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TEC, §21.0062, requires the chief administrative officer of a private school to notify the SBEC within seven days when a private school educator resigns before the completion of an investigation or is terminated and there is evidence that the educator has engaged in certain misconduct and gives the SBEC rulemaking authority to implement the section.

TEC, §21.007, gives the SBEC authority to place a notice that an educator is under investigation for alleged misconduct on the educator's public certification records, requires the SBEC give the educator notice and an opportunity to show cause, requires that the SBEC limit the amount of time the notice can appear on the educator's certification, and gives the SBEC rulemaking authority as necessary to implement the provision.

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TEC, §21.210(c), allows the SBEC to impose sanctions against an educator who abandons a term contract.

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The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Abuse--~~This term has the meaning assigned by Texas Family Code, §261.001(1). [Includes the following acts or omissions:]~~
- ~~[(A) — mental or emotional injury to a student or minor that results in an observable and material impairment in the student's or minor's development, learning, or psychological functioning;]~~
  - ~~[(B) — causing or permitting a student or minor to be in a situation in which the student or minor sustains a mental or emotional injury that results in an observable and material impairment in the student's or minor's development, learning, or psychological functioning;]~~
  - ~~[(C) — physical injury that results in substantial harm to a student or minor, or the genuine threat of substantial harm from physical injury to the student or minor, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline; or]~~
  - ~~[(D) — sexual conduct harmful to a student's or minor's mental, emotional, or physical welfare.]~~
- (2) Administrative denial--A decision or action by the Texas Education Agency staff, acting on behalf of the State Board for Educator Certification, to deny certification (including certification following revocation, cancellation, or surrender of a previously issued certificate), renewal of certification, or reinstatement of a previously suspended certificate based on the withholding or voiding of certification test scores; the invalidation of a certification test registration; evidence of a lack of good moral character; or evidence of i w;npr chnducte.
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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 educator, 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, duties, 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
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(failure to renew, failure to submit fingerprint information, or payment of fees), subject to any other certification requirements applicable to active certificates.

- (25) Inappropriate relationship--A violation of Texas Penal Code, §21..C4.00721.e m[(St;0.4 (oda9 (a)4 7.7 (e)4.2 (s)9u.9

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- (vi) if the educator claims to be counseling a student, the State Board for Educator Certification may consider whether the educator's job duties included counseling, whether the educator reported the subject of the counseling to the student's guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the educator reported the abuse or neglect to the appropriate authorities; and
- (vii) any other evidence tending to show the context of the communications between educator and student;
- (B) making inappropriate comments about a student's body, creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images;
- (C) making sexually demeaning comments to a student;
- (D) making comments about a student's potential sexual performance;
- (E) requesting details of a student's sexual history;
- (F) requesting a date, sexual contact, or any activity intended for the sexual gratification of the educator;
- (G) engaging in conversations regarding the sexual problems, preferences, or fantasies of either party;
- (H) inappropriate hugging, kissing, or excessive touching;
- (I) providing the student with drugs or alcohol;
- (J) violating written directives from school administrators regarding the educator's behavior toward a student;
- (K) grooming behaviors, considered in context and on the totality of circumstances, including, but not limited to:
  - (i) showing the student special attention;
  - (ii) giving the student individual gifts, money, or privileges;
  - (iii) isolating the student;
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- (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 filed a fraudulent application;
  - (2) the person assisted another person in obtaining employment at a school district or open-enrollment charter school, other than by the routine transmission of administrative or personnel files when the person knew that the other person had previously engaged in an inappropriate relationship with a minor or student in violation of the law;
  - (3) the person has committed an act that would make them subject to required revocation under the Texas Education Code, §21.058, or placement on the Registry of Persons Not Eligible for Hire under Texas Education Code, §22.092 ;
  - (4) the person has committed an act that would make them subject to mandatory permanent revocation or denial under §249.17(i) of this title (relating to Decision-Making Guidelines);
  - (5) the person has engaged in conduct or committed a crime or an offense that:
    - (A) demonstrates that the person lacks good moral character;
    - (B) demonstrates that the person violated the Educators' Code of Ethics under Chapter 247 of this title (relating to Educators' Code of Ethics);
    - (C) [~~B~~] demonstrates that the person is unworthy to instruct or to supervise the youth of this state; or
    - (D) [~~C~~] constitutes the elements of a crime or offense relating directly to the duties and responsibilities of the education profession; or
  - (6) the person failed to comply with the terms or conditions of an order issued by or on behalf of the State Board for Educator Certification or the TEA staff.
- (c)
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- (G) sale to or making alcohol or other drugs available to a student or minor;
  - (H) sale, distribution, or display of harmful material to a student or minor;
  - (I) certificate fraud;
  - (J) state assessment testing violations;
  - (K) deadly conduct; and
  - (L) conduct that involves inappropriate communication with a student as described in §247.2(3)(I) of this title (relating to Code of Ethics and Standard Practices for Texas Educators), inappropriate professional educator-student relationships and boundaries, or otherwise soliciting or engaging in sexual conduct or a romantic relationship with a student or minor.
- (2) Priority 2: any sanctionable conduct that is not Priority 1 conduct under paragraph (1) of this
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- (A) At least ten calendar days before placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in

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- (7) Any irregularities in test security or confidential integrity may also result in the invalidation of student results.
- (8) The superintendent and campus principal of each school district and chief administrative officer of each charter school and any private school administering the tests as allowed under the TEC, §39.033, shall develop procedures to ensure the security and confidential integrity of the tests specified in the TEC, Chapter 39, Subchapter B, and shall be responsible for notifying the TEA in writing of conduct that violates the security or confidential integrity of a test administered under the TEC, Chapter 39, Subchapter B. A person who fails to report such conduct as required by this subsection may be subject to any of the sanctions provided by subsection (a) of this section.

§249.17 Decision-Making Guidelines.

- (a) Purpose. The purpose of these guidelines is to achieve the following objectives:
  - (1) to provide a framework of analysis for the Texas Education Agency (TEA) staff, the presiding administrative law judge (ALJ), and the State Board for Educator Certification (SBEC) in considering matters under this chapter;
  - (2) to promote consistency in the exercise of sound discretion by the TEA staff, the presiding ALJ, and the SBEC in seeking, proposing, and making decisions under this chapter; and
  - (3) to provide guidance for the informal resolution of potentially contested matters.
- (b) Construction and application. This section shall be construed and applied so as to preserve SBEC members' discretion in making final decisions under this chapter. This section shall be further construed and applied so as to be consistent with §249.5(b) of this title (relating to Purpose; Policy Governing Disciplinary Proceedings) and this chapter, the Texas Education Code (TEC), and other applicable law, including SBEC decisions and orders.
- (c) Consideration. The following factors may be considered in seeking, proposing, or making a decision under this chapter:
  - (1) the seriousness of the violation;
  - (2) whether the misconduct was premeditated or intentional;
  - (3) attempted concealment of misconduct;
  - (4) prior misconduct and SBEC sanctions;
  - (5) the potential danger the conduct poses to the health and welfare of students;
  - (6) the effect of the prior conduct upon any victims of the conduct;
  - (7) whether sufficient time has passed and sufficient evidence is presented to demonstrate that the educator or applicant has been rehabilitated from the prior conduct;
  - (8) the effect of the conduct upon the educator's good moral character and ability to be a proper role model for students;
  - (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, as evidenced by documentation from a licensed medical provider, and the educator attempted to seek medical leave from the district, if eligible, prior to resignation
    - (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, supported by documentation



- (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; or
- (D) the educator's reasonable belief that the educator had written permission from the school

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- (1) engaged in any sexual contact or romantic relationship with a student or minor;
- (2) solicited any sexual contact or romantic relationship with a student or minor;
- (3) possessed or distributed child pornography;
- (4) was registered as a sex offender;
- (5) committed criminal homicide;
- (6) transferred, sold, distributed, or conspired to possess, transfer, sell, or distribute any controlled substance, the possession of which would be at least a Class A misdemeanor under the Texas

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~~(b) — Any disagreement with a factual finding or conclusion of law in the proposal for decision not contained in an exception to the proposal shall be waived.~~

(b) ~~(c)~~ Each exception or reply to a finding of fact or conclusion of law shall be concisely stated and shall summarize the evidence in support of each exception.

- (1) Any evidence or arguments relied upon shall be grouped under the exceptions to which they relate.
- (2) In summarizing evidence, the parties shall include a specific citation to the hearing record where such evidence appears or shall attach the relevant excerpts from the hearing record.
- (3) Arguments shall be logical and coherent and citations to authorities shall be complete.

(c) ~~(d)~~ Exceptions to the proposal for decision may be based on the following:

- (1) the ALJ has made an incorrect conclusion of law;
- (2) the ALJ has failed to make an essential fact finding;
- (3) the ALJ applied the incorrect burden or standard of proof;
- (4) the findings of fact do not support the conclusions of law; or
- (5) the ALJ has made a finding of fact that is not supported by the preponderance of the evidence.