TEC, §21.007 gives the SBEC authority to place a notice that an educator is under investigation

TEC, §21.160

knows the jobseeker has committed sexual misconduct with a student or minor in violation of the law.

FUTURE ACTION EXPECTED: TEA staff expects to present this item for discussion and possible action at a future SBEC meeting.

BACKGROUND INFORMATION AND JUSTIFICATION: SBEC implemented new requirements in 19 TAC Chapter 249 in 2021 after significant stakeholder engagement and Board discussion. Due to a rise in complaints, TEA staff is seeking guidance from the SBEC on prioritization of complaints and case processing.

At the April meeting, the Board had a preliminary discussion on potential amendments to Chapter 249. TEA staff brought these potential changes to the Educator Preparation Stakeholder Group on June 21, 2024, and held a stakeholder engagement meeting with the general public on July 9, 2024. TEA staff will present the stakeholder feedback to the Board at the July meeting and staff will hold an additional stakeholder engagement meeting prior to the September board meeting.

Historically, Educator Preparation, Certification and Enforcement (EPCE) has devoted a significant portion of its budget to sending notices regarding educator discipline proceedings to certified educators and educator applicants by certified and regular mail. Email addresses are often a more reliable method of communication than physical addresses because individuals retain the same email address.

The State Office of Administrative Hearings (SOAH) adopted amendments to its rules to allow for all methods of service permitted under Texas Rule of Civil Procedure 21a, including service by email without the prior agreement of the parties.

Under 19 TAC §230.91 (relating to Procedures in General), certified Texas educators are required to maintain their educator profiles with current mailing and email addresses by updating their Educator Certification Online System (ECOS) profile within 45 calendar days of the effective date of any change. The potential change would allow staff to serve the notices of SBEC disciplinary proceedings to educators and educator applicants via electronic mail to the email ECOS profile. Serving notice to educators and applicants via electronic mail would result in significant cost savings to the agency over the first five years the rule is in effect.

Currently, under 19 TAC §249.14(k), staff may set priorities for the investigation of complaints and requires staff to assign either Priority 1 or Priority 2 conduct to every investigation. As part of ongoing discussions,

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(42) Recklessly--

(v) the extent that the educator attempts to conceal the communications;

(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 Ts 100 Tz 0 Tr 10.02 0 0 10.02 126.02uad9apropriamcp(potesex)4

(57) Suspension--A sanction imposed by the State Board for Educator Certification (SBEC) temporarily invalidating a particular certificate until reinstated by the SBEC.

(58) Test administration rules or procedures--Rules and procedures governing professional examinations administered by the State Board for Educator Certification through the Texas Education Agency staff and a test contractor, including policies, regulations, and procedures set out in a test registration bulletin.

(59) 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) 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 and mission of the Sta

§249.5. Purpose; Policy Governing Disciplinary Proceedings.

(a) Purpose. The purpose of this chapter is:

(1) to protect the safety and welfare of Texas schoolchildren and school personnel;

(2) to ensure educators and applicants are morally fit and worthy to instruct or to supervise the youth of the state;

(3) to regulate and to enforce the standards of conduct of educators and applicants;

(4) to provide for disciplinary proceedings in conformity with the Texas Government Code, Chapter 2001, and the rules of practice and procedure of the State Office of Administrative Hearings;

(5) to enforce an educators' code of ethics;

(6) to fairly and efficiently resolve disciplinary proceedings at the least expense possible to the parties and the state;

(7) to promote the development of legal precedents through State Board for Educator Certification (SBEC) decisions to the end that disciplinary proceedings may be justly resolved; and

(8) to provide for regulation and general administration pursuant to the SBEC's enabling statutes.

(b) Policy governing disciplinary proceedings.

(1) A certified educator holds a unique position of public trust with almost unparalleled access to the hearts and minds of impressionable students. The conduct of an educator must be held to the highest standard. Because SBEC sanctions are imposed for reasons of public policy, and are not penal in nature, criminal procedural and punishment standards are not appropriate to educator disciplinary proceedings.

(2) The following general principles shall apply.

(A) Because the SBEC's primary duty is to safeguard the interests of Texas students, educator certification must be considered a privilege and not a right.

(B) The SBEC may pursue disciplinary proceedings and sanctions based on convictions of felonies and misdemeanors as provided by the Texas Education Code (TEC), §21.060; the Texas Occupations Code, Chapter 53; and this chapter.

(C) The SBEC may also pursue disciplinary proceedings and sanctions based on educator conduct that is proved by a preponderance of the evidence, and such proceedings and sanctions do not require a criminal conviction, deferred adjudication, community supervision, an indictment, or an arrest.

(D) An educator's good moral character, as defined in §249.3 of this title (relating to Definitions), constitutes the essence of the role model that the educator represents to students both inside and outside the classroom. Chapter 247 of this title (relating to Educators' Code of Ethics) and this chapter provide for educator disciplinary proceedings and provide a minimum standard for educator conduct. Conduct or conditions that may demonstrate that an educator or applicant lacks good moral character, is a negative role model to students, and does not possess the moral fitness necessary to be a certified educator include, but are not limited to:

(i) active community supervision or criminal probation;

(ii) conduct that indicates dishonesty or untruthfulness;

(iii) habitual impairment through drugs or alcohol;

(iv) abuse or neglect of students and minors, including the educator's own children; and

(v) reckless endangerment of the safety of others.

(E) "Unworthy to instruct or to supervise the youth of this state," defined in §249.3 of this title, which serves as a basis for sanctions under §249.15(b)(2) of this title (relating to Disciplinary Action by State Board for Educator Certification), is a broad concept that is not limited to the specific criminal convictions that are described in the TEC, §21.058 and §21.060. The moral fitness of a person to instruct the youth of this state must be determined from an examination of all relevant conduct, is not limited to conduct that occurs while performing the duties of a professional educator, and is not limited to conduct that constitutes a criminal violation or results in a criminal conviction or to conduct that constitutes a violation of Chapter 247 of this title. It is a rebuttable presumption that an educator who violates written directives from school administrators regarding the educator's behavior toward a student is unworthy to instruct or to supervise the youth of this state.

(F) Educators have positions of authority, have extensive access to students when no other adults (or even other students, in some cases) are present, and have access to confidential information that could provide a unique opportunity to exploit student vulnerabilities. Educators must clearly understand the boundaries of the educator-student relationship that they are trusted not to cross. Any violation of that trust, such as soliciting or engaging in a romantic or sexual relationship with any student or minor, is considered conduct that may result in permanent revocation of an educator's certificate.

(G) Administrators who hold Superintendent, Principal, or Mid-Management Administrator certificates issued by the SBEC have, as a result of their actual or potential positions of authority over both students and other educators, an even greater obligation to maintain good moral character than teachers and paraprofessionals. When an administrator's conduct demonstrates that the administrator lacks good moral character, is a negative role model to students, or does not possess the moral fitness necessary to be a certified educator as described in subparagraph (D) of this paragraph, the administrator may be subject to greater sanction than a teacher or paraprofessional would receive for the same conduct.

(H) Evidence of rehabilitation with regard to educator conduct that could result in sanction, denial of a certification application, or denial of an application for reinstatement of a certificate shall be recognized and considered. In addition, the following shall also be considered:

(i) the nature and seriousness of prior conduct;

(ii) the potential danger the conduct poses to the health and welfare of students;

(iii) the effect of the prior conduct upon any victims of the conduct;

(iv) whether sufficient time has passed and sufficient evidence is presented to demonstrate that the educator or applicant has been rehabilitated from the prior conduct; and

(v) the effect of the conduct upon the educator's good moral character and ability to be a proper role model for students.

§249.6. Construction.

(a) This chapter shall be liberally construed in conformity with the Texas Government Code, Chapter 2001, and the rules of practice and procedure of the State Office of Administrative Hearings so as to achieve the purposes for which it was adopted, without changing the statutory jurisdiction, powers, or authority of the

(c) If any provision of this chapter is declared invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this chapter that can be applied without the invalid provision. To that end, the SBEC declares the provisions of this chapter to be severable.

§249.7. Signature Authority.

(a) The State Board for Educator Certification (SBEC) may delegate to the chair the authority to sign on behalf of a majority of the SBEC members a decision made or order issued under this chapter.

(b) As provided by this chapter and any memorandum of agreement between the Texas Education Agency (TEA) and SBEC, TEA staff may sign final orders resolving or dismissing cases by agreement of the parties or by non-suit of the petitioner, as well as orders relating to other matters authorized by this chapter.

§249.8. Agreements to Be in Writing.

Unless otherwise provided in this chapter, no agreement between parties or their representatives related to a matter under this chapter will be enforced unless it be in writing and signed by the parties to the agreement or their representatives and appropriately filed with the papers as part of the record.

§249.9. Ex Parte Communications.

Parties, their authorized representatives, and any other person acting on a party's behalf shall not communicate or attempt to communicate with any State Board for Educator Certification member regarding a complaint, investigation, or disciplinary proceeding under this chapter, except as allowed by law. The chair may impose sanctions against a violator of this section.

§249.10. Conduct and Decorum.

(a) Parties, authorized representatives, witnesses, and other persons involved in a proceeding, hearing, or other matter under this chapter shall conduct themselves with proper dignity, courtesy, and respect for the State Board for Educator Certification (SBEC), Texas Education Agency staff, administrative law judge (ALJ), and all other participants. Disorderly conduct shall not be tolerated. The rules of the State Office of Administrative Hearings (SOAH) governing conduct and decorum under 1 Texas Administrative Code (TAC), Part 7, Chapter 155 (relating to Rules of Procedure), shall also apply to matters referred to the SOAH.

(b) Authorized representatives shall also observe any other standards of conduct applicable to the professional capacity in which they are appearing.

(c) The presiding officer or ALJ may impose sanctions against a violator of this section, including barring the person from attending further proceedings. Sanctions allowed by the rules of the SOAH under 1 TAC, Part 7, Chapter 155, in SOAH proceedings may also be imposed by the chair in a proceeding before the SBEC.

Subchapter B, Enforcement Actions and Guidelines

§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 permanently;

(10) the person has committed an act that would constitute an offense (without regard to whether there has been a criminal conviction) that is considered to relate directly to the duties and responsibilities of the education profession, as described in §249.16(c) of this title (relating to Eligibility of Persons with Criminal History for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21). Such offenses indicate a threat to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague; interfere with the orderly, efficient, or safe operation of a school district, campus, or activity; or indicate impaired ability or misrepresentation of qualifications to perform the functions of an educator and include, but are not limited to:

(A) offenses involving moral turpitude;

(B) offenses involving any form of sexual or physical abuse or neglect of a student or minor or other illegal conduct with a student or minor;

(C) offenses involving any felony possession or conspiracy to possess, or any misdemeanor or felony transfer, sale, distribution, or conspiracy to transfer, sell, or distribute any controlled substance defined in the Texas Health and Safety Code, Chapter 481;

(D) offenses involving school property or funds;

(E) offenses involving any attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;

(F) offenses occurring wholly or in part on school property or at a school-sponsored activity; or

(G) felony offenses involving driving while intoxicated (DWI);

(11) the person has intentionally failed to comply with the reporting, notification, and confidentiality requirements specified in the Texas Code of Criminal Procedure, §15.27(a), relating to student arrests, detentions, and juvenile referrals for certain offenses;

(12) the person has failed to discharge an employee or to refuse to hire an applicant when the employee or applicant was employed in a public school and on the registry of persons who are not eligible to be employed under TEC, §22.092, 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), or when the person knew or should have known through a criminal history record information review that the employee or applicant had been placed on community supervision or convicted of an offense in eble th a ic*nBT0 rthe person has failed to discfriSto hire an applicant when

(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 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. Only authorized personnel may have access to secure test materials.

(3) The contents of each test booklet and answer document are confidential in accordance with the Texas Government Code, Chapter 551, and the Family Educational Rights and Privacy Act of 1974. Individual student performance results are confidential as specified under the TEC, §39.030(b).

(4) Violation of security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, shall be prohibited. A person who engages in conduct prohibited by this section may be subject to sanction of credentials, including any of the sanctions provided by subsection (a) of this section.

(5) Charter school test administrators are not required to be certified; however, any irregularity in the administration of any test required by the TEC, Chapter 39, Subchapter B, would cause the charter itself to come under review by the commissioner of education for possible sanctions or revocation, as provided under the TEC, §12.115(a)(4).

(6) Conduct that violates the security and confidential integrity of a test is evidenced by any departure from the test administration procedures established by the commissioner of education. Conduct of this nature may include, but is not limited to, the following acts and omissions:

(A) viewing a test before, during, or after an assessment unless specifically authorized to do so;

(B) duplicating secure examination materials;

(C) disclosing the contents of any portion of a secure test;

(D) providing, suggesting, 0 6(Tz 0 Tr 10.02 0 6e)]TJi

(2) Mitigating factors. The following factors shall 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). The educator:

(A) gave written notice to the school district 30 days or more in advance of the first day of instruction for which the educator will not be present;

(B) assisted the school district in finding a replacement educator to fill the position;

(C) continued to work until the school district hired a replacement educator;

(D) assisted in training the replacement educator;

(E) showed good faith in communications and negotiations with the school district;

(F) provided lesson plans for classes following the educator's resignation;

(G) changed careers within the field of education:

(i) to a position that required a different class of educator certification as defined in §230.33(b) of this title (relating to Classes of Certificates);

(ii) to a position with a higher level of authority within the principal class of certificate; or

(iii) to a position in an open-enrollment charter school or a district of innovation that is equivalent to the positions described in clauses (i) and (ii) of this subparagraph;

(H) had a reduction in base pay, excluding stipends, as compared to the educator's base pay for the prior year at the same school district;

(I) resigned due to working conditions that reasonably posed an immediate threat of significant physical harm to the educator; or

(J) any other relevant circumstances or facts.

(3) Mandatory sanction for contract abandonment

(A) An educator subject to sanction, who has abandoned a contract 44-30 days prior to the first day of instruction for the following school year in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), in a case where the factors listed in subsection (c) of this section or in paragraph (1) or (2)(B)-(J) of this subsection do not mitigate or apply, shall receive a sanction of an inscribed reprimand.

(B) An educator subject to sanction, who has abandoned a contract less than 30 days prior to the first day of instruction for the following school year or at any point during the school year in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), in a case where the factors listed in subsection (c) of this section or in paragraph (1) or (2) of this subsection do not mitigate or apply, may not receive a sanction of less than:

(i) suspension for one y (e)7 0 T 0 0 103 (as)7 3ETQ le*n (i) 44

(C)

(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 Health and Safety Code, Chapter 481, on school property;

(7) intentionally, knowingly, or recklessly causes bodily injury to a student or minor when the conduct of the educator or applicant is not immune from disciplinary proceedings by TEC, §22.0512; or

(8) committed any offense described in the TEC, §21.058.

(j) Mandatory minimum for failure to report. An educator subject to sanction, who fails to report educator misconduct under the circumstances anq0 0m[(miscoBT/T48 (0m[l18))nyd Tucsso4 (402 4o4 ((d)3 (t e)8 (ducat)4 (or)]TJE

§249.21. Substitution of Administrative Law Judge.

Substitution of an administrative law judge shall be governed by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure).

§249.22. Classification of Parties; Current Addresses.

(a) Regardless of errors as to designation of a party, parties shall be accorded their true status in the proceeding.

(b) The petitioner in a contested case proceeding under this chapter and 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure) is the party in a contested case seeking relief from the decision maker and requesting an adjudicative hearing with the State Office of Administrative Hearings. The petitioner shall have the burden of proof to show by a preponderance of the evidence entitlement to such relief.

(c) Parties shall keep the Texas Education Agency (TEA) staff apprised of their current addresses and shall notify the TEA staff of a change of address within five calendar days of the effective date of such change.

§249.23. Representation of Parties.

(a) Representatives of parties shall notify the State Office of Administrative Hearings (SOAH) and other parties of the representation.

(b) At an informal conference offered pursuant to the Texas Government Code, Chapter 2001, a person may be represented by a person who is not an attorney.

(c) Parties in contested cases before the SOAH may represent themselves or be represented by an attorney licensed to practice law in the State of Texas.

§249.24. Filing or Serving Documents on the Texas Education Agency Staff or the Administrative Law Judge.

(a) The following original papers shall be served upon the Texas Education Agency (TEA) staff:

(1) appeal of an administrative denial;

(2) appeal of the imposition of an administrative sanction and request for a contested case hearing under this chapter;

(3) exceptions and replies to the proposal for decision of the administrative law judge (ALJ); and

(4) motions for rehearing.

(b) It is a rebuttable presumption that the date of service is the file stamp date affixed by the TEA staff.

(c) All papers may be served upon the TEA staff by any method allowed by the State Office of Administrative Hearings (SOAH) rules or any electronic transmission agreed to by the parties.

(d) The filing of papers with the SOAH or service of documents on the ALJ in contested cases shall be governed by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure), unless modified by order of the ALJ as allowed by law.

§249.25. Pleadings.

(a) Pleadings include petitions, answers, replies, exceptions, and motions. Regardless of any error in its designation, a pleading shall be accorded its true status in the proceeding in which it is filed.

(b) Amended and supplemental pleadings may be filed at such time so as not to operate as a surprise on the opposing party.

(c) The administrative law judge may allow a pleading to be amended during the contested case evidentiary hearing on the merits and shall do so freely when the trial amendment will facilitate determining the merits of the case but will not unduly prejudice the objecting party.

(d) In addition to this chapter, 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure) shall also govern the following matters related to pleadings:

(1) content generally of pleadings;

(2) purpose and effect of motions;

(3) general requirements for motions;

(4) responses to motions generally;

(5) motions to intervene;

(6) motions for continuance;

(7) responses to written motions for continuance; and

(8)