

State Board for Educator Certification
Discussion and Action Session Agenda
April 9, 2010 at 9:00 a.m.
Minutes

The Board will meet in open session and after determining the presence of a quorum, deliberate and possibly take formal action, including emergency action, on the following agenda items:

1. Call to Order

The State Board for Educator Certification convened its meeting at 9:00 a.m. on Friday, February 5, 2010 in Room 1-104 of the William B. Travis Building, 1701 N. Congress Avenue in Austin, Texas.

Present: Dr. Cain, Dr. Glynn, Mr. Booker, Ms. Baszile, Ms. Bridges, Dr. Barnes, Dr. Simpson, Dr. Culwell, Ms. Bricker, Mr. Trevino, Mr. Allard, Ms. Druessedow and Mr. Morris

Absent: Ms. Pogue and Ms. Robison

Dr. Cain introduced new Board member, Dr. Curtis Culwell.

2. Public Testimony

CONSENT AGENDA

3. Approval of February 5, 2010 Board Meeting Minutes

Motion and Vote:

Motion was made by Ms. Baszile to approve the February 5, 2010 minutes as presented. Second was made by Ms. Druessedow and the Board voted unanimously in favor of the motion.

DISCUSSION AND ACTION

4. Adoption of Proposed Repeal of 19 TAC Chapter 241, Principal Certificate, §241.35, Assessment Process Definition and Approval of Individual Assessments

Ms. Gutierrez informed the Board that the proposed repeal would be necessary as a result of House Bill 200, 81st Texas Legislature, 2009, which repealed the statutory authority for the principal assessment.

Motion and Vote:

Motion was made by Ms. Druessedow to approve for adoption, subject to State Board of Education review, the proposed repeal of 19 TAC Chapter 241, Principal

Certificate, §241.35, Assessment Process Definition and Approval of Individual Assessments, with an effective date of 20 days after filing as adopted with the Texas Register. Second was made by Ms. Baszile and the Board voted unanimously in favor of the motion.

5. Adoption of Proposed Amendments to 19 TAC Chapter 245, Certification of Educators from Other Countries

Ms. Gutierrez informed the Board that the proposed amendments to 19 TAC Chapter 245, Certification of Educators from Other Countries, relate to the issuance of the Texas educator certificate based on certification from another country. Ms. Gutierrez informed the Board that language would be added to clarify the requirements for the issuance of a one-year certificate and the requirements for the one-year certificate when the applicant holds only a student services, principal, or superintendent certificate. Ms. Gutierrez also informed the Board that the proposed amendments would add language to allow for an extension of the one-year certificate and clarify that the equivalent of a baccalaureate degree, at a minimum, must be verified by a foreign credentialing evaluation service.

Ms. Bricker asked if the rule indicates that an educator must have mastery of the English language. Ms. Gutierrez informed the Board that the educator credentials include English.

Motion and Vote:

Motion was made by Ms. Bricker to approve for adoption, subject to State Board of Education review, the proposed amendments to 19 TAC Chapter 245, Certification of Educators from Other Countries, with an effective date of 20 days after filing as adopted with the Texas Register. Second was made by Mr. Allard and the Board voted unanimously in favor of the motion.

6. Adoption of Review of 19 TAC Chapter 247, Educators' Code of Ethics

Mr. Allen informed the Board that the item is presented for the purpose of concluding the review of 19 TAC Chapter 247, Educators' Code of Ethics. Mr. Allen informed the Board that a stakeholders' meeting was held March 25, 2010, and that staff will present proposed changes for discussion and action at the June 2010 meeting.

Motion and Vote:

Motion was made by Ms. Bricker to adopt the review of 19 TAC Chapter 247, Educators' Code of Ethics. Second was made by Ms. Baszile and the Board voted unanimously in favor of the motion.

7. Adoption of Review of 19 TAC Chapter 250, Agency Administration

Mr. Allen informed the Board that the item is presented for the purpose of concluding the review of 19 TAC Chapter 250, Agency Administration.

Motion and Vote:

Motion was made by Ms. Druessedow to adopt the review of 19 TAC Chapter 250, Agency Administration. Second was made by Dr. Culwell and the Board voted unanimously in favor of the motion.

8. Proposed Revisions to 19 TAC Chapter 250, Agency Administration

Mr. Allen informed the Board that most of the chapter is no longer relevant since the State Board for Educator Certification (SBEC) as an agency was dissolved in 2005 and the administrative functions are now handled by the Texas Education Agency (TEA) staff. Mr. Allen also informed the Board that the current rules that deal with purchasing and contracts by the SBEC are proposed for repeal because those functions are now handled by the TEA staff, using existing law covering contract procedures and ethics.

Motion and Vote:

Motion was made by Ms. Bricker to approve the proposed revisions to 19 TAC Chapter 250, Agency Administration, for filing as proposed with the Texas Register. Second was made by Mr. Allard and the Board voted unanimously in favor of the motion.

9. Proposed Amendment to 19 TAC Chapter 231, Assignment of Public School Personnel, §231.1, Criteria for Assignment of Public School Personnel

Testimony on Item 9 was provided by:

Dr. Paul Tripp, Family & Consumer Sciences Teachers Association of Texas
and Sam Houston State University
Allen Kaminski, Sealy ISD, Vocational Agriculture Teachers Association of
Texas
Dr. Steve Johnson, retired superintendent
Dr. Rock McNulty, Superintendent Smithville ISD
Dr. Sandra West, Science Teachers Association
R.D. Norman

Ms. Gutierrez informed the Board that the proposed amendment includes updates to the assignments for Career and Technical Education (CTE) due to the revisions in those courses and the Texas Essential Knowledge and Skills (TEKS) that were mandated by House Bill (HB) 3485, 80th Texas Legislature, 2007. Ms. Gutierrez further explained that HB 3485 required that the State Board of Education identify the courses that satisfy the fourth mathematics and science credit courses required for the recommended and distinguished graduation plans.

Ms. Druessedow requested clarification of end of course (EOC) requirements for the fourth year course. In response to Ms. Druessedow, Anita Givens, Associate Commissioner for Standards and Programs, informed the Board that the fourth year mathematics and science courses are courses other than Algebra I, Algebra II, Geometry, Biology, Chemistry, and Physics, which do have end-of-course assessments.

Ms. Baszile requested information on the possibility of certificates being offered in the future for the instructional specialists. Dr. Loonam informed the Board that if the Texas Education Agency staff determine there is a need for instructional specialist certificates, it would be possible to offer the certificates with the Board's approval.

Motion and Vote:

Motion was made by Mr. Trevino to approve the proposed amendment to 19 TAC Chapter 231, Assignment of Public School Personnel, §231.1, Criteria for Assignment of Public School Personnel, for filing as proposed with the Texas Register. Second was made by Ms. Bricker and the Board voted unanimously in favor of the motion.

10. Consideration of an Opportunity to Approve Surveys Evaluating the Educator Preparation Programs

Testimony on Item 10 was provided by:

Holly Eaton, Texas Classroom Teachers Association (TCTA)

Dr. Cain requested that Dr. Lopez provide the Board with information regarding procedures and timelines. Dr. Lopez reminded the Board that this a pilot and staff will collect data for all questions; once the pilot is implemented beginning April 21, 2010, staff will have one year to review all responses and make any changes.

Ms. Baszile noted that questions two and three on the survey were too broad and suggested that staff make them more specific. Ms. Baszile also noted that on the teacher survey there was no place to denote if a teacher taught in a self-contained sixth grade campus.

Dr. Glynn informed the Board that the reason the survey states EC-6 is because that places it in alignment with the federal regulations in terms of Title II in order to meet highly qualified teacher status. The federal government identifies elementary as EC-6 and secondary as grades 7-12.

Dr. Simpson suggested when assignment is indicated, the survey should be specific to recognize when an educator is trained as EC-6, but actually is teaching a sixth-grade course all day. Dr. Simpson suggested placing specific information about exact placement and if the new educator had a setting or job change during the year.

Dr. Barnes suggested even for the pilot, the beginning of the survey should provide more detail instruction on the framework to differentiate the beginning of the year or the end of the year for the beginning teacher. Dr. Barnes reviewed question number 7, "apply strategies..." and questioned how it meets our standards. Dr. Barnes recommended that staff pay close attention to the part on technology to guarantee that it aligns with our standards. Dr. Barnes also suggested that the survey allow for denoting if the location of campus is a similar or different setting from where the educator student taught.

Dr. Lopez informed the Board that data will be available for viewing on the Consumer Information website by program, but data cannot be viewed by an individual educator because of confidentiality. Dr. Lopez also informed the Board that the surveys have space for specific open-ended comments so the principal will be able to add any additional information.

Mr. Booker informed the Board that staff will cover issues and concerns in training. Mr. Allen informed the Board that the requirement in TAC Chapter 229 stated that the person designated by the principal to complete the survey must also be Professional Development and Appraisal System (PDAS) certified.

Motion and Vote:

Motion was made by Ms. Allard to approve the surveys evaluating the educator preparation programs as recommended, with the commitment from staff that issues discussed will be addressed. Second was made by Ms. Bridges. Voting in favor of the motion were Dr. Cain, Ms. Baszile, Ms. Bridges, Mr. Culwell, Ms. Bricker, Mr. Allard, Mr. Morris and Ms. Druesedow. Mr. Trevino abstained. The motion carried.

11. Consideration of and Opportunity to Approve the 2008-2009 Accreditation Ratings of the Accountability System for Educator Preparation (ASEP)

Dr. Lopez reviewed the ratings for 2008-2009 and informed the Board that two educator preparation programs are rated Accredited – Under Review and 15 programs will be required to submit Action Plans.

Dr. Lopez informed the Board that under the 2008-2009 accountability rules, staff cannot sanction a program; however, the information will be posted on the Customer Information website.

Dr. Lopez informed the Board that staff will conduct site visits, extensive audits, validate specific data and accountability factors for the two programs under review and the programs will have one year to make changes.

Motion and Vote:

Motion was made by Dr. Culwell to approve the 2008-2009 accreditation ratings of the Accountability System for Educator Preparation (ASEP). Second was made by Ms. Baszile and the Board voted unanimously in favor of the motion.

12. Consideration of and Opportunity to Approve a Plan for the implementation of Increased Certification Test Standards

Mr. Carmody informed the Board that this is the opportunity to raise passing standards on four certification tests. Mr. Carmody also informed the Board that this is a follow up on action the Board took in 2007 and 2009 to increase the passing standards as recommended by the committee of educators.

Motion and Vote:

Motion was made by Ms. Bricker to approve a plan for the implementation of increased certification test standards. Second was made by Mr. Allard and the Board voted unanimously in favor of the motion.

13. Consideration of and Opportunity to Approve the Memorandum of Agreement (MOA) Between the State Board for Educator Certification (SBEC) and the Texas Education Agency (TEA)

Mr. Allen informed the Board that the new Memorandum of Agreement (MOA) would carry out the statutory mandate that the Texas Education Agency (TEA) perform the administrative functions of the State Board for Educator Certification (SBEC). Mr. Allen also informed the Board that the MOA would set the guidelines that the Board will set policy and adopt rules and TEA will carry out those rules.

Motion and Vote:

Motion was made by Dr. Culwell to approve the Memorandum of Agreement (MOA) between the State Board for Educator Certification (SBEC) and the Texas Education Agency (TEA) as recommended. Second was made by Ms. Druesedow and the Board voted unanimously in favor of the motion.

14. Litigation Settlement Options in Pending or Contemplated Litigation, Disciplinary Cases, and Pending Litigation

Merle Dover, Associate Deputy Counsel, provided information for default cases, proposals for decisions and motion for rehearing.

A. Contested Cases

I. Defaults

- 1) Docket No. 2048-EC-0908 State Board for Educator Certification v. Shannan Elizabeth Huddleston; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: 2 year suspension

- 2) Docket No. 2082-EC-1009 State Board for Educator Certification v. September Olson; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Revocation

- 3) Catherine C. Lewis spoke on her behalf on Docket No. 2050-EC-1008 State Board for Educator Certification v. Catherine C. Lewis; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: 2 year suspension

- 4) Docket No. 2035-EC-0708 State Board for Educator Certification v. Alice F. Ragusin; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Revocation

- 5) Docket No. 0902-EC-0110 State Board for Educator Certification v. Natalie Marie Pilgrim; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Revocation

- 6) Docket No. 701-10-0584.EC, TEA Docket No. 2085-EC-1009 State Board for Educator Certification v. Mary B. Swinhoe; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Revocation

- 7) Docket No. 4053-EC-1209 State Board for Educator Certification v. Jose Angel Alvarez; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: 2 year suspension

- 8) Docket No. 2061-EC-0109 State Board for Educator Certification v. Donna L. Harris; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: 2 year suspension

Motion and Vote:

Motion was made by Ms. Druesedow that the Board grant staff's request for the issuance of default judgment and enter an order consistent with staff's recommendations on all default cases. Motion was seconded by Mr. Morris and the Board voted unanimously in favor of the motion.

II. Proposals for Decision

- 9) Docket No. 701-09-3616.EC State Board for Educator Certification v. Jane Catherine Moore; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

Staff recommendation: Accept the Administrative Law Judge's (ALJ) recommendation to take no action.

Motion and Vote:

Motion was made by Ms. Baszile that the Board accept the Proposal for Decision and issue a final order consistent with the ALJ's recommendation and take no action. Motion was seconded by Dr. Culwell and the Board voted unanimously in favor of the motion.

- 10) Docket No. 701-09-3619.EC State Board for Educator Certification v. Manuel R. Garcia; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

Staff recommendation: Accept ALJ's recommendation to revoke as a matter of law.

Motion and Vote:

Motion was made by Mr. Morris that the Board accept the Proposal for Decision and issue a final order consistent with the ALJ's recommendation to revoke as a matter of law. Motion was seconded by Ms. Baszile and the Board voted unanimously in favor of the motion.

III. Motion for Rehearing

11) Docket No. 701-08-3699.EC State Board for Educator Certification v. Carmelita M. Anderson; Action to be taken: Consideration of Motion for Rehearing.

Motion and Vote:

Motion was made by Ms. Bricker that the Board amend the order issued by the Board on February 5, 2010, to more clearly explain the policy basis underlying our decision to read: On February 5, 2010, the State Board for Educator Certification, after review and consideration of the Proposal for Decision, as well as the exceptions and replies filed, adopted Findings of Fact #1-#19 (with technical corrections stated below) and Conclusions of Law #1-#8 in the Proposal for Decision, as if fully set out herein. The Board re-designated Finding of Fact #20 and amended Conclusions of Law #9-#11 below to more accurately reflect Board policy as follows.

Finding of Fact #20 is accorded its true nature as a Conclusion of Law and is duplicative of Conclusion of Law #10 below:

#20 The Board has basis to impose discipline on Respondent.

Conclusions of Law:

#9 Respondent violated the Educators' Code of Ethics, 19 TAC §247.2(b)(3)(B).

#10 The Board is authorized to discipline Respondent for her conduct, 19 TAC §249.15(b)(3).

#11 Based on the foregoing Findings, the Board should suspend Respondent's educator certificate for a period of one year.

The Administrative Law Judge's Conclusion of Law #9, #10 and #11 are incorrect in that they fail to properly apply or interpret SBEC rules and policy.

SBEC's focus on the safety and welfare of students is reflected in 19 TAC §249.5(1). Because this standard exemplifies SBEC's philosophy, it is reiterated in the SBEC Mission Statement, Core Principles, and Goals, as well as in the SBEC Disciplinary Policy Guidelines adopted in February, 2009. One of SBEC's primary

purposes is to protect the safety and welfare of Texas school children. Therefore, the conduct of an educator must be held to the highest standard.

Findings of Fact Nos. 5, 7, 8, 9, 10, 15 and 18 establish that Respondent, an educator of special needs students, treated a special needs student in a manner that adversely affected the student's learning, physical health, mental health, or safety. SBEC's longstanding policy has been that the relevant conduct of an educator is not limited to conduct that occurs while performing the duties of a professional educator. Additionally, children who attend school are students and an educator who has control of a student, whether related or not, must meet the standard of care established by Code of Ethics Standard 3.2. Therefore, Respondent's conduct violated 19 TAC §247.2(b)(3).

The Board has authority to discipline Respondent, as Respondent violated the Educator's Code of Ethics Standard 3.2 and 19 TAC §249.15(b)(3) authorizes disciplinary action upon satisfactory evidence of a violation of the Educators' Code of Ethics.

Due to Respondent's serious use of poor judgment in disciplining a special needs child by temporarily abandoning him on an isolated stretch of roadway in Houston, Texas at dark, the Board orders that Respondent's teaching certificate be suspended for one year. This sanction is in accordance with the Board's mission to protect the safety and welfare of children. The Board imposes this sanction because the ALJ improperly applied agency rules in a manner inconsistent with agency policy. Taking no disciplinary action would fail to deter the Respondent and other educators from this or similar conduct in the future. Additionally, the Board makes the following technical corrections: The two Findings of Fact that have both been under "5" are amended to Finding of Fact 5a and Finding of Fact 5b. Finding of Fact No. 13 is corrected to refer back to Finding of Fact No. 12 rather than Finding of Fact No. 10. Motion was seconded by Mr. Morris.

Ms. Bricker amended her motion to include that the educator must complete six hours of certified training of appropriate student discipline before the suspension is lifted. Motion was seconded by Mr. Morris. Voting for the motion was Ms. Bricker. Voting against the motion were Mr. Trevino, Mr. Allard, Mr. Morris, Ms. Druesedow, Dr. Cain, Ms. Baszile, Ms. Bridges, and Dr. Culwell. Motion failed.

Motion was made Mr. Allard that the Board agree with the motion as presented by Ms. Bricker with the change from a one-year suspension to uninscribed reprimand. Motion failed due to lack of a second.

Motion was made by Mr. Allard that the Board agree with the motion as presented by Ms. Bricker with the change from a one-year suspension to an inscribed reprimand. Motion was seconded by Dr. Culwell. Voting for the motion were, Mr. Allard, Mr. Morris, Ms. Druesedow, Dr. Cain, Ms. Baszile, Ms. Bridges, and Dr. Culwell. Voting against the motion were Mr. Trevino and Ms. Bricker. Motion carried.

Dr. Cain adjourned to Executive Session at 11:20 a.m.

Dr. Cain reconvened at 11:46 a.m.

15. Action on Items Discussed in Executive Session

Pursuant to section 551.102 of the Texas Government Code, any deliberation and final action on matters discussed in Executive Session may be made in an Open Meeting. For any final action that the Board discussed in Executive Session, the Board will deliberate and take its action in Open Session.

B. Pending Litigation

The Board may discuss any other litigation arising after the date of posting or reasonably contemplated as of the date of the board meeting.

- 1) *Jatis McCollister v. Texas Education Agency, Educator Certification and Standards Division; Cause No. D-1-GN-09-001338, In the 250th Judicial District Court of Travis County, Texas.*
- 2) *Andrew Broughton v. Livingston Independent School District, Texas Education Agency, State Board for Educator Certification, Robert Scott, Darrell D. Myers, Nikki Wilson, I teach Corp., Inc., Cause No. 9:08CV175, In the United States District Court for the Eastern District of Texas, Lufkin Division.*
- 3) *Leah Mullins, Don Madden, and David Jeffers v. The State Board for Educator Certification, Cause No. D1-GN-08-00979, In the 345th Judicial District Court of Travis County, Texas.*
- 4) *State of Texas v. Leslie Letsinger, Cause No. 50336, In the 365th Judicial District Court of Hardin County, Texas.*

IV. Appeals

- 1) *Anthony Allen Jones v. State Board for Educator Certification, Cause No. 03-09-00223-CV, In the Court of Appeals for the Third District of Texas at Austin, Texas.*
- 2) *Gilberto Gomez v. Texas Education Agency, Educator Certification and Standards Division, and Robert Scott, Commissioner of Education, in his Official Capacity; Cause No. 03-10-00128-CV, In the Court of Appeals for the Third District of Texas at Austin, Texas.*

DISCUSSION ONLY

16. Consideration of Defining the Term "Student" in SBEC Rules

Dr. Cain requested that this item be brought back for discussion at the June meeting because Ms. Pogue, who requested this item, was not present.

Mr. Allen also informed the Board that the new 19 TAC Chapter 247, Educators' Code of Ethics, currently under review, will be brought to the Board in June and may include a definition of the term "student".

INFORMATION ONLY

17. 2007-2010 Rule Review Plan for State Board for Educator Certification Rules

Dr. Cain reviewed this item.

18. Board Operation Policies and Procedures (BOPP)

Dr. Cain reviewed this item.

DISCUSSION AND ACTION

19. Requests and/or Questions from Board Members

Mr. Trevino questioned why there are no monetary sanctions for educator preparation programs. Mr. Booker stated that at this time it is not authorized in statute.

20. Adjournment

Dr. Cain adjourned the meeting at 11:50 p.m.

The Board may meet in closed executive session, Texas Government Code, section 551.071 to seek legal advice regarding any item on this agenda.