

STATE BOARD FOR EDUCATOR CERTIFICATION
DISCUSSION AND ACTION SESSION AGENDA

August 13, 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, August 13, 2010 in Room 1-104 of the William B. Travis Building, 1701 N. Congress Avenue in Austin, Texas.

Present: Dr. Glynn, Mr. Booker, Ms. Baszile, Ms. Pogue, Ms. Bridges, Dr. Culwell, Ms. Bricker, Mr. Allard, Dr. Barnes, Mr. Morris and Ms. Druessedow. Mr. Trevino arrived at 9:20 a.m.

Absent: Dr. Cain, Ms. Robison and Dr. Simpson

2. Public Testimony

CONSENT AGENDA

3. Approval of June 18, 2010 Board Meeting Minutes

Motion and Vote:

Motion was made by Ms. Baszile to approve the June 18, 2010 minutes. Second was made by Ms. Bricker and the Board voted unanimously in favor of the motion.

DISCUSSION AND ACTION

4. Adoption of Proposed Revisions to 19 TAC Chapter 244, Certificate of Completion of Training for Appraisers

Ms. Pogue reminded the Board that the proposed revisions were approved at the June 18, 2010, meeting and this item is now brought for adoption.

Dr. Lopez informed the Board that there is one change recommended since the Board approved the proposed revisions at the June 18, 2010, meeting. In response to a public comment, §244.2(b) would be changed to specify that providers of appraiser training would be responsible for verifying completion of the training, and that the regional education service center (ESC) designated by the commissioner of education to serve as the Professional Development and Appraisal System (PDAS) certification provider for the state would be responsible for maintaining documentation and issuing certification to

individuals who have completed PDAS appraiser training. Dr. Lopez also informed the Board that proposed revisions would align with the commissioner's rules codified in the Texas Administrative Code.

Motion and Vote:

Motion was made by Dr. Culwell to approve for adoption, subject to State Board of Education review, the proposed revisions to 19 TAC Chapter 244, Certificate of Completion of Training for Appraisers, with an effective date of 20 days after filing as adopted with the Texas Register. Second was made by Ms. Druesedow and the Board voted unanimously in favor of the motion.

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

Mr. Phillips informed the Board that this item is in response to House Bill (HB) 963, 81st Texas Legislature, 2009, which requires state licensing agencies to adopt rules necessary to administer requests for preliminary criminal history evaluations and would also provide for a nonrefundable fee for a request for the evaluation. Mr. Phillips also informed the Board that no changes have been made since the Board approved the proposal at the June 18, 2010, meeting.

Motion and Vote:

Motion was made by Ms. Bricker to 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, 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, 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 Proposed Amendments to 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter N, Certificate Issuance Procedures, §230.437, Issuance of Additional Certificates Based on Examination, and Subchapter P, Requirements for Standard Certificates and Specialized Assignments or Programs, §230.483, Specific Requirements for Standard Career and Technical Education Certificates Based on Experience and Preparation; and 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, §233.14, Career and Technical Education (Certificates requiring experience and preparation in a skill area)

Ms. Pogue reminded the Board that the proposed amendments were approved at the June 18, 2010, meeting and this item is now brought for adoption.

Mr. Allen informed the Board that the amendments would allow the Marketing Education: Grades 8-12 certificate to be obtained through certification by examination and would

allow either a school district or an educator preparation program to review and approve the required two years of work experience.

Motion and Vote:

Motion was made by Mr. Morris to approve for adoption, subject to State Board of Education review, the proposed amendments to 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter N, Certificate Issuance Procedures, §230.437, Issuance of Additional Certificates Based on Examination, and Subchapter P, Requirements for Standard Certificates and Specialized Assignments or Programs, §230.483, Specific Requirements for Standard Career and Technical Education Certificates Based on Experience and Preparation; and 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, §233.14, Career and Technical Education (Certificates requiring experience and preparation in a skill area), with an effective date of 20 days after filing as adopted with the Texas Register. Second was made by Ms. Druessedow and the Board voted unanimously in favor of the motion.

7. **Adoption of Proposed Amendments to 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, §§233.1, General Authority; 233.2, Generalist; 233.3, English Language Arts and Reading; Social Studies; 233.4, Mathematics; Science; 233.12, Career and Technical Education (Certificates not requiring experience and preparation in a skill area); and 233.15, Languages Other Than English**

Ms. Pogue reminded the Board that the proposed amendments were approved at the June 18, 2010, meeting and this item is now brought for adoption.

Ms. Gutierrez informed the Board that no public comments were received since the June 18, 2010, meeting. Ms. Gutierrez also informed the Board that language regarding the Integrated Physics and Chemistry course would be maintained.

In response to Ms. Druessedow's question regarding speech certificates, Ms. Gutierrez informed the Board that both speech certificates, Speech: Grades 7-12 and Speech: Grades 8-12, would be retained.

Motion and Vote:

Motion was made by Ms. Druessedow to approve for adoption, subject to State Board of Education review, the proposed amendments to 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, §§233.1, General Authority; 233.2, Generalist; 233.3, English Language Arts and Reading; Social Studies; 233.4, Mathematics; Science; 233.12, Career and Technical Education (Certificates not requiring experience and preparation in a skill area); and 233.15, Languages Other Than English, 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.

8. **Proposed Amendments to 19 TAC Chapter 247, Educators' Code of Ethics, and 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter A, General Provisions, §249.3, Definitions**

Testimony on Item 8 was provided by:

John Grey, Texas State Teachers Association
Julie Leahy, Texas Classroom Teachers Association
Jennifer Canady, Association of Texas Professional Educators
Patti Quinzi, American Federation of Teachers

Ms. Dover addressed concerns and issues discussed by the Board and in public testimony. Ms. Dover informed the Board that "excessive electronic communications" consists of many factors, not just the number of communications; the nature, the purpose, and the time of communications are also factors that aide in the determination of excessive electronic communications. Ms. Dover stated that negligence/gross negligence would be a matter of conscience negligence. At the request of Ms. Baszile, Ms. Dover addressed the use of "fitness" and "prior employment." Ms. Dover stated that if an educator is convicted of a crime of moral turpitude, as defined in 19 TAC Chapter 249, or whose conduct is equivalent to moral turpitude, this constitutes a lack of moral fitness. Dr. Culwell suggested referring "fitness" to a definition.

Ms. Bricker made a recommendation to remove "negligently" from §247.2(3)(B) because it is redundant. Ms. Bricker also recommended removing "excessive" from in §247.2(3)(I).

Dr. Barnes stated that Standard 3.9 reads differently from other standards because it contains both the standards and all the indicators; therefore, it reads as a rule not a standard. Dr. Barnes suggested that it might help if all the explications became definitions.

Dr. Barnes expressed concerns with Standard 3.8, "educator-student relationship" and suggested that it might need further clarification. Ms. Dover informed the Board that by stating "appropriate professional educator-student relationship" the standard would not prevent appropriate social relationships.

Mr. Booker informed the Board that the amendments are presented for approval to file them as proposed with the *Texas Register* and that once published the proposed amendments will be opened for public comment. Mr. Booker added that any public comments received, along with agency responses, will be included in the item when presented for adoption to the Board in October.

The Board requested that staff continually review the rule for revisions to adhere to goals and requested that after one school-year, staff bring 19 TAC Chapter 247 back to the Board with comments and suggestions for any changes.

The Board requested that staff make the following two additional changes: amend §247.2(1)(A) by adding Texas Education Agency to Standard 1.1, and amend §247.2(1)(J) by adding a reference for the term "fitness" to a definition in Chapter 249 to read "as defined in §249.3."

Motion and Vote:

Motion was made by Dr. Culwell to approve the proposed amendments to 19 TAC Chapter 247, Educators' Code of Ethics, as amended, and 19 TAC Chapter 249,

Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter A, General Provisions, §249.3, Definitions, for filing as proposed with the Texas Register. Second was made by Ms. Bridges. The motion carried, with Mr. Allard voting against.

9. Proposed Amendments to 19 TAC Chapter 228, Requirements for Educator Preparation Programs, §§228.2, Definitions; 228.35, Preparation Program Coursework and/or Training; and 228.60, Implementation Date

Testimony on Item 9 was provided by Diann Huber, iteachTexas.

Dr. Lopez informed the Board that changes would be made to clarify requirements for educator preparation programs. Dr. Lopez also informed the Board that in §228.35(d)(4)(D) the words "undergraduate university" were removed so there would be equity across the programs and to provide the opportunity to offer clinical teaching and student teaching out of country. Mr. Allen informed the Board that all Department of Defense Education Activity (DoDEA) schools would be automatically approved sites. Dr. Lopez stated that the Texas Higher Education Coordinating Board (THECB) exemption for student teaching for teacher aides would also be added.

Dr. Barnes expressed concern that §228.35(a)(6) would change the opportunity that educator preparation programs have had to put in place policies allowing them to recognize prior experience in a classroom; and, this new language would close that door to student teaching and clinical teaching. Dr. Barnes also expressed concern that Texas Education Code, §21.051, Options for Field Experience and Internships, removes some flexibility programs have had for recognizing experience.

Dr. Lopez informed the Board that the Texas Education Agency (TEA) has always recognized under the THECB the exemption to student teaching through their tuition and reimbursement. Since 19 TAC Chapter 228 was amended in 2008, the TEA has required, even with substitute teaching experience, that the educator participate in clinical teaching, student teaching, or an internship. Dr. Lopez and Mr. Allen informed the Board that field-based experience can be substituted.

Motion and Vote:

Motion was made by Mr. Allard to approve the proposed amendments to 19 TAC Chapter 228, Requirements for Educator Preparation Programs, §§228.2, Definitions; 228.35, Preparation Program Coursework and/or Training; and 228.60, Implementation Date, as amended, for filing as proposed with the Texas Register. Second was made by Dr. Culwell and the Board voted unanimously in favor of the motion.

10. Consideration of and Opportunity to Approve Additional Classes of Certificates for Educator Preparation Programs Currently Rated Accredited

Dr. Lopez introduced and reviewed the programs seeking additional classes of certificates and advised the Board that staff recommend the approval of the additional classes of certificates

- Texas A&M-San Antonio, Principal Certification Program
- Texas A&M-San Antonio, School Counselor Certification Program
- Texas A&M-San Antonio, Superintendent Certification Program

- A Career in Teaching, Principal Certification Program
- Lubbock Christian University, Educational Diagnostician Certification Program
- Lamar State University-Orange, Master Math Teacher EC-4 and 4-8 Certification Programs
- Lamar State University-Orange, Master Science Teacher 8-12 Certification Program

Motion and Vote:

Motion was made by Ms. Baszile to approve the additional classes of certificates for the educator preparation programs currently rated accredited. Second was made by Ms. Bricker and the Board voted unanimously in favor of the motion.

11. Consideration of and Opportunity to Approve the Passing Standard on the American Council on the Teaching of Foreign Languages (ACTFL) Examinations for Language Proficiency

Mr. Carmody informed the Board that this item provides the Board the opportunity to approve a passing standard for oral and written proficiency on the ACTFL Oral Proficiency Interview (OPI) and Written Proficiency Test (WPT) in Hindi, Italian, and Turkish.

Motion and Vote:

Motion was made by Ms. Bricker to approve the passing standard on the American Council on the Teaching of Foreign Languages (ACTFL) examinations for language proficiency. Second was made by Dr. Culwell and the Board voted unanimously in favor of the motion.

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

The Board may meet in closed Executive Session, pursuant to section 551.071(2) and/or 551.071(1), of the Texas Government Code, to seek legal advice regarding pending or contemplated litigation or settlement of same, and contested cases related to educator discipline and other matters arising under 19 Texas Administrative Code Chapter 249. Pursuant to section 551.102 of the Texas Government Code, any final action on matters discussed in Executive Session must be made in an open meeting.

A. Contested Cases

I. Defaults

- 1) Docket No. 0914-EC-0310, State Board for Educator Certification v. Ramon Armendariz; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Revocation

- 2) Docket No. 0915-EC-0410, State Board for Educator Certification v. Julie Whitchurch; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Three year suspension plus proof of successful completion of community service and substance abuse programs.

- 3) Docket No. 0818-EC-0410, State Board for Educator Certification v. Raul Montoya-Santellano; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: One year suspension.

- 4) Docket No. 0815-EC-0310, State Board for Educator Certification v. Mark Anthony Vasquez; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Two year suspension plus proof of successful completion of community supervision.

- 5) Docket No. 0906-EC-0210; State Board for Educator Certification v. Margaret Peggy Earley; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Revocation.

II. Proposals for Decision

- 1) Docket No. 701-09-3906.EC, State Board for Educator Certification v. Sonia Sanchez; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

Staff recommendation: Accept ALJ's recommendation to suspend for 5 years.

Russell Ramirez, Texas State Teachers Association, spoke on behalf of Sonia Sanchez. Ms. Dover reviewed and provided information on the case.

- 2) Docket No. 701-09-3352.EC, State Board for Educator Certification v. Donald Madden; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order

Staff recommendation: 1 year suspension

Richard Arnett spoke on behalf of Donald Madden. Ms. Dover reviewed and provided information on the case.

Ms. Pogue adjourned to Executive Session at 11:20 a.m.

Ms. Pogue reconvened at 12:05 p.m.

13. Action on Items Discussed in Executive Session

The Board may meet in closed Executive Session, pursuant to section 551.071(2) and/or 551.071(1), of the Texas Government Code, to seek legal advice regarding pending or contemplated litigation or settlement of same, and contested cases related to educator

discipline and other matters arising under 19 Texas Administrative Code Chapter 249. Pursuant to section 551.102 of the Texas Government Code, any final action on matters discussed in Executive Session must be made in an open meeting.

Motion and Vote:

Motion was made by Ms. Baszile to grant staff's request for the issuance of default judgments and enter an order consistent with staff's recommendation on each of the default cases. Motion was seconded by Ms. Druesedow and the Board voted unanimously in favor of the motion.

Proposals for Decision

- 1) Docket No. 701-09-3906.EC, State Board for Educator Certification v. Sonia Sanchez; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

Motion and Vote:

Motion was made by Dr. Culwell that the Board accept the Proposal for Decision and issue a final order consistent with the ALJ's recommendation to suspend Sonia Sanchez's educator certificate for five years. Second was made by Ms. Baszile. The motion carried, with Mr. Allard voting against.

- 2) Docket No. 701-09-3352.EC, State Board for Educator Certification v. Donald Madden; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order

Motion and Vote:

Motion was made by Mr. Allard that the Board accept the Proposal for Decision and issue a final order consistent with the ALJ's recommendation. Second was made by Dr. Culwell. Voting for the motion: Mr. Allard, Dr. Culwell, Mr. Morris and Ms. Bridges. Voting against the motion: Ms. Druesedow, Mr. Trevino, Ms. Baszile, Ms. Bricker and Ms. Pogue. Motion failed.

Motion and Vote:

Motion was made by Ms. Bricker that the Board accept the Findings of Fact #1 through #18 and Conclusions of Law #1 through #6 as stated in the Proposal for Decision; that the Board amend Finding of Fact #19 as follows:

#19 – Respondent's belief that the degree of force used in administering punishment to the student was necessary to maintain discipline was not reasonable under the circumstances. This change is proposed because based on the severity of the student's injuries, the doctors' opinions and the ALJ's conclusion that Respondent violated the Educators' Code of Ethics by knowingly treating the student in a manner that adversely affected the student's learning, physical health, mental health, or safety, and the ALJ's conclusion that Respondent physically mistreated the student, it is not consistent with Board's primary purpose and policy to safeguard the safety and welfare of the child, to find

that such use of force was necessary and reasonable under these circumstances; that the Board amend Conclusion of Law #7 as follows:

#7 – Under Texas Education Code §22.512, Respondent may be disciplined to enforce the Educators' Code of Ethics because his use of physical force against the student exceeded the scope justified under §9.62 of the Texas Penal Code, as found in Findings of Fact #10 through #17 and #19 and Conclusions of Law #5 and #6. The change is proposed because the Board is empowered to discipline educators who violate the Educators' Code of Ethics. The ALJ found that Respondent violated the Educators' Code of Ethics by knowingly treating a student in a manner that adversely affected the student's learning, physical health, mental health, or safety. The ALJ also found that Respondent violated the Educators' Code of Ethics by physically mistreating a student. Consistent with the Board policy to discipline educators who violate the Educators' Code of Ethics, Respondent may be disciplined; that the Board amend Conclusion of Law #8 as follows:

#8 – Under Texas Penal Code §9.62, Respondent's use of force against the student was not justified because the force used was not reasonable and to the degree necessary under the circumstances. This change is proposed because it is well-established Board policy to safeguard the safety and welfare of students first and foremost. Base on the severity of the student's injuries, the doctors' opinions, and the ALJ's conclusion that Respondent violated the Educators' Code of Ethics by knowingly treating the student in a manner that adversely affected the student's learning, physical health, mental health, or safety, and the ALJ's conclusion that Respondent physically mistreated the student, it not consistent with the Board's primary purpose and policy to safeguard the safety and welfare of the child, to find that such use of force was justified and reasonable and to the degree necessary under these circumstances. Accordingly, it is keeping with Board policy that the Board find that the degree of force was not justified or necessary and reasonable under the circumstances. Finally it is so moved that the Board issue a non-inscribed reprimand for one year. Second was made by Ms. Druesedow. Voting for the motion: Ms. Bricker, Ms. Druesedow, Mr. Trevino, Ms. Baszile and Ms. Pogue. Voting against the motion: Mr. Allard, Dr. Culwell, Ms. Bridges and Mr. Morris. Motion carried.

Ms. Dover informed the Board that a non-inscribed reprimand has no time put with it so the motion should not read ..."non-inscribed reprimand for one year".

Ms. Bricker amended her motion to read: Finally it is so moved that the Board issue a non-inscribed reprimand. Second was made by Ms. Druesedow. Voting for the amended motion: Ms. Bricker, Ms. Druesedow, Mr. Trevino, Ms. Baszile and Ms. Pogue. Voting against the amended motion: Mr. Allard, Mr. Culwell, Ms. Bridges and Mr. Morris. Motion carried.

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.

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.

III. Appeals

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

14. Discussion of the Implementation of Senate Bill (SB) 174, and 19 TAC Chapter 229, Accountability System for Educator Preparation Programs

Dr. Lopez reminded the Board that this item is brought to the Board at the request of Board members. Dr. Lopez reviewed the four new standards, certification pass rates, principal survey, student achievement, and field supervision. She also reviewed the time line on the consumer information website and the program participant exit survey.

Dr. Barnes commented that most ratings on the principal survey are made up of four categories, except the last question which is an overall assessment; that question is made up of five categories. Dr. Barnes suggested making the survey consistent. Dr. Barnes also commented on the number of programs that are very small producing programs.

Ms. Bricker requested a review of the state accountability system based on the annual assessment of the performance of novice teachers and their impact on students. She also requested periodic updates and timelines from staff on the implementation.

INFORMATION ONLY

15. Board Operating Policies and Procedures (BOPP)

DISCUSSION AND ACTION

16. Requests and/or Questions from Board Members

Mr. Trevino questioned what rules a candidate in an educator preparation program must adhere to; the rule(s) in effect when he/she entered the program, or rule(s) adopted while still in the program. Mr. Allen informed the Board that revisions in Chapter 228 state that program requirements in effect when a candidate enters a program will govern that person throughout the program.

Ms. Bricker requested staff provide the Board with a copy of the form that will be used by a potential educator to request a background check before entering an educator preparation program.

17. Adjournment

Ms. Pogue adjourned the meeting at 12:35 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.