists;
 14 (3) Flagrant neglect of duty;
 15 (4) Failure to fulfill any requirement for certification imposed pursuant to this chapter
 16 or chapter 13-43 and rules promulgated ~~thereto~~ thereby;
 17 (5) Moral turpitude, as defined in § 22-1-2; or
 18 (6) Any other cause specifically allowed by law.

19 **Section 4. That § 13-42-12 be AMENDED:**

20 **13-42-12.** Except as provided in § 13-42-10, any person may ~~initiate proceedings~~
 21 ~~for the revocation or suspension of a certificate. A~~ file a written complaint ~~shall be filed~~
 22 against a certificate holder with the Professional ~~Teachers~~ Educators Practices and
 23 Standards Commission ~~or the Professional Administrators Practices and Standards~~
 24 ~~Commission. The~~ In order to be considered by the commission, the complaint ~~shall~~
 25 ~~specify generally~~ must specify the nature and character of the charges, ~~and within~~
 26 ~~five days after filing, a copy of the complaint shall be served. The commission shall serve~~
 27 the complaint upon the certificate holder in person or by registered or certified mail
 28 addressed to the person's last known address within ten business days of the date the
 29 complaint was filed.

30 The certificate holder shall, within thirty days after the service of the complaint,
 31 file with the commission a written answer to the charges specified. ~~The~~ If the commission
 32 votes to hold a hearing shall on the complaint, the hearing must be conducted consistent
 33 with the requirements of chapter 1-26. ~~Each~~ The commission may shall promulgate rules,

1 pursuant to chapter 1-26, to further define the standards and procedures for conducting
2 hearings and for filing, investigating, and resolving complaints.

3 **Section 5. That § 13-42-14 be AMENDED:**

4 **13-42-14.** ~~The~~At the hearing referenced in § 13-42-12 ~~may be either private or~~
5 ~~public, as~~ the certificate holder may ~~elect, and the certificate holder may~~ appear in person
6 or by counsel and produce evidence at the hearing. Each witness shall be sworn before
7 testifying, and the official conducting the hearing may administer the oath prescribed by
8 law for witnesses in judicial proceedings. ~~A The Professional Educators Practices and~~
9 ~~Standards Commission shall make a record, in writing, shall be made~~ of the proceedings
10 and ~~of all~~ evidence produced at the hearing and ~~shall be filed~~ shall file the record with the
11 department upon conclusion of the hearing. The hearing ~~shall~~ must be held in Pierre unless
12 good cause is shown to justify moving the hearing to another location for the convenience
13 of the parties and witnesses.

14 **Section 6. That § 13-42-15 be AMENDED:**

15 **13-42-15.** The secretary shall make a decision within thirty days from receipt of
16 a complaint pursuant to § 13-43-28.1 ~~or 13-43-49~~. In case of suspension or revocation,
17 the secretary shall fix the date at which the suspension or revocation becomes effective
18 and, in case of suspension, the duration of the suspension. The order and findings of fact
19 and conclusions of law of the secretary ~~shall~~ must be served upon the certificate holder,
20 and, if applicable, upon the school ~~which~~ that last employed the certificate holder, the
21 commission, and the complainant before the commission.

22 **Section 7. That § 13-42-17 be AMENDED:**

23 **13-42-17.** Each complaint and answer referenced in § 13-42-12, and ~~all~~ any other
24 investigative information regarding potential discipline of an applicant or certificate holder
25 in the possession of the department, or the Professional ~~Teachers~~ Educators Practices and
26 Standards Commission, ~~and the Professional Administrators Practices and Standards~~
27 ~~Commission~~ is confidential and not a public record under chapter 1-27 ~~until the~~
28 ~~commission votes in favor of conducting a contested case hearing.~~

29 ~~This~~ The complaint, answer, and any investigative information may be discovered
30 and disclosed as part of a disciplinary proceeding initiated pursuant to this chapter ~~13-42~~
31 or chapter 13-43. In addition, if disciplinary action is imposed by the secretary or ~~a~~ the

1 commission pursuant to ~~this chapter 13-42~~ or chapter 13-43, ~~this the complaint, answer,~~
 2 and any investigative information may be disclosed to authorities within this state, another
 3 state, the District of Columbia, or a territory or country in which the applicant or certificate
 4 holder holds a certificate or has applied for a certificate.

5 **Section 8. That § 13-42-17.1 be AMENDED:**

6 **13-42-17.1.** The final decision of the secretary regarding a certificate, along with
 7 the findings of fact and conclusions of law, is a public record. ~~If the certificate holder~~
 8 ~~requests a private hearing,~~ pursuant to § 13-42-14, the written record and evidence from
 9 the hearing, including the findings of fact and conclusions of law, are confidential unless
 10 adopted by the secretary as part of the final decision. ~~However, if~~ If disciplinary action is
 11 imposed by the secretary or a commission the Professional Educators Practices and
 12 Standards Commission pursuant to ~~this chapter 13-42~~ or chapter 13-43, the written record
 13 and evidence from the hearing may be disclosed to authorities within this state, another
 14 state, the District of Columbia, or a territory or country in which the applicant or certificate
 15 holder holds a certificate or has applied for a certificate.

16 **Section 9. That § 13-43-17 be AMENDED:**

17 **13-43-17.** There is hereby created the ~~South Dakota Professional Teachers~~
 18 Educators Practices and Standards Commission, which ~~shall consist~~ consists of ~~seven~~ nine
 19 members:
 20 (1) Six representative ~~Four~~ Three members who are employed as full-time teachers hold
 21 an active teaching certificate, ~~at least four~~ one of whom shall be classroom
 22 teachers. None of the six representatives may be school administrators holds an
 23 educational specialist certificate as a school counselor or school psychologist; and
 24 (2) ~~Four~~ Three members who hold an active administrator certificate, ~~at least one of~~
 25 whom holds a school business official permit; and
 26 (3) ~~One~~ representative from the general public member who is neither teacher nor
 27 school board member does not hold a ~~teaching or administrator~~ certificate, and
 28 who is either a member of a board of a school district or a parent of a pupil student
 29 attending an approved twelve-year program of education a school district in this
 30 state, or both.

31 **Section 10. That § 13-43-17.1 be AMENDED:**

1 **13-43-17.1.** The Professional—Teachers Educators Practices and Standards
2 Commission shall operate within the Department of Education, and shall retain all its
3 prescribed functions, including administrative functions. The commission shall submit ~~such~~
4 records, information, and reports in the form and at ~~such~~ the times as required by the
5 secretary of education, ~~except that the~~. The commission shall report to the secretary of
6 education at least annually.

7 **Section 11. That § 13-43-18 be AMENDED:**

8 **13-43-18.** The Governor shall appoint the members of the Professional—Teachers
9 Educators Practices and Standards Commission ~~shall be appointed by the Governor in a~~
10 ~~manner to be designated by the Governor.~~ The terms of no more than three members
11 may expire in any one year. ~~The terms of all members are~~ A term is three years and shall
12 ~~terminate~~ terminates on December ~~thirty one~~ thirty-first, or when a successor is appointed
13 and qualified. No member of the commission may serve more than two consecutive terms,
14 and subsequent appointments to the commission ~~shall~~ must be made in a manner ~~to be~~
15 designated by the Governor.

16 **Section 12. That § 13-43-19 be AMENDED:**

17 **13-43-19.** ~~Vacancies~~ The Governor shall fill any vacancy on the Professional
18 Teachers Educators Practices and Standards Commission ~~shall be filled by the Governor~~
19 for the balance of any unexpired term. ~~Members~~ The Governor may be removed by the
20 Governor ~~remove a member~~ for cause.

21 **Section 13. That § 13-43-20 be AMENDED:**

22 **13-43-20.** The Professional—Teachers Educators Practices and Standards
23 Commission shall elect from its membership a chairperson, a vice chairperson, and other
24 ~~such~~ officers as the commission determines and shall ~~adopt~~ promulgate rules, pursuant
25 to chapter 1-26, to govern its proceedings.

26 **Section 14. That § 13-43-20.1 be AMENDED:**

27 **13-43-20.1.** The Professional—Teachers Educators Practices and Standards
28 Commission may appoint an executive secretary and employ persons to provide such
29 service as the commission may require.

1 **Section 15. That § 13-43-21 be AMENDED:**

2 **13-43-21.** The Professional ~~Teachers~~ Educators Practices and Standards
3 Commission shall meet ~~on~~ at the call of the chairperson ~~who, however,~~ The chairperson
4 ~~shall call a meeting~~ upon request of four of the members or a majority of the commission.

5 **Section 16. That § 13-43-23 be AMENDED:**

6 **13-43-23.** Any expense incurred by the Professional ~~Teachers~~ Educators Practices
7 and Standards Commission ~~or the Professional Administrators Practices and Standards~~
8 ~~Commission~~ in administering the provisions of §§ 13-43-16 to ~~13-43-49~~ 13-43-28.1,
9 inclusive, ~~shall~~ must be paid from the state institute fund. ~~However, the~~ The annual
10 expenses are limited to an amount not to exceed two-thirds of the annual amount collected
11 for certification fees. Nothing in this section is intended to limit the ability to assess costs
12 pursuant to § 13-42-17.2.

13 **Section 17. That § 13-43-25 be AMENDED:**

14 **13-43-25.** The Professional ~~Teachers~~ Educators Practices and Standards
15 Commission shall promulgate rules pursuant to chapter 1-26, to carry out the provisions
16 of §§ 13-43-16 to 13-43-28.1, inclusive.

17 The commission shall adopt a code of professional ethics for the ~~teaching~~ education
18 profession in this state.

19 The commission may make any recommendation to the South Dakota Board of
20 Education Standards or to a board of a school ~~boards which will~~ district to promote an
21 improvement in the ~~teaching~~ education profession.

22 **Section 18. That § 13-43-28 be AMENDED:**

23 **13-43-28.** After notice and hearing as a contested case under the provisions of
24 chapter 1-26, if the Professional ~~Teachers~~ Educators Practices and Standards Commission
25 determines that a certificate holder has engaged in conduct referenced in § 13-42-9 or
26 13-42-10, the commission may issue a public ~~or private~~ reprimand or impose other
27 appropriate disciplinary action ~~which~~ that is in the best interests of the commission, the
28 certificate holder, and the public. The commission ~~does not have the authority to~~ may not
29 deny, ~~not renew,~~ suspend, ~~or revoke,~~ or refuse to renew a certificate.

30 The commission has the powers conferred by §§ 1-26-19.1 and 1-26-19.2, and the
31 certificate holder and the certificate holder's attorney also have available the provisions

1 of those sections. The commission ~~may~~ shall promulgate rules, pursuant to chapter 1-26,
2 to further define other appropriate disciplinary action referenced in this section. Any
3 member reprimanded or disciplined by the commission pursuant to this section may
4 appeal to circuit court as provided by chapter 1-26.

5 **Section 19. That § 13-43-28.1 be AMENDED:**

6 **13-43-28.1.** If the Professional ~~Teachers~~ Educators Practices and Standards
7 Commission determines that proceedings to revoke or suspend ~~the a~~ certificate should be
8 instituted, the commission shall file a written complaint, findings of fact and conclusions
9 of law, and the hearing record with the secretary of education and serve a copy of the
10 complaint and findings and conclusions upon the parties before the commission. The
11 commission's complaint ~~shall~~ must specify the nature and character of the charges. The
12 commission may impose discipline pursuant to § 13-43-28 and file a complaint pursuant
13 to this section.

14 The secretary ~~may base the revocation or suspension decision~~ decide to revoke or
15 suspend the certificate, or may impose other discipline, solely upon review of the
16 commission's hearing record or may require additional evidence by affidavit, document,
17 or testimony upon the secretary's own motion or upon the request of any party before the
18 commission. The commission's determination to institute proceedings seeking revocation
19 or suspension of a certificate pursuant to this section is not a final agency action and may
20 not be appealed to court. The final decision of the secretary may be appealed to circuit
21 court as provided in § 13-42-16.

22 **Section 20. That § 13-43-59 be AMENDED:**

23 **13-43-59.** Any person employed in an administrative, teaching, or other
24 educational capacity, but who does not hold a valid South Dakota certificate pursuant to
25 chapter 13-42, is subject to the code of professional ethics as established under ~~§ 13-43-~~
26 ~~45~~ § 13-43-25. The procedures referenced in §§ 13-42-12 and 13-42-14 apply to
27 complaints and hearings regarding an alleged violation of the code of professional ethics
28 by the person. If the Professional ~~Administrators~~ Educators Practices and Standards
29 Commission determines that the person has violated the code of professional ethics, then
30 the commission may impose discipline referenced in ~~§ 13-43-48~~ § 13-43-28.

31 **Section 21. That § 13-43-38 be REPEALED:**

1 ~~There is hereby created the South Dakota Professional Administrators Practices~~
2 ~~and Standards Commission, which shall consist of seven members, as follows:~~

3 ~~(1) Five representative members who are employed as full-time administrators: two~~
4 ~~who are principals, two who are chief administrators of school districts offering an~~
5 ~~accredited twelve-year program of education, and one who is employed in an~~
6 ~~administrative capacity other than previously listed;~~

7 ~~(2) One representative who is a school board member; and~~

8 ~~(3) One representative from the general public who is neither an administrator nor a~~
9 ~~school board member and who is a parent of a pupil attending an approved~~
10 ~~twelve-year program of education.~~

11 **Section 22. That § 13-43-39 be REPEALED:**

12 ~~The Professional Administrators Practices and Standards Commission shall operate~~
13 ~~within the Department of Education and shall retain all its prescribed functions, including~~
14 ~~administrative functions. The commission shall submit such records, information and~~
15 ~~reports in such form and at such times as required by the South Dakota Board of Education~~
16 ~~Standards, except that the commission shall report at least annually.~~

17 **Section 23. That § 13-43-40 be REPEALED:**

18 ~~The members of the Professional Administrators Practices and Standards~~
19 ~~Commission shall be appointed by the Governor in a manner to be designated by the~~
20 ~~Governor. The terms of no more than five members may expire in any one year. The~~
21 ~~terms of all members shall be three years and shall terminate on December thirty-first or~~
22 ~~when a successor is appointed and qualified. No member of the commission may succeed~~
23 ~~himself more than once and subsequent appointments to the commission shall be made~~
24 ~~in a manner to be designated by the Governor.~~

25 **Section 24. That § 13-43-41 be REPEALED:**

26 ~~Vacancies on the Professional Administrators Practices and Standards Commission~~
27 ~~shall be filled by the Governor for the balance of any unexpired term. Members may be~~
28 ~~removed by the Governor for cause.~~

29 **Section 25. That § 13-43-42 be REPEALED:**

1 ~~The Professional Administrators Practices and Standards Commission shall elect~~
2 ~~from its membership a chairperson, a vice chairperson and other such officers as the~~
3 ~~commission shall determine and shall adopt rules to govern its proceedings.~~

4 **Section 26. That § 13-43-43 be REPEALED:**

5 ~~The Professional Administrators Practices and Standards Commission may appoint~~
6 ~~an executive secretary and employ persons to provide such service as the commission~~
7 ~~may require.~~

8 **Section 27. That § 13-43-44 be REPEALED:**

9 ~~The Professional Administrators Practices and Standards Commission shall meet~~
10 ~~on call of the chairperson. However, he shall call a meeting upon request of four members.~~

11 **Section 28. That § 13-43-45 be REPEALED:**

12 ~~The Professional Administrators Practices and Standards Commission may adopt~~
13 ~~rules in accordance with the provisions of chapter 1-26, to carry out the provisions of~~
14 ~~§§ 13-43-38 to 13-43-49, inclusive.~~

15 ~~The commission shall adopt a code of professional ethics for the administrator's~~
16 ~~profession in this state.~~

17 ~~The commission may make any recommendation to the South Dakota Board of~~
18 ~~Education Standards or to school boards which will promote an improvement in the~~
19 ~~administrator's profession.~~

20 **Section 29. That § 13-43-48 be REPEALED:**

21 ~~After notice and hearing as a contested case under the provisions of chapter 1-26,~~
22 ~~if the Professional Administrators Practices and Standards Commission determines that an~~
23 ~~administrator has engaged in conduct referenced in § 13-42-9 or 13-42-10, the~~
24 ~~commission may issue a public or private reprimand or impose other appropriate~~
25 ~~disciplinary action which is in the best interests of the commission, the certificate holder,~~
26 ~~and the public. The commission does not have the authority to deny, not renew, suspend,~~
27 ~~or revoke a certificate.~~

28 ~~The commission has the powers conferred by §§ 1-26-19.1 and 1-26-19.2, and the~~
29 ~~certificate holder and the certificate holder's attorney also have available the provisions~~
30 ~~of those sections. The commission may promulgate rules, pursuant to chapter 1-26, to~~

1 further define other appropriate disciplinary action referenced in this section. Any member
2 reprimanded or disciplined by the commission pursuant to this section may appeal to
3 circuit court as provided by chapter 1-26.

4 **Section 30. That § 13-43-49 be REPEALED:**

5 If the Professional Administrators Practices and Standards Commission determines
6 that proceedings to revoke or suspend the certificate of an administrator should be
7 instituted, the commission shall file a written complaint, findings of fact and conclusions
8 of law, and the hearing record with the secretary and serve a copy of the complaint and
9 findings and conclusions upon the parties before the commission. The commission's
10 complaint shall specify the nature and character of the charges. The commission may
11 impose discipline pursuant to § 13-43-48 and file a complaint pursuant to this section.

12 The secretary may base the revocation or suspension decision solely upon review
13 of the commission's hearing record or may require additional evidence by affidavit,
14 document, or testimony upon the secretary's own motion or upon the request of any party
15 before the commission. The commission's determination to institute proceedings seeking
16 revocation or suspension of a certificate pursuant to this section is not a final agency
17 action and may not be appealed to court. The final decision of the secretary may be
18 appealed to circuit court as provided in § 13-42-16.