

Item 23:**Discussion of Proposed Amendment to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, §249.14, Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition****DISCUSSION ONLY**

SUMMARY: This item presents proposed amendment to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, §249.14, Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition, for discussion. The proposed amendment would modify the description of circumstances requiring a superintendent to report alleged misconduct of an educator who resigns from a school district, the minimum requirements of a superintendent's report, and the requirements for a school district to request that the Texas Education Agency (TEA) pursue sanctions against an educator who has abandoned his or her contract in violation of the Texas Education Code (TEC), §§21.105(c)(2), 21.160(c)(2), or 21.210(c)(2).

STATUTORY AUTHORITY: The statutory authority for 19 TAC §249.14 is the TEC, §21.006 and §21.041.

BOARD RESPONSE: This item is presented for review and comment.

PREVIOUS BOARD ACTION: Section 249.14 was adopted to be effective March 31, 1999, and amended to be effective August 9, 2007, and December 16, 2007.

FUTURE ACTION EXPECTED: The proposed amendment to 19 TAC §249.14 would be presented to the SBEC for filing as proposed at the April 2009 SBEC meeting.

BACKGROUND INFORMATION AND SIGNIFICANT ISSUES: The TEC, §21.041(b)(7), authorizes the SBEC to adopt rules that provide for disciplinary proceedings for certificate holders.

One of the legislative priorities of the SBEC Legislative committee for the 81st Texas Legislative session is to broaden the circumstances under which a report of alleged educator misconduct is required by the TEC, §21.006. Therefore, TEA staff are recommending that a provision be added to 19 TAC §249.14(d) that would cover any such additional circumstances under the TEC, §21.006.

A 2006 Third Court of Appeals decision interpreted the meaning of the TEC, §21.355, provision that "a document evaluating the performance of a teacher or administrator is confidential" to include not just formal appraisals but also any document that reflects an administrator's judgment of an educator's actions. Subsequent letter rulings by the Attorney General Open Records Division held that the confidentiality applies even to the SBEC and the TEA staff investigating allegations of educator misconduct. At this time, neither the TEA nor the SBEC has authority to issue an administrative subpoena to obtain withheld documents unless there is other evidence that would support a formal petition for sanctions. As a result, TEA staff investigators have been unable to investigate reports of serious allegations of educator

misconduct because school district reports often do not contain detailed factual allegations and do not identify victims or witnesses, while the school districts' records related to alleged misconduct have been withheld as confidential appraisals. Therefore, TEA staff recommend that language be added to 19 TAC §249.14(e), as authorized by the TEC, §21.006(c)(2), to specify that reports of educator misconduct shall contain detailed factual allegations and the identity of victims and witnesses to allow such allegations to be adequately investigated.

Difficulties have arisen in the interpretation of 19 TAC §249.14(f), relating to the requirement that a school district submit to the TEA staff a written complaint for an educator's abandonment of a TEC, Chapter 21 contract "within 30 calendar days after the educator separates from employment." This has been especially problematic when the educator's resignation has not been accepted by the school district, resulting in the necessity of contested case hearings to resolve this single issue. Therefore, TEA staff also recommend that language be modified in 19 TAC §249.14(f) to specify a more definite date from which the 30-calendar day deadline would begin and to specify that the school district finding of lack of good cause to resign is not binding in a contested case hearing.

FISCAL IMPACT: None.

PUBLIC AND STUDENT BENEFIT: The public benefit anticipated as a result of the proposed amendment would be a more prompt and complete investigation of allegations of educator misconduct, thereby reducing uncertainty and preventing unnecessary administrative proceedings related to complaints of educator contract abandonment, to better protect the safety and welfare of Texas public school students.

PROCEDURAL AND REPORTING IMPLICATIONS: None.

LOCALLY MAINTAINED PAPERWORK REQUIREMENTS: The proposed amendment may have an impact on the amount of detail required in school district reports. Additional assessment of locally maintained paperwork can be made after the SBEC gives guidance to the TEA staff on the proposed changes.

PUBLIC COMMENTS: None.

ALTERNATIVES: An alternative to the proposed amendment would be to continue under the existing rule, resulting in some allegations of serious educator misconduct not being fully investigated and contract abandonment cases being less likely to settle informally.

OTHER COMMENTS AND RELATED ISSUES: None.

Respectfully submitted,

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- Attachments:**
- I. Statutory Citations
 - II. Text of Proposed Amendment to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, §249.14, Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition

ATTACHMENT I

Statutory Citations Relating to Proposed Amendment to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, §249.14, Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition**Texas Education Code, §21.006, Requirement to Report Misconduct:**

- (a) In this section, "abuse" has the meaning assigned by Section 261.001, Family Code, and includes any sexual conduct involving an educator and a student or minor.
- (b) In addition to the reporting requirement under Section 261.101, Family Code, the superintendent or director of a school district, regional education service center, or shared services arrangement shall notify the State Board for Educator Certification if the superintendent or director has reasonable cause to believe that:
 - (1) an educator employed by or seeking employment by the district, service center, or shared services arrangement has a criminal record;
 - (2) an educator's employment at the district, service center, or shared services arrangement was terminated based on a determination that the educator:
 - (A) abused or otherwise committed an unlawful act with a student or minor;
 - (B) possessed, transferred, sold, or distributed a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq., and its subsequent amendments;
 - (C) illegally transferred, appropriated, or expended funds or other property of the district, service center, or shared services arrangement;
 - (D) attempted by fraudulent or unauthorized means to obtain or alter a professional certificate or license for the purpose of promotion or additional compensation; or
 - (E) committed a criminal offense or any part of a criminal offense on school property or at a school-sponsored event;
 - (3) the educator resigned and reasonable evidence supports a recommendation by the superintendent or director to terminate the educator based on a determination that the educator engaged in misconduct described by Subdivision (2); or
 - (4) the educator engaged in conduct that violated the assessment instrument security procedures established under Section 39.0301.
- (c) The superintendent or director must notify the State Board for Educator Certification by filing a report with the board not later than the seventh day after the date the superintendent or director first learns about an alleged incident of misconduct described by Subsection (b). The report must be:
 - (1) in writing; and
 - (2) in a form prescribed by the board.
- (d) The superintendent or director shall notify the board of trustees or governing body of the school district, regional education service center, or shared services arrangement and the educator of the filing of the report required by Subsection (c).

- (e) A superintendent or director who in good faith and while acting in an official capacity files a report with the State Board for Educator Certification under this section is immune from civil or criminal liability that might otherwise be incurred or imposed.
- (f) The State Board for Educator Certification shall determine whether to impose sanctions against a superintendent or director who fails to file a report in violation of Subsection (c).
- (g) The State Board for Educator Certification shall propose rules as necessary to implement this section.
- (h) The name of a student or minor who is the victim of abuse or unlawful conduct by an educator must be included in a report filed under this section, but the name of the student or minor is not public information under Chapter 552, Government Code.

Texas Education Code, §21.041, Rules; Fees:

- (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;
 - (2) specify the classes of educator certificates to be issued, including emergency certificates;
 - (3) specify the period for which each class of educator certificate is valid;
 - (4) specify the requirements for the issuance and renewal of an educator certificate;
 - (5) provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to Section 21.052;
 - (6) provide for special or restricted certification of educators, including certification of instructors of American Sign Language;
 - (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;
 - (9) provide for continuing education requirements; and
 - (10) provide for certification of persons performing appraisals under Subchapter H.
- (c) The board shall propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of this subchapter.

ATTACHMENT II
Text of Proposed Amendment to 19 TAC

Chapter 249. Disciplinary Proceedings, Sanctions, and Contested Cases

Subchapter B. Enforcement Actions and Guidelines

§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 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 information indicating any of the following circumstances:
 - (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; or
 - (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 paragraph (3) of this subsection shall notify the governing body of the employing school district before filing the report with the TEA staff ; or []
 - (4) any other circumstances requiring a report under the Texas Education Code (TEC), §21.006.
- (e) A report filed under subsection (d) of this section shall, at a minimum, describe in detail [summarize] 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; ~~and~~ last known mailing address and home and daytime phone numbers ; ~~;~~ name or names and any available contact information 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. 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) The TEA staff shall not pursue sanctions against an educator who is alleged to have abandoned his or her contract in violation of the Texas Education Code (TEC), §§21.105(c), 21.160(c), or 21.210(c), 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
 - (2) submits a written complaint to the TEA staff within 30 calendar days after the educator files a written resignation with the school district in the manner provided by the TEC, §§21.105, 21.160, or 21.210. If the educator does not submit a written resignation, the employing school district may determine the effective date, which shall not be later than 14 days after the educator fails to appear for work under the terms of the contract, of the educator's deemed resignation and termination from employment for purposes of this subsection [separates from employment].
- (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 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 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: other conduct including but not limited to the following:
 - (A) any conduct constituting a misdemeanor criminal offense or testing violation which is not described as Priority 1 under paragraph (1) of this subsection;
 - (B) contract abandonment; and
 - (C) code of ethics violations.

- (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.
- (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 (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 (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 (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 (i)(2) of this section.
- (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 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 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 (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 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 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.
- (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.
- (k) The TEA staff shall remove an investigative notice from the certification records in the following situations.
- (1) When a case's final disposition occurs within the time limits established in subsection (j) of this section, an investigative notice shall be removed.
 - (2) If the time limits for an investigative notice have been exceeded; 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.
- (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.