

Item 5:
**Consider and Take Appropriate Action on Proposed
Amendments to 19 TAC Chapter 247,
Educators' Code of Ethics**

DISCUSSION AND ACTION

SUMMARY: This item provides the State Board for Educator Certification (SBEC) an opportunity to discuss and propose amendments to 19 TAC Chapter 247, Educators' Code of Ethics. The proposed amendment to 19 TAC §247.1 would add the definitions of "sexual harassment" and "under the influence of alcohol." The proposed amendment to 19 TAC §247.2 would make educators who act recklessly in diverting money for personal gain or misrepresenting the educator's employment history subject to discipline by the SBEC, would clarify language regarding an educator's illegal use of drugs, and would add a standard regarding educator-on-educator workplace sexual harassment. The proposed amendment to 19 TAC §247.2 would also strike Standard 1.14 (a prohibition on assisting an educator with getting a new job when the educator had an inappropriate relationship with a student or minor) with the intent to move that provision to 19 TAC §249.15.

STATUTORY AUTHORITY: The statutory authority for 19 TAC Chapter 247 is the Texas Education Code (TEC), §21.031(a) and §21.041(a) and (b)(1), (7), and (8); and Every Student Succeeds Acts (ESSA), 20 United States Code (USC), §7926.

TEC, §21.031(a), charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators.

TEC, §21.041, authorizes the SBEC to adopt rules as necessary to regulate educators, administer statutory requirements, and provide for educator disciplinary proceedings.

ESSA, 20 USC, §7926, requires state educational agencies to make rules forbidding an educator from aiding other school employees, contractors, or agents in getting jobs when the educator knows the job-seeker has committed sexual misconduct with a student or minor in violation of the law.

EFFECTIVE DATE: If approved for filing as proposed in May 2018 and if adopted, subject to State Board of Education (SBOE) review, at the August 2018 SBEC meeting, the proposed effective date of the proposed amendments would be October 21, 2018 (20 days after filing as adopted with the *Texas Register*). The proposed effective date is also based on the SBEC and SBOE meeting schedules.

PREVIOUS BOARD ACTION: Chapter 247 was last amended effective on December 27, 2016.

BACKGROUND INFORMATION AND JUSTIFICATION: The proposed amendment to §247.1(e)(17) would add a new definition for "sexual harassment," defining the term that is used later in the proposed new §247.2(2)(H) that makes it a violation of the Educators' Code of Ethics for an educator to intentionally or knowingly subject a colleague to sexual harassment. This provision is intended to address educator-on-educator sexual misconduct and is tailored to exclude concepts such as hostile work environment that can be better addressed by employment law actions than by educator disciplinary proceedings.

The proposed amendment to §247.1(e)(22) would define "under the influence of alcohol" for purposes of §247.2(1)(M), which makes educators subject to discipline when they are "under the influence of alcohol" at school or at school-related activities. The proposed definition would include any educator with a blood-alcohol content of .04% or higher because this is the blood alcohol level at which standard school district policy prohibits individuals from driving school buses and at which a commercial driver is considered to be driving while intoxicated under both state and federal law. The definition also would include any physical or mental symptoms to allow evidence of such symptoms to suffice to prove a violation of the Educators' Code of Ethics if evidence of the educator's blood-alcohol content is not available or admissible.

The proposed amendment to §247.2(1)(B) would change the level of intent required to prove that an educator violated the Educators' Code of Ethics by diverting money or property for personal gain from "knowingly" to "intentionally, knowingly, or recklessly." This would allow SBEC to discipline educators for misappropriation when the educator was reckless in book-keeping or in how the educator kept the money or property, as well as when the educator acted intentionally or knowingly to divert the money or property.

The proposed amendment to §247.2(1)(K) would change the level of intent required to prove that an educator violated the Educators' Code of Ethics by misrepresenting personal history when applying for employment to include educators who act recklessly. The change is intended to inspire educators to take extra care in the information they provide school districts and to allow SBEC to discipline educators who make such misrepresentations even when there is insufficient evidence that the educator acted knowingly or intentionally.

The proposed change to §247.2(1)(L) would revise the wording of the prohibition on educators illegally using, distributing, or abusing drugs to make it clearer and more enforceable. The changes are not intended to significantly alter the meaning of the provision.

The proposed amendment would strike §247.2(1)(N), which currently prohibits an educator from assisting another educator in getting a new job as an educator or any position in a school if the educator knows that the job-seeker engaged in sexual misconduct with a student or minor. This provision was initially adopted to implement the ESSA, 20 USC, §7926. TEA received feedback from stakeholders who felt that 19 TAC Chapter 249 was a more appropriate location for educator disciplinary rules that reiterate or implement separate statutory authority and that the Educators' Code of Ethics should be reserved for ethical requirements that were not otherwise reflected in the law. To that end, the language of this provision is simultaneously being proposed for inclusion in 19 TAC §249.15, Disciplinary Action by State Board for Educator Certification, in a separate item in this agenda.

FISCAL IMPACT: The TEA staff has determined that there is no additional fiscal impact on state and local governments and there are no additional costs to entities required to comply with the proposed amendments. In addition, there is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code (TGC), §2006.002, is required. There is no effect on local economy; therefore, no local employment impact statement is required under TGC, §2001.022. The proposed amendments do not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, are not subject to TGC, §2001.0045.

GOVERNMENT GROWTH IMPACT: The TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation by making educators subject to discipline by the SBEC for the intentional or knowing sexual harassment of another educator. In addition, the proposed rulemaking would not expand, limit, or repeal an existing regulation, except by striking the provision that prohibits an educator from assisting another educator in getting a job if the job-seeker is known to have engaged in sexual misconduct with a minor, but that provision is proposed to be added to 19 TAC Chapter 249.

The proposed rulemaking would not create or eliminate a government program, would not require the creation of new employee positions or the elimination of existing employee positions, would not require an increase or decrease in future legislative appropriations to the agency, would not require an increase or decrease in fees paid to the agency, would not increase or decrease the number of individuals subject to its applicability, and would not positively or adversely affect the state's economy.

PUBLIC AND STUDENT BENEFIT: The public and student benefit anticipated as a result of the proposed amendments would be to allow SBEC more effective and efficient enforcement of its Educators' Code of Ethics, to clarify the meaning of terms in the Educators' Code of Ethics, to clarify the purpose of the Educators' Code of Ethics, to protect educators from sexual harassment by other educators, and to further deter educators from misappropriating assets or misrepresenting themselves on job applications. The proposed amendments do not impose a cost on persons required to comply with the rules.

PROCEDURAL AND REPORTING IMPLICATIONS: The proposed amendments would have no reporting or procedural implications.

LOCALLY MAINTAINED PAPERWORK REQUIREMENTS: The proposed amendments would have no additional locally maintained paperwork requirements.

PUBLIC COMMENTS: The public comment period on the proposal begins June 22, 2018, and ends July 23, 2018. The SBEC will take oral and written comments on this item at the August 3, 2018 meeting in accordance with the SBEC Board operating policies and procedures.

ASSOCIATE COMMISSIONER'S RECOMMENDATION: I recommend that the State Board for Educator Certification:

Approve the proposed amendments to 19 TAC Chapter 247, Educators' Code of Ethics, to be published as proposed in the *Texas Register*.

Staff Members Responsible:

Laura Moriaty, Director, Legal Services for Educator Leadership and Quality
Doug Phillips, Director, Educator Investigations

Attachments:

- I. Statutory Citations
- II. Text of Proposed Amendments to 19 TAC Chapter 247, Educators' Code of Ethics

ATTACHMENT I**Statutory Citations Relating to Proposed Amendments to 19 TAC Chapter 247,
Educators' Code of Ethics****Texas Education Code, §21.031, Purpose (excerpt):**

- (a) The State Board for Educator Certification is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession. The board shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators.

Texas Education Code, §21.041, Rules; Fees (excerpts):

- (a) The board may adopt rules as necessary for its own procedures.
- (b) The board shall propose rules that:
- (1) provide for the regulation of educators and the general administration of this subchapter in a manner consistent with this subchapter;
 - (7) provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Chapter 2001, Government Code;
 - (8) provide for the adoption, amendment, and enforcement of an educator's code of ethics;

Every Student Succeeds Act, 20 United States Code, §7926, Prohibition on Aiding and Abetting Sexual Abuse (excerpt):

- (a) In general

A State, State educational agency, or local educational agency in the case of a local educational agency that receives Federal funds under this chapter shall have laws, regulations, or policies that prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.

ATTACHMENT II
Text of Proposed Amendments to 19 TAC

Chapter 247. Educators' Code of Ethics

§247.1. Purpose and Scope; Definitions.

- (a) In compliance with the Texas Education Code, §21.041(b)(8), the State Board for Educator Certification (SBEC) adopts an Educators' Code of Ethics as set forth in §247.2 of this title (relating to Code of Ethics and Standard Practices for Texas Educators). The SBEC may amend the ethics code in the same manner as any other formal rule.
- (b) The Texas educator shall comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community and shall safeguard academic freedom. The Texas educator, in maintaining the dignity of the profession, shall respect and obey the law, demonstrate personal integrity, and exemplify honesty and good moral character. The Texas educator, in exemplifying ethical relations with colleagues, shall extend just and equitable treatment to all members of the profession. The Texas educator, in accepting a position of public trust, shall measure success by the progress of each student toward realization of his or her potential as an effective citizen. The Texas educator, in fulfilling responsibilities in the community, shall cooperate with parents and others to improve the public schools of the community. This chapter shall apply to educators and candidates for certification.
- (c) The SBEC is solely responsible for enforcing the Educators' Code of Ethics for purposes related to certification disciplinary proceedings. The Educators' Code of Ethics is enforced through the disciplinary procedure set forth in Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) pursuant to the purposes stated therein.
- (d) As provided in §249.5 of this title (relating to Purpose; Policy Governing Disciplinary Proceedings), the primary goals the SBEC seeks to achieve in educator disciplinary matters are:
 - (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; and
 - (3) to fairly and efficiently resolve educator disciplinary proceedings at the least expense possible to the parties and the state.
- (e) The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.
 - (1) Abuse--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) Applicant--A party seeking issuance, renewal, or reinstatement of a certificate from the Texas Education Agency staff or the State Board for Educator Certification.

- (3) Code of Ethics--The Educators' Code of Ethics codified in this chapter.
- (4) 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.
- (5) 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.
- (6) Disciplinary proceedings--Any matter arising under this chapter or Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) 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.
- (7) Educator--A person who is required to hold a certificate issued under the Texas Education Code, Chapter 21, Subchapter B.
- (8) Endanger--Exposure of a student or minor to unjustified 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.
- (9) 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 Persons with Criminal History for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21), or by the commission of acts involving moral turpitude, but conduct that evidences a lack of good moral character is not necessarily limited to such crimes or acts.
- (10) Intentionally--An educator acts intentionally, or with intent, with respect to the nature of his or her conduct or to a result of his or her conduct when it is his or her conscious objective or desire to engage in the conduct or cause the result.
- (11) Knowingly--An educator acts knowingly, or with knowledge, with respect to the nature of his or her conduct or to circumstances surrounding his or her conduct when he or she is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his or her conduct when he or she is aware that the conduct is reasonably certain to cause the result.
- (12) Minor--A person under 18 years of age.
- (13) Moral turpitude--Improper conduct, including, but not limited to, the following: dishonesty; fraud; deceit; theft; misrepresentation; deliberate violence; base, vile, or depraved acts that are intended to arouse or to gratify the sexual desire of the actor; drug or alcohol related offenses as described in §249.16(b) 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); or acts constituting abuse or neglect under the Texas Family Code, §261.001.
- (14) Neglect--The placing or leaving of a student or minor in a situation where the student or minor would be exposed to a substantial risk of physical or mental harm.
- (15) Recklessly--An educator acts recklessly, or is reckless, with respect to circumstances surrounding his or her conduct or the results of his or her conduct when he or she is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or that the result will occur.

- (16) Sanction--A disciplinary action by the State Board for Educator Certification, including a restriction, reprimand, suspension, revocation of a certificate, or a surrender in lieu of disciplinary action.
- (17) Sexual harassment--Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.
- (18) [~~17~~] State Board for Educator Certification--The State Board for Educator Certification acting through its voting members in a decision-making capacity.
- (19) [~~18~~] State Board for Educator Certification member(s)--One or more of the members of the State Board for Educator Certification, appointed and qualified under the Texas Education Code, §21.033.
- (20) [~~19~~] Student--A person enrolled in a primary or secondary school, whether public, private, or charter, regardless of the person's age, or a person 18 years of age or younger who is eligible to be enrolled in a primary or secondary school, whether public, private, or charter.
- (21) [~~20~~] 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.
- (22) Under the influence of alcohol--A blood alcohol content of .04% or greater and/or lacking the normal use of mental or physical faculties by reason of the introduction of alcohol.
- (23) [~~21~~] Worthy to instruct or to supervise the youth of this state--Presence 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 State Board for Educator Certification policy and this chapter.

§247.2. Code of Ethics and Standard Practices for Texas Educators.

Enforceable Standards.

- (1) Professional Ethical Conduct, Practices and Performance.
- (A) Standard 1.1. The educator shall not intentionally, knowingly, or recklessly engage in deceptive practices regarding official policies of the school district, educational institution, educator preparation program, the Texas Education Agency, or the State Board for Educator Certification (SBEC) and its certification process.
- (B) Standard 1.2. The educator shall not intentionally, knowingly, or recklessly misappropriate, divert, or use monies, personnel, property, or equipment committed to his or her charge for personal gain or advantage.
- (C) Standard 1.3. The educator shall not submit fraudulent requests for reimbursement, expenses, or pay.
- (D) Standard 1.4. The educator shall not use institutional or professional privileges for personal or partisan advantage.
- (E) Standard 1.5. The educator shall neither accept nor offer gratuities, gifts, or favors that impair professional judgment or that are used to obtain special advantage. This standard shall not restrict the acceptance of gifts or tokens offered and accepted openly from students, parents of students, or other persons or organizations in recognition or appreciation of service.
- (F) Standard 1.6. The educator shall not falsify records, or direct or coerce others to do so.
- (G) Standard 1.7. The educator shall comply with state regulations, written local school board policies, and other state and federal laws.

- (H) Standard 1.8. The educator shall apply for, accept, offer, or assign a position or a responsibility on the basis of professional qualifications.
 - (I) Standard 1.9. The educator shall not make threats of violence against school district employees, school board members, students, or parents of students.
 - (J) Standard 1.10. The educator shall be of good moral character and be worthy to instruct or supervise the youth of this state.
 - (K) Standard 1.11. The educator shall not intentionally, ~~or~~ knowingly, or recklessly misrepresent his or her employment history, criminal history, and/or disciplinary record when applying for subsequent employment.
 - (L) Standard 1.12. The educator shall refrain from the illegal use, abuse, or distribution of controlled substances, prescription drugs, and toxic inhalants ~~[or distribution of controlled substances and/or abuse of prescription drugs and toxic inhalants]~~.
 - (M) Standard 1.13. The educator shall not be under the influence of alcohol or consume alcoholic beverages on school property or during school activities when students are present.
 - ~~(N) Standard 1.14. The educator shall not assist another educator, school employee, contractor, or agent in obtaining a new job as an educator or in a school, apart from the routine transmission of administrative and personnel files, if the educator knows or has probable cause to believe that such person engaged in sexual misconduct regarding a minor or student in violation of the law.]~~
- (2) Ethical Conduct Toward Professional Colleagues.
- (A) Standard 2.1. The educator shall not reveal confidential health or personnel information concerning colleagues unless disclosure serves lawful professional purposes or is required by law.
 - (B) Standard 2.2. The educator shall not harm others by knowingly making false statements about a colleague or the school system.
 - (C) Standard 2.3. The educator shall adhere to written local school board policies and state and federal laws regarding the hiring, evaluation, and dismissal of personnel.
 - (D) Standard 2.4. The educator shall not interfere with a colleague's exercise of political, professional, or citizenship rights and responsibilities.
 - (E) Standard 2.5. The educator shall not discriminate against or coerce a colleague on the basis of race, color, religion, national origin, age, gender, disability, family status, or sexual orientation.
 - (F) Standard 2.6. The educator shall not use coercive means or promise of special treatment in order to influence professional decisions or colleagues.
 - (G) Standard 2.7. The educator shall not retaliate against any individual who has filed a complaint with the SBEC or who provides information for a disciplinary investigation or proceeding under this chapter.
 - (H) Standard 2.8. The educator shall not intentionally or knowingly subject a colleague to sexual harassment.
- (3) Ethical Conduct Toward Students.
- (A) Standard 3.1. The educator shall not reveal confidential information concerning students unless disclosure serves lawful professional purposes or is required by law.
 - (B) Standard 3.2. The educator shall not intentionally, knowingly, or recklessly treat a student or minor in a manner that adversely affects or endangers the learning, physical health, mental health, or safety of the student or minor.

- (C) Standard 3.3. The educator shall not intentionally, knowingly, or recklessly misrepresent facts regarding a student.
- (D) Standard 3.4. The educator shall not exclude a student from participation in a program, deny benefits to a student, or grant an advantage to a student on the basis of race, color, gender, disability, national origin, religion, family status, or sexual orientation.
- (E) Standard 3.5. The educator shall not intentionally, knowingly, or recklessly engage in physical mistreatment, neglect, or abuse of a student or minor.
- (F) Standard 3.6. The educator shall not solicit or engage in sexual conduct or a romantic relationship with a student or minor.
- (G) Standard 3.7. The educator shall not furnish alcohol or illegal/unauthorized drugs to any person under 21 years of age unless the educator is a parent or guardian of that child or knowingly allow any person under 21 years of age unless the educator is a parent or guardian of that child to consume alcohol or illegal/unauthorized drugs in the presence of the educator.
- (H) Standard 3.8. The educator shall maintain appropriate professional educator-student relationships and boundaries based on a reasonably prudent educator standard.
- (I) Standard 3.9. The educator shall refrain from inappropriate communication with a student or minor, including, but not limited to, electronic communication such as cell phone, text messaging, email, instant messaging, blogging, or other social network communication. Factors that may be considered in assessing whether the communication is inappropriate include, but are not limited to:
 - (i) the nature, purpose, timing, and amount of the communication;
 - (ii) the subject matter of the communication;
 - (iii) whether the communication was made openly ¹ or the educator attempted to conceal the communication;
 - (iv) whether the communication could be reasonably interpreted as soliciting sexual contact or a romantic relationship;
 - (v) whether the communication was sexually explicit; and
 - (vi) whether the communication involved discussion(s) of the physical or sexual attractiveness or the sexual history, activities, preferences, or fantasies of either the educator or the student.