Item 6:

Adoption of Proposed Amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, and 19 TAC Chapter 247, Educators' Code of Ethics, §247.1, Purpose and Scope; Definitions

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, the proposed amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, and 19 TAC Chapter 247, Educators' Code of Ethics, §247.1, Purpose and Scope; Definitions. The proposed amendments to 19 TAC Chapter 249 would update statutory and administrative rule references, as well as clarify and streamline the SBEC disciplinary procedures and standards. This item also proposes an amendment to 19 TAC §247.1 to ensure that the definitions are consistent with 19 TAC §249.3, Definitions. Any additional changes recommended by Texas Education Agency (TEA) staff since published as proposed will be provided to the SBEC under separate cover prior to the October 2011 meeting.

STATUTORY AUTHORITY: The statutory authority for 19 TAC Chapter 249, Subchapter A, is the Texas Education Code (TEC), §§21.006(b-1) and (g); 21.007; 21.031(a); 21.035; 21.040(6) and (7); 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a); 21.058; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.087; and 57.491(g); Texas Government Code, §§411.087, 411.090, and 2001.058(f); Texas Family Code, §261.308(d) and (e) and §261.406(a) and (b); and Texas Occupations Code, §§53.021(a), 53.022-53.025, 53.051, and 53.052; for Subchapter B is the TEC, §§21.006(b-1) and (g); 21.007; 21.031(a); 21.035; 21.040(6) and (7); 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a); 21.058; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.087; and 57.491(g); Texas Government Code, §§411.087, 411.090, and 2001.058(f); Texas Family Code, §261.308(d) and (e) and §261.406(a) and (b); and Texas Occupations Code, §§53.021(a), 53.022-53.025, and 53.051; for Subchapter C is the TEC, §§21.031(a); 21.035; 21.040(6) and (7); and 21.041(a) and (b)(1) and (7); Texas Government Code, §2001.058(f); and Texas Occupations Code, §53.024 and §53.051; for Subchapter D is the TEC, §§21.031(a); 21.035; 21.040(6) and (7); and 21.041(a) and (b)(1) and (7); Texas Government Code, §2001.058(f); and Texas Occupations Code, §53.024 and §53.051; and for Subchapter E is the TEC, §§21.031(a); 21.035; 21.040(6) and (7); and 21.041(a) and (b)(1), (4), and (7); Texas Government Code, §2001.058(f); and Texas Occupations Code, §§53.021(a), 53.022-53.025, and 53.051. The statutory authority for 19 TAC §247.1 is the TEC, §21.041(b)(1), (7), and (8).

EFFECTIVE DATE: The proposed effective date of the proposed amendments to 19 TAC Chapter 249 and §247.1 would be December 22, 2011 (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: A majority of the rules in 19 TAC Chapter 249 were amended to be effective December 16, 2007. Section 249.3 was last amended to be effective December 26, 2010. Section 249.14 was last amended to be effective October 25, 2009. Section 249.15 and §249.16 were last amended to be effective June 21, 2009. In 2007, 19 TAC Chapter 249, Subchapter F, Enforcement of the Educator's Code of Ethics, §§249.46-249.56, were repealed effective December 16, 2007.

Section 247.1 was adopted to be effective March 1, 1998, and last amended to be effective December 26, 2010.

At the June 2011 meeting, the SBEC discussed the proposed amendments to 19 TAC Chapter 249. The SBEC approved the amendments to Chapter 249 and §247.1 for filing as proposed at the August 2011 meeting.

BACKGROUND INFORMATION AND SIGNIFICANT ISSUES: The SBEC rules in 19 TAC Chapter 249 are organized as follows: Subchapter A, General Provisions; Subchapter B, Enforcement Actions and Guidelines; Subchapter C, Prehearing Matters; Subchapter D, Hearing Procedures; and Subchapter E, Posthearing Matters. These subchapters provide for rules that establish guidelines and procedures for conducting investigations and disciplinary actions relating to educator misconduct. Section 247.1, Purpose and Scope; Definitions, contains definitions for words, terms, and phrases used in 19 TAC Chapter 247, Educators' Code of Ethics.

The proposed amendments to 19 TAC Chapter 249, shown in Attachment II, would streamline SBEC disciplinary procedures and standards and reflect input from stakeholders at a meeting held on May 13, 2011, and the SBEC at the June 2011 meeting. Throughout the proposed amendments there are also numerous changes made to clarify the language of the rules, to update statutory and rule references, and to better comply with *Texas Register* rule format. Therefore, amendments shown in Attachments II and III that are not discussed in the following are intended as non-substantive amendments made for one of these purposes. Following is a description of the proposed amendments to 19 TAC Chapter 249 and 19 TAC §247.1.

Proposed Amendments to Subchapter A, General Provisions

Section 249.3

Section 249.3 would be restructured for consistency and readability. In §249.3(2), the definition of "administrative denial" would be reorganized for better clarity and amended to eliminate admission to an educator preparation program as a matter subject to the definition, since current SBEC rules do not provide for SBEC review of such admissions. The definition of "applicant" in §249.3(5) and the definition of "certificate" in §249.3(7) would be simplified for purposes of clarity. In §249.3(12), the definition of "complaint" would be amended to add the requirement of providing the complainant's name and contact information. The definition of "contested case" in §249.3(13) would be amended to clarify that it applies to all cases in which a petition pursuant to this chapter is served, whether or not, as in the case of a default proceeding, the case is referred to the State Office of Administrative Hearings (SOAH).

In §249.3(14), the definition of "conviction" would be revised by eliminating the reference to "deferred adjudication" and defining that term separately as §249.3(15). The new definition

would clarify that a defendant's acceptance of deferred adjudication may be considered as prima facie evidence that the defendant committed the conduct underlying the criminal charge. In §249.3(16), the definition of "disciplinary proceedings" would be amended to apply only to proceedings that result in a final order or finding. A definition of the term "expired" would be added as §249.3(21), and a definition of the term "inactive" would be added as §249.3(24) to clarify the distinction between those terms when used to describe certificate status.

In §249.3(23), the definition of "good moral character" would be amended to add a positive definition of the term to the existing description of crimes and acts that indicate an absence of good moral character, while reflecting the necessary discretion that must be exercised by the SBEC in determining whether or not an educator possesses good moral character. A definition for "permanent revocation" would be added as §249.3(33) to specify that this term applies to a revocation that excludes the opportunity to reapply at a later time for a new certificate.

In §249.3(36), the definition of "petitioner" would be amended by eliminating the list of parties to whom that term may apply. In §249.3(40), the definition of "quorum" would be amended to specify that a quorum may include non-voting as well as voting members. In §249.3(42), the definition of "reinstatement" would be amended to clarify the term, as used in this chapter, and that it applies only to a suspended certificate. A definition for the term "reported criminal history" would be added as §249.3(43) to help clarify one of the circumstances that requires superintendent reporting under §249.14(d). A definition for "restricted" would be added in §249.3(47) to describe the imposition of restrictions or conditions on a certificate. The definition for "sanction" would be amended in §249.3(49) to clarify that the term applies to disciplinary action taken by the SBEC. In §249.3(50), "serious state assessment testing violation" would be defined as involving educator dishonesty or the attempt to alter required state assessment scores.

The definition for "solicitation of a romantic relationship" that is currently in 19 TAC §249.14(m) would be amended and moved as §249.3(51) for purposes of clarity, completeness, and the elimination of redundancies. The amended definition would attempt to expressly exclude appropriate educator-student relationships while retaining the list of acts and behaviors that, when considered in context, may indicate inappropriate solicitation of a romantic relationship. In §249.3(59), the definition of "unworthy to instruct or supervise the youth of this state" would be amended to reflect that a determination of unworthy to instruct can serve as a basis, not only for sanctions, but also for administrative denial under 19 TAC §249.12. The definition of "worthy to instruct or supervise the youth of this state" in current §249.3(53), would be deleted since that term is defined in 19 TAC §247.1(e)(21) and is not used in 19 TAC Chapter 249. A definition for "warning letter" would be added as §249.3(61), which specifies that such a letter is not a sanction or a finding that would be subject to appeal.

Sections 249.4-249.10

Section 249.4 would be amended to clarify that a proceeding seeking sanctions against a certificate for testing violations pursuant to 19 TAC Chapter 101, Assessment, is subject to the provisions of 19 TAC Chapter 249. Section 249.7 and its title would be amended to reflect the fact that the SBEC does not maintain a seal. Section 249.10 would be amended to clarify the applicability of the rules of decorum and the imposition of sanctions for violations of those rules.

Proposed Amendments to Subchapter B, Enforcement Actions and Guidelines

Sections 249.11-249.13

Sections 249.11-249.13 would be restructured for consistency and readability. Section 249.11 would be amended to clarify the provisions regarding the notice to an examinee whose test scores have been canceled or who has been barred from registering for a test, the right of an examinee to appeal such action, time limits, and the requirements of an appeal petition.

Section 249.12(a) would be amended to reference the definition of "administrative denial" in §249.3 and to clarify that it does not apply to the failure to issue a certificate because specific certification requirements have not been met. In §249.12, the list of factual bases for an administrative denial in subsection (b) would be reorganized for greater clarity, while subsections (c) and (d) would be amended to clarify notice, response, and appeal procedures, as well as time limits and other requirements for an appeal.

Section 249.13 would be amended to specify the effective date of a certificate cancellation, as well as provisions regarding the notice of intent to cancel, the right to show cause why a certificate should not be canceled, and the right to appeal cancellation. The proposed amendment would also clarify that the appeal provisions in §249.12 with regard to notice, time limits, requirements of an appeal petition, and burden of proof apply to a cancellation appeal as if it were an administrative denial.

Section 249.14

Section 249.14 would be restructured for consistency and readability. Section 249.14(d) would be amended to specify that a superintendent may be subject to certificate sanctions for failure to comply with the reporting provisions of this section. Section 249.14(d)(3) would be amended to require a superintendent to complete an investigation based on reasonable cause to believe the educator has committed one of the specified acts of misconduct, even if the educator resigns before the investigation is complete, as required by House Bill 1610, 82nd Texas Legislature, 2011. Section 249.14(e) would be amended to specify that the report a superintendent is required to make pursuant to the TEC, §21.006, regarding allegations of abuse or unlawful conduct by an educator, must include the name or names of any student or minor victim of such alleged conduct and to make reference to the federal regulations interpreting the Family Educational Rights and Privacy Act (FERPA) that exclude employee records from the definition of student education records subject to FERPA privacy provisions. Proposed §249.14(f) would be added to incorporate a new statutory reporting requirement for school boards who learn of a failure by a principal to provide the notice of student criminal history to staff that is required by the Texas Code of Criminal Procedure, §15.27(e). Current §249.14(f) would be re-ordered as proposed §249.14(g) and amended to add provisions regarding the effective date of separation from employment for purposes of a contract abandonment complaint to make the determination of the effective date more definite, to specify the documents that must be submitted as attachments to such a complaint, and to clarify that if a school board does not meet within the 30-day time limit for submitting a complaint, the required board minutes may be provided within 10 calendar days of the next board meeting. Proposed §249.14(g) would also be amended to incorporate the limitation of the TEC, §21.4021(g), on sanctions for contract abandonment after a furlough policy has been adopted by a school district. Current §249.14(g) would be re-ordered as proposed §249.14(h) and amended to clarify that Priority 2 conduct is conduct that is not

included in Priority 1 that is sanctionable under SBEC rules, and the definition of serious testing violation would be deleted since it would be covered under the definition in §249.3(50). Current §249.14(m) would also be deleted since "solicitation of a romantic relationship" would be defined in §249.3(51).

Sections 249.15-249.17

Section 249.15 would be restructured for consistency and readability. Section 249.15 would be amended to add proposed new subsection (b) regarding the issuance of a warning letter. Current §249.15(b) would be re-ordered as proposed §249.15(c) and amended to specify that failing to file a report required by §249.14(d) or (e), or willfully or recklessly failing to provide information required by other SBEC rule, including §229.3, Required Submissions of Information, Surveys, and Other Data, is a basis for educator certificate sanctions. Proposed §249.15(c) would also be amended to include specific reference to violation of assessment security and integrity as a ground for sanctions. Current §249.15(b)(7) would be re-ordered as proposed §249.15(c)(9) and amended to spell out the conduct described in §249.14(h)(1) that is a basis for educator certificate sanctions. The references to §249.12(b) and §249.16(b) would be deleted as unnecessary. Proposed new §249.15(c)(10) would be added to spell out conduct described in §249.16(b). Proposed new §249.15(c)(11) would be added to incorporate the Texas Code of Criminal Procedure, §15.27(a), which grants authority to the SBEC to sanction educators who intentionally fail to comply with the requirements of that subsection. Section 249.17(b) would be amended to add written SBEC disciplinary policies to the list of aids to construction and application of Chapter 249. Section 249.17(d)(5) would be amended to more clearly specify the drug offenses to which it applies.

Proposed Amendments to Subchapter C, Prehearing Matters

Section 249.18 and §249.24 would be amended to clarify that petitions and other documents are to be served on the TEA staff rather than filed, since there is no formal TEA filing or docketing system for such documents. Section 249.25 would be restructured for consistency and readability and to specify that pleadings may be amended at any time that does not unduly prejudice the opposing party. Section 249.26(b)(6) would be amended to emphasize the requirement to file an answer to a petition within 30 calendar days. Section 249.26(c) would be amended to clarify the address to which a petition authorized by 19 TAC Chapter 249 may be served. Section 249.27 would be amended to add an email address to the contact information to be included in an answer and would clarify that a legally insufficient answer may serve as a basis for a default judgment under any procedure authorized by Chapter 249.

Proposed Amendments to Subchapter D, Hearing Procedures

Section 249.30 would be restructured for consistency and readability. Section 249.30 would be amended to clarify the address to which a notice of hearing may be served, to provide that service to that address is legally sufficient, and to provide that service to any other possible address may be given by any means, including regular mail, facsimile, or email. Section 249.35 would be amended to clarify the procedures for prehearing and default dispositions of a contested case.

Proposed Amendments to Subchapter E, Posthearing Matters

Sections 249.36, 249.37, and 249.41-249.43 would be restructured for consistency and readability. Section 249.36 would be amended to clarify that a proposal for decision issued by an administrative law judge (ALJ) shall contain findings of fact and conclusions of law. Section 249.37 would be amended to provide that exceptions to a proposal for decision would be filed with the ALJ and served on the other party and are not required to be served on the SBEC. Filing deadlines for exceptions and replies would be amended to be consistent with the SOAH rules of procedure. Section 249.39 would be amended to provide that a copy of the SBEC order or decision may be delivered to the SOAH by facsimile or email. In addition, language would be added to reflect current SBEC practice of authorizing the chair or other board officer to sign on behalf of the board, unless members of the majority adopting the decision or order exercise their discretion to sign the decision or order. Section 249.40 would be amended to provide that the TEA should be reimbursed for the costs of preparing a record for appeal on the same basis as the charges for providing public information pursuant to 1 TAC Chapter 70, Cost of Copies of Public Information.

Section 249.41 would be amended to eliminate a reference to retaining copies of a certificate subject to a non-inscribed reprimand that is no longer necessary since the educator's virtual certificate on the TEA website is the official record of certification. Section 249.42 would be amended to eliminate the requirement of mailing a notice that an order of suspension, surrender, or revocation has become final, since the requirement to mail a copy of the order issued by the SBEC is sufficient and would eliminate the general requirement of notice of such an order by mail to schools other than the school where the educator is known to be employed. Section 249.43 would be amended to eliminate the requirement of applying for a duplicate certificate and to specify new procedures for reinstating a suspended certificate. Section 249.44(b) would be amended to specify that a person reapplying for certification after denial, revocation, or surrender must be recommended for certification by an approved educator preparation program and must satisfy the same requirements for certification that are applicable to any other new applicant. Section 249.44(c) would also be amended to provide that permanent revocation, without opportunity to reapply for certification, may be ordered by the SBEC pursuant to §249.17(d) or otherwise as deemed appropriate.

Proposed Amendment to 19 TAC §247.1, Purpose and Scope; Definitions

This item also presents the proposed amendment to 19 TAC Chapter 247, Educators' Code of Ethics, §247.1, Purpose and Scope; Definitions, shown in Attachment III. The proposed amendment to 19 TAC §247.1(e) would make consistent the definitions of terms that are used in both 19 TAC Chapter 247 and 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases. In §247.1(e)(2), the definition of "applicant" would be simplified for purposes of clarity. In §247.1(e)(4), the definition of "complaint" would be amended to add the requirement of providing the complainant's name and contact information. The definition of "contested case" in §247.1(e)(5) would be amended to clarify that it applies to all cases in which a petition pursuant to this chapter is served, whether or not, as in the case of a default proceeding, the case is referred to the SOAH. In §247.1(e)(6), the definition of "disciplinary proceedings" would be amended to apply only to proceedings that result in a final order or finding. In §247.1(e)(9), the definition of "good moral character" would be amended to add a positive definition of the term to the existing description of crimes and acts that indicate an absence of good moral character, while reflecting the necessary discretion that must be

exercised by the SBEC in determining whether or not an educator possesses good moral character. The definition for "sanction" would be amended in §247.1(e)(16) to clarify that the term applies to disciplinary action taken by the SBEC. The reference to "unworthy to instruct" in §247.1(e)(21) would be deleted as unnecessary.

FISCAL IMPACT: The TEA staff have determined that there are no additional costs to persons or entities required to comply with the proposed amendments. In addition, 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 benefit anticipated as a result of the proposed amendments would be updated definitions and streamlined procedures for prosecuting disciplinary cases, allowing for a more efficient resolution of contested disciplinary cases that is consistent with constitutional due process requirements.

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

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

PUBLIC COMMENTS: Following the August 2011 SBEC meeting, the proposed amendments to 19 TAC Chapter 249 and 19 TAC §247.1 were filed with the *Texas Register* initiating the official public comment period. Any public comments received will be provided to the SBEC under separate cover prior to the October 2011 meeting.

ALTERNATIVES: None.

OTHER COMMENTS AND RELATED ISSUES: A stakeholder meeting was held on May 13, 2011, for the purpose of reviewing and seeking input related to the proposed amendments to 19 TAC Chapter 249. The stakeholders included representatives from school districts, educator preparation programs, professional associations, and TEA staff.

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

> Approve for adoption, subject to State Board of Education review, the proposed amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, 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 247, Educators' Code of Ethics, §247.1, Purpose and Scope; Definitions, with an effective date of 20 days after filing as adopted with the *Texas Register*.

Respectfully submitted,

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Attachments:
I. Statutory Citations
II. Text of Proposed Amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases
III. Text of Proposed Amendment to 19 TAC Chapter 247, Educators' Code of Ethics, §247.1, Purpose and Scope; Definitions

ATTACHMENT I

Statutory Citations Relating to Proposed Amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, and 19 TAC Chapter 247, Educators' Code of Ethics, §247.1, Purpose and Scope; Definitions

Texas Education Code, §21.006, Requirement to Report Misconduct, as amended by House Bill 1610, 82nd Texas Legislature, 2011 (excerpts):

(b-1) A superintendent or director of a school district shall complete an investigation of an educator that is based on reasonable cause to believe the educator may have engaged in misconduct described by Subsection (b)(2)(A), despite the educator's resignation from district employment before completion of the investigation.

(g) The State Board for Educator Certification shall propose rules as necessary to implement this section.

Texas Education Code, §21.007, Notice on Certification Record of Alleged Misconduct:

(a) In this section, "board" means the State Board for Educator Certification.

(b) The board shall adopt a procedure for placing a notice of alleged misconduct on an educator's public certification records. The procedure adopted by the board must provide for immediate placement of a notice of alleged misconduct on an educator's public certification records if the alleged misconduct presents a risk to the health, safety, or welfare of a student or minor as determined by the board.

(c) The board must notify an educator in writing when placing a notice of an alleged incident of misconduct on the public certification records of the educator.

(d) The board must provide an opportunity for an educator to show cause why the notice should not be placed on the educator's public certification records. The board shall propose rules establishing the length of time that a notice may remain on the educator's public certification records before the board must:

(1) initiate a proceeding to impose a sanction on the educator on the basis of the alleged misconduct; or

(2) remove the notice from the educator's public certification records.

(e) If it is determined that the educator has not engaged in the alleged incident of misconduct, the board shall immediately remove the notice from the educator's public certification records.

(f) The board shall propose rules necessary to administer this section.

Texas Education Code, §21.031, Purpose (excerpt):

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

Texas Education Code, §21.035, Administration by Agency:

The Texas Education Agency shall provide the board's administrative functions and services.

Texas Education Code, §21.040, General Powers and Duties of Board, as amended by Senate Bill 1179, 82nd Texas Legislature, 2011 (excerpts):

The board shall:

(6) develop and implement policies that clearly define the respective responsibilities of the board and the board's staff; and

(7) [~~file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report, in the form and within the time provided by the General Appropriations Act, accounting for all funds received and disbursed by the board during the preceding fiscal year; and~~]

[~~(8)~~] execute interagency contracts to perform routine administrative functions.

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

(a) The board may adopt rules as necessary for its own procedures.

(b) The board shall propose rules that:

(1) provide for the regulation of educators and the general administration of this subchapter in a manner consistent with this subchapter;

(4) specify the requirements for the issuance and renewal of an educator certificate;

(7) provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Chapter 2001, Government Code;

(8) provide for the adoption, amendment, and enforcement of an educator's code of ethics;

Texas Education Code, §21.044, Educator Preparation, as amended by Senate Bills 866 and 1620, 82nd Texas Legislature, 2011 (excerpt):

(a) The board shall propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program. The board shall specify the minimum academic qualifications required for a certificate.

Texas Education Code, §21.058, Revocation of Certificate and Termination of Employment Based on Conviction of Certain Offenses, as amended by House Bill 1610, 82nd Texas Legislature, 2011:

(a) The procedures described by Subsections (b) and (c) apply [~~This section applies~~] only:

(1) to conviction of a felony offense under Title 5, Penal Code, or an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; and

(2) if the victim of the offense is under 18 years of age.

(b) Notwithstanding Section 21.041(b)(7), not later than the fifth day after the date the board receives notice under Article 42.018, Code of Criminal Procedure, of the conviction of a person who holds a certificate under this subchapter, the board shall:

(1) revoke the certificate held by the person; and

(2) provide to the person and to any school district or open-enrollment charter school employing the person at the time of revocation written notice of:

(A) the revocation; and

(B) the basis for the revocation.

(c) A school district or open-enrollment charter school that receives notice under Subsection (b) of the revocation of a certificate issued under this subchapter shall:

(1) immediately remove the person whose certificate has been revoked from campus or from an administrative office, as applicable, to prevent the person from having any contact with a student; and

(2) if the person is employed under a probationary, continuing, or term contract under this chapter:

(A) suspend the person without pay;

(B) provide the person with written notice that the person's contract is void as provided by Subsection (c-2); and

(C) [~~as soon as practicable,~~] terminate the employment of the person as soon as practicable [~~in accordance with the person's contract and with this subchapter~~] .

(c-1) If a school district or open-enrollment charter school becomes aware that a person employed by the district or school under a probationary, continuing, or term contract under this chapter has been convicted of or received deferred adjudication for a felony offense, and the person is not subject to Subsection (c), the district or school may:

(1) suspend the person without pay;

(2) provide the person with written notice that the person's contract is void as provided by Subsection (c-2); and

(3) terminate the employment of the person as soon as practicable.

(c-2) A person's probationary, continuing, or term contract is void if the school district or open-enrollment charter school takes action under Subsection (c)(2)(B) or (c-1)(2).

(d) A person whose certificate is revoked under Subsection (b) may reapply for a certificate in accordance with board rules.

(e) Action taken by a school district or open-enrollment charter school under Subsection (c) or (c-1) is not subject to appeal under this chapter, and the notice and hearing requirements of this chapter do not apply to the action.

Texas Education Code, §21.060, Eligibility of Persons Convicted of Certain Offenses:

The board may suspend or revoke the certificate or permit held by a person under this subchapter, impose other sanctions against the person, or refuse to issue a certificate or permit to a person under this subchapter if the person has been convicted of a felony or misdemeanor offense relating to the duties and responsibilities of the education profession, including:

(1) an offense involving moral turpitude;

(2) an offense involving a form of sexual or physical abuse of a minor or student or other illegal conduct in which the victim is a minor or student;

(3) a felony offense involving the possession, transfer, sale, or distribution of or conspiracy to possess, transfer, sell, or distribute a controlled substance, as

defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;

(4) an offense involving the illegal transfer, appropriation, or use of school district funds or other district property; or

(5) an offense involving an attempt by fraudulent or unauthorized means to obtain or alter a professional certificate or license issued under this subchapter.

Texas Education Code, §21.105, Resignations Under Probationary Contract (excerpt):

(c) On written complaint by the employing district, the State Board for Educator Certification may impose sanctions against a teacher employed under a probationary contract who:

(1) resigns;

(2) fails without good cause to comply with Subsection (a) or (b); and

(3) fails to perform the contract.

Texas Education Code, §21.160, Resignation Under Continuing Contract (excerpt):

(c) On written complaint by the employing district, the State Board for Educator Certification may impose sanctions against a teacher who is employed under a continuing contract that obligates the district to employ the person for the following school year and who:

(1) resigns;

(2) fails without good cause to comply with Subsection (a) or (b); and

(3) fails to perform the contract.

Texas Education Code, §21.210, Resignation Under Term Contract (excerpt):

(c) On written complaint by the employing district, the State Board for Educator Certification may impose sanctions against a teacher who is employed under a term contract that obligates the district to employ the person for the following school year and who:

(1) resigns;

(2) fails without good cause to comply with Subsection (a) or (b); and

(3) fails to perform the contract.

Texas Education Code, §22.082, Access to Criminal History Records by State Board for Educator Certification:

The State Board for Educator Certification shall subscribe to the criminal history clearinghouse as provided by Section 411.0845, Government Code, and may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21.

Texas Education Code, §22.0831, National Criminal History Record Information Review of Certified Educators:

(a) In this section, "board" means the State Board for Educator Certification.

(b) This section applies to a person who is an applicant for or holder of a certificate under Subchapter B, Chapter 21, and who is employed by or is an applicant for employment by a school district, open-enrollment charter school, or shared services arrangement.

(c) The board shall review the national criminal history record information of a person who has not previously submitted fingerprints to the department or been subject to a national criminal history record information review.

(d) The board shall place an educator's certificate on inactive status for failure to comply with a deadline for submitting information required under this section.

(e) The board may allow a person who is applying for a certificate under Subchapter B, Chapter 21, and who currently resides in another state to submit the person's fingerprints and other required information in a manner that does not impose an undue hardship on the person.

(f) The board may propose rules to implement this section, including rules establishing:

(1) deadlines for a person to submit fingerprints and photographs in compliance with this section; and

(2) sanctions for a person's failure to comply with the requirements of this section, including suspension or revocation of a certificate or refusal to issue a certificate.

(g) The board by rule shall establish a schedule for obtaining and reviewing the information a certified educator must provide the board under this section. Not later than September 1, 2011, the board must obtain all national criminal history record information on all certified educators. This subsection expires October 1, 2011.

Texas Education Code, §22.087, <u>Notification to State Board for Educator Certification</u>:

The superintendent of a school district or the director of an open-enrollment charter school, private school, regional education service center, or shared services arrangement shall promptly notify the State Board for Educator Certification in writing if the person obtains or has knowledge of information showing that an applicant for or holder of a certificate issued under Subchapter B, Chapter 21, has a reported criminal history.

Texas Education Code, §57.491, <u>Loan Default Ground for Nonrenewal of Professional or Occupational License</u> (excerpt):

(g) A licensing agency shall not renew the license of a licensee who defaults on a repayment agreement unless the person presents to the agency a certificate issued by the corporation certifying that:

(1) the licensee has entered another repayment agreement on the defaulted loan; or

(2) the licensee is not in default on a loan guaranteed by the corporation or on a repayment agreement.

Texas Code of Criminal Procedure, §15.27, <u>Notification of Schools Required</u>, as amended by House Bill 1907, 82nd Texas Legislature, 2011 (excerpts):

(a) A law enforcement agency that arrests any person or refers a child to the office or official designated by the juvenile board who the agency believes is enrolled as a student in a public primary or secondary school, for an offense listed in Subsection (h), shall attempt to ascertain whether the person is so enrolled. If the law enforcement agency ascertains

that the individual is enrolled as a student in a public primary or secondary school, the head of the agency or a person designated by the head of the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of that arrest or referral within 24 hours after the arrest or referral is made, or before [~~on~~] the next school day, whichever is earlier. If the law enforcement agency cannot ascertain whether the individual is enrolled as a student, the head of the agency or a person designated by the head of the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is believed to be enrolled of that arrest or detention within 24 hours after the arrest or detention, or before [~~on~~] the next school day, whichever is earlier. If the individual is a student, the superintendent or the superintendent's designee shall immediately [~~promptly~~] notify all instructional and support personnel who have responsibility for supervision of the student. All personnel shall keep the information received in this subsection confidential. The State Board for Educator Certification may revoke or suspend the certification of personnel who intentionally violate this subsection. Within seven days after the date the oral notice is given, the head of the law enforcement agency or the person designated by the head of the agency shall mail written notification, marked "PERSONAL and CONFIDENTIAL" on the mailing envelope, to the superintendent or the person designated by the superintendent. The written notification must include the facts contained in the oral notification, the name of the person who was orally notified, and the date and time of the oral notification. Both the oral and written notice shall contain sufficient details of the arrest or referral and the acts allegedly committed by the student to enable the superintendent or the superintendent's designee to determine whether there is a reasonable belief that the student has engaged in conduct defined as a felony offense by the Penal Code. The information contained in the notice shall [~~may~~] be considered by the superintendent or the superintendent's designee in making such a determination.

(a-1) The superintendent or a person designated by the superintendent in the school district shall [~~may~~] send to a school district employee having direct supervisory responsibility over the student the information contained in the confidential notice under Subsection (a) [~~if the superintendent or the person designated by the superintendent determines that the employee needs the information for educational purposes or for the protection of the person informed or others~~].

(b) On conviction, deferred prosecution, or deferred adjudication or an adjudication of delinquent conduct of an individual enrolled as a student in a public primary or secondary school, for an offense or for any conduct listed in Subsection (h) of this article, the office of the prosecuting attorney acting in the case shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of the conviction or adjudication and whether the student is required to register as a sex offender under Chapter 62. Oral notification must be given within 24 hours of the time of the order or before [~~on~~] the next school day, whichever is earlier. The superintendent shall, within 24 hours of receiving notification from the office of the prosecuting attorney, or before the next school day, whichever is earlier, notify all instructional and support personnel who have regular contact with the student. Within seven days after the date the oral notice is given, the office of the prosecuting attorney shall mail written notice, which must contain a statement of the offense of which the individual is convicted or on which the adjudication, deferred adjudication, or deferred prosecution is grounded and a statement of whether the student is required to register as a sex offender under Chapter 62.

(e) (1) A law enforcement agency that arrests, or refers to a juvenile court under Chapter 52, Family Code, an individual who the law enforcement agency knows or believes is enrolled as a student in a private primary or secondary school shall make the oral and written notifications described by Subsection (a) to the principal or a school employee designated by the principal of the school in which the student is enrolled.

(2) On conviction, deferred prosecution, or deferred adjudication or an adjudication of delinquent conduct of an individual enrolled as a student in a private primary or secondary school, the office of prosecuting attorney shall make the oral and written notifications described by Subsection (b) of this article to the principal or a school employee designated by the principal of the school in which the student is enrolled.

(3) The principal of a private school in which the student is enrolled or a school employee designated by the principal shall [~~may~~] send to a school employee having direct supervisory responsibility over the student the information contained in the confidential notice, for the same purposes as described by Subsection (a-1) [~~(d)~~] of this article.

(l) If a school district board of trustees learns of a failure by the superintendent of the district or a district principal to provide a notice required under Subsection (a), (a-1), or (b), the board of trustees shall report the failure to the State Board for Educator Certification. If the governing body of a private primary or secondary school learns of a failure by the principal of the school to provide a notice required under Subsection (e), and the principal holds a certificate issued under Subchapter B, Chapter 21, Education Code, the governing body shall report the failure to the State Board for Educator Certification.

Texas Government Code, §411.087, Access to Criminal History Record Information Maintained By Federal Bureau of Investigation or Local Criminal Justice Agency, as amended by Senate Bill 1178, 82nd Texas Legislature, 2011:

(a) Unless otherwise authorized by Subsection (e), a [~~A~~] person, agency, department, political subdivision, or other entity that is authorized by this subchapter to obtain from the department criminal history record information maintained by the department that relates to another person is authorized to:

(1) obtain through the Federal Bureau of Investigation criminal history record information maintained or indexed by that bureau that pertains to that person; or

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person.

(b) Any restriction or limitation in this subchapter on criminal history record information that a person, agency, department, political subdivision, or other entity is entitled to obtain from the department applies equally to the criminal history record information that the person, agency, department, political subdivision, or other entity is entitled to obtain from the identification division of the Federal Bureau of Investigation or other criminal justice agency.

(c) Subsection (a) does not authorize a person, agency, department, political subdivision, or other entity to obtain criminal history record information from the identification division of the Federal Bureau of Investigation if dissemination of criminal history record information by the division is prohibited by federal law, executive order, or rule.

(d) A person, agency, department, political subdivision, or other entity that is not a criminal justice agency is entitled to obtain criminal history record information from the Federal Bureau of Investigation only if:

(1) the requestor submits a complete set of the individual's fingerprints and other identifying information and pays any fee required or approved by the bureau;

(2) no disqualifying record or information from a state or local criminal justice agency is known to the requestor; and

(3) the request is not for the purpose of discriminating against a person because of the person's race, sex, age, disability, religion, color, or national origin.

(e) The department may provide access to state and national criminal history record information to qualified [~~nongovernmental~~] entities entitled to that information under 42 U.S.C. Section 5119a. The department must follow federal law and regulation, federal executive orders, and federal policy in releasing information under this subsection.

(f) Notwithstanding any other law, a person, agency, department, political subdivision, or other entity entitled to access the criminal history record information of a person under Subsection (e) is not required to collect or submit the person's fingerprints if:

(1) a complete set of the person's fingerprints was previously submitted under Subsection (d)(1);

(2) the department retained the fingerprints;

(3) the fingerprints are acceptable to the Federal Bureau of Investigation for access to criminal history record information; and

(4) the only purpose for which the person's fingerprints are collected is to access criminal history record information under Subsection (e).

Texas Government Code, §411.090, Access to Criminal History Record Information: State Board for Educator Certification:

(a) The State Board for Educator Certification is entitled to obtain from the department any criminal history record information maintained by the department about a person who has applied to the board for a certificate under Subchapter B, Chapter 21, Education Code.

(b) Criminal history record information obtained by the board in the original form or any subsequent form:

(1) may be used only for a purpose related to the issuance, denial, suspension, or cancellation of a certificate issued by the board;

(2) may not be released to any person except:

(A) the person who is the subject of the information;

(B) the Texas Education Agency;

(C) a local or regional educational entity as provided by Section 411.097; or

(D) by court order;

(3) is not subject to disclosure as provided by Chapter 552; and

(4) shall be destroyed by the board after the information is used for the authorized purposes.

(c) The department shall notify the State Board for Educator Certification of the arrest of any educator, as defined by Section 5.001, Education Code, who has fingerprints on file with the department. Any record of the notification and any information contained in the notification is not subject to disclosure as provided by Chapter 552.

Texas Government Code, §2001.058, Hearing Conducted by State Office of Administrative Hearings (excerpt):

(f) A state agency by rule may provide that, in a contested case before the agency that concerns licensing in relation to an occupational license and that is not disposed of by stipulation, agreed settlement, or consent order, the administrative law judge shall render the final decision in the contested case. If a state agency adopts such a rule, the following provisions apply to contested cases covered by the rule:

(1) the administrative law judge shall render the decision that may become final under Section 2001.144 not later than the 60th day after the latter of the date on which the hearing is finally closed or the date by which the judge has ordered all briefs, reply briefs, and other posthearing documents to be filed, and the 60-day period may be extended only with the consent of all parties, including the occupational licensing agency;

(2) the administrative law judge shall include in the findings of fact and conclusions of law a determination whether the license at issue is primarily a license to engage in an occupation;

(3) the State Office of Administrative Hearings is the state agency with which a motion for rehearing or a reply to a motion for rehearing is filed under Section 2001.146 and is the state agency that acts on the motion or extends a time period under Section 2001.146;

(4) the State Office of Administrative Hearings is the state agency responsible for sending a copy of the decision that may become final under Section 2001.144 or an order ruling on a motion for rehearing to the parties, including the occupational licensing agency, in accordance with Section 2001.142; and

(5) the occupational licensing agency and any other party to the contested case is entitled to obtain judicial review of the final decision in accordance with this chapter.

Texas Family Code, §261.308, Submission of Investigation Report (excerpts):

(d) The department shall release information regarding a person alleged to have committed abuse or neglect to persons who have control over the person's access to children, including, as appropriate, the Texas Education Agency, the State Board for Educator Certification, the local school board or the school's governing body, the superintendent of the school district, or the school principal or director if the department determines that:

(1) the person alleged to have committed abuse or neglect poses a substantial and immediate risk of harm to one or more children outside the family of a child who is the subject of the investigation; and

(2) the release of the information is necessary to assist in protecting one or more children from the person alleged to have committed abuse or neglect.

(e) On request, the department shall release information about a person alleged to have committed abuse or neglect to the State Board for Educator Certification if the board has

a reasonable basis for believing that the information is necessary to assist the board in protecting children from the person alleged to have committed abuse or neglect.

Texas Family Code, §261.406, Investigations in Schools (excerpts):

(a) On receipt of a report of alleged or suspected abuse or neglect of a child in a public or private school under the jurisdiction of the Texas Education Agency, the department shall perform an investigation as provided by this chapter.

(b) The department shall send a copy of the completed report of the department's investigation to the Texas Education Agency, the State Board for Educator Certification, the local school board or the school's governing body, the superintendent of the school district, and the school principal or director, unless the principal or director is alleged to have committed the abuse or neglect, for appropriate action. On request, the department shall provide a copy of the report of investigation to the parent, managing conservator, or legal guardian of a child who is the subject of the investigation and to the person alleged to have committed the abuse or neglect. The report of investigation shall be edited to protect the identity of the persons who made the report of abuse or neglect. Other than the persons authorized by the section to receive a copy of the report, Section 261.201(b) applies to the release of the report relating to the investigation of abuse or neglect under this section and to the identity of the person who made the report of abuse or neglect.

Texas Occupations Code, §53.021, Authority to Revoke, Suspend, or Deny License (excerpt):

(a) A licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of:

(1) an offense that directly relates to the duties and responsibilities of the licensed occupation;

(2) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license;

(3) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or

(4) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

Texas Occupations Code, §53.022, Factors in Determining Whether Conviction Relates to Occupation:

In determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Texas Occupations Code, §53.023, Additional Factors for Licensing Authority to Consider:

(a) In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in Section 53.022:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and

(6) other evidence of the person's fitness, including letters of recommendation from:

(A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff or chief of police in the community where the person resides; and

(C) any other person in contact with the convicted person.

(b) The applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by Subsection (a)(6).

(c) In addition to fulfilling the requirements of Subsection (b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has:

(1) maintained a record of steady employment;

(2) supported the applicant's dependents;

(3) maintained a record of good conduct; and

(4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

Texas Occupations Code, §53.024, Proceedings Governed by Administrative Procedure Act:

A proceeding before a licensing authority to establish factors required to be considered under this subchapter is governed by Chapter 2001, Government Code.

Texas Occupations Code, §53.025, Guidelines:

(a) Each licensing authority shall issue guidelines relating to the practice of the licensing authority under this chapter. The guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

(b) A state licensing authority that issues guidelines under this section shall file the guidelines with the secretary of state for publication in the Texas Register.

(c) A local or county licensing authority that issues guidelines under this section shall post the guidelines at the courthouse for the county in which the licensing authority is located or publish the guidelines in a newspaper having countywide circulation in that county.

(d) Amendments to the guidelines, if any, shall be issued annually.

Texas Occupations Code, §53.051, Notice:

A licensing authority that suspends or revokes a license or denies a person a license or the opportunity to be examined for a license because of the person's prior conviction of a crime and the relationship of the crime to the license shall notify the person in writing of:

(1) the reason for the suspension, revocation, denial, or disqualification;

(2) the review procedure provided by Section 53.052; and

(3) the earliest date the person may appeal the action of the licensing authority.

Texas Occupations Code, §53.052, Judicial Review:

(a) A person whose license has been suspended or revoked or who has been denied a license or the opportunity to take an examination under Section 53.021 and who has exhausted the person's administrative appeals may file an action in the district court in the county in which the licensing authority is located for review of the evidence presented to the licensing authority and the decision of the licensing authority.

(b) The petition for an action under Subsection (a) must be filed not later than the 30th day after the date the licensing authority's decision is final and appealable.

ATTACHMENT II
Text of Proposed Amendments 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.

(2) Administrative denial--A decision or action by the Texas Education Agency staff , acting on behalf of the State Board for Educator Certification, to deny certification (including certification following revocation, cancellation, or surrender of a previously issued certificate), renewal of certification, or reinstatement of a previously suspended certificate [~~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 evidence of 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) Administrative law judge--A person appointed by the chief judge of the State Office of Administrative Hearings under the Texas Government Code, Chapter 2003.

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

(5) Applicant--A party seeking issuance, renewal, or reinstatement of a certificate from [~~any of the following from~~] the Texas Education Agency staff or the State Board for Educator Certification . [~~: 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) Cancellation--The invalidation of an erroneously issued certificate.

(7) Certificate--The whole or part of any educator credential, license, or [~~certificate,~~] permit issued under the Texas Education Code, Chapter 21, Subchapter B. [~~, approval, endorsement, or similar form of permission issued by the Texas Education Agency staff or the State Board for Educator~~

~~Certification.~~] The official certificate is the record of the certificate as maintained on the Texas Education Agency's website.

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

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

(10) Chief judge--The chief administrative law judge of the State Office of Administrative Hearings.

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

(12) Complaint--A written statement containing the complainant's verifiable contact information, including full name, complete address, and phone number, submitted to the Texas Education Agency staff that contains essential facts alleging improper conduct by an educator, applicant, or examinee, and provides grounds for sanctions.

(13) Contested case--A proceeding under this chapter in which the legal rights, duties, and privileges related to [~~of~~] a party's educator certificate [~~party~~] are to be determined by the State Board for Educator Certification and/or the State Office of Administrative Hearings commencing when a petition is properly served under this chapter [~~after an opportunity for an adjudicative hearing~~] .

(14) Conviction--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.~~]

(15) Deferred adjudication--The resolution of a criminal charge, based on a defendant's plea to the offense of guilty or nolo contendere, which results in the suspension of adjudication of the defendant's guilt and the imposition of conditions such as community supervision or restitution, and, upon successful completion of those conditions, the dismissal of the criminal case. In a contested case under this chapter, the defendant's acceptance of deferred adjudication in a criminal case may be considered as prima facie evidence regarding whether the defendant committed the conduct underlying the criminal charge.

(16) [~~(15)~~] Disciplinary proceedings-- Any matter arising under this chapter or Chapter 247 of this title (relating to the Educators' Code of Ethics) that results in a final order or finding issued by [~~Contested case proceedings before~~] the Texas Education Agency staff, the State Office of Administrative Hearings, or [~~and~~] the State Board for Educator Certification relating to the legal rights, duties, privileges, and status of a party's educator certificate [~~that commence when a request for hearing is timely filed under this chapter~~] .

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

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

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

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

(21) Expired--No longer valid because a specific period or term of validity of a certificate has ended; an expired certificate is not subject to renewal or revalidation and a new certificate must be issued.

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

(23) [~~(21)~~] Good moral character--The virtues of a person as evidenced by patterns of personal, academic, and occupational behaviors that, in the judgment of the State Board for Educator Certification, indicate honesty, accountability, trustworthiness, reliability, and integrity. Lack of good moral character may be evidenced by the commission of [~~, 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 by the commission of acts involving moral turpitude , but conduct that evidences a lack of good moral character is not necessarily limited to such crimes or acts .

(24) Inactive--Lacking current effectiveness. An inactive certificate does not currently entitle the certificate holder to work as a professional educator in Texas public schools. An inactive certificate is distinguished from a certificate that is void or expired by the fact that it can be reactivated by satisfying the condition or conditions that caused it to be placed in inactive status (failure to renew, failure to submit fingerprint information, or payment of fees), subject to any other certification requirements applicable to active certificates.

(25) [~~(22)~~] Informal conference--An informal meeting between the Texas Education Agency staff and an educator, applicant, or examinee; [~~the purpose of~~] such a meeting may be used [~~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 pursuant to Texas Government Code, §2001.054(c) .

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

(27) [~~(24)~~] Law--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 and the commissioner of education.

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

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

(30) [~~(27)~~] Moral turpitude--Improper conduct , including, but not limited to, the following: dishonesty; fraud; deceit; theft; misrepresentation; deliberate violence; base, vile, or depraved acts that are intended to arouse or to gratify the sexual desire of the actor; drug or alcohol related offenses as described in §249.16(b) of this title (relating to Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53); or acts constituting abuse or neglect under the Texas Family Code, §261.001.

(31) [~~(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.

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

(33) Permanent revocation--Revocation without the opportunity to reapply for a new certificate.

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

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

(36) [~~(32)~~] Petitioner--The party seeking relief, requesting a contested case hearing under this chapter, and 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) 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.~~]

(37) [~~(33)~~] 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.

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

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

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

(41) [~~(37)~~] 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.

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

(43) Reported criminal history--Information concerning any formal criminal justice system charges and dispositions. The term includes, without limitation, arrests, detentions, indictments, informations, convictions, deferred adjudications, and probations in any state or federal jurisdiction.

(44) [~~(39)~~] Representative--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 or other person authorized as a party representative under SOAH rules .

(45) [~~(40)~~] Reprimand--The State Board for Educator Certification'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) Revocation--A sanction imposed by the State Board for Educator Certification invalidating an educator's certificate.~~]

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

(47) Restricted--The condition of an educator certificate that has had limitations or conditions on its use imposed by State Board for Educator Certification order.

(48) Revocation--A sanction imposed by the State Board for Educator Certification invalidating an educator's certificate.

(49) Sanction--A disciplinary action by the State Board for Educator Certification, including a restriction, reprimand, suspension, revocation of a certificate, or a surrender in lieu of disciplinary action.

(50) Serious state assessment testing violation--Failure to observe the requirements of test administration, security, and confidentiality of any assessment required by the Texas Education Code, Chapter 39, Subchapter B, in a manner that involves dishonesty or intent to affect the test score of a student, the evaluation of an educator, or the state or federal accountability rating of a school district or a campus. The term does not include benchmark tests or other locally required assessments.

(51) Solicitation of a romantic relationship--Deliberate or repeated acts that can be reasonably interpreted as the solicitation by an educator of a relationship with a student that is romantic in nature. A romantic relationship is often characterized by a strong emotional or sexual attachment and/or by patterns of exclusivity, but does not include appropriate educator-student relationships that arise out of legitimate contexts such as familial connections or longtime acquaintance. The following acts, considered in context, may constitute prima facie evidence of the solicitation by an educator of a romantic relationship with a student:

(A) behavior, gestures, expressions, or communications with a student that are unrelated to the educator's job duties and evidence a romantic intent or interest in the student, including statements of love, affection, or attraction. Factors that may be considered in determining the romantic intent of such communications or behavior, include, without limitation:

(i) the nature of the communications;

(ii) the timing of the communications;

(iii) the extent of the communications;

(iv) whether the communications were made openly or secretly;

(v) the extent that the educator attempts to conceal the communications;

(vi) if the educator claims to be counseling a student, the State Board for Educator Certification may consider whether the educator's job duties included counseling, whether the educator reported the subject of the counseling to the student's guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the educator reported the abuse or neglect to the appropriate authorities; and

(vii) any other evidence tending to show the context of the communications between educator and student;

(B) making inappropriate comments about a student's body, creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images;

(C) making sexually demeaning comments to a student;

(D) making comments about a student's potential sexual performance;

(E) requesting details of a student's sexual history;

(F) requesting a date, sexual contact, or any activity intended for the sexual gratification of the educator;

(G) engaging in conversations regarding the sexual problems, preferences, or fantasies of either party;

(H) inappropriate hugging, kissing, or excessive touching;

(I) providing the student with drugs or alcohol;

(J) suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage; and

(K) any other acts tending to show that the educator solicited a romantic relationship with a student.

[~~(43) Sanction~~]

[~~(A) a disciplinary action by the State Board for Educator Certification, 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 or presiding officer against a party, representative, or other participant involved in a disciplinary proceeding, hearing, or other matter under this chapter.~~]

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

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

(54) [~~(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.

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

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

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

(58) [~~(50)~~] 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.

(59) [~~(51)~~] 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(c)(2) [~~§249.15(b)(2)~~] of this title (relating to Disciplinary Action by State Board for Educator Certification) and for administrative denial under §249.12(b) of this title (relating to Administrative Denial; Appeal). A determination that a person is unworthy to instruct does not require a [~~is not limited to specific~~] criminal conviction [~~convictions~~] .

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

(61) Warning letter--A cautionary letter advising an educator that disciplinary allegations investigated by Texas Education Agency staff have not been sufficiently established or do not rise to a level

requiring official State Board for Educator Certification action, but that similar conduct should be avoided. A warning letter is not a sanction or an official determination and, therefore, is not subject to appeal.

[~~(53) 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.~~]

§249.4. Applicability.

(a) In conjunction with the rules of practice and procedure of the State Office of Administrative Hearings (SOAH), (1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure [~~Procedures~~])) and other applicable law, this chapter shall govern disciplinary matters before the State Board for Educator Certification (SBEC), including the following proceedings:

(1) sanctions sought against a certificate holder;

(2) appeals of administrative denials;

(3) appeals of the administrative cancellation or withholding of test scores for alleged violation of test administration rules;

(4) reinstatement of a suspended certificate;

(5) complaints of contract abandonment filed with the Texas Education Agency (TEA) staff pursuant to Texas Education Code (TEC), §§21.105(c), 21.160(c), or 21.210(c); [~~and~~]

(6) sanctions sought against a certificate for the holder's knowing failure to report criminal history or other information required to be reported under the TEC, Chapter 22, Subchapter C; Texas Family Code, Chapter 261, Subchapter B; or this chapter ; and [~~.~~]

(7) sanctions sought against a certificate pursuant to Chapter 101 of this title (relating to Assessment) for violations of security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B.

(b) The SOAH shall conduct all contested case hearings held under this chapter.

(c) This chapter shall apply to any matter referred for a contested case hearing.

(d) This chapter does not apply to matters related to the proposal or adoption of the SBEC rules under the Texas Government Code, Chapter 2001, or to internal personnel policies or practices of the TEA staff or the SBEC. The provisions of this chapter may not be used to seek sanctions against a member of the SBEC or the TEA staff acting in that capacity.

§249.7. Signature Authority [~~; Seal~~] .

(a) The State Board for Educator Certification (SBEC) may delegate to the chair the authority to sign on behalf of a majority of the SBEC members a decision made or order issued under this chapter.

(b) As provided by this chapter and any memorandum of agreement between [~~,~~] the Texas Education Agency (TEA) and SBEC, TEA staff may sign final orders resolving or dismissing cases by agreement of the parties or by non-suit of the petitioner , as well as orders [~~those~~] relating to other matters authorized [~~as provided~~] by this chapter.

[~~(c) The SBEC and the TEA staff may maintain a seal to authenticate their official acts under this title, including certifying copies of records showing decisions or orders of the SBEC or the TEA staff. The seal shall have a star with five points and the words "State Board for Educator Certification" on it.~~]

§249.9. Ex Parte Communications.

Parties [~~Subjects, parties~~] , their authorized representatives, and any other person acting [~~or anyone else~~] on a party's behalf shall not communicate or attempt to communicate with any State Board for Educator Certification member regarding a complaint, investigation, or disciplinary proceeding under this chapter, except as allowed by law. The chair may impose sanctions against a violator of this section.

§249.10. Conduct and Decorum.

(a) Parties, authorized representatives, witnesses, and other persons involved in a proceeding, hearing, or other matter under this chapter shall conduct themselves with proper dignity, courtesy, and respect for the State Board for Educator Certification (SBEC), Texas Education Agency staff, administrative law judge (ALJ), and all other participants. Disorderly conduct shall not be tolerated. The rules of the State Office of Administrative Hearings (SOAH) governing conduct and decorum under 1 Texas Administrative Code (TAC), Part 7, Chapter 155 (relating to Rules of Procedure [~~Procedures~~]), shall also apply to matters referred to the SOAH.

(b) Authorized representatives shall also observe any other [~~the~~] standards of conduct applicable to the professional capacity in which they are appearing [~~prescribed for their professions~~] .

(c) The presiding officer or ALJ may impose sanctions against a violator of this section, including barring the person from attending further proceedings. Sanctions allowed by the rules of the SOAH under 1 TAC, Part 7, Chapter 155, in SOAH proceedings may also be imposed by [~~governing sanctions against a party or its representative and the grounds for them under that chapter are also available to~~] the chair in a [~~any other~~] proceeding before the SBEC [~~that is not conducted by the SOAH~~] .

Subchapter B. Enforcement Actions and Guidelines

§249.11. Test Irregularities; Appeal; Sanctions.

(a) Upon satisfactory evidence that the examinee has violated certification test administration rules or procedures, the State Board for Educator Certification may cancel the examinee's test scores or registration and bar the person from being admitted to [~~a~~] future test administrations [~~administration~~] . The Texas Education Agency (TEA) staff shall provide written [~~mail~~] notice of this action and the factual and legal reasons for it to the examinee by personal service, registered or certified mail, or email to the most recent address provided to the TEA or its test contractor by [~~, and~~] the examinee . The examinee may attempt to [~~shall be given the opportunity to~~] show compliance with test administration rules or procedures by written submission or by requesting an informal conference, and/or may appeal and request a State Office of Administrative Hearings (SOAH) hearing as hereafter provided .

(b) The examinee may appeal and request a SOAH hearing of the administrative cancellation of test scores and/or test admission bar [~~by requesting a hearing before the State Office of Administrative Hearings (SOAH)~~] . The appeal of an administrative cancellation shall be in the form of a petition that complies in content and form with §249.26 of this title (relating to Petition) and 1 Texas Administrative Code, Part 7, §155.301 [~~§155.29~~] (relating to Required Form of Pleadings) . [~~and shall be filed with the TEA staff. No appeal of an administrative cancellation shall receive a contested case hearing on the merits unless the petition is received by the TEA staff within 30 calendar days after the person received written notice of the TEA staff's action. It is a rebuttable presumption that the notice was received no later than five calendar days after mailing. The TEA staff may dismiss an appeal not timely filed.~~]

(c) In order to be referred to the SOAH for a contested case hearing, an appeal petition must be filed with the TEA staff within 30 calendar days after the examinee received or is deemed to have received written notice of the TEA staff's action. Unless otherwise proved by the examinee, the notice shall be deemed to have been received by the examinee no later than five calendar days after mailing to the most recent address provided by the examinee. The TEA staff may dismiss an appeal not timely filed.

(d) [~~(c)~~] The TEA staff shall send an answer to the petition to the examinee and shall refer the petition and answer to the SOAH for a contested case hearing.

§249.12. Administrative Denial; Appeal.

(a) This section applies to administrative denials, as that term is defined in §249.3 of this title (relating to Definitions). [~~the denial of an application for certification (including certification following revocation, cancellation, or surrender of a previously issued certificate), the denial of an application for renewal of certification, or the reinstatement of a suspended certificate.~~] This section does not apply to the denial of an application for a certificate that has been permanently revoked, and it does not apply to the failure to issue a certificate because specific certification requirements have not been met [~~denied, or surrendered~~] .

(b) The Texas Education Agency (TEA) staff may administratively deny any of the matters set out in subsection (a) of this section based on satisfactory evidence that:

(1) the person filed a fraudulent application;

(2) the person has engaged in conduct or committed a crime or an offense that:

(A) demonstrates that the person lacks good moral character;

(B) demonstrates that the person is unworthy to instruct or to supervise the youth of this state; or

(C) constitutes the elements of a crime or offense relating directly to the duties and responsibilities of the education profession; or

(3) the person failed to comply with the terms or conditions of an order issued by or on behalf of the State Board for Educator Certification or the TEA staff.

[~~(1) the person has committed a crime, an offense, or conduct that would constitute a crime or offense relating directly to the duties and responsibilities of the education profession;~~]

[~~(2) the person lacks good moral character;~~]

[~~(3) the person filed a fraudulent application;~~]

[~~(4) the person is unworthy to instruct or to supervise the youth of this state;~~]

[~~(5) the person failed to comply with an order issued by the State Board for Educator Certification or the TEA staff; or~~]

[~~(6) the person has committed a crime, an offense, or conduct that would constitute a crime or offense relating directly to the duties and responsibilities of the education profession while the person's certificate was suspended.~~]

(c) The TEA staff shall provide written notice of the denial and the factual and legal reasons for it [~~mail~~] to the person whose application or request has been administratively denied [~~written notice of the denial and the factual and legal reasons for it~~] . The notice shall be given by registered or certified mail to the address the person has provided in the application or request that is being denied. The person may attempt to [~~shall be given an opportunity to~~] show compliance with legal requirements by written submission or by requesting an informal conference, and/or may appeal and request a State Office of Administrative Hearings (SOAH) hearing as hereafter provided. The 30-day deadline to appeal and request a hearing is not tolled during any attempts to show cause . [~~A person may appeal an administrative denial.~~]

(d) The appeal and request for a SOAH hearing of an administrative denial shall be in the form of a petition that complies in content and form with §249.26 of this title (relating to Petition) and 1 Texas Administrative Code, Part 7, §155.301 [~~§155.29~~] (relating to Required Form of Pleadings). In order to be referred to the SOAH for a contested case hearing, an appeal petition must be filed with [~~No appeal of an administrative denial shall receive a contested case hearing on the merits unless the request for hearing is received by~~] the TEA staff within 30 calendar days after the person received or is deemed to have received written notice of the administrative denial. Unless otherwise proved by the person, the notice shall be deemed to have been received by the examinee no later than five calendar days after mailing to the most recent address provided by the person [~~TEA staff's action~~] . The TEA staff may dismiss an appeal that is not timely filed without further action.

(e) The TEA staff shall send an answer to the petition to the person appealing an administrative denial and shall refer the petition and answer to the SOAH [~~State Office of Administrative Hearings~~] for a contested case hearing.

§249.13. Cancellation of an Erroneously Issued Certificate.

(a) When satisfactory evidence indicates that a certificate was issued in error and the person issued the certificate has not fulfilled all certification requirements, the Texas Education Agency (TEA) staff shall cancel the certificate . The effective date of cancellation is the date [~~by updating~~] the person's virtual certificate is updated to reflect that the certificate is no longer valid . [~~Before canceling the certificate, the TEA staff shall notify the person issued the certificate that the TEA intends to cancel the certificate and shall provide the person issued the certificate at least ten calendar days to respond and show cause why the certificate should not be cancelled.~~]

(b) Before canceling the certificate, the TEA staff shall notify the person issued the certificate of the reasons for which the TEA intends to cancel the certificate and shall provide the person issued the certificate at least ten calendar days to respond and show cause why the certificate should not be canceled. Unless otherwise proved by the person, the show cause notice shall be deemed to have been received by the person no later than five calendar days after mailing to the most recent address the person is required to provide pursuant to §230.431 of this title (relating to Procedures in General).

(c) [~~(b)~~] The TEA staff shall notify the person and the person's employing school district, if any, that the person was issued a certificate in error, what actions the TEA staff have taken to cancel the erroneously issued certificate, and how the person can be issued a valid certificate.

(d) [~~(c)~~] The TEA staff will issue the person a valid certificate when it receives satisfactory evidence that all certification requirements have been fulfilled. The person will not be required to repeat any coursework, training, internship, or other certification requirements that an educator preparation program certifies that the person has completed. [~~whose erroneously issued certificate has been cancelled may request a contested case hearing before the State Office of Administrative Hearings. The person whose certificate has been cancelled shall be deemed to have had their original application for the erroneously issued certificate administratively denied.~~]

(e) The person whose erroneously issued certificate has been canceled may request a contested case hearing before the State Office of Administrative Hearings (SOAH). For the purposes of notice, time limits, appeal requirements, and determining the placement of the burden of proof at the SOAH contested case hearing, the person whose certificate has been canceled shall be deemed to have had his or her original application for the erroneously issued certificate administratively denied pursuant to §249.12 of this title (relating to Administrative Denial; Appeal) on the effective date of the cancellation.

§249.14. Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition.

(a) The Texas Education Agency (TEA) staff may obtain and investigate information concerning alleged improper conduct by an educator, applicant, examinee, or other person subject to this chapter that would warrant the State Board for Educator Certification (SBEC) denying relief to or taking disciplinary action against the person or certificate.

(b) Complaints against an educator, applicant, or examinee must be filed in writing.

(c) The TEA staff may also obtain and act on other information providing grounds for investigation and possible action under this chapter.

(d) A person who serves as the superintendent of a school district or the director of an open-enrollment charter school, private school, regional education service center, or shared services arrangement may notify the SBEC of any educator misconduct that the person believes in good faith may be subject to sanctions under this chapter and/or Chapter 247 of this title (relating to Educators' Code of Ethics). However, under any of the following circumstances, a person who serves in such a position shall promptly notify in writing the SBEC by filing a report with the TEA staff within seven calendar days of the date the person first obtains or has knowledge of those [~~information indicating any of the following~~] circumstances and may be subject to sanctions for failure to do so pursuant to §249.15(c)(4) of this title (relating to Disciplinary Action by State Board for Educator Certification) :

(1) that an applicant for or a holder of a certificate has a reported criminal history;

(2) that a certificate holder was terminated from employment based on a determination that he or she committed any of the following acts:

(A) sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor;

(B) possessed, transferred, sold, or distributed a controlled substance;

(C) illegally transferred, appropriated, or expended school property or funds;

(D) attempted by fraudulent or unauthorized means to obtain or to alter any certificate or permit that would entitle the individual to be employed in a position requiring such certificate or permit or to receive additional compensation associated with a position;

(E) committed a crime, any part of such crime having occurred on school property or at a school-sponsored event; or

(F) solicited or engaged in sexual conduct or a romantic relationship with a student or minor;

(3) that a certificate holder resigned and reasonable evidence supported a recommendation by the person to terminate a certificate holder because he or she committed one of the acts specified in paragraph (2) of this subsection.

(A) Before accepting an employee's resignation that, under this paragraph, requires a person to notify the SBEC by filing a report with the TEA staff, the person shall inform the certificate holder in writing that such a report will be filed and sanctions against his or her certificate may result as a consequence.

(B) A person required to comply with this paragraph shall notify the governing body of the employing school district before filing the report with the TEA staff . [~~; or~~]

(C) A superintendent or director of a school district shall complete an investigation of an educator that is based on reasonable cause to believe the educator may have engaged in misconduct described in paragraph (2) of this subsection despite the educator's resignation from district employment before completion of the investigation; or

(4) any other circumstances requiring a report under the Texas Education Code (TEC), §21.006.

(e) Pursuant to the TEC, §21.006(c) and (h), a [~~A~~] report filed under subsection (d) of this section must include the name or names of any student or minor who is the victim of abuse or unlawful conduct by an educator and shall, at a minimum, describe in detail the factual circumstances requiring the report and identify the subject of the report by providing the following available information: name and any aliases; certificate number, if any, or social security number; last known mailing address and home and daytime phone numbers; all [~~name or names and any~~] available contact information for [~~of~~] any alleged victim or victims; and name or names and any available contact information of any relevant witnesses to the circumstances requiring the report. Pursuant to the Family Educational Rights and Privacy Act (FERPA), 20 United States Code, §1232g(a)(4), and the federal regulations interpreting it at 34 Code of Federal Regulations, §99.3, education records that are protected by FERPA must be records that are directly related to a student, and the term "education records" does not include records that relate to a school employee in his or her capacity as a school employee. A person who is required to file a report under subsection (d) of this section but fails to do so timely is subject to sanctions under this chapter.

(f) If a school district board of trustees learns of a failure by the superintendent of the district or a district principal to provide a notice required under the Texas Code of Criminal Procedure (TCCP), §15.27(a), (a-1), or (b), the board of trustees shall report the failure to the SBEC. If the governing body of a private primary or secondary school learns of a failure by the principal of the school to provide a notice required under the TCCP, §15.27(e), and the principal holds a certificate issued under the TEC, Chapter 21, Subchapter B, the governing body shall report the failure to the SBEC.

(g) [~~(f)~~] The TEA staff shall not pursue sanctions against an educator who is alleged to have abandoned his or her TEC, Chapter 21, contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), subject to the limitations imposed by the TEC, §21.4021(g), unless the board of trustees of the employing school district:

[~~(1) renders a finding that good cause did not exist under the TEC, §§21.105(c)(2), 21.160(c)(2), or 21.210(c)(2). This finding constitutes prima facie evidence of the educator's lack of good cause, but is not a binding determination in a contested case hearing; and~~]

(1) [~~(2)~~] submits a written complaint to the TEA staff within 30 calendar days after the effective date of the educator's separation from employment from [~~educator files a written resignation with~~] the school district . For purposes of this section, unless the school district and the educator have a written agreement to the contrary, the effective date of separation from employment is the first day that, without district permission, the educator fails to appear for work under the contract; [~~in the manner provided by the TEC, §§21.105, 21.160, or 21.210. This deadline applies even if the school district does not accept the educator's written resignation. If the educator does not submit a written resignation, the employing school district may determine the effective resignation date for purposes of this section, which shall not be later than 14 days after the educator fails to appear for work without district permission under the terms of the contract.~~]

(2) renders a finding that good cause did not exist under the TEC, §§21.105(c)(2), 21.160(c)(2), or 21.210(c)(2). This finding constitutes prima facie evidence of the educator's lack of good cause, but is not a conclusive determination; and

(3) submits the following required attachments to the written complaint:

(A) the educator's resignation letter, if any;

(B) the agreement with the educator regarding the effective date of separation from employment, if any;

(C) the educator's contract; and

(D) school board meeting minutes indicating a finding of "no good cause" (if the board does not meet within 30 calendar days of the educator's separation from employment, the minutes may be submitted within 10 calendar days after the next board meeting).

(h) [~~(g)~~] To efficiently administer and implement the SBEC's purpose under this chapter and the TEC, the TEA staff may set priorities for the investigation of complaints based on the severity and immediacy of the allegations and the likelihood of harm posed by the subject of the investigation. All cases accepted for investigation shall be assigned one of the following priorities . [~~:~~]

(1) Priority 1: conduct that may result in the placement of an investigative notice pursuant to the TEC, §21.007, and subsection (i) of this section because it presents [~~indicates~~] a risk to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague, including , but not limited to , the following:

(A) any conduct constituting a felony criminal offense;

(B) indecent exposure;

(C) public lewdness;

(D) child abuse and/or neglect;

(E) possession of a weapon on school property;

(F) drug offenses occurring on school property;

(G) sale to or making alcohol or other drugs available to a student or minor;

(H) sale, distribution, or display of harmful material to a student or minor;

(I) certificate fraud;

(J) serious state assessment testing violations;

(K) deadly conduct; and

(L) conduct that involves soliciting or engaging in sexual conduct or a romantic relationship with a student or minor.

(2) Priority 2: any [~~other~~] conduct that is not Priority 1 conduct under paragraph (1) of this subsection. An investigative notice will not be placed on an educator's certification records on the basis of an allegation of Priority 2 conduct. The TEA staff may change a case's priority at any time based on information received. Priority 2 conduct includes, but is not limited to, [~~including but not limited to~~] the following:

(A) any sanctionable conduct constituting a misdemeanor criminal offense or testing violation that [~~which~~] is not [~~described as~~] Priority 1 conduct [~~under paragraph (1) of this subsection~~] ;

(B) contract abandonment; and

(C) sanctionable code of ethics violations that do not constitute Priority 1 conduct .

[~~(3) An investigative notice will not be placed on an educator's certification records on the basis of an allegation of Priority 2 conduct. The TEA staff may change a case's priority at any time based on information received.~~]

[~~(4) For purposes of this subsection, a serious testing violation is a failure to observe the requirements of test administration established by the commissioner of education in a manner that involves~~

~~dishonesty or intent to affect the test score of a student or action that is calculated to effect the accountability rating of a school district or campus.~~]

(i) [~~(h)~~] After accepting a case for investigation, if the alleged conduct indicates a risk to the health, safety, or welfare of a student or minor, as described in subsection (h)(1) [~~(g)(1)~~] of this section, the TEA staff shall immediately place an investigative notice on the certificate holder's certification records stating that the certificate holder is currently under investigation. The placement of such an investigative notice must follow the procedures set forth in subsection (j)(1) [~~(i)(1)~~] of this section. After accepting a case for investigation, if the alleged conduct indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (h)(1) [~~(g)(1)~~] of this section, the TEA staff may place an investigative notice on the certificate holder's certification records stating that the certificate holder is currently under investigation. The placement of an investigative notice must follow the procedures set forth in subsection (j)(2) [~~(i)(2)~~] of this section.

(j) [~~(i)~~] The following procedures must be followed for placing an investigative notice on the educator's certification records.

(1) At the time of placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a student or minor, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.

(A) Within ten calendar days of placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.431 of this title (relating to Procedures in General).

(B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide the certificate holder the opportunity to show cause within ten calendar days why the notice should be removed from the educator's certification records.

(2) Prior to placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (h)(1) [~~(g)(1)~~] of this section, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.

(A) At least ten calendar days before placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.431 of this title.

(B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide the certificate holder the opportunity to show cause within ten calendar days why the notice should not be placed on the educator's certification records.

(3) The TEA staff shall determine whether or not to remove or place an investigative notice on the educator's certification records, taking into account the educator's response, if any, to the letter notifying the certificate holder of the investigation.

(k) [~~(j)~~] An investigative notice is subject to the following time limits.

(1) An investigative notice may remain on the certification records of a certificate holder for a period not to exceed 240 calendar days.

(2) The TEA staff may toll this time limit if information is received indicating that there is a pending criminal matter related to the alleged act of misconduct that gives rise to the investigative notice. For purposes of this subsection, a criminal matter includes an arrest, an investigation, or a prosecution by a criminal law enforcement agency. Upon receiving notice that the criminal matter has been resolved the tolling period shall end. As part of its procedure, the TEA staff will attempt

to make bimonthly (once every two months) contact with a law enforcement agency where a criminal investigation is pending to determine whether the criminal investigation has been closed or otherwise resolved.

(3) The TEA staff may toll this time limit if the matter is referred for a contested case hearing, or upon agreement of the parties.

(l) [~~(k)~~] The TEA staff shall remove an investigative notice from an educator's [~~the~~] certification records : [~~in the following situations.~~]

(1) when [~~When~~] a case's final disposition occurs within the time limits established in subsection (k) [~~(j)~~] of this section ; or [~~, an investigative notice shall be removed.~~]

(2) when [~~If~~] the time limits for an investigative notice have been exceeded , if: [~~; and~~]

(A) the certificate holder has made a written demand to the TEA staff that the investigative notice be removed because the time limits have been exceeded; and

(B) the TEA staff has failed to refer the matter to the State Office of Administrative Hearings for a contested case hearing within 30 calendar days from the date of receipt of the written demand to remove the investigative notice.

(m) [~~(l)~~] Only the TEA staff may file a petition seeking sanctions under §249.15 of this title [~~(relating to Disciplinary Action by Board)~~] . Prior to filing a petition, the TEA staff shall mail to the certificate holder affected by written notice of the facts or conduct alleged to warrant the intended action and shall provide the certificate holder an opportunity to show compliance with all requirements of law.

[~~(m) The following words and terms, when used in this section, shall have the following meanings.~~]

[~~(1) For purposes of this section, "TEA staff" means staff of the Texas Education Agency assigned by the commissioner of education to perform the SBEC's administrative functions and services.~~]

[~~(2) For purposes of this section, solicitation of a romantic relationship means deliberate or repeated acts that can be reasonably interpreted as soliciting a relationship characterized by an ardent emotional attachment or pattern of exclusivity. Acts that constitute the solicitation of a romantic relationship include, but are not limited to:~~]

[~~(A) behavior, gestures, expressions, communications, or a pattern of communication with a student that are unrelated to the educator's job duties and which may reasonably be interpreted as encouraging the student to form an ardent or exclusive emotional attachment to the educator, including statements of love, affection or attraction. When evaluating whether communications constitute the solicitation of a romantic relationship, the TEA staff may consider the following:~~]

[~~(i) the nature of the communications;~~]

[~~(ii) the timing of the communications;~~]

[~~(iii) the extent of the communications;~~]

[~~(iv) whether the communications were made openly or secretly;~~]

[~~(v) the extent that the educator attempts to conceal the communications;~~]

[~~(vi) if the educator claims to be counseling a student, the SBEC may consider whether the educator's job duties included counseling, whether the educator reported the subject of the counseling to the student's guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the educator reported the abuse or neglect to the appropriate law enforcement agencies; and~~]

[~~(vii) any other communications tending to show that the educator solicited a romantic relationship with the student;~~]

[~~(B) making inappropriate comments about a student's body;~~]

[~~(C) making sexually demeaning comments to a student;~~]

[~~(D) making comments about a student's potential sexual performance;~~]

[~~(E) requesting details of a student's sexual history;~~]

[~~(F) requesting a date;~~]

[~~(G) engaging in conversations regarding the sexual problems, preferences, or fantasies of either party;~~]

[~~(H) inappropriate hugging, kissing, or excessive touching;~~]

[~~(I) suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage; and~~]

[~~(J) any other acts tending to show that the educator solicited a romantic relationship with the student, including, but not limited to, providing the student with drugs or alcohol.~~]

§249.15. Disciplinary Action by State Board for Educator Certification.

(a) Pursuant to this chapter, the State Board for Educator Certification (SBEC) may take any of the following actions:

(1) place restrictions on the issuance, renewal, or holding of a certificate, either indefinitely or for a set term;

(2) issue an inscribed or non-inscribed reprimand;

(3) suspend a certificate for a set term or issue a probated suspension for a set term;

(4) revoke or cancel, which includes accepting the surrender of, a certificate without opportunity for reapplication for a set term or permanently; or

(5) impose any additional conditions or restrictions upon a certificate that the SBEC deems necessary to facilitate the rehabilitation and professional development of the educator or to protect students, parents of students, school personnel, or school officials.

(b) If it is determined that allegations of conduct against a person that are subject to this section have not been sufficiently established or do not rise to a level requiring official SBEC action, the TEA staff may issue a warning letter to the person. Such a warning letter is not a sanction under this chapter and does not constitute a finding, order, or decision of the SBEC.

(c) [~~(b)~~] The SBEC may take any of the actions listed in subsection (a) of this section based on satisfactory evidence that:

(1) the person has conducted school or education activities in violation of law;

(2) the person is unworthy to instruct or to supervise the youth of this state;

(3) the person has violated a provision of the Educators' Code of Ethics [~~educators' code of ethics~~] ;

(4) the person has failed to report or has hindered the reporting of child abuse pursuant to the Texas Family Code, §261.001, or has failed to notify the SBEC under the circumstances and in the manner [~~or the known criminal history of an educator as~~] required by the Texas Education Code (TEC), §21.006, [~~law~~] and §249.14(d) and (e) [~~§249.14~~] of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition);

(5) the person has abandoned a contract in violation of the TEC [~~Texas Education Code~~] , §§21.105(c), 21.160(c), or 21.210(c);

(6) the person has failed to cooperate with the Texas Education Agency (TEA) in an investigation; [~~or~~]

(7) the person has willfully or recklessly failed to provide information required to be provided by SBEC rules, including, but not limited to, §229.3 of this title (relating to Required Submissions of Information, Surveys, and Other Data);

(8) the person has violated the security or integrity of any assessment required by the TEC, Chapter 39, Subchapter B, including, but not limited to, conduct or omissions described in §101.65 of this title (relating to Penalties);

(9) [~~(7)~~] the person has committed an act described in §249.14(h)(1) [~~§249.14(g)~~] of this title [~~(relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition)~~] , which constitutes sanctionable Priority 1 conduct, as follows: [~~§249.12(b) of this title (relating to Administrative Denial; Appeal), or §249.16(b) of this title (relating to Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53).~~]

(A) any conduct constituting a felony criminal offense;

(B) indecent exposure;

(C) public lewdness;

(D) child abuse and/or neglect;

(E) possession of a weapon on school property;

(F) drug offenses occurring on school property;

(G) sale to or making alcohol or other drugs available to a student or minor;

(H) sale, distribution, or display of harmful material to a student or minor;

(I) certificate fraud;

(J) serious state assessment testing violations;

(K) deadly conduct; or

(L) conduct that involves soliciting or engaging in sexual conduct or a romantic relationship with a student or minor;

(10) the person has committed an act that would constitute a crime (without regard to whether there has been a criminal conviction) that is considered to relate 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). Such crimes indicate a threat to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague; interfere with the orderly, efficient, or safe operation of a school district, campus, or activity; or indicate impaired ability or misrepresentation of qualifications to perform the functions of an educator and include, but are not limited to:

(A) crimes involving moral turpitude;

(B) crimes involving any form of sexual or physical abuse or neglect of a student or minor or other illegal conduct with a student or minor;

(C) crimes involving any felony possession or conspiracy to possess, or any misdemeanor or felony transfer, sale, distribution, or conspiracy to transfer, sell, or distribute any controlled substance defined in the Texas Health and Safety Code, Chapter 481;

(D) crimes involving school property or funds;

(E) crimes involving any attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;

(F) crimes occurring wholly or in part on school property or at a school-sponsored activity; or

(G) felonies involving driving while intoxicated (DWI); or

(11) the person has intentionally failed to comply with the reporting, notification, and confidentiality requirements specified in the Texas Code of Criminal Procedure, §15.27(a), relating to student arrests, detentions, and juvenile referrals for certain offenses.

(d) [~~(c)~~] The TEA staff may commence a contested case to take any of the actions listed in subsection (a) of this section by serving a petition to the certificate holder in accordance with this chapter describing the SBEC's intent to issue a sanction and specifying the legal and factual reasons for the sanction. The certificate holder shall have 30 calendar days to file an answer as provided in §249.27 of this title (relating to Answer).

(e) [~~(d)~~] Upon the failure of the certificate holder to file a written answer as required by this chapter, the TEA staff may file a request for the issuance of a default judgment from the SBEC imposing the proposed sanction in accordance with §249.35 of this title (relating to Disposition Prior to Hearing; Default).

(f) [~~(e)~~] If the certificate holder files a timely answer as provided in this section, the case will be referred to the State Office of Administrative Hearings (SOAH) for hearing in accordance with the SOAH rules; the Texas Government Code, Chapter 2001; and this chapter.

(g) [~~(f)~~] The provisions of this section are not exclusive and do not preclude consideration of other grounds or measures available by law to the SBEC or the TEA staff, including student loan default or child support arrears. The SBEC may request the Office of the Attorney General to pursue available civil, equitable, or other legal remedies to enforce an order or decision of the SBEC under this chapter.

§249.17. Decision-Making Guidelines.

(a) Purpose. The purpose of these guidelines is to achieve the following objectives:

(1) to provide a framework of analysis for the Texas Education Agency (TEA) staff, the presiding administrative law judge (ALJ), and the State Board for Educator Certification (SBEC) in considering matters under this chapter;

(2) to promote consistency in the exercise of sound discretion by the TEA staff, the presiding ALJ, and the SBEC in seeking, proposing, and making decisions under this chapter; and

(3) to provide guidance for the informal resolution of potentially contested matters.

(b) Construction and application. This section shall be construed and applied so as to preserve SBEC members' discretion in making final decisions under this chapter. This section shall be further construed and applied so as to be consistent with the Texas Education Code (TEC), the rest of this chapter, any written SBEC disciplinary policy guidelines, and other applicable law, including SBEC decisions and orders.

(c) Consideration. The following factors may be considered in seeking, proposing, or making a decision under this chapter:

(1) the seriousness of the violation;

(2) whether the misconduct was premeditated or intentional;

(3) attempted concealment of misconduct;

(4) prior misconduct;

(5) whether the sanction will deter future violations; and

(6) any other relevant circumstances or facts.

(d) Permanent revocation or denial. Notwithstanding subsection (c) of this section, the SBEC shall permanently revoke the teaching certificate of any educator or permanently deny the application of any applicant if, after a contested case hearing, it is determined that the educator or applicant:

(1) engaged in or solicited any sexual contact or romantic relationship with a student or minor as defined in §249.3 [~~§249.14(m)~~] of this title (relating to Definitions [~~Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition~~]);

(2) possessed or distributed child pornography;

(3) was registered as a sex offender;

(4) committed criminal homicide;

(5) [~~possessed without a prescription,~~] transferred, sold, distributed, or conspired to possess [~~without a prescription~~] , transfer, sell, or distribute any controlled substance , the possession of which would be at least a Class A misdemeanor under [~~defined in~~] the Texas Health and Safety Code, Chapter 481, on school property; or

(6) committed any offense described in the TEC, §21.058.

Subchapter C. Prehearing Matters

§249.18. Jurisdiction.

(a) A contested case commences under this chapter when a petition [~~request for hearing~~] is properly served [~~timely filed~~] with the Texas Education Agency (TEA) staff.

(b) The TEA staff shall refer the case to the State Office of Administrative Hearings (SOAH) if the TEA staff determines:

(1) in an administrative denial case, the applicant has timely served [~~filed~~] a petition pursuant to §249.12(d) of this title (relating to Administrative Denial; Appeal); or

(2) the certificate holder has timely served [~~filed~~] an answer pursuant to §249.15(e) [~~§249.15(d)~~] of this title (relating to Disciplinary Action by State Board for Educator Certification).

(c) Nothing in this section precludes the TEA staff from referring the case to the SOAH prior to the receipt of a petition or answer.

(d) Jurisdiction of the SOAH is determined by the administrative law judge under 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure [~~Procedures~~]) and this chapter after the TEA staff have [~~has~~] referred the case to the SOAH.

§249.19. Powers and Duties of Administrative Law Judge.

The powers and duties of an administrative law judge are determined by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure [~~Procedures~~]).

§249.20. Recusal and Disqualification of Administrative Law Judge.

The recusal or disqualification of an administrative law judge shall be governed by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure [~~Procedures~~]).

§249.21. Substitution of Administrative Law Judge.

Substitution of an administrative law judge shall be governed by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure [~~Procedures~~]).

§249.22. Classification of Parties; Current Addresses.

(a) Regardless of errors as to designation of a party, parties shall be accorded their true status in the proceeding.

(b) The petitioner in a contested case proceeding under this chapter and 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure [~~Procedures~~]) is the party in a contested case seeking relief from the decision maker and requesting an adjudicative hearing with the State Office of Administrative Hearings. The petitioner shall have the burden of proof to show by a preponderance of the evidence entitlement to such relief.

(c) Parties shall keep the Texas Education Agency (TEA) staff apprised of their current addresses and shall notify the TEA staff of a change of address within five calendar days of the effective date of such change.

§249.24. Filing or Serving Documents on the Texas Education Agency Staff or the Administrative Law Judge.

(a) The following original papers shall be served upon [~~filed with~~] the Texas Education Agency (TEA) staff:

(1) appeal of an administrative denial;

(2) appeal of the imposition of an administrative sanction and request for a contested case hearing under this chapter;

(3) exceptions and replies to the proposal for decision of the administrative law judge (ALJ); and

(4) motions for rehearing.

(b) It is a rebuttable presumption that the date of service [~~filing~~] is the file stamp date affixed by the TEA staff.

(c) All papers may be served upon [~~filed with~~] the TEA staff by any method allowed by the State Office of Administrative Hearings (SOAH) rules or any electronic transmission agreed to by the parties.

(d) The filing of papers with the SOAH or service of documents on the ALJ in contested cases shall be governed by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure [~~Procedures~~]), unless modified by order of the ALJ as allowed by law.

§249.25. Pleadings.

(a) Pleadings include petitions, answers, replies, exceptions, and motions. Regardless of any error in its designation, a pleading shall be accorded its true status in the proceeding in which it is filed.

[~~(1) Amended and supplemental pleadings may be filed at such time so as not to operate as a surprise on the opposing party.~~]

[~~(2) The administrative law judge may allow a pleading to be amended during the contested case evidentiary hearing on the merits and shall do so freely when the trial amendment will facilitate determining the merits of the case but will not unduly prejudice the objecting party.~~]

(b) Amended and supplemental pleadings may be filed at such time so as not to operate as a surprise on the opposing party.

(c) The administrative law judge may allow a pleading to be amended during the contested case evidentiary hearing on the merits and shall do so freely when the trial amendment will facilitate determining the merits of the case but will not unduly prejudice the objecting party.

(d) [~~(b)~~] In addition to this chapter, 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure [~~Procedures~~]) shall also govern the following matters related to pleadings:

(1) content generally of pleadings;

(2) purpose and effect of motions;

(3) general requirements for motions;

(4) responses to motions generally;

(5) motions to intervene;

(6) motions for continuance;

(7) responses to written motions for continuance; and

(8) amendment of pleadings.

§249.26. Petition.

(a) The party seeking relief and requesting a contested case hearing under this chapter shall serve [~~file~~] a petition as required under this chapter [~~with the Texas Education Agency staff~~] . The petitioner shall have the burden of proof by a preponderance of the evidence in all contested case proceedings brought under this chapter.

(b) The petition shall contain the following items:

(1) a statement of the legal authority and jurisdiction under which the disciplinary action is being sought and the hearing is to be held;

(2) a reference to the particular sections of the statutes and rules involved;

(3) a statement of the matters asserted;

(4) a statement regarding the failure of the parties to reach an agreed settlement of the matters asserted in the petition;

(5) the name, current mailing address, daytime telephone number, if any, and facsimile number, if any, of the petitioner and the petitioner's authorized representative; and

(6) if the petition seeks to impose [~~imposes~~] sanctions against a certificate holder, a notification set forth as follows [~~in capital letters and~~] in at least 12-point boldface type: If you do not file a written answer to this petition with the Texas Education Agency staff WITHIN 30 CALENDAR DAYS of being served with this petition, the State Board for Educator Certification may grant the relief requested in this petition, including revocation of your certificate by default. The matters asserted in the petition will be deemed admitted unless your written answer specifically denies each assertion pled and is filed within the prescribed time period. If you file a written answer but then fail to attend a scheduled hearing, the State Board for Educator Certification may grant any relief requested in this petition, up to and including REVOCATION OF YOUR CERTIFICATE. [~~IF YOU DO NOT FILE A WRITTEN ANSWER TO THIS PETITION WITH THE TEXAS EDUCATION AGENCY STAFF WITHIN 30 CALENDAR DAYS OF BEING SERVED WITH THIS PETITION, THE STATE BOARD FOR EDUCATOR CERTIFICATION MAY GRANT THE RELIEF REQUESTED IN THIS PETITION, INCLUDING REVOCATION OF YOUR CERTIFICATE BY DEFAULT. THE MATTERS ASSERTED IN THE PETITION WILL BE DEEMED ADMITTED UNLESS YOUR WRITTEN ANSWER SPECIFICALLY DENIES EACH ASSERTION PLED AND IS FILED WITHIN THE PRESCRIBED TIME PERIOD. IF YOU FILE A WRITTEN ANSWER BUT THEN FAIL TO ATTEND A SCHEDULED HEARING, THE STATE BOARD FOR EDUCATOR CERTIFICATION MAY GRANT THE RELIEF REQUESTED IN THIS PETITION, INCLUDING REVOCATION OF YOUR CERTIFICATE.~~]

(c) The petition shall be served on the respondent by United States certified mail, return receipt requested, and by regular first-class United States mail , to the address a certified educator is required to provide pursuant to §230.431 of this title (relating to Procedures in General), or as otherwise specified in this chapter. If an educator, applicant, or examinee is the petitioner, the address to which the petition shall be served is Texas Education Agency, Legal Certification Enforcement Division, 1701 North Congress Avenue, Austin, Texas 78701 . A certificate evidencing service shall be included in the petition. For purposes of this section and §249.27 of this title (relating to Answer), it is a rebuttable presumption that a petition was served on the respondent no later than five calendar days after mailing.

§249.27. Answer.

(a) The party responding to a petition filed under this chapter shall file a written answer with the petitioner within 30 calendar days after being served with such petition. For purposes of this section and §249.26 of this title (relating to Petition), it is a rebuttable presumption that a petition was served on the respondent no later than five calendar days after mailing. The respondent shall serve the answer on the petitioner by United States certified mail, return receipt requested, and by regular first-class United States mail.

(b) The answer shall specifically admit or deny each allegation in the petition and shall plead all affirmative defenses.

(c) The answer shall contain the name, current mailing address, daytime telephone number, email address [~~if any~~] , and facsimile number, if any, of the respondent and the respondent's authorized representative.

(d) All well-pled factual allegations in the petition will be deemed admitted unless the respondent's answer, containing specific denials to each allegation, is filed within the time period prescribed in subsection (a) of this section. A general denial shall not be sufficient to controvert factual allegations contained in the petition.

(e) An answer that does not comply with the requirements of this section and 1 Texas Administrative Code, Part 7, §155.301 [~~§155.29~~] (relating to Required Form of Pleadings) may provide grounds for default judgment in favor of the petitioner, as provided in this chapter [~~if supported by a proposal for decision issued by an administrative law judge~~] .

§249.28. Stipulations.

Stipulations shall be governed by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure [~~Procedures~~]).

§249.29. Discovery.

The Texas Government Code, Chapter 2001; 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure [~~Procedures~~]); this chapter; and the Texas Rules of Civil Procedure, as applicable, shall govern discovery.

Subchapter D. Hearing Procedures

§249.30. Notice of Hearing.

(a) The notice of hearing is governed by the Texas Government Code, Chapter 2001; 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure [~~Procedures~~]); and this chapter.

(b) The Texas Education Agency (TEA) staff may serve the notice of hearing by sending it certified, return receipt requested, and regular first-class United States mail to the party's last known address.

(c) For purposes of this subsection, the last known address is:

(1) the address of record of the party or the party's authorized representative in the contested case, if any; or

(2) if the party has not made an appearance in the contested case, the last address provided in any response to the complaint or proposed action that is the subject of the contested case, if any; or

(3) if the party has not provided an address in response to the complaint or proposed action:

(A) for a certified educator, the address supplied by the educator pursuant to §230.431(c) of this title (relating to Procedures in General);

(B) for a certification applicant, the address provided in the certification application; or

(C) for an examinee, the address provided in the examination registration.

(d) While notice to the last known address is legally sufficient, notice may also be given by regular first-class United States mail, facsimile, email, or any other means to any other possible address that is known to the TEA staff at the time that the notice is sent.

[~~(c) For purposes of this subsection, the last known address is the address supplied by the educator pursuant to §230.431(c) of this title (relating to Procedures in General) and any other address that is known to the TEA staff at the time that the notice is sent.~~]

§249.31. Venue.

Hearings shall be conducted in Austin, Texas, at a site designated by the State Office of Administrative Hearings in accordance with applicable law and 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure [~~Procedures~~]).

§249.32. Conduct and Record of Hearings.

The rules of the State Office of Administrative Hearings under 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure [~~Procedures~~]) shall govern the procedure at the hearing and the making of a record of a contested case.

§249.34. Consolidated Proceedings.

A party may move to consolidate two or more proceedings under this chapter if:

(1) the proceedings [~~they~~] involve common questions of law and fact; and

(2) separate proceedings would result in unwarranted expense, delay, or substantial injustice.

§249.35. Disposition Prior to Hearing; Default.

(a) This chapter and 1 Texas Administrative Code (TAC), Part 7, Chapter 155 (relating to Rules of Procedure [~~Procedures~~]) shall govern disposition prior to hearing, default, and attendant relief.

(b) The Texas Education Agency (TEA) staff may issue and sign orders on behalf of the State Board for Educator Certification (SBEC) resolving a case by waiver, stipulation, compromise, agreed settlement,

consent order, agreed statement of facts, or any other informal or alternative resolution agreed to by the parties and not precluded by law.

(c) The SBEC or the State Office of Administrative Hearings (SOAH) may dispose of a case through dismissal, partial or final summary disposition, or any other procedure authorized by SOAH rules of procedure prior to a contested case hearing on the merits on the following grounds: unnecessary duplication of proceedings; res judicata; withdrawal; mootness; lack of jurisdiction; failure of a party requesting relief to timely file or file in proper form a pleading that would support an order or decision in that party's favor; failure to comply with an applicable order, deadline, rule, or other requirement issued by the SBEC, the TEA staff, or the presiding administrative law judge (ALJ); failure to state a claim for which relief can be granted; or failure to prosecute.

(d) In any contested case hearing conducted pursuant to this chapter, the findings made by a hearing examiner in a proceeding arising under the Texas Education Code, Chapter 21, Subchapter G, shall not be conclusive but, the record of such proceeding, including all testimony and evidence admitted in the hearing, as well as the findings of the hearing examiner, shall be deemed admissible in a proceeding brought pursuant to this chapter, and shall be considered by the ALJ and the SBEC in issuing a proposed or final decision.

(e) For purposes of this chapter, the following shall constitute a default in a contested case:

(1) the failure of the respondent to timely file a written answer in proper form as required by this chapter;

(2) the failure of the petitioner in an administrative denial case to timely file a petition in proper form as required by this chapter; or

(3) the failure of the certificate holder or applicant to appear in person or by authorized representative on the day and at the time set for hearing in a contested case, regardless of whether a written answer or petition has been filed. [~~In such event, the SOAH shall abate the case so that the SBEC may enter a final order in accordance with this chapter.~~]

(f) Upon the occurrence of an event of default as defined in this section, the SBEC may enter a default judgment, as authorized by the Texas Government Code, §2001.056, and 1 TAC, Part 7, §155.501 (relating to Default Proceedings) [~~§155.55~~] , whether or not the case has been referred to the SOAH, upon 30 calendar days' [~~days calendar~~] notice. It is a rebuttable presumption that the notice was served on the certificate holder or applicant no later than five calendar days after mailing. The notice shall specify the factual and legal basis for imposing the proposed sanction. Prior to issuance of a default decision or order, the certificate holder may contest the issuance of a default judgment by written notice filed with the TEA staff or by written request to appear before the SBEC at an SBEC meeting to show good cause for failure to file an answer or appear at the contested case proceeding.

Subchapter E. Posthearing Matters

§249.36. Proposal for Decision.

(a) As appropriate, the presiding administrative law judge (ALJ) shall prepare a proposal for decision containing separately stated findings of fact and conclusions of law. [~~the following items:~~]

[~~(1) separately stated findings of fact and conclusions of law; and~~]

[~~(2) a proposed order, if requested in the Texas Education Agency (TEA) staff's notice of hearing.~~]

[~~(b) In an appeal of the imposition of an administrative sanction, the TEA staff may prepare a proposal for decision containing separately stated findings of fact, conclusions of law, and a proposed order if the respondent has failed to file a timely answer to the TEA staff's petition as required by §249.27 of this title (relating to Answer).~~]

(b) [~~(c)~~] The ALJ may amend the proposal for decision pursuant to exceptions, replies to exceptions, and briefs.

(c) [~~(d)~~] The ALJ shall submit the proposal for decision to the SBEC, with a copy to each party.

(d) [~~(e)~~] Except as otherwise provided or prohibited by these rules and other applicable law, the SBEC's general counsel may issue procedural directives relating to matters that arise after the submission of the proposal for decision to the SBEC and that are not delegated to the State Office of Administrative Hearings for action or decision.

§249.37. Exceptions and Replies.

(a) A party may [~~who is aggrieved by the proposal for decision of the administrative law judge (ALJ) or the Texas Education Agency (TEA) staff shall~~] file any exceptions to the proposal for decision within 15 [~~30~~] calendar days of the date of the proposal for decision. Any replies to the exceptions shall be filed by other parties within 15 [~~50~~] calendar days of the filing of exceptions [~~proposal for decision~~] . These time limits may be extended by agreement of the parties and the administrative law judge (ALJ). Exceptions and replies shall be:

[~~(1) filed with the State Board for Educator Certification (SBEC) by mailing, hand-delivering, or faxing them to the SBEC's general counsel;~~]

(1) [~~(2)~~] served upon the other party by mail, hand-delivery, or facsimile [~~fax~~] ; and

(2) [~~(3)~~] filed with [~~served on~~] the ALJ in accordance with 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure [~~Procedures~~]).

(b) Any disagreement with a factual finding or conclusion of law in the proposal for decision not contained in an exception to the proposal shall be waived.

(c) Each exception or reply to a finding of fact or conclusion of law shall be concisely stated and shall summarize the evidence in support of each exception.

(1) Any evidence or arguments relied upon shall be grouped under the exceptions to which they relate.

(2) In summarizing evidence, the parties shall include a specific citation to the hearing record where such evidence appears or shall attach the relevant excerpts from the hearing record.

(3) Arguments shall be logical and coherent and citations to authorities shall be complete.

(d) Exceptions to the proposal for decision may be based on the following:

(1) the ALJ has made an incorrect conclusion of law;

(2) the ALJ has failed to make an essential fact finding;

(3) the ALJ applied the incorrect burden or standard of proof;

(4) the findings of fact do not support the conclusions of law; or

(5) the ALJ has made a finding of fact that is not supported by the preponderance of the evidence.

§249.39. Final Decisions and Orders.

(a) The chair having certified a quorum present at a regularly scheduled State Board for Educator Certification (SBEC) meeting, a majority vote of the voting members present shall be required to make a final decision on a proposal for decision or request for issuance of a default judgment, unless provided otherwise by this chapter.

(b) A copy of the SBEC's decision or order shall be delivered by hand or certified mail to the parties or to their authorized representatives, as appropriate, and to the State Office of Administrative Hearings by facsimile or email .

(c) All final decisions and orders of the SBEC under this chapter shall be in writing and signed [~~by the members of the SBEC voting in favor of the decision or order or~~] by the chair or other board officer on behalf of the majority as provided [~~allowed~~] by this chapter , board operating policies and procedures, and applicable law, unless members of the majority adopting the decision or order exercise their discretion to sign the decision or order . A final decision or order shall include findings of fact and conclusions of law separately stated. The findings of fact or conclusions of law may be adopted by reference to another document.

(d) The SBEC may adopt an order modifying findings of fact or conclusions of law in a proposal for decision submitted by the administrative law judge (ALJ) in accordance with the Texas Government Code, Chapter 2001. If the SBEC adopts an order that differs from an ALJ's proposal for decision, the SBEC's final decision or order shall show how the proposal was changed and state the specific reason and legal basis for a change. If the SBEC changes a proposal for decision because no evidence in the record supports the ALJ's finding of fact or conclusion of law, then the SBEC may cite the record as a whole for such a change. The SBEC may remand the matter back to the ALJ with specific instructions for the ALJ to determine an essential finding of fact or to apply the correct burden or standard of proof.

§249.40. Motion for Rehearing; Administrative Finality; Appeal.

(a) A motion for rehearing of the State Board for Educator Certification's (SBEC's) decision in a contested case and the determination of administrative finality shall be governed by the Texas Government Code, Chapter 2001; applicable case law; and this section.

(b) A motion for rehearing unsupported by satisfactory evidence shall be overruled. This subsection does not limit the overruling of a motion for rehearing on other grounds or by operation of law.

(c) Appeals from a final order of the SBEC shall be under the substantial evidence standard of review and governed by the Texas Government Code, Chapter 2001; applicable case law; and this section.

(d) The costs of transcribing the testimony and preparing the record for an appeal by judicial review shall be paid by the party who appeals. Texas Education Agency's services in preparing a record for appeal at the request of another party shall be reimbursed on the same basis as the charges for providing public information pursuant to 1 Texas Administrative Code, Part 3, Chapter 70 (relating to Cost of Copies of Public Information).

§249.41. Procedure for Reprimand; Restriction.

(a) Notice. When the State Board for Educator Certification (SBEC) reprimands an educator or restricts an educator's certificate, the Texas Education Agency (TEA) staff shall mail to the educator a copy of the SBEC's order.

(b) Inscribed reprimand.

(1) The TEA staff may [~~shall~~] inscribe the reprimand upon the virtual certificate of the educator.

(2) A record of the SBEC's action publicly reprimanding the educator shall become part of the educator's official certification records maintained by the TEA staff.

(3) The TEA staff shall also notify the employing school district of the SBEC's order reprimanding the educator.

(c) Non-inscribed reprimand.

[~~(1) The educator may retain all copies of all certificates or permits issued by the State of Texas as well as all copies of them without being required to substitute a certificate showing the reprimand.~~]

(1) [~~(2)~~] The SBEC's action reprimanding the certificate holder shall only become part of the person's confidential investigative/litigation case file maintained by the TEA staff and shall not be available for public inspection except as required by law.

(2) [~~(3)~~] The TEA staff, the presiding administrative law judge, and the SBEC may consider a non-inscribed reprimand in seeking, recommending, or ordering sanctions based on subsequently obtained evidence of improper or criminal conduct by the educator.

(d) Restriction.

(1) A record of the SBEC's action restricting the educator's certificate shall be placed on the educator's virtual certificate and shall become part of the person's official records maintained by the TEA staff.

(2) If known, the [~~The~~] TEA staff may [~~shall~~] notify the employing school district of the SBEC's order restricting the educator's certificate.

§249.42. Procedure for the Suspension, Surrender, or Revocation of a Certificate.

(a) When the State Board for Educator Certification (SBEC) issues an order of suspension, surrender, or revocation, the Texas Education Agency (TEA) staff shall mail a copy of the order to the person who formerly held the certificate.

[~~(b) When an order of suspension, surrender, or revocation becomes administratively final, the TEA staff shall mail to the former certificate holder notification of finality.~~]

(b) [~~(c)~~] A record of the SBEC action suspending, canceling, or revoking the certificate shall be recorded on the educator's virtual certificate and shall become part of the person's official records maintained by the TEA staff.

(c) [~~(d)~~] The TEA staff shall also notify the employing school district of the SBEC's order when it becomes administratively final.

[~~(e) The TEA staff shall notify all Texas school district superintendents and certification officers in each state or territory of the United States of the suspension, surrender, or revocation by mailing a notice to any school district known to be employing the educator and by recording the action on the educator's virtual certificate.~~]

§249.43. Procedure for Reinstating a Suspended Certificate.

(a) At the end of the suspension period designated by the State Board for Educator Certification (SBEC), the person whose certificate was suspended may submit a written request that the Texas Education Agency (TEA) staff reinstate the certificate , together with proof of compliance with the order of suspension, [~~by applying for a duplicate certificate up to 30 days prior to the end of the suspension period~~] and payment of [~~paying~~] the appropriate fee. The TEA staff shall run a criminal background check on an educator who requests reinstatement of a suspended [~~the applicant for the duplicate~~] certificate and may deny the reinstatement based on any [~~a~~] subsequent criminal history or other misconduct occurring or discovered after the effective date of the order suspending the certificate. The educator must also meet all other requirements necessary to maintain educator certification or, if applicable, to reactivate an inactive standard certificate.

(b) A record of reinstatement of the certificate shall become part of the educator's official certification records and shall be recorded on the educator's virtual certificate together with the record of the suspension .

[~~(c) The TEA staff shall notify all Texas school district superintendents and certification officers in each state or territory of the United States of the reinstatement of the certificate by updating the educator's virtual certificate to show that the period of the suspension has expired. The record of the prior suspension shall become part of the person's official records maintained by the TEA staff and shall be recorded as a prior disciplinary action on the educator's virtual certificate.~~]

§249.44. Reapplication Following Denial, Surrender, or Revocation.

(a) Except as provided by this section, the Texas Education Agency (TEA) staff shall process and review in its usual and customary manner the certificate application of a person whose previous application was denied or whose certificate was revoked or surrendered by the State Board for Educator Certification (SBEC) under this chapter. Such an applicant shall be subject to the same requirements and qualifications as any other current applicant, as specified in Chapter 230 of this title (relating to Professional Educator Preparation and Certification), including recommendation from an approved educator preparation program, if applicable, and all other prerequisites for certification at the time the application is received.

(b) A person whose certificate has been denied, surrendered, or revoked under this chapter shall not reapply for a certificate before the fifth anniversary after the date of the SBEC's order denying, accepting a surrender, or revoking a certificate became administratively final. The TEA staff shall reject without processing or further proceedings any application received in violation of this subsection. A person reapplying for certification after denial, revocation, or surrender must be recommended for certification by an approved educator preparation program and must satisfy the same requirements for certification that are applicable to any other new applicant.

(c) In addition to other sanctions available under this chapter, the SBEC may order that a person whose certificate has been denied, surrendered, or revoked under this chapter shall not reapply for a certificate for [~~before~~] a time period of [~~longer than~~] five years or longer after the order of denial, surrender, or revocation becomes [~~became~~] administratively final. The SBEC may order that a certificate be permanently revoked or surrendered or that an application be permanently denied without opportunity to reapply for certification, pursuant to §249.17(d) of this title (relating to Decision-Making Guidelines), or otherwise as the SBEC may deem appropriate . The TEA staff shall reject without processing or further proceedings any application received in violation of such an order. A rejection pursuant to this section is not considered an administrative denial and is not subject to a contested case hearing.

(d) In reviewing a certificate application, the TEA staff, the presiding administrative law judge, and the SBEC shall consider prior SBEC orders denying, accepting a surrender, or revoking a certificate previously applied for or held by the applicant. The applicant may not contest the underlying basis for the prior order.

(e) A person whose petition for relief under this section has been denied by the SBEC, in whole or in part, shall not file a subsequent application or petition earlier than the fifth anniversary of the effective date of such denial.

(f) The TEA staff shall publish notice of any certificate issued to a person whose previous application was denied or whose certificate was canceled or revoked by the SBEC under this chapter by updating the educator's virtual certificate.

ATTACHMENT III
Text of Proposed Amendment to 19 TAC

Chapter 247. Educators' Code of Ethics

§247.1. Purpose and Scope; Definitions.

(a) In compliance with the Texas Education Code, §21.041(b)(8), the State Board for Educator Certification (SBEC) adopts an Educators' Code of Ethics as set forth in §247.2 of this title (relating to Code of Ethics and Standard Practices for Texas Educators). The SBEC may amend the ethics code in the same manner as any other formal rule.

(b) The Texas educator shall comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community and shall safeguard academic freedom. The Texas educator, in maintaining the dignity of the profession, shall respect and obey the law, demonstrate personal integrity, and exemplify honesty and good moral character. The Texas educator, in exemplifying ethical relations with colleagues, shall extend just and equitable treatment to all members of the profession. The Texas educator, in accepting a position of public trust, shall measure success by the progress of each student toward realization of his or her potential as an effective citizen. The Texas educator, in fulfilling responsibilities in the community, shall cooperate with parents and others to improve the public schools of the community. This chapter shall apply to educators and candidates for certification.

(c) The SBEC is solely responsible for enforcing the Educators' Code of Ethics for purposes related to certification disciplinary proceedings. The Educators' Code of Ethics is enforced through the disciplinary procedure set forth in Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) pursuant to the purposes stated therein.

(d) As provided in §249.5 of this title (relating to Purpose), the primary goals the SBEC seeks to achieve in educator disciplinary matters are:

(1) to protect the safety and welfare of Texas schoolchildren and school personnel;

(2) to ensure educators and applicants are morally fit and worthy to instruct or to supervise the youth of the state; and

(3) to fairly and efficiently resolve educator disciplinary proceedings at the least expense possible to the parties and the state.

(e) The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Abuse--Includes the following acts or omissions:

(A) mental or emotional injury to a student or minor that results in an observable and material impairment in the student's or minor's development, learning, or psychological functioning;

(B) causing or permitting a student or minor to be in a situation in which the student or minor sustains a mental or emotional injury that results in an observable and material impairment in the student's or minor's development, learning, or psychological functioning;

(C) physical injury that results in substantial harm to a student or minor, or the genuine threat of substantial harm from physical injury to the student or minor, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline; or

(D) sexual conduct harmful to a student's or minor's mental, emotional, or physical welfare.

(2) Applicant--A party seeking issuance, renewal, or reinstatement of a certificate from [~~any of the following from~~] the Texas Education Agency staff or the State Board for Educator Certification . [~~: 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.~~]

(3) Code of Ethics--The Educators' Code of Ethics codified in [~~and Standards of Practices for Texas Educators, pursuant to~~] this chapter.

(4) Complaint--A written statement containing the complainant's verifiable contact information, including full name, complete address, and phone number, submitted to the Texas Education Agency staff that contains essential facts alleging improper conduct by an educator, applicant, or examinee, and provides grounds for sanctions.

(5) Contested case--A proceeding under [~~Chapter 249 of~~] this chapter [~~title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases)~~] in which the legal rights, duties, and privileges related to [~~of~~] a party's educator certificate [~~party~~] are to be determined by the State Board for Educator Certification and/or the State Office of Administrative Hearings commencing when a petition is properly served under this chapter [~~after an opportunity for an adjudicative hearing~~] .

(6) Disciplinary proceedings-- Any matter arising under this chapter or Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) that results in a final order or finding issued by [~~Contested case proceedings before~~] the Texas Education Agency staff, the State Office of Administrative Hearings, or [~~and~~] the State Board for Educator Certification relating to the legal rights, duties, privileges, and status of a party's educator certificate [~~that commence when a request for hearing is timely filed under Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases)~~] .

(7) Educator--A person who is required to hold a certificate issued under the Texas Education Code, Chapter 21, Subchapter B.

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

(9) Good moral character--The virtues of a person as evidenced by patterns of personal, academic, and occupational behaviors that, in the judgment of the State Board for Educator Certification, indicate honesty, accountability, trustworthiness, reliability, and integrity. Lack of good moral character may be evidenced by the commission of [~~, 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 by the commission of acts involving moral turpitude , but conduct that evidences a lack of good moral character is not necessarily limited to such crimes or acts .

(10) Intentionally--An educator acts intentionally, or with intent, with respect to the nature of his or her conduct or to a result of his or her conduct when it is his or her conscious objective or desire to engage in the conduct or cause the result.

(11) Knowingly--An educator acts knowingly, or with knowledge, with respect to the nature of his or her conduct or to circumstances surrounding his or her conduct when he or she is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his or her conduct when he or she is aware that the conduct is reasonably certain to cause the result.

(12) Minor--A person under 18 years of age.

(13) Moral turpitude--Improper conduct , including, but not limited to, the following: dishonesty; fraud; deceit; theft; misrepresentation; deliberate violence; base, vile, or depraved acts that are intended to arouse or to gratify the sexual desire of the actor; drug or alcohol related offenses as described in §249.16(b) of this title (relating to Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53); or acts constituting abuse or neglect under the Texas Family Code, §261.001.

(14) Neglect--The placing or leaving of a student or minor in a situation where the student or minor would be exposed to a substantial risk of physical or mental harm.

(15) Recklessly--An educator acts recklessly, or is reckless, with respect to circumstances surrounding his or her conduct or the results of his or her conduct when he or she is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur.

(16) Sanction--A disciplinary action by the State Board for Educator Certification, including a restriction, reprimand, suspension, revocation of a certificate, or a surrender in lieu of disciplinary action.

[~~(16) Sanction--~~]

[~~(A) a disciplinary action by the State Board for Educator Certification, 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 or presiding officer against a party, representative, or other participant involved in a disciplinary proceeding, hearing, or other matter under Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases).~~]

(17) State Board for Educator Certification--The State Board for Educator Certification acting through its voting members in a decision-making capacity.

(18) State Board for Educator Certification member(s)--One or more of the members of the State Board for Educator Certification, appointed and qualified under the Texas Education Code, §21.033.

(19) Student--A person enrolled in a primary or secondary school, whether public, private, or charter, regardless of the person's age, or a person 18 years of age or younger who is eligible to be enrolled in a primary or secondary school, whether public, private, or charter.

(20) Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.

(21) Worthy to instruct or to supervise the youth of this state--Presence of those moral, mental, and psychological qualities that are required to enable an educator to render the service essential to the accomplishment of the goals and mission of the State Board for Educator Certification policy and this chapter. [~~"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.~~]