

Item 8:**Discussion of Rule Review of and Proposed Amendments to
19 TAC Chapter 249, Disciplinary Proceedings, Sanctions,
and Contested Cases****DISCUSSION ONLY**

SUMMARY: This item provides the State Board for Educator Certification (SBEC) an opportunity to discuss proposed amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases. This item also provides an opportunity to discuss the rule review of 19 TAC Chapter 249, scheduled to begin March 2015.

STATUTORY AUTHORITY: The statutory authority for 19 TAC Chapter 249 is the Texas Education Code (TEC), §§21.006(b-1) and (g); 21.007; 21.031(a); 21.035; 21.040(6) and (7); 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a); 21.058; 21.060, 21.105(c); 21.160(c); 21.210(c); 21.259; 21.304; 22.082; 22.0831; 22.085; 22.087; and 57.491(g); Texas Government Code, §§411.087, 411.090, and 2001.058(e); Texas Family Code, §261.308(d) and (e) and §261.406(a) and (b); and Texas Occupations Code, §§53.021(a), 53.022, 53.023, 53.024, 53.025, 53.051, and 53.052. Statutory authority for the rule review is Texas Government Code, §2001.039.

BOARD RESPONSE: This item is presented for review and comment.

PREVIOUS BOARD ACTION: Sections 249.7, 249.35, and 249.39 were last amended effective December 19, 2011. Section 249.14 was last amended effective October 17, 2013. Section 249.15 was last amended effective December 28, 2014.

FUTURE ACTION EXPECTED: The review of 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, is scheduled to be presented to the SBEC at the March 2015 meeting to be published as proposed with the *Texas Register*. It is anticipated that amendments to Chapter 249 would also be presented at the March 2015 SBEC meeting to be published as proposed with the *Texas Register*.

BACKGROUND INFORMATION AND SIGNIFICANT ISSUES: The TEC, §21.041(b)(7), authorizes the SBEC to adopt rules that provide for disciplinary proceedings for certificate holders. The SBEC rules in 19 TAC Chapter 249 are organized as follows: Subchapter A, General Provisions; Subchapter B, Enforcement Actions and Guidelines; Subchapter C, Prehearing Matters; Subchapter D, Hearing Procedures; and Subchapter E, Posthearing

The proposed amendment to 19 TAC §249.14, Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition, would clarify that the investigative notice timeline will remain tolled while an agreed order is awaiting approval by the SBEC at its next meeting.

The proposed amendment to 19 TAC §249.15, Disciplinary Action by State Board for Educator Certification, would add two additional violations for which the SBEC may sanction a person who holds a certificate.

The proposed amendment to 19 TAC §249.39, Final Decisions and Orders, would further clarify the process for SBEC's adoption of a final order and remove redundant language.

FISCAL IMPACT: None.

PUBLIC AND STUDENT BENEFIT: The public and student benefit anticipated as a result of the proposed amendments would be alignment of rules and statute.

PROCEDURAL AND REPORTING IMPLICATIONS: None.

LOCALLY MAINTAINED PAPERWORK REQUIREMENTS: None.

PUBLIC COMMENTS: None.

ALTERNATIVES: None.

OTHER COMMENTS AND RELATED ISSUES: None.

Respectfully submitted,

Ryan Franklin
Associate Commissioner
Educator Leadership and Quality

Staff Members Responsible: Nichole Bunker-Henderson, Deputy General Counsel
Legal Services

Laura Moriaty, Administrative Law Judge
Legal Services

Attachments: I. Statutory Citations
II. Text of Proposed Amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases

ATTACHMENT I

Statutory Citations Relating to Discussion of Rule Review of and Proposed Amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases

Texas Education Code, §21.006, Requirement to Report Misconduct (excerpts):

- (b-1) A superintendent or director of a school district shall complete an investigation of an educator that is based on reasonable cause to believe the educator may have engaged in misconduct described by Subsection (b)(2)(A), despite the educator's resignation from district employment before completion of the investigation.
- (g) The State Board for Educator Certification shall propose rules as necessary to implement this section.

Texas Education Code, §21.007, Notice on Certification Record of Alleged Misconduct

- (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:
 - (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:
- (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 the school district or open-enrollment charter school takes action under Subsection (c)(2)(B) or (c-1)(2).
- (d) A person whose certificate is revoked under Subsection (b) may reapply for a certificate in accordance with board rules.
- (e) Action taken by a school district or open-enrollment charter school under Subsection (c) or (c-1) is not subject to appeal under this chapter, and the notice and hearing requirements of this chapter do not apply to the action.

Texas Education Code, §21.060, Eligibility of Persons Convicted of Certain Offenses:

The board may suspend or revoke the certificate or permit held by a person under this subchapter, impose other sanctions against the person, or refuse to issue a certificate or permit to a person under this subchapter if the person has been convicted of a felony or misdemeanor offense relating to the duties and responsibilities of the education profession, including:

- (1) an offense involving moral turpitude;
- (2) an offense involving a form of sexual or physical abuse of a minor or student or other illegal conduct in which the victim is a minor or student;
- (3) a felony offense involving the possession, transfer, sale, or distribution of or conspiracy to possess, transfer, sell, or distribute a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;
- (4) an offense involving the illegal transfer, appropriation, or use of school district funds or other district property; or
- (5) an offense involving an attempt by fraudulent or unauthorized means to obtain or alter a professional certificate or license issued under this subchapter.

Texas Education Code, §21.105, Resignations Under Probationary Contract (excerpt):

- (c) On written complaint by the employing district, the State Board for Educator Certification may impose sanctions against a teacher employed under a probationary contract 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, §21.160, 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, §21.259, Decision of Board of Trustees or Board Subcommittee:

- (a) Not later than the 10th day after the date of the board meeting under Section 21.258, the board of trustees or board subcommittee shall announce a decision that:
- (1) includes findings of fact and conclusions of law; and
 - (2) may include a grant of relief.
- (b) The board of trustees or board subcommittee may adopt, reject, or change the hearing examiner's:
- (1) conclusions of law, including a determination regarding good cause for suspension without pay or termination; or
 - (2) proposal for granting relief.
- (c) The board of trustees or board subcommittee may reject or change a finding of fact made by the hearing examiner only after reviewing the record of the proceedings before the hearing examiner and only if the finding of fact is not supported by substantial evidence.
- (d) The board of trustees or board subcommittee shall state in writing the reason and legal basis for a change or rejection made under this section.

- (d) A school district, open-enrollment charter school, private school, regional education service center, or shared services arrangement may discharge an employee if the district or school obtains information of the employee's conviction of a felony or of a misdemeanor involving moral turpitude that the employee did not disclose to the State Board for Educator Certification or the district, school, service center, or shared services arrangement. An employee discharged under this section is considered to have been discharged for misconduct for purposes of Section 207.44, Labor Code.
- (e) The State Board for Educator Certification may impose a sanction on an educator who does not discharge an employee or refuse to hire an applicant if the educator knows or

- the identification division of the Federal Bureau of Investigation or other criminal justice agency.
- (c) Subsection (a) does not authorize a person, agency, department, political subdivision, or other entity to obtain criminal history record information from the identification division of the Federal Bureau of Investigation if dissemination of criminal history record information by the division is prohibited by federal law, executive order, or rule.
 - (d) A person, agency, department, political subdivision, or other entity that is not a criminal justice agency is entitled to obtain criminal history record information from the Federal Bureau of Investigation only if:
 - (1) the requestor submits a complete set of the individual's fingerprints and other identifying information and pays any fee required or approved by the bureau;
 - (2) no disqualifying record or information from a state or local criminal justice agency is known to the requestor; and
 - (3) the request is not for the purpose of discriminating against a person because of the person's race, sex, age, disability, religion, color, or national origin.
 - (e) The department may provide access to state and national criminal history record information to qualified entities entitled to that information under 42 U.S.C. Section 5119a. The department must follow federal law and regulation, federal executive orders, and federal policy in releasing information under this subsection.
 - (f) Notwithstanding any other law, a person, agency, department, political subdivision, or other entity entitled to access the criminal history record information of a person under Subsection (e) is not required to collect or submit the person's fingerprints if:
 - (1) a complete set of the person's fingerprints was previously submitted under Subsection (d)(1);
 - (2) the department retained the fingerprints;
 - (3) the fingerprints are acceptable to the Federal Bureau of Investigation for access to criminal history record information; and

- (b) The department shall send a copy of the completed report of the department's investigation to the Texas Education Agency, the State Board for Educator Certification, the local school board or the school's governing body, the superintendent of the school district, and the school principal or director, unless the principal or director is alleged to have committed the abuse or neglect, for appropriate action. On request, the department shall provide a copy of the report of investigation to the parent, managing conservator, or legal guardian of a child who is the subject of the investigation and to the person alleged to have committed the abuse or neglect. The report of investigation shall be edited to protect the identity of the persons who made the report of abuse or neglect. Other than the persons authorized by the section to receive a copy of the report, Section 261.201(b) applies to the release of the report relating to the investigation of abuse or neglect under this section and to the identity of the person who made the report of abuse or neglect.

Texas Occupations Code, §53.021, Authority to Revoke, Suspend, or Deny License (excerpt):

- (a) A licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of:
- (1) an offense that directly relates to the duties and responsibilities of the licensed occupation;
 - (2) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license;
 - (3) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or
 - (4) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

Texas Occupations Code, §53.022, Factors in Determining Whether Conviction Relates to Occupation:

In determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Texas Occupations Code, §53.023, Additional Factors for Licensing Authority to Consider:

- (a) In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in Section 53.022:

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- (3) that a certificate holder resigned and reasonable evidence supported a recommendation by the person to terminate a certificate holder because he or she committed one of the acts specified in paragraph (2) of this subsection.
- (A) Before accepting an employee's resignation that, under this paragraph, requires a person to notify the SBEC by filing a report with the TEA staff, the person shall inform the certificate holder in writing that such a report will be filed and sanctions against his or her certificate may result as a consequence.
- (B) A person required to comply with this paragraph shall notify the governing body of the employing school district before filing the report with the TEA staff.
- (C) A superintendent or director of a school district shall complete an investigation of an educator that is based on reasonable cause to believe the educator may have engaged in misconduct described in paragraph (2)(A) of this subsection despite the educator's resignation from district employment before completion of the investigation; or
- (4) any other circumstances requiring a report under the Texas Education Code (TEC), §21.006.
- (e) Pursuant to the TEC, §21.006(c) and (h), a report filed under subsection (d) of this section must include the name or names of any student or minor who is the victim of abuse or unlawful conduct by an educator and shall, at a minimum, describe in detail the factual circumstances requiring the report and identify the subject of the report by providing the following available information: name and any aliases; certificate number, if any, or social security number; last known mailing address and home and daytime phone numbers; all available contact information for any alleged victim or victims; and name or names and any available contact information of any relevant witnesses to the circumstances requiring the report. Pursuant to the Family Educational Rights and Privacy Act (FERPA), 20 United States Code, §1232g(a)(4), and the federal regulations interpreting it at 34 Code of Fe(ed)-766 Un1 0 0 1 Fe(ed)-766 A))

(d)

- (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.

Subchapter D. Hearing Procedures

§249.35. Disposition Prior to Hearing; Default.

- (a) This chapter and 1 Texas Administrative Code (TAC), Part 7, Chapter 155 (relating to Rules of Procedure) shall govern disposition prior to hearing, default, and attendant relief.
- (b) The Texas Education Agency (TEA) staff may propose agreed orders subject to the approval [issue and sign orders on behalf] of the State Board for Educator Certification (SBEC) resolving a case by waiver, stipulation, compromise, agreed settlement, consent order, agreed statement of facts, or any other informal or alternative resolution agreed to by the parties and not precluded by law. If the certificate holder rejects the proposed agreed order or does not respond within 14 calendar days after receipt of the proposed agreed order, TEA staff may refer the matter to the State Office of Administrative Hearings (SOAH). If the certificate holder accepts the proposed resolution of the matter by signing the agreed order, the agreed order will be docketed for action by the SBEC at the next SBEC meeting. An agreed order shall not be final and effective until the SBEC votes to accept the proposed disposition. The SBEC may vote to accept, amend, or reject the agreed order.
 - (1) If the SBEC votes to amend the agreed order, TEA staff shall mail the amended agreed order to the certificate holder, and the certificate holder shall have 14 calendar days from receipt to accept the amended agreed order by signing and returning it to TEA staff. If a certificate holder does not return to TEA a signed amended agreed order or does not respond within the 14 calendar days, TEA staff shall refer the matter to the SOAH for a contested case hearing.

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