

Item 10:**Proposed Amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, §249.16, Eligibility of Persons with Criminal Convictions for a Certificate under Articles 6252-13c and 6252-13d, Revised Civil Statutes, including technical edits to 19 TAC §249.3, Definitions, §249.15, Disciplinary Action by State Board for Educator Certification, and §232.830, Requirements for Certificate Renewal****DISCUSSION AND ACTION**

SUMMARY: This item provides the State Board for Educator Certification (SBEC) an opportunity to discuss and propose an amendment to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, §249.16, Eligibility of Persons with Criminal Convictions for a Certificate under Articles 6252-13c and 6252-13d, Revised Civil Statutes. The proposed amendment would update the current rule to reflect current law and delineate crimes other than those listed in the Texas Education Code (TEC), §21.060, as being related to the duties and responsibilities of the education profession. In addition, this item provides the SBEC an opportunity to discuss and propose amendments to 19 TAC §249.3, Definitions, §249.15, Disciplinary Action by State Board for Educator Certification, and §232.830, Requirements for Certificate Renewal. The proposed amendments would be necessary to update the current rules to reflect the proposed section title for 19 TAC §249.16.

STATUTORY AUTHORITY: The statutory authority for 19 TAC §§249.3, 249.15, 249.16, and 232.830 is the TEC, §21.041(b)(7) and (8) and §21.060; and Texas Occupations Code, §53.021(a) and §53.025.

EFFECTIVE DATE: If approved for filing as proposed in February 2009, the proposed effective date for the proposed amendments to 19 TAC §§249.3, 249.15, 249.16, and 232.830 would be June 21, 2009 (20 days after filing as adopted with the *Texas Register*). The proposed effective date is also based on the SBEC and State Board of Education meeting schedules.

PREVIOUS BOARD ACTION: Sections 249.3, 249.15, and 249.16 were adopted to be effective March 31, 1999, and §249.3 and §249.15 were last amended to be effective December 16, 2007. Section 232.830 was adopted to be effective January 1, 1999, and was last amended to be effective June 22, 2008.

The proposed amendments to 19 TAC §§249.3, 249.15, 249.16, and 232.830 were schedule for discussion at the October 2008 SBEC meeting.

BACKGROUND INFORMATION AND SIGNIFICANT ISSUES: The TEC, §21.041(b)(7) and (8), authorize the SBEC to adopt rules providing for disciplinary proceedings and enforcing the educator's code of ethics.

At the July 2007 SBEC meeting, the SBEC requested that the amendment to 19 TAC §249.16 be pulled from the proposed rule changes to 19 TAC Chapter 249 for filing with the *Texas Register* so that an

Attorney General's opinion could be requested regarding the meaning of the TEC, §21.060, added by Senate Bill 9, 80th Texas Legislature, 2007. The question submitted to the Attorney General was whether the proposed amendment to 19 TAC §249.16 would be in conflict with the TEC, §21.060. Subsequently, the Attorney General issued Opinion No. GA-0614 ruling that the list of crimes deemed to be related to the duties and responsibilities of the education profession is nonexclusive in the TEC, §21.060. Therefore, the SBEC has the authority, pursuant to the Texas Occupations Code, §53.025, to list crimes other than those listed in the TEC, §21.060, as being related to the duties and responsibilities of the education profession. As a result, TEA staff are recommending the following changes to 19 TAC §249.16, as shown in Attachment II.

These changes are similar to the changes originally presented to the SBEC in July 2007, with the exception of an additional revision to §249.16(b)(3) that would include only felony possession of illegal drugs while retaining the inclusion of all convictions for transfer, sale, or distribution of illegal drugs.

In §249.16(b)(7), the standard for alcohol-related crimes and crimes that relate to the teaching professional would be revised to include felony driving while intoxicated (DWI) and felony driving under the influence of drugs or alcohol (DUI), rather than the previous standard which focused on two or more offenses within any 12-month period.

In §249.16, language would be added in proposed new subsection (d) to state that the remedies found in the TEC, §21.060, added by Senate Bill 9, 80th Texas Legislature, 2007, are cumulative with the remedies found in the Texas Occupations Code, Chapter 53. Both provisions apply to criminal acts committed by certificate holders.

In §249.16, grammatical and technical changes would also be made, such as the replacement of the terms "Agency" and "executive director" with the term "TEA staff" and the replacement of the term "Board" with the term "State Board for Educator Certification." Also, statutory citation references would be updated and standardized to reflect current law and *Texas Register* formatting requirements. Technical edits would also be made to §§249.3, 249.15, and 232.830 to update references to the proposed section title for 19 TAC §249.16, as well as statutory citations.

FISCAL IMPACT: The TEA staff has determined that there are no additional costs to persons or entities required to comply with the proposed rule action. 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 implementing a more efficient and less costly process of resolving less serious educator misconduct complaints and redirecting resources to deal with more serious disciplinary complaints against educators.

PROCEDURAL AND REPORTING IMPLICATIONS: Modifying the current process for resolving ethical disputes would result in a more efficient resolution process.

LOCALLY MAINTAINED PAPERWORK REQUIREMENTS: None.

PUBLIC COMMENTS: None.

ALTERNATIVES: None.

OTHER COMMENTS AND RELATED ISSUES: None.

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

Approve the proposed amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, §249.3, Definitions; §249.15, Disciplinary Action by State Board for Educator Certification; and §249.16, Eligibility of Persons with Criminal Convictions for a Certificate under Articles 6252-13c and 6252-13d, Revised Civil Statutes, and 19 TAC Chapter 232, General Certification Provisions, §232.830, Requirements for Certificate Renewal, for filing as proposed 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, Subchapter A, General Provisions, §249.3, Definitions, and Subchapter B, Enforcement Actions and Guidelines, §249.15, Disciplinary Action by State Board for Educator Certification, and §249.16, Eligibility of Persons with Criminal Convictions for a Certificate under Articles 6252-13c and 6252-13d, Revised Civil Statutes
- III. Text of Proposed Amendment to 19 TAC Chapter 232, General Certification Provisions, Subchapter B, Certificate Renewal and Continuing Professional Education Requirements, §232.830, Requirements for Certificate Renewal

ATTACHMENT I

Statutory Citations Relating to Proposed Amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, §249.16, Eligibility of Persons with Criminal Convictions for a Certificate under Articles 6252-13c and 6252-13d, Revised Civil Statutes, including technical edits to 19 TAC §249.3, Definitions, §249.15, Disciplinary Action by State Board for Educator Certification, and §232.830, Requirements for Certificate Renewal

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

- (b) The board shall propose rules that:
 - (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, § 21.060, 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 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 a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation.

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.

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)-(18) (No change.)
- (19) Good moral character--the virtues of a person as evidenced, at a minimum, by his or her not having committed crimes relating directly to the duties and responsibilities of the education profession as described in §249.16(b) of this title (relating to Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53 [Articles 6252-13e and 6252-13d, Revised Civil Statutes]) or acts involving moral turpitude.
- (20)-(24) (No change.)
- (25) 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 [Articles 6252-13e and 6252-13d, Revised Civil Statutes]); or acts constituting abuse or neglect under the Texas Family Code, §261.001.
- (26)-(46) (No change.)

Subchapter B. Enforcement Actions and Guidelines

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

- (a) (No change.)
- (b) The SBEC may take any of the actions listed in subsection (a) of this section based on satisfactory evidence that:
 - (1)-(6) (No change.)
 - (7) the person has committed an act described in §249.14(g) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition), §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 [Articles 6252-13c and 6252-13d, Revised Civil Statutes]).
- (c)-(f) (No change.)

§249.16. Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53 [Articles 6252-13c and 6252-13d, Revised Civil Statutes] .

- (a) Pursuant to the Texas Occupations Code, Chapter 53 [Articles 6252-13c and 6252-13d, Revised Civil Statutes] , and the Texas Education Code (TEC), Chapter 22, Subchapter C, [Chapter 22, Education Code,] the State Board for Educator Certification [board] may suspend or revoke an existing valid certificate, deny an applicant a certificate, or bar a person from being assessed or examined for a certificate because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the education profession.
- (b) Subsection (a) of this section applies to a crime that [:] indicates a threat to the health, safety, or welfare of a student or minor , parent of a student, fellow employee, or professional colleague; interferes with the orderly, efficient, or safe operation of a school district, campus, or activity; or indicates impaired ability or misrepresentation of qualifications to perform the functions of an educator. Crimes considered to relate directly to the duties and responsibilities of the education profession include , but are not limited to :
 - (1) crimes involving [the crime involves] moral turpitude;
 - (2) crimes involving [the crime involves] any form of sexual or physical abuse or neglect of a student or minor [or student] or other illegal conduct with a student or minor [or student] ;
 - (3) crimes involving any [the facts underlying the crime would support a] felony [conviction for] possession or conspiracy to possess, or any misdemeanor or felony [:] transfer, sale, distribution, or conspiracy to [possess,] transfer, sell, or distribute any controlled substance defined in the Texas Health and Safety Code, Chapter 481 [, Health and Safety Code] ;
 - (4) crimes involving [the crime involves] school property or funds;
 - (5) crimes involving [the crime involves] 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;
 - (6) crimes occurring [the crime occurs] wholly or in part on school property or at a school-sponsored activity; or
 - (7) felonies involving driving while intoxicated (DWI) or driving under the influence (DUI) of drugs or alcohol.
 - ~~[(7) two or more crimes are committed within any 12-month period that involve public intoxication, operating a motor vehicle while under the influence of alcohol, or disorderly conduct.]~~
- (c) Pursuant to the Texas Occupations Code, Chapter 53 [Article 6252-13d, Revised Civil Statutes] , the Texas Education Agency (TEA) staff [executive director] shall notify the applicant or certificate holder in writing

of the TEA staff's ~~agency's~~ intent to seek disciplinary action, including denial or revocation, and the reasons for the proposed action. The applicant or certificate holder shall have the opportunity to be heard according to the procedures set forth in this chapter.

- (d) The grounds for revoking or suspending a certificate provided by this section and the Texas Occupations Code, Chapter 53, are cumulative of the other grounds and remedies provided by the TEC, §21.060, and this chapter.

ATTACHMENT III
Text of Proposed Amendment to 19 TAC

Chapter 232. General Certification Provisions

Subchapter B. Certificate Renewal and Continuing Professional Education Requirements

§232.830. Requirements for Certificate Renewal.

- (a) (No change.)
- (b) To be eligible for renewal, an educator must:
 - (1)-(3) (No change.)
 - (4) successfully resolve any criminal history, as defined by §249.16 of this title (relating to Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53 [Articles 6252-13c and 6252-13d, Revised Civil Statutes]);
 - (5)-(8) (No change.)
- (c)-(e) (No change.)