Text of Proposed Amendment to 19 TAC

Chapter 249. Disciplinary Proceedings, Sanctions, and Contested Cases

Subchapter A. General Provisions

§249.3. Definitions.

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.

[~~(1) Abuse--As defined in the Texas Family Code, §261.001(1).~~]

(2) [~~(1)~~] Administrative denial-- A [~~a~~] decision or action by the Texas Education Agency [~~(TEA)~~] staff to deny a person any of the following based on the withholding or voiding of certification test scores; the invalidation of a certification test registration; or evidence of a lack of good moral character or improper conduct:

(A) admission to an educator preparation program;

(B) certification (including certification following revocation, cancellation, or surrender of a previously issued certificate) or renewal of certification; or

(C) reinstatement of a previously suspended certificate.

(3) [~~(2)~~] Administrative law judge [~~(ALJ)~~] -- A [~~a~~] person appointed by the chief judge of the State Office of Administrative Hearings [~~(SOAH)~~] under the Texas Government Code, Chapter 2003.

(4) [~~(3)~~] Answer-- The [~~the~~] initial responsive pleading filed in reply to factual and legal issues raised in [~~by~~] a petition.

(5) [~~(4)~~] Applicant-- A [~~a~~] party seeking any of the following from the Texas Education Agency [~~TEA~~] staff or the State Board for Educator Certification [~~(SBEC)~~] : issuance of a certificate (including issuance of a new certificate following revocation, cancellation, or surrender of a previously issued certificate); renewal of a certificate; or reinstatement of a suspended certificate.

(6) [~~(5)~~] Cancellation-- The [~~the~~] invalidation of an erroneously issued certificate.

(7) [~~(6)~~] Certificate-- The [~~the~~] whole or part of any certificate, permit, approval, endorsement, or similar form of permission issued by the Texas Education Agency [~~TEA~~] staff or the State Board for Educator Certification [~~SBEC~~] . The official certificate is the record of the certificate as maintained on the Texas Education Agency's [~~SBEC's~~] website.

(8) [~~(7)~~] Certificate holder-- A [~~a~~] person who holds a certificate issued under the Texas Education Code [~~(TEC)~~] , Chapter 21, Subchapter B.

(9) [~~(8)~~] Chair-- The [~~the~~] presiding officer of the State Board for Educator Certification [~~SBEC~~] , elected pursuant to the Texas Education Code [~~TEC~~] , §21.036, or other person designated by the chair to act in his or her absence or inability to serve.

(10) [~~(9)~~] Chief judge-- The [~~the~~] chief administrative law judge of the State Office of Administrative Hearings [~~SOAH~~] .

(11) [~~(10)~~] Code of Ethics-- The [~~the~~] Code of Ethics and Standards of Practices for Texas Educators, pursuant to Chapter 247 of this title (relating to the Educators' Code of Ethics).

(12) [~~(11)~~] Complaint-- A [~~a~~] written statement submitted to the Texas Education Agency [~~TEA~~] staff that contains essential facts alleging improper conduct by an educator, applicant, or examinee, and provides grounds for sanctions.

(13) [~~(12)~~] Contested case-- A [~~a~~] proceeding under this chapter in which the legal rights, duties, and privileges of a party are to be determined by the State Board for Educator Certification [~~SBEC~~] after an opportunity for an adjudicative hearing.

(14) [~~(13)~~] Conviction-- An [~~an~~] adjudication of guilt for a criminal offense. The term does not include the imposition of deferred adjudication for which the judge has not proceeded to an adjudication of guilt [~~, except as provided by Code of Criminal Procedure, Article 42.12~~] .

(15) [~~(14)~~] Disciplinary proceedings-- Contested [~~contested~~] case proceedings before the Texas Education Agency [~~TEA~~] staff, the State Office of Administrative Hearings [~~SOAH~~] , and the State Board for Educator Certification [~~SBEC~~] that commence when a request for hearing is timely filed under this chapter.

(16) [~~(15)~~] Educator-- A [~~a~~] person who is required to hold a certificate issued under the Texas Education Code [~~TEC~~] , Chapter 21, Subchapter B.

(17) [~~(16)~~] Effective date-- As [~~as~~] applied to a non-rulemaking decision or action by the State Board for Educator Certification [~~SBEC~~] or the Texas Education Agency [~~TEA~~] staff, the date the decision or action becomes final under the appropriate legal authority.

(18) Endanger--Exposure of a student or minor [~~child~~] to **unjustified** **[~~the~~]** risk of injury or to injury that jeopardizes the physical health or safety of the student or minor [~~child~~] without regard to whether there has been an actual injury to the student or minor [~~child~~] .

(19) [~~(17)~~] Examinee-- A [~~a~~] person who registers to take or who takes a basic skills examination prescribed by the State Board for Educator Certification (SBEC) [~~SBEC~~] for admission to an educator preparation program or a comprehensive examination prescribed by the SBEC for a certificate.

(20) [~~(18)~~] Filing-- Any [~~any~~] written petition, answer, motion, response, other written instrument, or item appropriately filed with the Texas Education Agency [~~TEA~~] staff, the State Board for Educator Certification [~~SBEC~~] , or the State Office of Administrative Hearings [~~SOAH~~] under this chapter.

(21) [~~(19)~~] Good moral character-- The [~~the~~] virtues of a person as evidenced, at a minimum, by his or her not having committed 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 Convictions for a Certificate under Texas Occupations Code, Chapter 53) or acts involving moral turpitude.

(22) [~~(20)~~] Informal conference-- An [~~an~~] informal meeting between the Texas Education Agency [~~TEA~~] staff and an educator, applicant, or examinee; the purpose of such a meeting being to give the person an opportunity to show compliance with all requirements of law for the granting or retention of a certificate or test score.

(23) [~~(21)~~] Invalidation-- Rendered [~~rendered~~] void; lacking legal or administrative efficacy.

(24) [~~(22)~~] Law-- The [~~the~~] United States and Texas Constitutions, state and federal statutes, regulations, rules, relevant case law, and decisions and orders of the State Board for Educator Certification [~~SBEC~~] and the commissioner of education.

(25) [~~(23)~~] Mail-- Certified [~~certified~~] United States mail, return receipt requested, unless otherwise provided by this chapter.

(26) [~~(24)~~] Majority-- A [~~a~~] majority of the voting members of the State Board for Educator Certification [~~SBEC~~] who are present and voting on the issue at the time the vote is recorded.

(27) [~~(25)~~] Moral turpitude-- Improper [~~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 Convictions for a Certificate under Texas Occupations Code, Chapter 53); or acts constituting abuse or neglect under the Texas Family Code, §261.001.

(28) 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.

[~~(28) Neglect--As defined in the Texas Family Code, §261.001(4).~~]

[~~(29) Negligence--Failure to exercise the degree of care that a reasonably prudent~~ [~~reasonable~~] ~~person would exercise under the same or similar circumstances.~~]

(29) **[~~(30)~~]** [~~(26)~~] Party-- Each [~~each~~] person named or admitted to participate in a contested case under this chapter.

(30) **[~~(31)~~]** [~~(27)~~] Person-- Any [~~any~~] individual, representative, corporation, or other entity, including the following: an educator, applicant, or examinee; the Texas Education Agency [~~TEA~~] staff, State Board for Educator Certification [~~SBEC~~] , or State Office of Administrative Hearings [~~SOAH~~] ; any other agency or instrumentality of federal, state, or local government; or any public or non-profit corporation.

(31) **[~~(32)~~]** [~~(28)~~] Petition-- The [~~the~~] written pleading filed by the petitioner in a contested case under this chapter.

(32) **[~~(33)~~]** [~~(29)~~] Petitioner-- The [~~the~~] party having the burden of proof by a preponderance of the evidence in any contested case hearing or proceeding under this chapter. The term includes the following persons:

(A) the Texas Education Agency (TEA) [~~TEA~~] staff;

(B) a person appealing the administrative cancellation of scores based on irregularities involving a TEA-administered test; and

(C) a person appealing the administrative denial of any of the following:

(i) certification (including certification following revocation, cancellation, or surrender of a previously issued certificate) or renewal of certification; or

(ii) reinstatement of a suspended certificate.

(33) **[~~(34)~~]** Physical mistreatment--Any act of unreasonable or offensive touching that would be offensive to a reasonable person in a similar circumstance. It is an affirmative defense that any unreasonable or offensive touching was justified under the circumstances, using a reasonable person standard.

(34) **[~~(35)~~]** [~~(30)~~] Presiding officer-- The [~~the~~] chair or acting chair of the State Board for Educator Certification [~~SBEC~~] .

(35) **[~~(36)~~]** [~~(31)~~] Proposal for decision-- A [~~a~~] recommended decision issued by an administrative law judge [~~ALJ~~] in accordance with the Texas Government Code, §2001.062.

(36) **[~~(37)~~]** [~~(32)~~] Quorum-- A [~~a~~] majority of the 14 members appointed to and serving on the State Board for Educator Certification (SBEC) [~~SBEC~~] pursuant to the Texas Education Code [~~TEC~~], §21.033; eight SBEC members, as specified in the SBEC Operating Policies and Procedures.

(37) **[~~(38)~~]** 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 the result will occur.

(38) **[~~(39)~~]** [~~(38)~~] [~~(33)~~] Reinstatement-- The [~~the~~] reactivation to valid status of a certificate suspended by the State Board for Educator Certification [~~SBEC~~] ; the lifting or discharging of a suspension on a certificate.

(39) **[~~(40)~~]** [~~(39)~~] [~~(34)~~] Representative-- A [~~a~~] person representing an educator, applicant, or examinee in matters arising under this chapter; in a contested case proceeding before the State Office of Administrative Hearings [~~SOAH~~] , an attorney licensed to practice law in the State of Texas.

(40) **[~~(41)~~]** [~~(40)~~] [~~(35)~~] Reprimand-- The State Board for Educator Certification's [~~the SBEC's~~] formal censuring of a certificate holder.

(A) An "inscribed reprimand" is a formal, published censure appearing on the face of the educator's virtual certificate.

(B) A "non-inscribed reprimand" is a formal, unpublished censure that does not appear on the face of the educator's virtual certificate.

(41) **[~~(42)~~]** [~~(41)~~] [~~(36)~~] Revocation-- A [~~a~~] sanction imposed by the State Board for Educator Certification [~~SBEC permanently~~] invalidating an educator's certificate.

(42) **[~~(43)~~]** [~~(42)~~] [~~(37)~~] Respondent-- The [~~the~~] party who contests factual or legal issues or both raised in a petition; the party filing an answer in response to a petition.

(43) **[~~(44)~~]** [~~(43)~~] [~~(38)~~] Sanction--

(A) a disciplinary action by the State Board for Educator Certification [~~SBEC~~] , including a restriction, reprimand, suspension, surrender, or revocation of a certificate; or

(B) a reasonable and lawful punitive measure imposed by the administrative law judge [~~ALJ~~] or presiding officer against a party, representative, or other participant involved in a disciplinary proceeding, hearing, or other matter under this chapter.

(44) **[~~(45)~~]** [~~(44)~~] [~~(39)~~] State Board for Educator Certification-- The State Board for Educator Certification [~~the SBEC~~] acting through its voting members in a decision-making capacity.

(45) **[~~(46)~~]** [~~(45)~~] [~~(40)~~] State Board for Educator Certification member(s)-- One [~~one~~] or more of the members of the State Board for Educator Certification [~~SBEC~~] , appointed and qualified under the Texas Education Code [~~TEC~~] , §21.033.

(46) **[~~(47)~~]** [~~(46)~~] 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.

(47) **[~~(48)~~]** [~~(47)~~] [~~(41)~~] Surrender-- An [~~an~~] educator's voluntary [~~, permanent~~] relinquishment and invalidation of a particular certificate in lieu of disciplinary proceedings under this chapter and possible revocation of the certificate.

(48) **[~~(49)~~]** [~~(48)~~] [~~(42)~~] Suspension-- A [~~a~~] sanction imposed by the State Board for Educator Certification (SBEC) [~~SBEC~~] temporarily invalidating a particular certificate until reinstated by the SBEC.

(49) **[~~(50)~~]** [~~(49)~~] [~~(43)~~] Test administration rules or procedures-- Rules [~~rules~~] and procedures governing professional examinations administered by the State Board for Educator Certification [~~SBEC~~] through the Texas Education Agency [~~TEA~~] staff and a test contractor, including policies, regulations, and procedures set out in a test registration bulletin.

(50) **[~~(51)~~]** [~~(50)~~] [~~(44)~~] Texas Education Agency staff-- Staff [~~staff~~] of the Texas Education Agency [~~TEA~~] assigned by the commissioner of education to perform the State Board for Educator Certification's [~~SBEC's~~] administrative functions and services.

(51) **[~~(52)~~]** [~~(51)~~] [~~(45)~~] Unworthy to instruct or to supervise the youth of this state-- Absence 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 Chapter 247 of this title (relating to Educators' Code of Ethics). Unworthy to instruct serves as a basis for sanctions under §249.15(b)(2) of this title (relating to Disciplinary Action by State Board for Educator Certification) and is not limited to specific criminal convictions. [~~the determination that a person is unfit to hold a certificate under the TEC, Chapter 21, Subchapter B, or to be allowed on a school campus under the auspices of an educator preparation program.~~]

(52) **[~~(53)~~]** [~~(52)~~] [~~(46)~~] Virtual certificate-- The [~~the~~] official record of a person's certificate status as maintained on the Texas Education Agency's [~~SBEC's~~] website.

(53) **[~~(54)~~]** 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 Chapter 247 of this title (relating to Educators' Code of Ethics). "Unworthy to instruct" serves as a basis for sanctions under §249.15(b)(2) of this title (relating to Disciplinary Action by State Board for Educator Certification) and is not limited to specific criminal convictions.