

**VERMONT SECRETARY OF STATE, OFFICE OF PROFESSIONAL REGULATION
AND
VERMONT AGENCY OF EDUCATION**

Assessment of Educator Discipline
Pursuant to Act 69 of 2021
December 15, 2021

Executive Summary

The Legislature directed the Agency of Education (“AOE”) and Office of Professional Regulation (“OPR”) to assess the costs and benefits of transferring educator discipline to the Office of Professional Regulation. We find some similarities between the statutory provisions that apply to the two agencies disciplinary responsibilities, as well as some similarities between the processes used to carry out those responsibilities. As with any major changes to an agency’s policies and procedures, there are costs and benefits to consolidating the disciplinary function of the Agency of Education into the Office of Professional Regulation. Resources would not decrease in terms of personnel and non-IT resources. IT savings may be found. The precise costs of consolidation are unknown. Other, non-fiscal costs and benefits of transfer are not agreed upon by the agencies. OPR advocates that transfer could have the benefit of ending the use of private discipline for licensed educators, and will increase transparency to the public and AOE licensees and improve public protection. AOE advocates the value of private discipline as an option consistent with statute and regulation.

The Legislature has several significant policy decisions in response to this analysis.

- 1) Would any problems or inadequacies regarding the efficiency and transparency of the regulatory system and public protection be solved by transfer?
- 2) Are there policy considerations that support the availability of private discipline for licensed educator misconduct, although discipline for other professions is exclusively public in nature?
- 3) Are there policy considerations that support the transfer of disciplinary processes for licensed educator misconduct away from AOE given the inherent interconnection with supervisory unions and school districts in both supportive and oversight roles? School districts and supervisory unions are primary reporters of alleged misconduct. District/SU employment investigations are made available to AOE and often serve as the initial investigatory materials for AOE misconduct investigations. Findings of a misconduct investigation frequently lead to broader interventions at a district level from other Agency divisions, such as education quality, finance, and special education.

Introduction

Pursuant to [Act 69](#), Section 14, the General Assembly directed

...that the Agency of Education and the Office of Professional Regulation cooperatively assess the costs and benefits of transferring responsibility for educator discipline to the Office of Professional Regulation, making investigative and disciplinary processes applicable to educators consistent with those applicable to professions licensed under 3 V.S.A. § 122. The agencies' assessment shall consider whether the transfer of enforcement and adjudication to the Office of Professional Regulation would enhance the efficiency and transparency of the regulatory process and increase public protection.

OPR and AOE must provide this report, along with their findings and any recommendations for legislative action, to the House and Senate Committees on Government Operations and on Education by December 15, 2021.

General State Policy on Professional Licensing

The General Assembly has found “that multiple State agencies regulate a variety of professions and occupations, resulting in professional regulatory structures that vary throughout the State.” 2019 No. 30, Sec. 7. Consequent to this finding, the General Assembly recommended the following:

The State should review whether transferring the regulation of certain professions and occupations to a different State agency would enhance the effectiveness of those professional regulatory structures, including by improving public protection and customer service, reducing unnecessary barriers to licensure, and increasing efficiencies in the staffing, information technology, and other necessary costs associated with professional regulation.

Vermont administrators and legislators recognized that the orderly and restrained regulation of professions and occupations is generally best accomplished when regulatory programs are consolidated within a single agency. To accomplish this, the General Assembly created the Office of Professional Regulation within the Office of the Secretary of State, over time “attaching” fifty enumerated regulatory programs beneath the Office’s umbrella at [3 V.S.A. § 122](#).

Vermont law sets clear policies and standards for legislative review of proposed professional regulation. [26 V.S.A. Chapter 57](#) (“Chapter 57”). The law calls for a cost-benefit policy analysis of proposals for new professional regulation. The law unambiguously places upon the proponents of new regulation the burden to demonstrate that new regulation is genuinely necessary to protect the public. It is the policy of the State of Vermont that regulation is imposed upon a profession or occupation solely to protect the public. Chapter 57 assigns OPR with the responsibility of conducting periodic reviews of existing regulatory programs for fidelity to the purpose and policy set forth in Chapter 57.

It is acknowledged that the purpose of this report is not to provide a full Chapter 57 review and analysis of AOE’s regulatory laws which is expressly prohibited by 26 V.S.A. § 3104, but rather to provide the reader with a general understanding of the general application of the policies and standards to all occupational and professional licensing.



Previous Analyses of AOE and OPR Licensing and Enforcement Consolidation

Over the years, transferring AOE’s licensing system, license enforcement and/or appellate process to OPR has been considered and reported to the General Assembly in various reports. The most recent [legislative report](#) from 2020 includes an analysis of possible transfer options. The analysis concerning the transfer of enforcement jurisdiction to OPR stated:

Intermediate measures can be imagined that would improve efficiency and consistency without terminating AOE-based license administration. Specifically, the General Assembly could address the most significant area of discordance with other licensing programs simply by transferring enforcement jurisdiction to OPR. This would have the immediate effect of attaching a single point of complaint and cross-profession disciplinary processes to teacher licensing, making the system equivalent in procedural simplicity and substantive transparency, without the complexities of unwinding teacher licensing from the (sic) collective-bargaining and retirement.

Following a suggestion from AOE, effective July 1, 2021, appeals from hearing panel orders are to be referred to the Director of the Office of Professional Regulation (Director) and all appeals are handled by OPR staff and procedure. [16 V.S.A. § 1707](#), as amended by Act 69 (2020), Sec. 13. OPR and AOE are in the process of developing a Memorandum of Understanding memorializing how the agencies interpret and apply the new statutory provision. This report was further directed to be undertaken in the same legislation.

Comparative Analysis of Investigatory and Disciplinary Process

General Administration	
OPR	AOE
<ul style="list-style-type: none"> OPR has established mechanisms and structures to develop and promulgate regulations, to receive and screen complaints, and to adjudicate and enforce disciplinary actions. These structures and mechanisms are built to enable regulatory programs small and large, whether or not related by profession type, to share common resources, processes, and procedures; to avoid duplication of effort; and to present a consistent, single point of government contact for applicants, licensees, and persons aggrieved by the conduct of licensees. OPR is capable of implementing these structures and mechanisms for the disciplinary process for any type of professional licensure requirements. 	<ul style="list-style-type: none"> AOE has established procedures and staff to develop and adopt regulations, to receive and screen complaints, and to adjudicate and implement disciplinary actions involving licensed educators. The AOE can field all questions related to licensed educators, to have licensing processes and disciplinary processes to inform recommendations to the Vermont Standards Board for Professional Educators, and to avoid duplication of effort through supervision by the Secretary of Education. AOE staff specialize in the issues that are unique to public and independent schools while collaborating with school boards/trustees, superintendents, heads of independent schools, school staff, parent/guardians, and students.
<p>In terms of efficiency, OPR can seamlessly assume responsibility for AOE’s investigative and disciplinary processes given its robust existing structures and mechanisms for the 50 regulatory programs already under its umbrella. If AOE’s investigations and discipline was transferred to OPR, it would take time and resources for OPR staff to receive training regarding the issues that are unique to public and independent schools. This is true for all new professions that come under OPR’s jurisdiction. It is anticipated that OPR would need to add two investigators and a prosecuting attorney to its staff if it assumed licensed educator misconduct investigations and discipline.</p>	

Transparency and Public Accessibility to Disciplinary Matters

OPR	AOE
<ul style="list-style-type: none"> The articulated intent of the statutory provisions regarding confidentiality and accessibility of disciplinary matters is the same for OPR and AOE: "...both to protect the reputation of licensees from public disclosure of unwarranted complaints against them, and to fulfill the public's right to know of any action taken against a licensee when that action is based on a determination of unprofessional conduct." 3 V.S.A. § 131; 16 V.S.A. § 1708. 	
<ul style="list-style-type: none"> A public registry of complaints is maintained for <u>all</u> complaints with the identity of the respondent licensee omitted. 3 V.S.A. § 131. Disciplinary prosecutions mirror the transparency of the judicial system: the fact of a complaint, the identity of the respondent licensee, and the investigation are private until the evidence exists to warrant official action and a specification of charges is filed against a licensee. Initial charges and every subsequent pleading and proceeding, including consent orders and hearing transcripts, are a public record. <i>Id.</i> OPR publishes a monthly discipline report on its website listing the conduct and discipline decisions for each month. The monthly reports listed on the website date back to 2014. OPR's website also has a "Conduct Decision Search" function that permits the public to search for and obtain information on conduct cases involving OPR licensees. 	<ul style="list-style-type: none"> AOE is bound by very specific statutes on the confidentiality of licensing actions. 16 V.S.A. § 1708. A public registry of formal investigation outcomes is maintained. The identity of the licensee is not included in the public registry. When a formal investigation is initiated, AOE provides notice to a licensee in writing that AOE has received an allegation of misconduct and would like to speak with the licensee to hear their side of the story. Formal charges, pleadings, hearings, and the findings, conclusions and order of the hearing panel are required to be public. Public Licensing Agreements and private reprimands are posted to the AOE's Disciplinary Action public web page. Private Licensing Agreements are not posted. AOE reports public disciplinary action to the National Association of State Directors of Teacher Education and Certification (NASDTEC). This is the national collection point for professional educator discipline actions taken in 50 states, the District of Columbia, the U.S. Department of Defense Educational Opportunity Schools, the Commonwealth of Puerto Rico, and United States Territories. NASDTEC maintains a database of all licensed educator disciplinary actions reported by member states and beyond. Private Licensing agreements are not reported to the NASDTEC.

The most applicable policy consideration here is the transparency of the regulatory process and the effect that transparency has on public protection. The current statutes for licensed educator discipline require a high degree of confidentiality regarding misconduct investigations and outcomes. The statutes for other professions require that discipline outcomes are made public. If the discipline of licensed educators who commit misconduct were to be given to OPR, the most significant change would be the elimination of private discipline as an option. The General Assembly should carefully weigh this consideration in any decision to continue to keep the disciplinary process at AOE or consolidate that function into OPR. The rationale for the difference in transparency is in part because that is how the statutes have evolved. OPR's perspective is that discipline, including restorative discipline, should be public to alert and inform the public, the profession's licensees, and employers of the nature of disciplinary matters that rose to the level of being actionable. AOE sees value in having private discipline as an option for resolution of disciplinary investigations, because it allows AOE to use a restorative approach when appropriate.

Comparative Volume of Complaints, Investigations, Prosecution and Discipline

OPR	AOE
<ul style="list-style-type: none"> • In FY 2021, OPR received 753 complaints. This represents 0.99% of its license population (75,926/753 = 0.99%) • For fiscal year 2020, OPR received 828 complaints and had 123 instances of public discipline. As of June 2021, OPR: <ul style="list-style-type: none"> ○ received 753 complaints; ○ conducted 436 investigations (57.90%); ○ prosecuted 140 cases (18.59%); and ○ had 120 instances of discipline (15.95%) 	<ul style="list-style-type: none"> • In FY 2021, AOE received 375 complaints. If all subjects of complaints were licensed educators, which is not the case, this would represent 2.40% of its license population (15,645/375 = 2.40%). • Since 2014 the AOE has received complaints on average of 375 per year. • Since 2014 the AOE has opened on average 40 formal investigations per year. • Since 2014 the AOE has publicly disciplined on average eight licensed educators per year. • Most of the remaining formal investigations result in a private Licensing Agreement for 12 to 18 months that outlines conditions, to include an educational component or substance abuse and/or mental health counseling. • In rare instances, AOE closes a formal investigation without discipline, whether public or private.
<p>Both agencies, receive significant complaints about their licensees. Both agencies understand that disciplinary actions should have the goal of rehabilitating a professional. Notably, the majority of AOE’s actions are private in nature.</p>	



Complaints: Filing, Screening, and Mandatory Reporting

OPR	AOE
<ul style="list-style-type: none"> • OPR has an accessible and prominent tool for the public to file complaints against licensees believed to have engaged in unprofessional conduct. These complaints are entered directly into OPR’s system upon the complainant’s submission. • OPR receives complaints from anonymous individuals, the general public, licensees, media, attorneys, patients/clients/customers/consumers of licensees, DCF, federal, state, local and country police. • The Chief Investigator, in consultation with the Chief Prosecutor, conducts the screening of all complaints filed with OPR and determines which complaints will proceed to an investigation. The standard used to determine whether to proceed with an investigation is: if the allegations are true, would it constitute unprofessional conduct? • Certain employers have a statutory duty to report certain types of disciplinary action to OPR. 3 V.S.A. § 128. The employers required to report disciplinary action include hospitals, clinics, community mental health centers, or other health care institutes where a licensee performs professional service. Events to be reported include any action that limits or conditions a licensee’s privilege to practice or that leads to suspension or expulsion from the institution. The employer has 10 days from the date the disciplinary action was taken to report to OPR. Additionally, insurers must report any judgment or settlement involving a claim of professional negligence by the licensee to OPR within 30 days of such judgment or settlement. 	<ul style="list-style-type: none"> • AOE has a designated email address listed at the bottom of its website that is characterized as a unified public comment tool for any complaint about a public or independent school, which frequently includes complaints against a licensed educator and is also a way for the public to contact AOE about anything related to the agency. Administrative personnel screen the messages sent to this email address and send complaints against licensed educators or other individuals working in school districts to the AOE investigator. • AOE receives complaints from anonymous sources, parents, guardians, community members, school board members, licensees, DCF, law enforcement, media and AOE staff. • Superintendents are mandatory reporters of licensed educator misconduct. 16 V.S.A § 1699. • The investigation committee makes a recommendation to open a formal investigation to the Secretary of Education, who decides. The investigation committee consists of a member of the hearing panel, the investigator, and a prosecuting attorney. 16 V.S.A. § 1700. • AOE receives all DCF emergency intakes that involve an educational setting as per a MOU.
<p>Having an easily accessible and obvious tool that is used solely for the public to file complaints against licensees is a huge benefit to public protection. OPR has an efficient system for collecting and screening complaints and applies an objective legal test to determine whether to proceed with an investigation. AOE uses a universal email address to report complaints about schools in Vermont. This enables a parent or student to direct the complaint to AOE without needing specialized knowledge about which AOE division should field the complaint.</p>	

Investigations	
OPR	AOE
<ul style="list-style-type: none"> • At least 60% percent of complaints proceed to an investigation. • OPR Investigators often travel throughout the State to conduct in person interviews of licensees and witnesses as well as to collect necessary documents or locate and review physical evidence. Investigators use a variety of methods, including the issuance of subpoenas on behalf of the Board/Director, to gather any information which can be used to determine if a licensee committed unprofessional conduct. They also utilize technology, such as Teams, email, and telephone calls, to conduct low level interviews. • The majority of investigations handled by the enforcement division are administrative (civil) in nature; however, approximately 10% of OPR complaints implicate collateral criminal investigation. In 2020, ten individuals licensed by the State of Vermont were arrested and charged with a crime resulting from an OPR investigation. • OPR licensees are required to cooperate with an OPR investigation concerning their license. “Impeding an investigation under this chapter or unreasonably failing to reply, cooperate, or produce lawfully requested records in relation to such investigation” constitutes unprofessional conduct. 3 V.S.A. § 129a(a)(16)(A). 	<ul style="list-style-type: none"> • AOE has two types of investigations: preliminary and formal investigations. Many preliminary investigations determine that the subject of the complaint is not a licensed educator. In this case, AOE reports the complaint to the district/SU and takes no further licensing action. • At the preliminary stage, the school district is always notified of complaints within their district. The AOE investigator also identifies if other entities need to be notified, such as DCF or law enforcement. • School district/supervisory union employment investigations are made available to AOE and often serve as the initial investigatory materials for AOE’s investigation. • Other agencies (the school district, DCF, or law enforcement) are usually also conducting independent investigations related to the same allegations as AOE. AOE determines if the conduct is licensed educator misconduct. AOE will typically wait for its partner agencies to conduct their investigation before completing its investigation. AOE is available in an active supportive role to those investigations. • Upon receipt of the school district’s, DCF’s, law enforcement’s and/or AOE’s investigation materials the AOE investigation committee decides if the conduct rises to the level of 16 V.S.A. § 1698 • The investigation committee decides if they are going to recommend to the Secretary of Education that a formal investigation should be opened. The Secretary has the sole authority to decide if a formal investigation should be opened. 16 V.S.A. § 1700(b)-(c). • After the formal investigation is completed, the committee decides what, if any, disciplinary action to take against the licensee. • Approximately 10% of complaints result in a formal investigation. • For all investigations, AOE investigators often travel throughout the state to conduct in-person interviews of licensees and witnesses, as well as to collect necessary documents or locate and review physical evidence. Investigators will use a variety of methods to gather any information which can be used to determine if unprofessional conduct occurred. During the COVID-19 state of emergency, AOE conducted interviews through



	<p>teleconferencing rather than in-person interviews. This process has been highly effective in allowing AOE to interview when appropriate without the time and cost of travel both to the AOE and the licensee. AOE continues to use this method.</p> <ul style="list-style-type: none"> Licensed educators are not required to cooperate with an investigation.
<p>The average length of both OPR and AOE investigations is six months. Both agencies also have approximately one to two years of clearance time from complaint to final resolution, dependent on the complexity of the case.</p> <p>OPR conducts a full investigation of 60% of the complaints it receives. AOE conducts a formal investigation of 10% of complaints it receives. From a public protection standpoint, the argument can be made that doing a full or formal investigation by the agency (not an outside entity such as the school district) of a larger percentage of complaints is more protective of the public and creates more transparency as information regarding the complaints and investigation will be on a public registry.</p> <p>It is also acknowledged that it may be more efficient for AOE to utilize the investigatory materials compiled by outside entities, such as school districts, DCF, and law enforcement to perform the preliminary investigations rather than use their own resources. However, it is OPR’s opinion that any efficiency is outweighed by the likely reduction of transparency and public protection as noted above.</p>	

Adjudication Personnel	
OPR	AOE
<ul style="list-style-type: none"> OPR directly employs prosecutors, inspectors, and investigators to look into and adjudicate complaints. OPR employs State prosecuting attorneys within the Office. Prosecutorial independence removes the potential for anti-competitive use of enforcement authority by peer against peer. Prosecutors exercise independent prosecutorial discretion in determining which cases of unprofessional conduct to charge. 3 V.S.A. § 129(c)(2). A hearing authority presides over all adjudication. OPR contracts with three independent hearing officers who also act as independent appellate officers. 	<ul style="list-style-type: none"> AOE directly employs a prosecutor and an investigator to process and adjudicate complaints. AOE uses an Assistant Attorney General (AAG) as prosecuting attorney within the legal team and the Secretary of Education makes the determination whether to initiate a formal investigation and whether to file charges of misconduct. The role of the Secretary removes the potential for anti-competitive use of enforcement authority by peer against peer. 16 V.S.A. 1700. AOE contracts with two independent hearing officers (approved by the Governor’s appointees annually) who preside over the hearing and assist the hearing panel which adjudicates the case. 16 V.S.A. 1705.
<p>The adjudication personnel employed by both agencies are similar and thus an analysis is not needed.</p>	

Adjudication Procedure	
OPR	AOE
<ul style="list-style-type: none"> • OPR has Administrative Rules of Practice which establish orderly procedures for contested cases in disciplinary matters, or where an applicant wishes to challenge the denial of a license application. These Rules include transparent procedures for the articulation of charges, discovery, default, and appeals of a decision of a board, commission and Appellate Officer, which parallel the Vermont Rules of Civil Procedure where appropriate. • In a contested case, the OPR docket clerk sends a copy of the Administrative Rules of Procedure to the parties in advance of the proceeding to ensure that all parties are aware of the Rules. • The process for challenging agency licensing decisions and charges is purposefully accessible to unrepresented persons via the Administrative Rules of Practice. • In a board-regulated profession, the board deliberates and makes findings of fact and conclusions of law. In advisor-regulated professions, an administrative law officer adjudicates. 	<ul style="list-style-type: none"> • AOE follows the administrative rules adopted by the Vermont Standards Board for Professional Educators (Rule Series 5000). These rules are primarily regarding licensing, endorsements and professional standards and ethics. • In formal hearing, AOE follows the APA, Procedural Rules for the State Board of Education, and the rules proposed by the hearing officer. • The relevant statutory provisions in Title 16 instruct licensees and the public on the procedures for challenging agency licensing decisions and charges. • Statute dictates the process by which a license applicant can challenge the denial of a license application by requesting an appeal hearing. 16 V.S.A. 1701. • Disciplinary hearings are held by a three-person hearing panel drawn from among the 14 members appointed by the Governor to serve on hearing panels. 16 V.S.A. 1702. The hearing panel members are the decision makers for the findings of fact and conclusions of law.
<p>Having administrative rules of practice that are clear, publicly accessible on OPR’s website, and applicable to all adjudicative proceedings increases the transparency of the disciplinary process. Transparency and clarity also mean fairness and efficiency: One does not need to be a repeat player to understand process and to make meaningful use of the hearing process. Adjudicative proceedings will move more quickly and smoothly when all parties are informed of the applicable rules of practice. This is also important for complainants, who are not parties, and the general public.</p>	



Evidentiary Standard	
OPR	AOE
<ul style="list-style-type: none"> OPR applies the evidentiary standard of a “preponderance of the evidence” which is also applicable to most civil matters. 	<ul style="list-style-type: none"> AOE has a two-tiered burden of proof: “in matters involving alleged unprofessional conduct or incompetence, including denial of a license based on alleged unprofessional conduct or incompetence” a preponderance standard applies; however, “in the case of revocation or suspension for more than one year, the proof shall be by clear and convincing evidence.” 16 V.S.A. § 1704.
<p>Having one evidentiary standard for all adjudicative proceedings is clearer and more consistent than two different evidentiary standards. OPR is of the view that the higher standard applied to AOE cases involving potential revocation or suspension can have negative public protection implications. If the conduct of a licensed educator is so concerning that license revocation or suspension is being contemplated, raising the burden of proof for the state to prove such conduct seems counterintuitive and less protective of the public as it will result in fewer license revocations/suspensions.</p>	

Disciplinary Sanctions and Conditions: Transparency and Available Remedies	
OPR	AOE
<ul style="list-style-type: none"> Pursuant to 3 V.S.A. § 131, OPR makes public decisions and orders by a hearing authority or appellate officer and stipulation agreements regarding findings of unprofessional conduct and sanctions deemed necessary to protect the public. The public can search for such decisions and orders and stipulation agreements on OPR’s website https://sos.vermont.gov/opr/complaints-conduct-discipline/. A board, or the Director of OPR for professions that have advisor appointees, has the power to impose the following sanctions: “Issue warnings or reprimands, suspend, revoke, limit, condition, deny, or prevent renewal of licenses, after disciplinary hearings or, in cases requiring emergency action, immediately suspend... In a case involving noncompliance with a statute or rule relating to administrative duties not related to patient, client, or customer care, a board or hearing officer may determine that ordering a monetary civil penalty does not constitute a finding of unprofessional conduct.” 3 V.S.A. § 129a(3). Private discipline and private settlements do not occur. 	<ul style="list-style-type: none"> Transparency and discoverability of discipline is governed by 16 V.S.A. § 1708. A hearing panel in the educator-licensing system may substantiate charges and order a public reprimand, administrative penalty, conditions, limit or suspend a license; but also “take no action” or “issue a private reprimand” for such substantiated charges.
<p>The public does not have access to all discipline taken against AOE licensees. The public has access to all discipline taken against OPR licensees. It is uncontroverted that AOE’s private disciplinary sanctions and licensing agreements are not as transparent, and that transferring AOE’s discipline to OPR will increase the amount of information the public can access regarding licensing discipline imposed on educators.</p>	



Case Management of Disciplinary Sanctions and Conditions	
OPR	AOE
<ul style="list-style-type: none"> Case managers monitor =completion of sanctions/conditions imposed pursuant to an order or consent order. 	<ul style="list-style-type: none"> The AOE investigator monitors compliance with a Licensing Agreement.
For both OPR and AOE (through written agreement), most respondents successfully complete conditions.	

Settlement	
OPR	AOE
<ul style="list-style-type: none"> Out of the cases charged, 10-20% proceed to a hearing. The remainder settled. The investigative teams meet on most conduct cases to have discussions and make decisions regarding how to proceed with a case. For example, discussions may involve whether standards of practice were met, whether there is evidence of unprofessional conduct, whether the case should proceed to the filing of charges, and what the sanctions will be. The prosecutor has full prosecutorial discretion, but the investigative team informs the prosecutor. The prosecutor assigned to the case negotiates the settlement, which is referred to as a consent order. The Board or the administrative law officer approves settlements. If the profession is board-regulated , there is a settlement review hearing before the board. The complainant can attend and ask questions, and the respondent can attend and make a statement. If the profession is advisor-regulated profession, the administrative law officer approves the stipulation but has the opportunity to reject it and have a hearing. Consent orders are public documents. OPR does not permit private settlements. As a matter of course, OPR files public specification of charges before any settlement negotiations occur. 	<ul style="list-style-type: none"> Since 2014 AOE has charged five licensees and has had two cases proceed to hearings. The investigative team meets to have discussions and make decisions regarding how to proceed with a case. For example, discussions may involve whether standards of practice were met, whether to open a formal investigation or take no action, whether a restorative approach can be implemented, whether there is evidence of unprofessional conduct, whether the case should proceed to the filing of charges, and what the sanctions will be. The Secretary of Education has ultimate settlement authority, but the investigative team informs and advises the Secretary. The prosecutor assigned to the case determines the settlement in consultation with the investigator, which is referred to as a Licensing Agreement.
<p>Again, AOE’s minimal public charges filed against licensees as compared to OPR reduces the amount of transparency regarding concerning conduct and discipline of its licensees. As stated hereinabove, from OPR’s perspective, increasing transparency increases public protection. The majority of AOE disciplinary cases settle before public charges are filed. As such, in the majority of AOE cases, the public is not aware of the findings of the investigation that substantiated the charges and ultimate discipline.</p>	



Promulgation of Administrative Rules for Professional Regulation and Licensing

OPR	AOE
<ul style="list-style-type: none"> The Vermont Administrative Procedure Act found in Chapter 25 of Title 3 provides procedures for rulemaking for all State agencies. The Secretary of State is charged with maintaining a centralized rule system that is open and available to the public. 3 V.S.A. § 818. At OPR, the attorneys within the general counsel division draft the proposed new or amended rules and follow the procedure outlined in the Secretary of State’s Rule on Rulemaking. 	<ul style="list-style-type: none"> The Vermont Standards Board for Professional Educators annually reviews and updates the rules for licensing of educators, code of conduct and discipline processes through the administrative rulemaking process. Title 3 Chapter 25.
<p>The authority to promulgate administrative rules related to professional licensing, investigation, prosecution, and unprofessional conduct hearings is the same for AOE and OPR.</p>	

Software and Case Management Tools

OPR	AOE
<ul style="list-style-type: none"> The Next Generation Licensing Platform (NGLP), is a mission-critical license management system developed by OPR. The NGLP runs in the Pegasystems “cloud” and interfaces with other systems in and outside the State, both cloud-based and physical, to manage professional licensing, enforcement case management, tribunal case management, and inspection programs for the State of Vermont. OPR’s current business practices and supporting technologies are maximizing OPR’s ability to meet its current statutory responsibilities. 	<ul style="list-style-type: none"> AOE currently has an antiquated records/case management system but has contracted for new licensing and case management software to be implemented in 2022. This system will process license applications and complaints. The system will hold all relevant documents, will allow legal staff to keep confidential investigation files separate from licensing files, and to track imposed discipline on licensees.
<p>Transferring AOE’s investigations and discipline to OPR would be efficient and result in no additional cost to the state due to the existing robust NGLP system. Perhaps AOE could modify its contract so that the new system functions for licensing purposes only, which would result in additional cost savings.</p>	



Personnel Employed	
OPR	AOE
<ul style="list-style-type: none"> The prosecution team consists of four state prosecuting attorneys. Two case managers and one administrative assistant support the prosecution team. The investigation team consists of five full-time law enforcement investigators as well as three full-time civil investigators. The role of the investigation team is to conduct thorough, impartial investigations to assist the prosecution team with determining if a licensee engaged in unprofessional conduct. OPR contracts with hearing officers to hear cases that would otherwise be heard by a board, administrative law officers to hear contested cases regarding denials of licensure or disciplinary matter, and appellate officers to hear appeals of board decisions. 	<ul style="list-style-type: none"> AOE has one AAG and one full-time investigator, supported by partial time from AOE general counsel. AOE contracts with two hearing officers for discipline hearings. One hearing officer contract for appeals has been terminated as a result of Act 69 shift of appeals to OPR.

Cost of Regulation	
OPR	AOE
<ul style="list-style-type: none"> The entire cost of regulating a profession is borne by the licensees that practice in that profession. As a result, OPR costs the general public nothing in general fund dollars. 	<ul style="list-style-type: none"> The entire cost of the regulation of the educator profession is borne by the license fees paid by educators. As a result, AOE license enforcement costs the general public nothing in general fund dollars.

New and Redundant Positions if AOE Investigations and Adjudication is Transferred to OPR	
OPR	AOE
<ul style="list-style-type: none"> It is estimated that OPR will need at least one additional prosecutor, two investigators and one case manager. 	<ul style="list-style-type: none"> A transfer would likely necessitate the elimination of two positions that also provide support to the Agency on other issues as assigned. This would reduce AOE's capacity.
<p>Transfer would increase costs associated with hiring at least three new staff members. OPR anticipates that superintendents would continue to be the primary complainants and reporters of unprofessional conduct but that additional OPR resources would be utilized to make screening, investigation, and prosecutorial decisions.</p>	