

**Item 5:****Adoption of Proposed New 19 TAC Chapter 227, Provisions for Educator Preparation Candidates, Subchapter B, Preliminary Evaluation of Certification Eligibility, and Proposed Amendment to 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter N, Certificate Issuance Procedures, §230.436, Schedule of Fees for Certification Services****DISCUSSION AND ACTION**

**SUMMARY:** This item provides the State Board for Educator Certification (SBEC) an opportunity to adopt, subject to State Board of Education (SBOE) review, proposed new 19 TAC Chapter 227, Provisions for Educator Preparation Candidates, Subchapter B, Preliminary Evaluation of Certification Eligibility, and an amendment to 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter N, Certificate Issuance Procedures, §230.436, Schedule of Fees for Certification Services. House Bill (HB) 963, 81st Texas Legislature, 2009, requires state licensing agencies to adopt rules necessary to administer requests for preliminary criminal history evaluations. The proposed new subchapter would provide procedures that allow for administering and responding to requests for preliminary criminal history evaluations. This item also proposes an amendment to 19 TAC §230.436 to provide a nonrefundable fee for a request for preliminary criminal history evaluation as authorized by HB 963. No additional changes are recommended since published as proposed.

**STATUTORY AUTHORITY:** The statutory authority for proposed new 19 TAC Chapter 227, Subchapter B, is the Texas Education Code (TEC), §21.041(b)(1) and (4), and Texas Occupations Code, Chapter 53, Subchapter D. The statutory authority for 19 TAC §230.436 is the TEC, §21.041(d), and Texas Occupations Code, §53.105.

**EFFECTIVE DATE:** The proposed effective date of proposed new 19 TAC Chapter 227, Subchapter B, and the proposed amendment to 19 TAC §230.436 would be October 31, 2010 (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:** Section 230.436 was adopted to be effective December 5, 1996, and last amended to be effective June 21, 2009.

The SBEC approved new 19 TAC Chapter 227, Subchapter B, and the amendment to 19 TAC §230.436 for filing as proposed at the June 2010 meeting.

**BACKGROUND INFORMATION AND SIGNIFICANT ISSUES:** An Attorney General opinion was requested by the commissioner of education regarding several issues related to the preliminary criminal history evaluation required by HB 963, as codified in the Texas Occupations Code, Chapter 53, Subchapter D. Subsequently, the Attorney General Opinion No. GA-0759, issued February 16, 2010, held that the statute grants the SBEC the implied authority to require

any information deemed necessary to determine whether a conviction or deferred adjudication set out in a request for preliminary criminal history evaluation renders the requestor ineligible for certification by the SBEC. The opinion further stated that while the evaluation is binding with regard to information that is "reasonably available" to the SBEC, what information is considered to be "reasonably available" is largely a question of fact that must be determined by the SBEC.

Proposed New 19 TAC Chapter 227, Subchapter B, Preliminary Evaluation of Certification Eligibility

Proposed new 19 TAC Chapter 227, Provisions for Educator Preparation Candidates, Subchapter B, Preliminary Evaluation of Certification Eligibility, shown in Attachment II, would establish the procedures for administering and responding to requests for preliminary criminal history evaluation of certification eligibility and limit the effect of the criminal history evaluation to the information that is provided by the requestor. The proposed rule actions reflect input received at the April 29, 2010, stakeholder meeting. Specifically, the proposed new subchapter would include the following.

Proposed new 19 TAC §227.101, Purpose, would identify the purpose of the subchapter in subsection (a). The terms, "criminal history," "ineligibility," "reasonably available," "requestor," and "Texas Education Agency (TEA) staff," would be defined in subsection (b) for purposes of this subchapter. Subsection (c) would identify persons who are eligible to make a request for preliminary criminal history evaluation under proposed new 19 TAC Chapter 227, Subchapter B. No additional changes are recommended since published as proposed.

Proposed new 19 TAC §227.103, Application, would establish the procedures that a person must follow to submit a request for preliminary criminal history evaluation. Proposed new subsection (a) would specify that the fee for a request for preliminary criminal history evaluation must be paid before the request is submitted. Proposed new subsection (b) would identify the required contents of a request for preliminary criminal history evaluation. Proposed new subsection (c) would specify that all required documents and information must be included with the request for preliminary criminal history evaluation or the request will not be considered reasonably available. Proposed new subsection (d) would identify the recommended disposition documentation for a conviction or deferred adjudication. Proposed new subsection (e) would specify the permissible methods of transmittal of the application and required documentation to be provided to the TEA staff. Proposed new subsection (f) would identify what constitutes a complete request for preliminary criminal history evaluation and provide that no action will be taken on requests that are incomplete. Proposed new subsection (g) would provide that documents submitted in connection with a request for preliminary criminal history evaluation will not be returned and may be destroyed or retained in accordance with the TEA records retention schedule. No additional changes are recommended since published as proposed.

Proposed new 19 TAC §227.105, Preliminary Criminal History Evaluation Letter, would establish the procedures and timeline for the issuance of a preliminary criminal history evaluation letter. Proposed new subsection (a) would provide that within 90 days of receipt of a complete request for preliminary criminal history evaluation, the TEA staff would notify the requestor by e-mail of the TEA's determination with regard to the requestor's potential ineligibility based on the matters described in the request. Proposed new subsection (b) would provide that the preliminary criminal history evaluation letter would be strictly limited to the facts stated on the request for preliminary criminal history evaluation, and that the requestor would still be subject to a full fingerprint-based criminal history evaluation at the time the requestor applies for certification. Proposed new subsection (c) would provide that a favorable preliminary criminal history evaluation letter would not be a guarantee of educator certification, admission to

an educator preparation program, or employment as an educator. No additional changes are recommended since published as proposed.

Proposed new 19 TAC §227.107, Fee for Request for Preliminary Criminal History Evaluation, would specify in proposed new subsection (a) that the fee for a request for preliminary criminal history evaluation would be established in 19 TAC §230.436, Schedule of Fees for Certification Services. Proposed new subsection (b) would provide that a new fee would be required to reactivate a request if the requestor fails to submit the required documentation within 90 days of receipt by the TEA of the initial fee. No additional changes are recommended since published as proposed.

*Proposed Amendment to 19 TAC §230.436, Schedule of Fees for Certification Services*

This item also presents the proposed amendment to 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter N, Certificate Issuance Procedures, §230.436, Schedule of Fees for Certification Services, shown in Attachment III. The proposed amendment to 19 TAC §230.436 would provide for a request for preliminary criminal history evaluation fee of \$150, which, pursuant to Texas Occupations Code, §53.105, TEA staff have determined is sufficient to cover the cost of administration. The proposed amendment would also establish this fee as nonrefundable. It should be noted that an additional fee would apply to the request for preliminary criminal history evaluation fee for the purpose of recovering the cost of the Texas Online Initiative as required by 19 TAC §230.438, E-Pay Supplemental Fee. No additional changes are recommended since published as proposed.

**FISCAL IMPACT:** HB 963 requires state licensing agencies to adopt rules necessary to administer requests for preliminary criminal history evaluation. Proposed new 19 TAC Chapter 227, Subchapter B, provides procedures for preliminary criminal history evaluations and the proposed amendment to 19 TAC §230.436 establishes a nonrefundable fee of \$150 for a request for preliminary criminal history evaluation. HB 963 specifies that the fee adopted by the licensing agency must be in an amount sufficient to cover the administrative costs for preliminary criminal history evaluation requests. The fiscal implications are based on an estimate of 400 persons per year, which is approximately 1% of the applicants fingerprinted in an average year, submitting a request for preliminary criminal history evaluation. The following fiscal implications are based on costs per request for state government (TEA) and persons (individuals) for fiscal years (FYs) 2011-2015.

There are anticipated fiscal implications for the TEA as a result of enforcing or administering the proposed rule actions. The TEA estimates the total cost at \$58,455 in FY 2011, \$29,142 in FY 2012, \$29,870 in FY 2013, \$30,642 in FY 2014, and \$31,460 in FY 2015. The total estimated cost includes \$11,455 in FY 2011, \$12,142 in FY 2012, \$12,870 in FY 2013, \$13,642 in FY 2014, and \$14,460 in FY 2015 for personnel costs. The total estimated cost also includes other operating expenses for the development and maintenance of the system at \$47,000 in FY 2011 and \$17,000 in each year for FY 2012-FY 2015. The costs are based on two employees spending 10% of their work day on requests for preliminary criminal history evaluations. The increase is based on a .06% increase each year for FY 2012-FY 2015.

The TEA estimates an increase in revenue at \$60,000 in each year for FY 2011-FY 2015. The agency would collect a fee per request to defray the cost to complete the preliminary criminal history evaluation.

The TEA estimates the total anticipated economic costs to persons required to comply with the proposed rule actions at \$60,000 in each year for FY 2011-FY 2015. The estimate is based on

400 persons requesting a preliminary criminal history evaluation that will be required to pay a fee of \$150 for processing by TEA staff.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**PUBLIC AND STUDENT BENEFIT:** The public and student benefit anticipated would be an increase in the number of educator certification candidates since qualified candidates will not be discouraged from becoming educators due to criminal histories that are not relevant to educator certification.

**PROCEDURAL AND REPORTING IMPLICATIONS:** Persons enrolled or planning to enroll in a Texas educator preparation program or planning to take a certification examination would follow the procedures established in proposed new 19 TAC Chapter 227, Subchapter B, to submit a request for preliminary criminal history evaluation, which would include a form to be used when an individual makes a request for a preliminary criminal history evaluation.

**LOCALLY MAINTAINED PAPERWORK REQUIREMENTS:** The TEA staff have determined that there are no locally maintained paperwork requirements to school districts and educators.

**PUBLIC COMMENTS:** Following the June 2010 SBEC meeting, proposed new 19 TAC Chapter 227, Subchapter B, and proposed amendment to 19 TAC §230.436 were filed with the *Texas Register* initiating the official public comment period. At the time this item was prepared, no comments had been received. Any public comments received will be provided to the SBEC during the August 2010 meeting.

**ALTERNATIVES:** None.

**OTHER COMMENTS AND RELATED ISSUES:** A stakeholder meeting was held on April 29, 2010, for the purpose of reviewing and seeking input related to proposed new 19 TAC Chapter 227, Subchapter B, and proposed amendment to 19 TAC §230.436. The stakeholders included representatives of educator preparation programs, educator organizations, and school districts.

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

Approve for adoption, subject to State Board of Education review, proposed new 19 TAC Chapter 227, Provisions for Educator Preparation Candidates, Subchapter B, Preliminary Evaluation of Certification Eligibility, with an effective date of 20 days after filing as adopted with the *Texas Register*, and

Approve for adoption, subject to State Board of Education review, the proposed amendment to 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter N, Certificate Issuance Procedures, §230.436, Schedule of Fees for Certification Services, with an effective date of 20 days after filing as adopted with the *Texas Register*.

Respectfully submitted,

Jerel Booker  
Associate Commissioner  
Educator and Student Policy Initiatives

**Staff Members Responsible:** Karen Loonam, Ed.D., Deputy Associate Commissioner  
Educator Certification, Standards, and Investigations

Doug Phillips, Director  
Investigations and Fingerprinting

Andrew Allen, Assistant Counsel  
Legal Services for Educator Certification, Standards, and  
Investigations

- Attachments:**
- I. Statutory Citations
  - II. Text of Proposed New 19 TAC Chapter 227, Provisions for Educator Preparation Candidates, Subchapter B, Preliminary Evaluation of Certification Eligibility
  - III. Text of Proposed Amendment to 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter N, Certificate Issuance Procedures, §230.436, Schedule of Fees for Certification Services

## ATTACHMENT I

**Statutory Citations Relating to Proposed New 19 TAC Chapter 227, Provisions for Educator Preparation Candidates, Subchapter B, Preliminary Evaluation of Certification Eligibility, and Proposed Amendment to 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter N, Certificate Issuance Procedures, §230.436, Schedule of Fees for Certification Services**

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

- (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;
  - (4) specify the requirements for the issuance and renewal of an educator certificate;
- (d) The board may propose a rule adopting a fee for the approval or renewal of approval of an educator preparation program, or for the addition of a certificate or field of certification to the scope of a program's approval. A fee imposed under this subsection may not exceed the amount necessary, as determined by the board, to provide for the administrative cost of approving, renewing the approval of, and appropriately ensuring the accountability of educator preparation programs under this subchapter.

**Texas Occupations Code, §53.101, Definitions:**

In this subchapter:

- (1) "License" means a license, certificate, registration, permit, or other authorization that:
  - (A) is issued by a licensing authority; and
  - (B) a person must obtain to practice or engage in a particular business, occupation, or profession.
- (2) "Licensing authority" means a department, commission, board, office, or other agency of the state that issues a license.

**Texas Occupations Code, §53.102, Request for Criminal History Evaluation Letter:**

- (a) A person may request a licensing authority to issue a criminal history evaluation letter regarding the person's eligibility for a license issued by that authority if the person:
  - (1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and
  - (2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.
- (b) The request must state the basis for the person's potential ineligibility.

**Texas Occupations Code, §53.103, Authority to Investigate:**

A licensing authority has the same powers to investigate a request submitted under this subchapter and the requestor's eligibility that the authority has to investigate a person applying for a license.

**Texas Occupations Code, §53.104, Determination of Eligibility; Letter:**

- (a) If a licensing authority determines that a ground for ineligibility does not exist, the authority shall notify the requestor in writing of the authority's determination on each ground of potential ineligibility.
- (b) If a licensing authority determines that the requestor is ineligible for a license, the licensing authority shall issue a letter setting out each basis for potential ineligibility and the authority's determination as to eligibility. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the licensing authority at the time the letter is issued, the authority's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.
- (c) A licensing authority must provide notice under Subsection (a) or issue a letter under Subsection (b) not later than the 90th day after the date the authority receives the request.

**Texas Occupations Code, §53.105, Fees:**

A licensing authority may charge a person requesting an evaluation under this subchapter a fee adopted by the authority. Fees adopted by a licensing authority under this subchapter must be in an amount sufficient to cover the cost of administering this subchapter.

ATTACHMENT II  
Text of Proposed New 19 TAC

**Chapter 227. Provisions for Educator Preparation Candidates**

**Subchapter B. Preliminary Evaluation of Certification Eligibility**

**§227.101. Purpose.**

- (a) This subchapter provides rules for the implementation of a preliminary criminal history evaluation as provided in the Texas Occupations Code, Chapter 53, Subchapter D.
- (b) The following words, terms, and phrases, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.
  - (1) Criminal history--Criminal history record information that relates to convictions and deferred adjudications.
  - (2) Ineligibility--Unsuitability for certification, based on any of the grounds described in §249.12(b) of this title (relating to Administrative Denial; Appeal), as determined by the Texas Education Agency staff.
  - (3) Reasonably available--Provided in writing to Texas Education Agency staff by a requestor.
  - (4) Requestor--A person making a request for preliminary criminal history evaluation pursuant to this subchapter.
  - (5) 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.
- (c) A person who is enrolled or planning to enroll in a State Board for Educator Certification-approved educator preparation program or planning to take a certification examination may request a preliminary criminal history evaluation letter regarding the person's potential ineligibility for certification due to a conviction or deferred adjudication for a felony or misdemeanor offense.

**§227.103. Application.**

- (a) A request for preliminary criminal history evaluation must be preceded by payment of the required criminal history evaluation fee specified in §230.436(22) of this title (relating to Schedule of Fees for Certification Services).
- (b) A request for preliminary criminal history evaluation must include the following:
  - (1) a signed and dated application, in the form provided on the Texas Education Agency (TEA) website, containing contact information and the date and description of each offense requested to be evaluated;
  - (2) an attached statement of the circumstances upon which the arrest is based and the disposition relating to each offense to be evaluated;
  - (3) court documentation relating to each offense, including, at a minimum, the formal disposition of the offense(s) and related charge(s) (e.g., Judgment, Order of Probation, Sentence, Deferred Adjudication Order, etc.); and
  - (4) a copy of the receipt for the request for preliminary criminal history evaluation fee.
- (c) All required documents and information specified in subsection (b) of this section must be provided with the request for preliminary criminal history evaluation. Any documents or information not provided in the original request will not be considered reasonably available.
- (d) The preliminary criminal history evaluation will be based solely on the application and court or law enforcement documents provided. Any information not provided by the requestor shall be considered not reasonably available at the time of the request and may be considered at the time the requestor subsequently

applies for a certificate issued by the State Board for Educator Certification. Additional documentation that should be provided, if possible, includes the following:

- (1) the formal charge(s) (e.g., indictment, information, or complaint);
  - (2) evidence that the condition(s) of the court have been met (e.g., completion of probation, receipt for restitution, etc.); and
  - (3) any available law enforcement report(s) describing the offense or the investigation of the offense.
- (e) The application, the statement of circumstances, the required court documentation, and a copy of the receipt for the request for preliminary criminal history evaluation fee must be submitted to the TEA division responsible for educator investigations by United States certified mail, return receipt requested, to the address provided on the application or by facsimile to the facsimile number provided on the application.
- (f) A request for preliminary criminal history evaluation is incomplete unless it includes a copy of the receipt for the request for preliminary criminal history evaluation fee, a completed application, a statement of circumstances, and the required court documentation. The TEA staff will take no action on a request that is incomplete.
- (g) All documents submitted in connection with a request for preliminary criminal history evaluation, whether complete or incomplete, will not be returned to the requestor. All documents will be retained or destroyed by the TEA in accordance with the TEA records retention schedule.

**§227.105. Preliminary Criminal History Evaluation Letter.**

- (a) Within 90 calendar days of receipt of a complete request for a preliminary criminal history evaluation, the Texas Education Agency (TEA) staff will notify the requestor, by e-mail to the e-mail address provided on the requestor's application, of the TEA's determination with regard to the requestor's potential ineligibility based on the matters described in the request for preliminary criminal history evaluation.
- (b) The preliminary criminal history evaluation letter will be strictly limited to the facts stated and the documents submitted by the requestor, as of the date of the request. Any documents or information not provided by the requestor will not be considered reasonably available for purposes of evaluating the request. In the event that the requestor subsequently applies for certification by the State Board for Educator Certification, complete fingerprint-based national criminal history information will be required. The TEA staff may conduct a criminal history investigation at that time regarding the offense(s) that were the subject of the request, based on any misstatements, incomplete information, or missing documentation in the request for preliminary criminal history evaluation; additional or subsequent criminal history or inappropriate conduct; or changed circumstances.
- (c) The preliminary criminal history evaluation letter relates only to whether the specific information submitted constitutes grounds for ineligibility. The evaluation letter is not a guarantee of educator certification, admission to an educator preparation program, or employment as an educator.

**§227.107. Fee for Request for Preliminary Criminal History Evaluation.**

- (a) The fee to request a preliminary criminal history evaluation under this subchapter shall be in an amount sufficient to cover the cost of administration of the evaluation process and as provided in §230.436 of this title (relating to Schedule of Fees for Certification Services).
- (b) A new fee will be required to reactivate a request that is incomplete because of failure to submit the required documentation within 90 calendar days of receipt by the Texas Education Agency of the initial fee.

**ATTACHMENT III**  
**Text of Proposed Amendment to 19 TAC**

**Chapter 230. Professional Educator Preparation and Certification**

**Subchapter N. Certificate Issuance Procedures**

**§230.436. Schedule of Fees for Certification Services.**

An applicant for a certificate or a school district requesting a permit shall pay the applicable fee from the following list.

- (1) Standard Educational Aide certificate--\$30.
- (2) Standard certificate, additional specialization, teaching field, or endorsement/delivery system, based on recommendation by an approved educator preparation program or State Board for Educator Certification authorization; or extension or conversion of a certificate processing fee--\$75.
- (3) Probationary certificate based on recommendation by an approved educator preparation program or Texas public school district processing fee--\$50.
- (4) Duplicate of an active, valid certificate or change of name on an active, valid certificate--\$45.
- (5) Addition of certification based on completion of appropriate examination--\$75.
- (6) Review of a credential issued by a jurisdiction other than Texas (nonrefundable)--\$175.
- (7) Temporary credential based on a credential issued by a jurisdiction other than Texas--\$50.
- (8) Emergency permit, including an initial permit, reassignment on permit with a change in assignment or school district, renewal for nonconsecutive years, or renewal of permit on a hardship basis (nonrefundable)--\$55.
- (9) Renewal in the school district of a permit at the same target certificate level and initial activation, or renewal in the same school district of a temporary classroom assignment permit--no fee.
- (10) National criminal history check (nonrefundable)--The fee, posted on the State Board for Educator Certification website, shall vary according to the current cost of fingerprint processing and obtaining national criminal history record information from the Texas Department of Public Safety, its contractors, and the Federal Bureau of Investigation. The same fee will be paid by current certified educators who are subject to a national criminal history check pursuant to the Texas Education Code, §§22.082, 22.0831, and 22.0836.
- (11) Temporary Teacher certificate based on recommendation by an approved Texas public school district--\$50.
- (12) Review of credentials requiring analysis and research of college or university transcript and degrees for issuance of a temporary certificate (nonrefundable)--\$175.
- (13) On-time renewal of Standard Educational Aide certificate--\$10.
- (14) Additional fee for late renewal of Standard Educational Aide certificate--\$5.
- (15) Reactivation of an inactive Standard Educational Aide certificate--\$15.
- (16) Reinstatement following restitution of child support or student loan repayment for Standard Educational Aide certificate--\$20.
- (17) On-time renewal of Standard certificate (to include any paraprofessional certificates if held)--\$20.
- (18) Additional fee for late renewal of Standard certificate--\$10.
- (19) Reactivation of an inactive Standard certificate--\$40; except for an inactivation pursuant to §232.907 of this title (relating to Inactive Status).
- (20) Reinstatement following restitution of child support or student loan repayment--\$50.

- (21) Visiting International Teacher certificate--\$50.
- (22) Request for preliminary criminal history evaluation (nonrefundable)--\$150.