

# **STATE BOARD FOR EDUCATOR CERTIFICATION** **DISCUSSION AND ACTION SESSION AGENDA**

August 10, 2012

## **Minutes**

The Board will meet in open session and after determining the presence of a quorum, deliberate and possibly take formal action, including emergency action, on the following agenda items:

### **1. Call to Order**

The State Board for Educator Certification convened its meeting at 9:00 a.m. on Friday, August 10, 2012 in Room 1-104 of the William B. Travis Building, 1701 N. Congress Avenue in Austin, Texas.

Present: Dr. Cain, Ms. Bricker, Ms. Pogue, Ms. Robison, Ms. Everest, Dr. Simpson, Dr. Loreda, Mr. Allard, Ms. McCall, Ms. Druesedow; Ms. Bridges arrived at 9:35 a.m.

Absent: Dr. Culwell, Mr. Trevino

Dr. Cain recognized Dr. Ann Smisko and her service to the Board and to the Texas Education Agency.

### **2. Associate Commissioner's Comments Regarding the SBEC Agenda**

Todd Webster, Chief Deputy Commissioner, reviewed the agenda.

### **3. Public Testimony**

No public testimony on non-agenda items.

### **Consent Agenda**

### **4. Approval of June 8, 2012 Board Meeting Minutes**

### **5. Approval of 2013 Board Meeting Dates**

### **Motion and Vote:**

*Motion was made by Ms. Pogue to approve the June 8, 2012 board meeting minutes and the 2013 board meeting dates. Second was made by Ms. Bricker and the Board voted unanimously in favor of the motion.*

**DISCUSSION AND ACTION****6. Adoption of Review of 19 TAC Chapter 229, Accountability System for Educator Preparation Programs**

Dr. Lopez informed the Board that this item is presented for the purpose of concluding the review of 19 TAC Chapter 229, Accountability System for Educator Preparation Programs.

**Motion and Vote:**

*Motion was made by Ms. Druesedow to adopt the review of 19 TAC Chapter 229, Accountability System for Educator Preparation Programs. Second was made by Ms. McCall and the Board voted unanimously in favor of the motion.*

**7. Consideration of Petition for Adoption of Rule Change Concerning 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter E, Posthearing Matters, §249.44(b), (c), and (e), Reapplication Following Denial, Surrender, or Revocation**

Mr. Allen informed the Board that this item presents a citizen petition requesting an amendment to 19 TAC §249.44(b), (c), and (e), that would change the time a person must wait before reapplying for a certificate after denial, surrender, or revocation of a certificate from five years to three years. Mr. Allen informed the Board that the Texas Education Agency (TEA) staff recommendation is to deny the petition as to surrenders and revocations and requested board direction regarding denials. Mr. Allen stated that board policy has been that a person who is on active felony, community supervision, or probation would not be approved to reapply for a certificate.

Mr. Allen presented the Board with options to consider regarding denials: 1) change the waiting period from five years to three years or 2) leave the automatic five-year waiting period, but provide some discretion to reduce the waiting period down to as low as three years in certain cases where the conduct is not as serious.

The Board discussed various options and considerations for denials.

**Motion and Vote:**

*Motion was made by Ms. Pogue to deny the petition to reduce the waiting period from five years to three years before a person reapplies for a certificate after surrender, revocation, or denial of a certificate, since the SBEC has previously reviewed this issue and determined that a five-year waiting period is appropriate. Second was made by Ms. Bricker and the Board voted unanimously in favor of the motion.*

**8. Consideration of Petition for Adoption of Rule Change Concerning 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter P, Requirements for Standard Certificates and Specialized Assignments or Programs, §230.483(b)(1)(A)(ii), Specific Requirements for Standard Career and Technical Education Certificates Based on Experience and Preparation**

**Public Testimony was provided by:**

Linda Holcombe, Texas Industrial Vocational Association (TIVA)

Mr. Allen informed the Board that this item presents a citizen petition requesting an amendment to 19 TAC §230.483(b)(1)(A)(ii), that would change the requirement that a person with a bachelor's degree who is seeking a standard Trade and Industrial Education: Grades 8-12 certificate must have three years of full-time wage-earning experience within the past eight years in one or more approved occupations for which instruction is offered. Mr. Allen informed the Board that the petition requests that recent continuing professional education activities within the area of instruction be allowed to substitute for work experience within the last eight years.

Mr. Allen informed the Board that the Texas Education Agency (TEA) staff recommendation is to deny the petition. Mr. Allen stated that staff determined that recent work experience is a necessary qualification for certification.

**Motion and Vote:**

*Motion was made by Ms. Robison to deny the petition to allow continuing professional education activities to count toward the three years of full-time wage-earning experience within the past eight years, since recent work experience is a necessary qualification for certification to prepare students for the workforce in the occupations covered by the Trade and Industrial Education: Grades 8-12 certificate. Second was made by Ms. Druesedow and the Board voted unanimously in favor of the motion.*

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

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

Ms. Dover provided information on the Default Cases.

**A. Contested Cases****I. Defaults**

- 1) Docket No. 0944-EC-0212, Texas Education Agency, Educator Certification and Standards Division v. Lisa Ann Casas; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: 2 years Suspension

**Motion and Vote:**

*Motion was made by Mr. Allard to grant staff's request for the Issuance of Default Judgment and enter a Final Order consistent with staff's recommendation. Motion was seconded by Ms. Everest and the Board voted unanimously in favor of the motion.*

- 2) Docket No. 0943-EC-10212, Texas Education Agency, Educator Certification and Standards Division v. Nairobi Boone-Garcia; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Revocation

**Motion and Vote:**

*Motion was made by Mr. Allard to grant staff's request for the Issuance of Default Judgment and enter a Final Order consistent with staff's recommendation. Motion was seconded by Ms. Everest and the Board voted unanimously in favor of the motion.*

- 3) Docket No. 0950-EC-0312, Texas Education Agency, Educator Certification and Standards Division v. James Scott Gray; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Permanent Revocation

**Motion and Vote:**

*Motion was made by Mr. Allard to grant staff's request for the Issuance of Default Judgment and enter a Final Order consistent with staff's recommendation. Motion was seconded by Ms. Everest and the Board voted unanimously in favor of the motion.*

- 4) Docket No. 6014-EC-0312, Texas Education Agency, Educator Certification and Standards Division v. Cade Koltonski; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Permanent Revocation

**Motion and Vote:**

*Motion was made by Mr. Allard to grant staff's request for the Issuance of Default Judgment and enter a Final Order consistent with staff's recommendation. Motion was seconded by Ms. Everest and the Board voted unanimously in favor of the motion.*

- 5) Docket No. 0949-EC-0312, Texas Education Agency, Educator Certification and Standards Division v. Andrea Tara Medina; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Permanent Revocation

**Motion and Vote:**

*Motion was made by Mr. Allard to grant staff's request for the Issuance of Default Judgment and enter a Final Order consistent with staff's recommendation. Motion was seconded by Ms. Everest and the Board voted unanimously in favor of the motion.*

- 6) Docket No. 0952-EC--0412, Texas Education Agency, Educator Certification and Standards Division v. Gerardo Tamez, Jr.; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Revocation

**Motion and Vote:**

*Motion was made by Mr. Allard to grant staff's request for the Issuance of Default Judgment and enter a Final Order consistent with staff's recommendation. Motion was seconded by Ms. Everest and the Board voted unanimously in favor of the motion.*

- 7) Docket No. 0951-EC-0412, Texas Education Agency, Educator Certification and Standards Division v. Candice M. Small; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: 3 years Suspension

**Motion and Vote:**

*Motion was made by Mr. Allard to grant staff's request for the Issuance of Default Judgment and enter a Final Order consistent with staff's recommendation. Motion was seconded by Ms. Everest and the Board voted unanimously in favor of the motion.*

- 8) Docket No.3159-EC-0312, Texas Education Agency, Educator Certification and Standards Division v. Robin W. Smith; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Permanent Revocation

**Motion and Vote:**

*Motion was made by Mr. Allard to grant staff's request for the Issuance of Default Judgment and enter a Final Order consistent with staff's recommendation. Motion was seconded by Ms. Everest and the Board voted unanimously in favor of the motion.*

- 9) Docket No. 0219-EC-0412, Texas Education Agency, Educator Certification and Standards Division v. Stephanie Hundley aka Stephanie Lacy; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: 1 year Suspension

**Motion and Vote:**

*Motion was made by Mr. Allard to grant staff's request for the Issuance of Default Judgment and enter an order consistent with staff's recommendation. Motion was seconded by Ms. Everest and the Board voted unanimously in favor of the motion.*

- 10) Docket No. 0211-EC-0312, Texas Education Agency, Educator Certification and Standards Division v. Rebecca Maley; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: 2 years Suspension

**Motion and Vote:**

*Motion was made by Ms. Pogue to accept staff's recommendation of a two year suspension with the addition that the educator must submit proof of a current alcohol awareness training before the suspension is lifted. Additionally, a restriction will be added to the certificate to prohibit transportation of students in connection with the educator's professional employment. Motion was seconded by Ms. Bricker and the Board voted unanimously in favor of the motion.*

- 11) Docket No. 0210-EC-0312, Texas Education Agency, Educator Certification and Standards Division v. Yaminah Lashaun Johnson; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Revocation

**Motion and Vote:**

*Motion was made by Mr. Allard to grant staff's request for the Issuance of Default Judgment and enter a Final Order consistent with staff's recommendation. Motion was seconded by Ms. Everest and the Board voted unanimously in favor of the motion.*

- 12) Docket No. 0954-EC-0512, Texas Education Agency, Educator Certification and Standards Division v. Jennifer J. Carter-Tamayo; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Revocation

**Motion and Vote:**

*Motion was made by Mr. Allard to grant staff's request for the Issuance of Default Judgment and enter a Final Order consistent with staff's recommendation. Motion was seconded by Everest and the Board voted unanimously in favor of the motion.*

- 13) Docket No. 0222-EC-0412, Texas Education Agency, Educator Certification and Standards Division v. Kelli Ann Hutchinson; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: 2 years Suspension

**Motion and Vote:**

*Motion was made by Ms. Pogue to accept staff's recommendation of a two year suspension with the addition that the educator must submit proof of a current alcohol awareness training before the suspension is lifted. Additionally, a restriction will be added to the certificate to prohibit transportation of students in connection with the educator's professional employment. Motion was seconded by Ms. Bricker and the Board voted unanimously in favor of the motion.*

- 14) Docket No. 4130-EC-0312, Texas Education Agency, Educator Certification and Standards Division v. Clarence Lee Lewis, Jr.; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Revocation

**Motion and Vote:**

*Motion was made by Mr. Allard to grant staff's request for the Issuance of Default Judgment and enter a Final Order consistent with staff's recommendation. Motion was seconded by Ms. Everest and the Board voted unanimously in favor of the motion.*

**II. Proposals for Decision**

- 15) Docket No. 701-11-8398.EC; Texas Education Agency, Educator Certification and Standards Division v. Barry Ryan Davis; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

ALJ Recommendation: 1 year Suspension

Staff recommendation: Same

Mr. Davis spoke on his behalf. Ms. Dover provided information on the case.

**Motion and Vote:**

*Motion was made by Mr. Allard to accept the Proposal for Decision and Issue an amended Final Order of a non-inscribed reprimand instead of the ALJ's and staff's recommendation of a one-year suspension. The amended order is due to the fact that the activity is not sufficient enough to remove the educator from the classroom for an additional year. Motion was seconded by Ms. Everest. Motion and second was withdrawn.*

- 16) Docket No. 701-12-0020.EC; Texas Education Agency, Educator Certification and Standards Division v. Lora Quintanilla; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

ALJ Recommendation: Revocation  
Staff recommendation: Same

**Motion and Vote:**

*Motion was made by Ms. Robison to accept the Proposal for Decision and Issue a Final Order consistent with the ALJ's recommendation. Motion was seconded by Ms. Bridges and the Board voted unanimously in favor of the motion.*

- 17) Docket No. 701-11-8468.EC; Texas Education Agency, Educator Certification and Standards Division v. Erasmo Montalvo, Jr.; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

ALJ Recommendation: No Sanction  
Staff recommendation: Revocation

Mr. Mark Robinett spoke on Mr. Montalvo's behalf. Ms Dover provided information on the case.

**Motion and Vote:**

*Motion was made by Ms. Pogue to accept the Proposal for Decision including Findings of Fact Numbers 1-33 and Conclusions of Law Numbers 1-6, modify Conclusions of Law Numbers 7 and 8, and add Conclusions of Law Number 9 as follows:*

*Conclusion of Law 7: Based on Findings of Fact Numbers 11, 14, 18, 20, 22, 23, and 26, Respondent is a person unworthy to instruct or supervise the youth of this state.*

*Conclusion of Law 8: SBEC is authorized to take disciplinary action against Respondent's Texas Educator Certificate.*

*Conclusion of Law 9 should be added as follows: Respondent's educator certificate should be REVOKED.*

*These modifications are permissible pursuant to Texas Government Code Section 2001.058(e) and are necessary because the ALJ failed to appropriately interpret SBEC policies and rules.*

**Motion and Vote continued:**

*These additions and modifications are permissible pursuant to Texas Government Code §2001.058(e) and are necessary because the ALJ failed to appropriately interpret and apply SBEC policies and rules. See 34 TexReg 5421-22, Marrs v. Matthews, 270 S.W.586 (1925), and 19 Tex. Admin. Code §249.15(b)(2).*

*Protecting the safety and welfare of Texas school children and school personnel is a primary purpose of the SBEC. A certified educator holds a unique position of public trust and, therefore, the conduct of an educator must be held to the highest standard.*

*The moral fitness of an educator must be determined from an examination of all relevant conduct and is not limited to conduct that constitutes a criminal violation or results in a criminal conviction. The responsibility and discretion to make this weighty determination is vested in the SBEC.*

*Mr. Montalvo held a trusted position of authority that provided him a unique opportunity to exploit vulnerable female athletes. Educators must clearly understand the boundaries of the educator-student relationship that they are trusted not to cross. The SBEC considers any violation of that trust to be conduct that may result in permanent revocation of an educator's certificate.*

*Allowing a female student to use the Jacuzzi in the master bathroom of his home while no one else is present, calling a student over 480 times in the late evening over a four month period, a male coach giving a female athlete rubdowns and ice baths, and failing to follow district protocol to send an injured athlete to the trainer is conduct that the SBEC considers to cross the bounds of the appropriate student-teacher relationship and is sanctionable conduct. Respondent's actions crossed the bounds of an appropriate educator-student relationship and show that he is presently unworthy to hold a Texas educator certificate. Motion was seconded by Ms. Everest. Motion carried with Ms. Robison and Mr. Allard voting against the motion.*

- 18) Docket No. 701-11-6246.EC; Texas Education Agency, Educator Certification and Standards Division v. Albert T. Walker; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

ALJ Recommendation: No Action

Staff recommendation: Same

**Motion and Vote:**

*Motion was made by Ms. Robison to accept the Proposal for Decision and Issue a Final Order with the ALJ's recommendation to take no action. Motion was seconded by Ms. Druesedow and the Board voted unanimously in favor of the motion.*

Dr. Cain adjourned to Executive Session at 11:12 a.m.  
Dr. Cain reconvened the meeting at 11:45 a.m.

Ms. Bridges left the meeting at 11:50 a.m.

### III. Motions for Rehearing

None

### IV. Appeals

- 1) Andra Barton v. State Board for Educator Certification; Cause No. 06-11-00078-CV, In the Court of Appeals for the Sixth District of Texas at Texarkana, Texas.
- 2) Don Madden v. State Board for Educator Certification; Cause No. 03-11-00584-CV, In the Court of Appeals for the Third District of Travis County, Texas.
- 3) Sonia Sanchez v. Texas Education Agency, Educator Certification and Standards Division; Cause No. D-1-GN-10-003868, In the 345<sup>th</sup> Judicial District Court of Travis County, Texas.
- 4) Robert Lange v. State Board for Educator Certification; Cause No. D-1-GN-11-001843, In the 250<sup>th</sup> Judicial District Court of Travis County, Texas.

### B. Pending Litigation

*The Board may discuss any other litigation arising after the date of posting or reasonably contemplated as of the date of the board meeting.*

- 1) Leah Mullins, Don Madden, and David Jeffers v. Texas Education Agency, Educator Certification and Standards Division, Cause No. D1-GN-08-00979, In the 345<sup>th</sup> Judicial District Court of Travis County, Texas.

### 10. Action on Items Discussed in Executive Session

*Pursuant to section 551.102 of the Texas Government Code, any deliberation and final action on matters discussed in Executive Session must be made in an Open Meeting. For any final action that the Board discussed in Executive Session, the Board will deliberate and take its action in Open Session.*

- 15) Docket No. 701-11-8398.EC; Texas Education Agency, Educator Certification and Standards Division v. Barry Ryan Davis; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

ALJ Recommendation: 1 year Suspension  
Staff recommendation: Same

**Motion and Vote:**

*Motion was made by Mr. Allard to accept the Proposal for Decision and Issue a Final Order suspending Mr. Davis for one year, retroactively from August 10, 2011 to August 10, 2012. The decision is based on the fact that Mr. Davis was released early from his probation program and he also has not committed or been accused of any crime since then. Motion was seconded by Ms. Everest and the board voted unanimously in favor of the motion.*

**DISCUSSION ONLY****11. Discussion of the Definition of the Term "Student" in 19 TAC Chapter 247, Educators' Code of Ethics, §247.1(e)(19), Purpose and Scope; Definitions, and 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter A, General Provisions, §249.3(54), Definitions**

Mr. Allen informed the Board that this item was placed on the agenda at the request of a board member in order to emphasize the Board's definition of the term "student." Mr. Allen noted that the definition of the term "student" in board rules includes any student whether 18 years of age and whether they go to the same school district as an educator.

**12. Discussion of Standard Three of 19 TAC Chapter 229, Accountability System for Educator Preparation Programs****Public Testimony was provided by:**

Dr. Diann Huber, iteachTexas

Dr. Lopez notified the Board that the actual matric will not be fully operational until 2014-2015. Dr. Lopez informed the Board that the LBJ School of Public Affairs at the University of Texas is transitioning out as the vendor for the project, and the contract with the new vendor has not been finalized.

Dr. Loreda and Dr. Simpson commended the staff and Dr. Cynthia Osbourne and her team at the LBJ School of Public Affairs at the University of Texas for the work that has been done.

**13. Discussion of Educator Preparation Program Accountability, Sanctions and Technical Assistance**

Dr. Cain requested that this item be brought back to the Board at the October meeting because Mr. Trevino, who requested the item, was not present.

**INFORMATION ONLY****14. Board Operating Policies and Procedures (BOPP)****15. 2011-2014 Rule Review Plan for State Board for Educator Certification Rules**

**DISCUSSION AND ACTION**

**16. Requests from Board Members for Future Board Items**

**17. Adjournment**

**Dr. Cain adjourned the meeting at 12:05 p.m.**