

Item 9:

Consider and Take Appropriate Action on Adoption of Proposed Amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter A, General Provisions, §249.3, Definitions, Subchapter B,

TEC, §§21.105g 11.04 72f -0.8.3(n.3(11.02f -0.8.313.3())t53 0 Td [(,)90 5e)-1.02f -04e)-,t53 0 and [(

There will be a cost of \$500-\$10,000 each to principals, superintendents, and directors who fail to report educator misconduct timely and become subject to administrative penalties under the proposed amendments to 19 TAC §249.15(a)(6) and §249.17(j). The potential cost to persons who fail to properly comply with the law is estimated at \$7,000 each year for FY 2018 through FY 2022. This estimate is based on the small number of superintendents whom the SBEC currently sanctions for failure to report, which averages to one per year.

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- (4) the educator engaged in conduct that violated the assessment instrument security procedures established under Section 39.0301.
- (b-1) A superintendent or director of a school district, district of innovation, ~~[or]~~ open-enrollment charter school, regional education service center, or shared services arrangement shall complete an investigation of an educator that involves ~~[is based on]~~ evidence that the educator may have engaged in misconduct described by Subsection (b)(2)(A) or (A-1), despite the educator's resignation from ~~[district or school]~~ employment before completion of the investigation.
- (b-2) The principal t des-s(c)-2(hool)2.6(di).3(i)2d.6(s)-2(t)-6.6(r)-5.962.6(c)-2(t)4.2(3-6.6(d)10.6(s)8.8(t9-6.6

- ~~[(2)]~~ if the victim of the offense was ~~[is]~~ under 18 years of age at the time the offense was committed.
- (b) Notwithstanding Section 21.041(b)(7), not later than the fifth day after the date the board receives notice under Article 42.018, Code of Criminal Procedure, of the conviction or placement on deferred adjudication community supervision of a person who holds a certificate under this subchapter, the board shall:
- (1) revoke the certificate held by the person; and
 - (2) provide to the person, to the agency, and to any school district or open-enrollment charter school employing the person at the time of revocation written notice of:
 - (A) the revocation; and
 - (B) the basis for the revocation.
- (c) A school district or open-enrollment charter school that receives notice under Subsection (b) of the revocation of a certificate issued under this subchapter shall:
- (1) immediately remove the person whose certificate has been revoked from campus or from an administrative office, as applicable, to prevent the person from having any contact with a student; and
 - (2) if the person is employed under a probationary, continuing, or term contract under this chapter, with the approval of the board of trustees or governing body or a designee of the board or governing body:
 - (A) suspend the person without pay;
 - (B) provide the person with written notice that the person's contract is void as provided by Subsection (c-2); and
 - (C) terminate the employment of the person as soon as practicable.
- (c-1) If a school district or open-enrollment charter school becomes aware that a person employed by the district or school under a probationary, continuing, or term contract under this chapter has been convicted of or received deferred adjudication for a felony offense, and the person is not subject to Subsection (c), the district or school may, with the approval of the board of trustees or governing body or a designee of the board of trustees or governing body:
- (1) suspend the person without pay;
 - (2) provide the person with written notice that the person's contract is void as provided by Subsection (c-2); and
 - (3) terminate the employment of the person as soon as practicable.
- (c-2) A person's probationary, continuing, or term contract is void if, with the approval of the board of trustees or governing body or a designee of the board or governing body, the school district or open-enrollment charter school takes action under Subsection (c)(2)(B) or (c-1)(2).

Texas Education Code, §21.160, Resignation Under Continuing Contract (excerpt):

- (c) On written complaint by the employing district, the State Board for Educator Certification may impose sanctions against a teacher who is employed under a continuing contract that obligates the district to employ the person for the following school year and who:
- (1) resigns;
 - (2) fails without good cause to comply with Subsection (a) or (b); and
 - (3) fails to perform the contract.

Texas Education Code, §21.210 , Resignation Under Term Contract (excerpt):

- (c) On written complaint by the employing district, the State Board for Educator Certification may impose sanctions against a teacher who is employed under a term contract that obligates the district to employ the person for the following school year and who:
- (1) resigns;
 - (2) fails without good cause to comply with Subsection (a) or (b); and
 - (3) fails to perform the contract.

Texas Education Code, §22.085, Employees and Applicants Convicted of Certain

Offenses, as amended by House Bill 3270, 85th Texas Legislat Tc 0 Tw 1.217 0 Td ()Tj -0.2.66(Tc 03(a)2(at

Texas Government Code, §2001.058, Hearing Conducted by State Office of Administrative Hearings:

- (a) This section applies only to an administrative law judge employed by the State Office of Administrative Hearings.
- (b) An administrative law judge who conducts a contested case hearing shall consider applicable agency rules or policies in conducting the hearing, but the state agency deciding the case may not supervise the administrative law judge.
- (c) A state agency shall provide the administrative law judge with a written statement of applicable rules or policies.
- (d) A state agency may not attempt to influence the finding of facts or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument.
- (d-1) On making a finding that a party to a contested case has defaulted under the rules of the State Office of Administrative Hearings, the administrative law judge may dismiss the case from the docket of the State Office of Administrative Hearings and remand it to the referring agency for informal disposition under Section 2001.056. After the case is dismissed and remanded, the agency may informally dispose of the case by applying its own rules or the procedural rules of the State Office of Administrative Hearings relating to default proceedings. This subsection does not apply to a contested case in which the administrative law judge is authorized to render a final decision.
- (e) A state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines:
 - (1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided under Subsection (c), or prior administrative decisions;
 - (2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or
 - (3) that a technical error in a finding of fact should be changed.The agency shall state in writing the specific reason and legal basis for a change made under this subsection.
- (f) A state agency by rule may provide that, in a contested case before the agency that concerns licensing in relation to an occupational license and that is not disposed of by stipulation, agreed settlement, or consent order, the administrative law judge shall render the final decision in the contested case. If a state agency adopts such a rule, the following provisions apply to contested cases covered by the rule:
 - (1) the administrative law judge shall render the decision that may become final under Section 2001.144 not later than the 60th day after the latter of the date on which the hearing is finally closed or the date by which the judge has ordered all briefs, reply briefs, and other posthearing documents to be filed, and the 60-day period may be extended only with the consent of all parties, including the occupational licensing agency;
 - (2) the administrative law judge shall include in the findings of fact and conclusions of law a determination whether the license at issue is primarily a license to engage in an occupation;

(3)

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- (12) ~~Complaint~~—A written statement submitted to the Texas Education Agency staff that contains essential facts alleging improper conduct by an ~~educap~~ applicant, or examinee, the complainant's verifiable contact information, including full name, complete address, and phone number, which provides grounds for sanctions.
- (13) ~~Contested case~~—A proceeding under this chapter in which the legal rights ~~and~~ privileges related to a party's educator certificate are to be determined by the State Board for Educator Certification and/or the State Office of Administrative Hearings commencing when a petition is properly served under this chapter.
- (14) ~~Conviction~~—An adjudication of guilt for a criminal offense. The term does not include the imposition of deferred adjudication for which the judge has not proceeded to an adjudication of guilt.
- (15) ~~Deferred adjudication~~—The resolution of a criminal charge, ~~based~~ on a defendant's plea to the offense of guilty or nolo contendere, which results in the suspension of adjudication of the defendant's guilt and the imposition of conditions such as community supervision or restitution, and, upon successful completion ~~of those~~ conditions, the dismissal of the criminal case. In a contested case under this chapter, the defendant's acceptance of deferred adjudication in a criminal case may be considered as provided by the Texas Occupations Code, §53.021.
- (16) ~~Disciplinary proceedings~~—Any matter arising under this chapter or Chapter 247 of this title (relating to the Educators' Code of Ethics) that results in a final order or finding issued by the Texas Education Agency staff, the State Office of Administrative Hearings, or the State Board for Educator Certification relating to the legal rights, duties, privileges, and status of a party's educator certificate.
- (17) ~~Educator~~—A person who is required to hold a certificate issued under the Texas Education Code, Chapter 21, ~~Subchapter~~ Chapter B.
- (18) ~~Effective date~~—The date the decision or action taken by the State Board for Educator Certification or the Texas Education Agency staff becomes final under the appropriate legal authority.
- (19) ~~Endanger~~—Exposure of a student or minor to ~~un~~ justified risk of injury or to injury that jeopardizes the physical health or safety of the student or minor without regard to whether there has been an actual injury to the student or minor.
- (20) ~~Examinee~~—A person who registers to take or who takes any examination required by the State Board for Educator Certification for admission to an educator preparation program or to obtain an educator certificate.
- (21) ~~Expired~~—No longer valid because a specific period or term of validity of a certificate has ended; an expired certificate is not subject to renewal or revalidation and a new certificate must be issued.
- (22) ~~Filing~~—Any written petition, answer, motion, response, other written instrument, or item appropriately filed under this chapter with the Texas Education Agency staff, the State Board for Educator Certification, or the State Office of Administrative Hearings.
- (23) ~~Good moral character~~—The virtues of a person as evidenced by patterns of personal, academic, and occupational behaviors that, in the ~~judgment~~ of the State Board for Educator Certification, indicate honesty, accountability, trustworthiness, reliability, and integrity. Lack of good moral character may be evidenced by the commission of crimes relating directly to the duties and responsibilities of the education profession as described in §249.16(b) of this title (relating to Eligibility of

(failure to renew, failure to submit fingerprint information, or payment of fees), subject to any other certification requirements applicable to active certificates.

~~(25)~~ (25) ~~Inappropriate relationship~~ A violation of Texas Penal Code, §21.12(a); a sexual or romantic relationship with a student or minor; or solicitation of a sexual or romantic relationship with a student or minor.

~~(26)~~ (25) ~~Informal conference~~ An informal meeting between the Texas Education Agency staff and an educator, applicant, or examinee; such a meeting may be used to give the person an opportunity to show compliance with all requirements of law for the granting or retention of a certificate or test score pursuant to Texas Government Code §2001.054(c).

~~(27)~~ (26) Invalid--Rendered void; lacking legal or administrative efficacy.

~~(28)~~ (27) Law--

- (iv) whether the communications were made openly or secretly;
- (v) the extent that the educator attempts to conceal the communications;
- (vi) if the educator claims to be counseling a student, the Board for Educator Certification may consider whether the educator's job duties included counseling, whetheri-5

Education Agency staff and a test contractor, including policies, regulations, and procedures set out in a test registration bulletin.

- (59) [(58)] Texas Education Agency staff—Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.
- (60) [(59)] Unworthy to instruct or to supervise the youth of this state—Absence of those moral, mental, and psychological qualities that are required to enable an educator to render the service essential to the accomplishment of the goals of the State Board for Educator Certification policy and Chapter 247 of this title (relating to Educators' Code of Ethics). Unworthy to instruct serves as a basis for sanctions under §249.15(b)(2) of this title (relating to Disciplinary Action by State Board for Educator Certification) and for administrative denial under §249.12(b) of this title (relating to Administrative Denial; Appeal). A determination that a person is unworthy to instruct does not require a criminal conviction.
- (61) [(60)] Virtual certificate—The official record of a person's certificate status as maintained on the Texas Education Agency's website.

Subchapter B. Enforcement Actions and Guidelines

§249.12. Administrative Denial; Appeal.

- (a) This section applies to administrative denials, as that term is defined in §249.3 of this title (relating to Definitions). This section does not apply to the denial of an application for a certificate that has been permanently revoked, and it does not apply to the failure to issue a certificate because specific certification requirements have not been met.
- (b) The Texas Education Agency (TEA) staff may administratively deny any of the matters set out in subsection (a) of this section based on satisfactory evidence that:
 - (1) the person fil

- (B) the agreement with the educator regarding the effective date of separation from employment, if any;
- (C) the educator's contract; and
- (D) school board meeting minutes indicating a finding of "no good cause" (if the ~~board~~ does not meet within 30 calendar days of the educator's separation from employment, the minutes may be submitted within 10 calendar days after the next board meeting).

(k) ~~(h)~~ To efficiently administer and implement the SBEC's purpose under this ~~chapter~~ the TEC, the TEA staff may set priorities for the investigation of complaints based on the severity and immediacy of the allegations and the likelihood of harm posed by the subject of the investigation. All cases accepted for investigation shall be assigned one of the following priorities.

- (1) Priority 1: conduct that may result in the placement of an investigative notice pursuant to the TEC, §21.007, and subsection (l)0

- (1) when a case's final disposition occurs within the time limits established in subsection ~~(k)~~ of this section; or
 - (2) when the time limits for an investigative notice have been exceeded, if:
 - (A) the certificate holder has made a written demand to the TEA staff that the investigative notice be removed because the time limits have been exceeded; and
 - (B) the TEA staff has failed to refer the matter to the State Office of Administrative Hearings for a contested case hearing within 30 calendar days from the date of receipt of the written demand to remove the investigative notice.
- (p) ~~(m)~~ Only the TEA staff may file a petition seeking sanctions under §249.15 of this title. Prior to filing a petition, the TEA staff shall mail to the certificate holder affected by written notice of the facts or conduct alleged to warrant the intended action and shall provide the certificate holder an opportunity to show compliance with all requirements of law.

§249.15. Disciplinary Action by State Board for Educator Certification.

- (a) Pursuant to this chapter, the State Board for Educator Certification (SBEC) may take any of the following actions:
 - (1) place restrictions on the issuance, renewal, or holding of a certificate, either indefinitely or for a set term;
 - (2) issue an inscribed or ~~non~~inscribed reprimand;
 - (3) suspend a certificate for a set term or issue a probated suspension for a set term;
 - (4) revoke or cancel, which includes accepting the surrender of, a certificate without opportunity for reapplication for a set term or permanent ~~by~~ [
 - (5) impose any additional conditions or restrictions upon a certificate that the SBEC deems necessary to facilitate the rehabilitation and professional development of the educator ~~to~~ protect students, parents of students, school personnel, or school officials; or
 - (6) ~~impose an administrative penalty of \$500,000 on a superintendent or director who fails to file timely a report required under §249.14(d) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition) or on a principal who fails to timely notify a superintendent or director as required under §249.14(e) of this title under the circumstances and in the manner required by the Texas Education Code (TEC), §21.006.~~
- (b) The SBEC may take any of the actions listed in subsection (a) of this section based on satisfactory evidence that:
 - (1) the person has conducted school or education activities in violation of law;
 - (2) the person is unworthy to instruct or to supervise the youth of this state;
 - (3) the person has violated a provision of the Educators' Code of Ethics;
 - (4) the person has failed to report or has hindered the reporting of child abuse pursuant to the Texas Family Code, §261.001, or has failed to notify the SBEC or the school superintendent or director under the circumstances and in the manner required ~~by the Texas Education Code (TEC), §21.006, and §249.14(d)(f) [§249.14(d) and (f) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition)]~~
 - (5) the person has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c);
 - (6) the person has failed to cooperate with the Texas Education Agency (TEA) in an investigation;
 - (7)

- (8) the person has violated the security or integrity of any assessment required by the TEC, Chapter 39, Subchapter B, as described in subsection (g) of this section or has committed an act of departure from the test administration procedures established by the commissioner of education in Chapter 101 of this title (relating to Assessment);
- (9) the person has committed an act described in §249.14(h)(1) of this title, which constitutes sanctionable Priority 1 conduct, as follows:
 - (A) any conduct constituting a felony criminal offense;
 - (B) indecent exposure;
 - (C) public lewdness;
 - (D) child abuse and/or neglect;
 - (E) possession of a firearm.

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- (12) the person has failed to discharge an employee or to refuse to hire an applicant when the person knew that the employee or applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor in accordance with the TEC, §21.009(e), knew or should have known through a criminal history record information review that the employee or applicant had been convicted of an offense in accordance with the TEC, §22.085;
- (13) the person is a superintendent of a school district or the chief operating officer of an open enrollment charter school who falsely or inaccurately certified to the commissioner of education that the district or charter school had complied with the TEC, §22.085; or
- (14) the person has ~~filed~~ failed to comply with an order or decision of the SBEC.
- (c) The TEA staff may commence a contested case to take any of the actions listed in subsection (a) of this section by serving a petition to the certificate holder in accordance with this chapter ~~in accordance with~~ SBEC's intent to issue a sanction and specifying the legal and factual reasons for the sanction. The certificate holder shall have 30 calendar days to file an answer as provided in §249.27 of this title (relating to Answer).
- (d) Upon the failure of the certificate holder to file a written answer as required by this chapter, the TEA staff may file a request for the issuance of a default judgment from the SBEC imposing the proposed sanction in accordance with §249.35 of this title (relating to Disposition Prior to Hearing; Default).
- (e) If the certificate holder files a timely answer as provided in this section, the case will be referred to the State Office of Administrative Hearings (SOAH) for hearing in accordance with the SOAH rules; the Texas Government Code, Chapter 2001; and this chapter.
- (f) The provisions of this section are not exclusive and do not preclude consideration of other grounds or measures available by law to the SBEC or the TEA staff, including student loan default or child support arrears. The SBEC may request the Office of the Attorney General to pursue available civil, equitable, or other legal remedies to enforce an order or decision of the SBEC under this chapter.
- (g) The statewide assessment program as defined by the TEC, Chapter 39, Subchapter B, is a secure testing program.
- (1) Procedures for maintaining security shall be specified in the appropriate test administration materials.
- (2) Secure test materials must be accounted for before, during, and after each test administration ~~in accordance with~~ ~~the~~ ~~TEC~~ ~~§~~ ~~249.35~~ ~~of~~ ~~this~~ ~~title~~ ~~(relating~~ ~~to~~ ~~Disposition~~ ~~Prior~~ ~~to~~ ~~Hearing~~ ~~; Default).~~ ~~Only~~ ~~in~~ ~~accordance~~ ~~with~~ ~~TEC~~ ~~§~~ ~~249.35~~ ~~of~~ ~~this~~ ~~title~~ ~~(relating~~ ~~to~~ ~~Disposition~~ ~~Prior~~ ~~to~~ ~~Hearing~~ ~~; Default).~~ ~~Only~~ ~~in~~ ~~accordance~~ ~~with~~ ~~TEC~~ ~~§~~ ~~249.35~~ ~~of~~ ~~this~~ ~~title~~ ~~(relating~~ ~~to~~ ~~Disposition~~ ~~Prior~~ ~~to~~ ~~Hearing~~ ~~; Default).~~ ~~Only~~ ~~in~~ ~~accordance~~ ~~with~~ ~~TEC~~ ~~§~~ ~~249.35~~ ~~of~~ ~~this~~ ~~title~~ ~~(relating~~ ~~to~~ ~~Disposition~~ ~~Prior~~ ~~to~~ ~~Hearing~~ ~~; Default).~~ ~~Only~~ ~~in~~ ~~accordance~~ ~~with~~ ~~TEC~~ ~~§~~ ~~249.35~~ ~~of~~ ~~this~~ ~~title~~ ~~(relating~~ ~~to~~ ~~Disposition~~ ~~Prior~~ ~~to~~ ~~Hearing~~ ~~; Default).~~ ~~Only~~ ~~in~~ ~~accordance~~ ~~with~~ ~~TEC~~ ~~§~~ ~~249.35~~ ~~of~~ ~~this~~ ~~title~~ ~~(relating~~ ~~to~~ ~~Disposition~~ ~~Prior~~ ~~to~~ ~~Hearing~~ ~~; 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- (9) whether the sanction will deter future violations; and
 - (10) any other relevant circumstances or facts.
- (d) Contract abandonment.
- (1) Good cause. The following factors may be considered good cause when an educator is reported to have abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c):
 - (A) serious illness or health condition of the educator or close family member of the educator;
 - (B) relocation to a new city as a result of change in employer of the educator's spouse or partner who resides with the educator; or
 - (C) significant change in the educator's family needs that requires the educator to relocate or to devote more time than allowed by current employment.
 - (2) Mitigating factors. The following factors may be considered in seeking, proposing, or making a decision under this chapter regarding an educator who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c):
 - (A) educator gave written notice to school district 30 days or more in advance of the first day of instruction for which the educator will not be ~~sent~~;
 - (B) educator assisted school district in finding a replacement educator to fill the position;
 - (C) educator continued to work until the school district hired a replacement educator;
 - (D) educator assisted in training the replacement educator;
 - (E) educator showed good faith in communications and negotiations with school district; or
 - (F) educator provided lesson plans for classes following educator's resignation.
 - (3) Mandatory minimum sanction for contract abandonment. An educator subject to sanctions who abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c) in a case where the factors listed in paragraph (1) or (2) of this subsection do not apply, may not receive a sanction of less than:
 - (A) suspension for one year from th

- (2) an inscribed reprimand and a \$500 administrative penalty for a principal who fails to timely notify a superintendent or director.

