

**Item 15:****Adoption of Proposed Amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, and Subchapter E, Post-Hearing Matters****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, proposed amendments to 19 Texas Administrative Code (TAC) Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, and Subchapter E, Post-Hearing Matters. The proposed amendments would implement House Bill (HB) 2519, 87th Texas Legislature, Regular Session, 2021, by amending the SBEC's rules to allow the SBEC to put conditions on a certificate without any additional sanction; to reduce the minimum sanction for contract abandonment that occurs 30–44 days in advance of the first day of instruction for the next school year; to clarify that sanctions for contract abandonment are subject to all mitigating factors and that mitigating factors can reduce a sanction to the point that the SBEC takes no disciplinary action against an educator; and to clarify the notice that the Texas Education Agency (TEA) sends sanctioned educators regarding the necessity of filing a motion for rehearing if the respondent wants to appeal the decision. The proposed amendments also reflect the results of the SBEC's July work session on contract abandonment and October meeting by expanding the definition of good cause for contract abandonment to include instances when an educator resigns after receiving written permission from school administration and by adding new mitigating factors that allow lower sanctions for contract abandonment when an educator gets a promotion, is assigned to another campus, has their salary reduced, or faces a threat of immediate physical harm. No changes are recommended since published as proposed, but additional changes may be recommended at the time of the meeting based on public comment.

**STATUTORY AUTHORITY:** The statutory authority for 19 TAC Chapter 249, Subchapter B, §249.15 and §249.17, is Texas Education Code (TEC), §§21.006(a)–(c-2), (f)–(g-1), and (i); 21.007; 21.009(e); 21.031(a); 21.035; 21.041; 21.058; 21.0581; 21.060; 21.065, as added by HB 2519, 87th Texas Legislature, Regular Session, 2021; 21.105(c), (e), and (f), as amended and added by HB 2519, 87th Texas Legislature, Regular Session, 2021; 21.160(c), (e), and (f), as amended and added by HB 2519, 87th Texas Legislature, Regular Session, 2021; 21.210(c), (e) and (f), as amended and added by HB 2519, 87th Texas Legislature, Regular Session, 2021; 22.082; 22.0831; 22.085; 22.087; 22.092; and 22.093(a)–(f); Texas Government Code (TGC), §§411.090, 2001.058(e), and 2001.142(a); Texas Family Code (TFC), §261.308(d) and (e) and §261.406(a) and (b); Texas Occupations Code (TOC), §§53.021(a), 53.022–53.025, 53.051, 53.052, and 56.003; and the Every Student Succeeds Act (ESSA), 20 United States Code (USC), §7926. The statutory authority for 19 TAC Chapter 249, Subchapter E, §249.42, is TEC, §§21.031(a); 21.035; 21.040(4); and 21.041(a) and (b)(1), (4), and (7); and TOC, §§53.021(a), 53.022–53.025, and 53.051.

TEC, §21.006(a)–(c-2), (f)–(g-1), and (i), require the superintendent or director of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center or shared services arrangement to report to the SBEC within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct, unless the superintendent or director completes an investigation before the educator resigns or is terminated and determines that the educator did not commit the alleged misconduct. It also requires principals to report to superintendents within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and when there is evidence that the educator has engaged in certain misconduct. It further authorizes the SBEC to impose sanctions on educators who fail to report as required by the statute, including authority to impose monetary administrative penalties, gives the SBEC rulemaking authority as necessary to implement the statute, requires the SBEC to create an internet portal to facilitate confidential and secure reporting, and gives the SBEC authority to impose administrative penalties on principals and superintendents who fail to fulfill their reporting obligations to the SBEC under TEC, §21.006.

TEC, §21.007, gives the SBEC authority to place a notice that an educator is under investigation for alleged misconduct on the educator's public certification records, requires the SBEC to give the educator notice and an opportunity to show cause, requires that the SBEC limit the amount of time the notice can appear on the educator's certification, and gives the SBEC rulemaking authority as necessary to implement the provision.

TEC, §21.009(e), states that the SBEC may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a student or minor.

TEC, §21.031(a), charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators.

TEC, §21.035, states that TEA staff provide administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commissioner of education or to TEA staff the authority to settle or otherwise informally dispose of contested cases involving educator certification.

TEC, §21.040(4), requires the SBEC to develop policies that delineate the respective responsibilities of the SBEC and TEA staff.

TEC, §21.041, authorizes the SBEC to adopt rules as necessary for its own procedures, to regulate educators, specify the requirements for issuance or renewal of educator certificates, administer statutory requirements, provide for educator disciplinary proceedings, and for enforcement of the Educator's Code of Ethics.

TEC, §21.058, requires the SBEC to revoke the certification of an educator convicted or placed on deferred adjudication community supervision for certain offenses.

TEC, §21.0581, allows the SBEC to suspend, revoke or sanction an educator's certificate, or refuse to issue a certificate, if the person has assisted another person in obtaining employment at a school district, private school, or open-enrollment charter school, other than by the routine

transmission of administrative and personnel files when the person knew the other person had engaged in sexual misconduct with a student or minor in violation of the law.

TEC, §21.060, sets out crimes that relate to the education profession and authorizes the SBEC to sanction or to refuse to issue a certificate to any person who has been convicted of one of these offenses.

TEC, §21.065, as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, sets requirements for the notice SBEC must send when it suspends an educator's certificate.

TEC, §21.105(c), as amended by HB 2519, 87th Texas Legislature, Regular Session, 2021, allows the SBEC to impose sanctions against an educator who abandons a probationary contract.

TEC, §21.105(e), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, requires the SBEC to consider any mitigating factors relevant to the teacher's conduct and allows the SBEC to consider alternatives to sanctions, including additional continuing education or training.

TEC, §21.105(f) as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, forbids the SBEC from issuing a sanction of suspension or revocation for educators who abandon their contracts with school districts more than 30 days prior to the first day of instruction for the next school year.

TEC, §21.160(c), as amended by HB 2519, 87th Texas Legislature, Regular Session, 2021, allows the SBEC to impose sanctions against an educator who abandons a continuing contract.

TEC, §21.160(e), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, requires the SBEC to consider any mitigating factors relevant to the teacher's conduct and allows the SBEC to consider alternatives to sanctions, including additional continuing education or training.

TEC, §21.160(f), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, forbids the SBEC from issuing a sanction of suspension or revocation for educators who abandon their contracts with school districts more than 30 days prior to the first day of instruction for the next school year.

TEC, §21.210(c), as amended by HB 2519, 87th Texas Legislature, Regular Session, 2021, allows the SBEC to impose sanctions against an educator who abandons a term contract.

TEC, §21.210(e), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, requires the SBEC to consider any mitigating factors relevant to the teacher's conduct and allows the SBEC to consider alternatives to sanctions, including additional continuing education or training.

TEC, §21.210(f), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, forbids the SBEC from issuing a sanction of suspension or revocation for educators who abandon their contracts with school districts more than 30 days prior to the first day of instruction for the next school year.

TEC, §22.082, requires the SBEC to subscribe to the criminal history clearinghouse and allows the SBEC to obtain any criminal history from any closed case file.

TEC, §22.0831, requires the SBEC to review the criminal history of certified educators and applicants for certification.

TEC, §22.085, requires school districts, charter schools, and shared services arrangements to conduct fingerprint criminal background checks on employees and to refuse to hire those who have certain criminal history.

TEC, §22.087, requires superintendents and directors of school districts, charter schools, private schools, regional education service centers, and shared services arrangement to notify the SBEC if an applicant for a certification has criminal history that is not in the criminal history clearinghouse.

TEC, §22.092, requires school districts, charter schools, districts of innovation, regional education service centers, and shared services arrangements to discharge or to refuse to hire any person listed on the registry of persons not eligible for employment in Texas public schools.

TEC, §22.093(a)–(f), requires superintendents or directors of school districts, districts of innovation, charter schools, regional education service centers, or shared services arrangements to notify the commissioner of education if an employee resigned or was terminated and there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor, or was involved in a romantic relationship with a student or minor.

TGC, §411.090, allows the SBEC to get from the Texas Department of Public Safety all criminal history record information about any applicant for licensure as an educator.

TGC, §2001.058(e), sets out the requirements for when the SBEC can make changes to a proposal for decision from an administrative law judge.

TGC, §2001.142(a), requires all Texas state licensing agencies to notify parties to contested cases of orders or decisions of the agency by personal service, electronic means, if the parties have agreed to it, first class, certified or registered mail, or by any method required under the agency's rules for a party to serve copies of pleadings in a contested case.

TFC, §261.308(d) and (e), requires the Texas Department of Family and Protective Services to release information regarding a person alleged to have committed abuse or neglect to the SBEC.

TFC, §261.406(a) and (b), requires the Texas Department of Family and Protective Services to send a copy of a completed investigation report involving allegations of abuse or neglect of a child in a public or private school to the TEA.

TOC, §53.021(a), 53.022-53.025, 53.051, and 53.052, allow the SBEC to suspend or revoke an educator's certificate or refuse to issue a certificate if a person is convicted of certain offenses; set out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education; set out additional factors for the SBEC to consider when deciding whether to allow a person convicted of a crime to serve as an educator; set out information the SBEC must give an applicant when it denies a license and requires that the SBEC allow 30 days for the applicant to submit any relevant information to the SBEC; state that proceedings to

deny or sanction an educator's certification are covered by the Texas Administrative Procedure Act, Chapter 2001, Texas Government Code; give the SBEC rulemaking authority to issue guidelines to define which crimes relate to the profession of education; require that the SBEC notify a license holder or applicant after denying, suspending, or revoking the certification; and allow a person who has been denied an educator certification or had an educator certification revoked or suspended to file a petition for review in state district court after exhausting all administrative remedies.

TOC, §56.003, prohibits state agencies from taking disciplinary action against licensees for student loan non-payment or default.

ESSA, 20 USC, §7926, requires state educational agencies to make rules forbidding educators from aiding other school employees, contractors, or agents in getting jobs when the educator knows the job-seeker has committed sexual misconduct with a student or minor in violation of the law.

**EFFECTIVE DATE:** The proposed effective date of the proposed amendments to 19 TAC Chapter 249 would be March 3, 2022 (20 days after filing as adopted with the *Texas Register*). The proposed effective date is based on the SBEC and SBOE meeting schedules.

**PREVIOUS BOARD ACTION:** At the October 1, 2021 SBEC meeting, the SBEC approved the proposed amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, and Subchapter E, Post-Hearing Matters, for publication in the *Texas Register* as proposed rules.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Chapter 249 covers educator discipline, including investigations, sanction guidelines, and procedures for contested cases. TEC, §§21.105, 21.160, and 21.210, give educators the right to resign without penalty at the end of a school year, up to 45 days before the first day of instruction for the following school year. Contract abandonment occurs when an educator resigns from a teaching contract less than 45 days before the first day of instruction for the following school year. The SBEC engaged in discussions during the July 22, 2021 work session and July 23, 2021 SBEC meeting regarding contract abandonment rules and procedures. Proposed rule changes to implement the results of those discussions and recent legislation regarding contract abandonment are presented in Attachment II.

### **House Bill 2519**

HB 2519, 87th Texas Legislature, Regular Session, 2021, created new requirements and limitations for the SBEC in educator discipline cases involving either contract abandonment or a suspension sanction.

HB 2519 amended TEC, §§21.105(e), 21.160(e), and 21.210(e), to state that the SBEC in considering contract abandonment cases "may consider alternatives to sanctions, including additional continuing education or training." The SBEC has historically interpreted "additional" in 19 TAC §249.15(a)(5) to mean that the SBEC had to impose another sanction, such as a non-inscribed reprimand, before it could put other conditions or restrictions on a certificate, such as requiring continuing education. To allow the SBEC to require training without having to issue any other sanction in accordance with the intent of HB 2519, the proposed amendment would remove the word "additional" from 19 TAC §249.15(a)(5).

Through changes to TEC, §§21.105, 21.160, and 21.210, HB 2519 forbids the SBEC from issuing a sanction of suspension or revocation for educators who abandon their contracts with school districts 30 days or more before the first day of instruction for the next school year. The proposed amendment would therefore change the sanction guidance for contract abandonment in 19 TAC §249.17(d)(3) to make an inscribed reprimand the standard sanction when an educator abandons a contract 30–44 days prior to the first day of instruction and no mitigating factors apply. HB 2519 made no changes to the deadline for educator resignations; an educator can still resign without penalty 45 days prior to the first day of instruction. Thus, under the proposed rule, an educator who resigns 45 days prior to the first day of instruction is not subject to sanction by the SBEC, an educator who resigns 44–30 days prior to the first day of instruction is subject to an inscribed reprimand if no mitigating factors apply, and an educator who resigns fewer than 30 days before the first day of instruction or at any point during the school year is subject to at least a one-year suspension if no mitigating factors apply. In a case where the educator resigned 44–30 days prior to the first day of instruction and mitigating factors applied, under the proposed rule, the educator would receive a sanction of less than an inscribed reprimand—a non-inscribed reprimand, a requirement to complete continuing education with no reprimand, or no reprimand at all—depending on the strength of the mitigating factors and at the SBEC's discretion. Similarly, in a case where the educator resigns fewer than 30 days prior to the first day of instruction or during the school year and mitigating factors apply, under the proposed rule, the educator would receive a sanction of less than a one-year suspension—a shorter suspension, an inscribed reprimand, a non-inscribed reprimand, a requirement to complete continuing education with no reprimand, or no reprimand at all—depending on the strength of the mitigating factors and at the SBEC's discretion. In any case where the educator had good cause for contract abandonment as defined in 19 TAC §249.17(d)(1), the educator would not be subject to sanction by the SBEC regardless of when the educator resigned.

HB 2519 amended TEC, §§21.105(e), 21.160(e), and 21.210(e) to require that the SBEC consider "any mitigating factors relevant to the teacher's conduct" prior to imposing a sanction for contract abandonment. The proposed amendment to 19 TAC §249.17(d)(2) would change "may" to "shall" to reflect this new statutory requirement by removing the SBEC's discretion on whether to review mitigating factors in contract abandonment cases. The proposed amendment to 19 TAC §249.17(d)(2) would also include technical edits that would add "the educator" as a lead in and would make corresponding technical edits to subparagraphs (A)–(F). The proposed amendment to 19 TAC §249.17(d)(3) would add new §249.17(d)(3)(A) and (B) to include specific cross-references to the factors the SBEC considers under 19 TAC §249.17(c), among which would include a broad catch-all factor, "any other relevant circumstances or facts," to make it clear that the SBEC will consider all mitigating factors in contract abandonment cases.

The proposed amendment to 19 TAC §249.17(d)(3)(B) would also provide a technical edit to reorganize subparagraphs (A)–(C) to clauses (i)–(iii).

The proposed amendment would also include new 19 TAC §249.17(d)(3)(C), which would clarify that mitigating factors can reduce an educator's sanction to such an extent that the SBEC takes no disciplinary action against the educator. This change is proposed to reduce confusion among SBEC members and stakeholders regarding the limits of the SBEC's discretion in considering mitigating factors. The SBEC cannot be arbitrary or capricious in determining the value of a mitigating factor or a sanction, but the SBEC can decide that the unique mitigating facts in a specific case are so extreme and compelling that they necessitate reducing the educator's sanction to the point that an educator subject to discipline receives no sanction.

In TEC, §21.065(b), HB 2519 imposes requirements on the SBEC to give notice to an educator whose certificate has been suspended of "the basis for the suspension" and "information regarding the method in which the teacher may respond to the suspension." The SBEC already sends sanctioned educators such notices with the final order, informing the educators that they must file a Motion for Rehearing with the SBEC if they do not agree with the SBEC's decision and if they want to appeal in keeping with TGC, §2001.145. The proposed amendment would add language to 19 TAC §249.42(a) that would reflect and clarify this procedure and the language used in the letters to educators.

This proposal would include technical edits to further define a cross reference to 19 TAC Chapter 101 in §249.15(b)(8).

### ***SBEC Work Session and Board Meeting***

On July 22, 2021, the SBEC conducted a work session to examine ways to improve its contract abandonment sanctioning guidelines. The results of the work session and July 23 and October 1, 2021 SBEC meetings are reflected in the proposed amendment to 19 TAC §249.17(d)(1) and (2), which adds to the definition of good cause for contract abandonment and to the mitigating factors that apply specifically to contract abandonment cases. These provisions offer guidance and predictability to educators, TEA staff, State Office of Administrative Hearings judges, and the SBEC regarding in what situations the SBEC will take no action against an educator due to good cause and in what situations the SBEC will issue reduced sanctions against an educator for contract abandonment based on applicable mitigating factors.

The proposed amendment to 19 TAC §249.17(d)(1) would expand the definition of good cause for contract abandonment. Proposed new §249.17(d)(1)(D) would make written permission from school district administration good cause for contract abandonment. The proposed amendment would cause the SBEC to take no disciplinary action against an educator who abandoned a contract under those specific conditions because an educator should be able to resign without penalty when the educator reasonably understands that he or she has received written permission from the school administration to resign.

The proposed amendment to 19 TAC §249.17(d)(2) would add mitigating factors that reduce an educator's sanction for contract abandonment. Proposed new §249.17(d)(2)(G) would reduce an educator's sanction if the educator had resigned in order to take a position that amounted to a career change from one certification class to another or to a more advanced position within the principal certificate class. For example, the proposed amendment would reduce the sanction for an educator who resigned in order to become a librarian, a counselor, an assistant principal, a principal, or a superintendent. The proposed amendment also would reduce the sanction for an assistant principal who resigned to become a principal, a superintendent, or another more senior administration position that requires a principal or superintendent certificate. This proposed amendment would give teachers more flexibility to advance their careers within education without fear of long suspension sanctions from SBEC due to contract abandonment.

Proposed new 19 TAC §249.17(d)(2)(H) would allow a reduced sanction when an educator resigns due to a decrease in the educator's base pay, excluding stipends, as compared to the prior year at the same school district. Due to school district board meeting schedules, some educators do not learn what their salary will be for the school year until after the 45th day before the first day of instruction, when educators can no longer resign without penalty. The commissioner of education has held that an educator's contract remains valid even if the educator's salary is set at a later school district board meeting, so long as the educator's final

salary is within the salary range that the educator was offered when the educator signed the contract. An educator can thus find themselves in a year-long contract for a salary that is less than the educator had earned the year before and be unable to resign without penalty. Under proposed new 19 TAC §249.17(d)(2)(H), an educator who resigned in such circumstances would still be subject to discipline for contract abandonment but would receive a lesser sanction than the default one-year suspension.

Proposed new 19 TAC §249.17(d)(2)(I) would allow a reduced contract abandonment sanction when an educator resigns following a change in the educator's campus assignment that causes a significant adverse impact on the educator's family needs or health condition. In geographically large school districts, a change in campus assignment can cause an educator to have a commute that is much longer than the educator had expected, which can cause the educator to be unable to pick up his or her children on time or can adversely affect the educator's health. This proposed change would give educators confronted with a change in campus assignment and contemplating resignation some predictability that the SBEC will reduce the penalty for contract abandonment to reflect the severity of the impact the change in assignment had on the educator's health or family needs.

Proposed new 19 TAC §249.17(d)(2)(J) would allow lower sanctions for contract abandonment when an educator resigns a contract due to working conditions that reasonably posed an immediate threat of physical harm to the educator. This proposed change would allow the SBEC to reduce the penalty in a contract abandonment case to reflect the severity of the risk of physical harm an educator faced before resigning. It would give educators some comfort and predictability that they would not face a long suspension for contract abandonment if they resign due to physically dangerous working conditions.

While TEA staff may make sanction recommendations, the SBEC would retain discretion to determine the final sanction and the amount of reduction in penalty allowed for each mitigating factor prescribed in 19 TAC §249.17(d)(2).

No changes are recommended to the proposed amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, and Subchapter E, Post-Hearing Matters, but additional changes may be recommended at the time of the meeting based on public comment.

**FISCAL IMPACT:** No changes have been made to this section since published as proposed. The TEA staff has determined that there is no additional fiscal impact on state or local governments and that there are no additional costs to entities required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** No changes have been made to this section since published as proposed. The proposal has no effect on local economy; therefore, no local employment impact statement is required under TGC, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** No changes have been made to this section since published as proposed. The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in TGC, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** No changes have been made to this section since published as proposed. The proposal does not impose a cost on regulated persons,



another state agency, a special district, or a local government and, therefore, is not subject to TGC, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** No changes have been made to this section since published as proposed. The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under TGC, §2007.043.

**GOVERNMENT GROWTH IMPACT:** No changes have been made to this section since published as proposed. The TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation by reducing the minimum sanction for contract abandonment 30 days prior to the first day of instruction when no mitigating factors apply from a one-year suspension to an inscribed reprimand. It would further limit an existing regulation by creating more mitigating factors and ways that a respondent can meet the definition of good cause, reducing the number of respondents who will be subject to sanction.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** No changes have been made to this section since published as proposed. The public benefit anticipated as a result of the proposal would be predictability and transparency in contract abandonment sanctioning by the SBEC. There is no anticipated cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** No changes have been made to this section since published as proposed. The proposal would have no new data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** No changes have been made to this section since published as proposed. The TEA staff has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal began October 22, 2021, and ended November 22, 2021. Any comments received will be provided to the SBEC under separate cover prior to the December 10, 2021 meeting. The SBEC will take registered oral and written comments on this item at the December 10, 2021 meeting in accordance with the SBEC board operating policies and procedures.

**ASSOCIATE COMMISSIONER'S RECOMMENDATION:**

Approve for adoption, subject to the State Board of Education (SBOE) review, the proposed amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, and Subchapter E, Post-Hearing Matters, with an effective date of 20 days after filing the adoption notice with the *Texas Register*.

**Staff Members Responsible:**

Laura Moriaty, Director, SBEC Enforcement

David Rodriguez, Director, Educator Investigations

**Attachments:**

- I. Statutory Citations
- II. Text of Proposed Amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, and Subchapter E, Post-Hearing Matters

**ATTACHMENT I****Statutory Citations Relating to Proposed Amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contest Cases, Subchapter B, Enforcement Actions and Guidelines, and Subchapter E, Post-Hearing Matters****Texas Education Code, §21.006, Requirement to Report Misconduct (excerpts):**

- (a) In this section:
- (1) "Abuse" has the meaning assigned by Section 261.001, Family Code, and includes any sexual conduct involving an educator and a student or minor.
  - (2) "Other charter entity" means:
    - (A) a school district operating under a home-rule school district charter adopted under Subchapter B, Chapter 12;
    - (B) a campus or campus program operating under a charter granted under Subchapter C, Chapter 12; and
    - (C) an entity that contracts to partner with a school district under Section 11.174(a)(2) to operate a district campus under a charter granted to the entity by the district under Subchapter C, Chapter 12.
- (b) In addition to the reporting requirement under Section 261.101, Family Code, and except as provided by Subsection (c-2), the superintendent or director of a school district, district of innovation, open-enrollment charter school, other charter entity regional education service center, or shared services arrangement shall notify the State Board for Educator Certification if:
- (1) an educator employed by or seeking employment by the school district, district of innovation, charter school, other charter entity, service center, or shared services arrangement has a criminal record and the school district, district of innovation, charter school, other charter entity, service center, or shared services arrangement obtained information about the educator's criminal record by a means other than the criminal history clearinghouse established under Section 411.0845, Government Code;
  - (2) an educator's employment at the school district, district of innovation, charter school, other charter entity, service center, or shared services arrangement was terminated and there is evidence that the educator:
    - (A) abused or otherwise committed an unlawful act with a student or minor;
    - (A-1) was involved in a romantic relationship with or solicited or engaged in sexual contact 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.;
    - (C) illegally transferred, appropriated, or expended funds or other property of the school district, district of innovation, charter school, other charter entity, 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 there is evidence 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.
- (b-1) A superintendent or director of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement shall complete an investigation of an educator that involves evidence that the educator may have engaged in misconduct described by Subsection (b)(2)(A) or (A-1), despite the educator's resignation from employment before completion of the investigation.
- (b-2) The principal of a school district, district of innovation, open-enrollment charter school, or other charter entity campus must notify the superintendent or director of the school district, district of innovation, charter school, or other charter entity not later than the seventh business day after the date:
- (1) of an educator's termination of employment or resignation following an alleged incident of misconduct described by Subsection (b); or
  - (2) the principal knew about an educator's criminal record under Subsection (b)(1).
- (c) Except as provided by Subsection (c-2), the superintendent or director must notify the State Board for Educator Certification by filing a report with the board not later than the seventh business day after the date the superintendent or director receives a report from a principal under Subsection (b-2) or knew about an educator's termination of employment or resignation following an alleged incident of misconduct described by Subsection (b) or an employee's criminal record under Subsection (b)(1).
- (c-1) The report under Subsection (c):
- (1) must be:
    - (A) in writing; and
    - (B) in a form prescribed by the board; and
  - (2) may be filed through the Internet portal developed and maintained by the State Board for Educator Certification under Subsection (g-1).
- (c-2) A superintendent or director of a school district, district of innovation, open-enrollment charter school, regional education service center, or shared services arrangement is not required to notify the State Board for Educator Certification or file a report with the board under Subsection (b) or (c) if the superintendent or director:
- (1) completes an investigation into an educator's alleged incident of misconduct described by Subsection (b)(2)(A) or (A-1) before the educator's termination of employment or resignation; and
  - (2) determines the educator did not engage in the alleged incident of misconduct described by Subsection (b)(2)(A) or (A-1).
- (f) The State Board for Educator Certification shall determine whether to impose sanctions, including an administrative penalty under Subsection (i), against a principal who fails to provide notification to a superintendent or director in violation of Subsection (b-2) or

- 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.
  - (g-1) The State Board for Educator Certification shall develop and maintain an Internet portal through which a report required under Subsection (c) may be confidentially and securely filed.
  - (i) If an educator serving as a superintendent or director is required to file a report under Subsection (c) and fails to file the report by the date required by that subsection, or if an educator serving as a principal is required to notify a superintendent or director about an educator's criminal record or alleged incident of misconduct under Subsection (b-2) and fails to provide the notice by the date required by that subsection, the State Board for Educator Certification may impose on the educator an administrative penalty of not less than \$500 and not more than \$10,000. The State Board for Educator Certification may not renew the certification of an educator against whom an administrative penalty is imposed under this subsection until the penalty is paid.

**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, §21.009, Pre-Employment Affidavit (excerpt):**

- (e) The State Board for Educator Certification may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant for a position described by Section 21.003(a) or (b) despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor.

**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, Delegation Authority; Administration by Agency:**

- (a) The board is permitted to make a written delegation of authority to the commissioner or the agency to informally dispose of a contested case involving educator certification.
- (b) The agency shall provide the board's administrative functions and services.

**Texas Education Code, §21.040, General Powers and Duties of the Board (excerpt):**

- (4) develop and implement policies that clearly define the respective responsibilities of the board and the board's staff.

**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, §21.058, Revocation of Certificate and Termination of Employment Based on Conviction of or Placement on Deferred Adjudication Community Supervision for Certain Offenses:**

- (a) The procedures described by Subsections (b) and (c) apply only:
  - (1) to conviction of or placement on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or
  - (2) to conviction of a felony offense under Title 5, Penal Code, if the victim of the offense was under 18 years of age at the time the offense was committed.
- (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 or placement on deferred adjudication community supervision 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, to the agency, 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, with the approval of the board of trustees or governing body or a designee of the board or governing body:
    - (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) terminate the employment of the person as soon as practicable.
- (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, with the approval of the board of trustees or governing body or a designee of the board of trustees or governing body:
  - (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, with the approval of the board of trustees or governing body or a designee of the board or governing body, 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, §21.0581, Revocation for Assisting Person Who Engaged in Sexual Misconduct Obtain Employment**

- (a) The board may suspend or revoke a certificate held by a person under this subchapter, impose other sanctions against the person, or refuse to issue a certificate to the person under this subchapter if:
  - (1) the person assists another person in obtaining employment at a school district, private school, or open-enrollment charter school, other than by the routine transmission of administrative and personnel files; and

- (2) the person knew that the other person has previously engaged in sexual misconduct with a minor or student in violation of the law.
- (b) The commissioner may require a school district to revoke or decline to issue a school district teaching permit under Section 21.055 issued to or requested by a person subject to board action under Subsection (a).

**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, §21.065, Notice to Teacher Regarding Suspension of Certificate or Permit, as added by HB 2519, 87th Texas Legislature, Regular Session, 2021:**

- (a) In this section, "teacher" means a superintendent, principal, supervisor, classroom teacher, school counselor, paraprofessional, or other full-time professional employee who is required to hold a certificate issued under this subchapter.
- (b) Except as provided by Subsection (c), on the suspension of a teacher's certificate or permit issued under this subchapter, the board shall promptly notify the teacher of the suspension. The notice must include:
  - (1) the basis for the suspension; and
  - (2) information regarding the method in which the teacher may respond to the suspension.
- (c) Subsection (b) does not apply to the suspension of a teacher's certificate or permit by an agreed order.

**Texas Education Code, §21.105, Resignations Under Probationary Contract, as amended and added by HB 2519, 87th Texas Legislature, Regular Session, 2021 (excerpt):**

- (c) Subject to Subsections (e) and (f), on [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
- (e) Before imposing sanctions against a teacher under Subsection (c), the State Board for Educator Certification:
  - (1) must consider any mitigating factors relevant to the teacher's conduct; and
  - (2) may consider alternatives to sanctions, including additional continuing education or training.
- (f) If a teacher fails to timely file a written resignation as required by Subsection (a) but files a written resignation in the manner provided by that subsection not later than the 30th day before the first day of instruction of the following school year, the State Board for Educator Certification may not suspend or revoke the teacher's certificate under Subsection (c).

**Texas Education Code, §21.160, Resignation Under Continuing Contract, as amended and added by HB 2519, 87th Texas Legislature, Regular Session, 2021 (excerpt):**

- (c) Subject to Subsections (e) and (f), on [OR] 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.
- (e) Before imposing sanctions against a teacher under Subsection (c), the State Board for Educator Certification:
  - (1) must consider any mitigating factors relevant to the teacher's conduct; and
  - (2) may consider alternatives to sanctions, including additional continuing education or training.
- (f) If a teacher fails to timely file a written resignation as required by Subsection (a) but files a written resignation in the manner provided by that subsection not later than the 30th day before the first day of instruction of the following school year, the State Board for Educator Certification may not suspend or revoke the teacher's certificate under Subsection (c).

**Texas Education Code, §21.210, Resignation Under Term Contract, as amended and added by HB 2519, 87th Texas Legislature, Regular Session, 2021 (excerpt):**

- (c) Subject to Subsections (e) and (f), on [OR] 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

- (e) Before imposing sanctions against a teacher under Subsection (c), the State Board for Educator Certification:
- (1) must consider any mitigating factors relevant to the teacher's conduct; and
  - (2) may consider alternatives to sanctions, including additional continuing education or training.
- (f) If a teacher fails to timely file a written resignation as required by Subsection (a) but files a written resignation in the manner provided by that subsection not later than the 30th day before the first day of instruction of the following school year, the State Board for Educator Certification may not suspend or revoke the teacher's certificate under Subsection (c).

**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.

**Texas Education Code, §22.085, Employees and Applicants Convicted of or Placed on Deferred Adjudication Community Supervision for Certain Offenses:**

- (a) A school district, open-enrollment charter school, or shared services arrangement shall discharge or refuse to hire an employee or applicant for employment if the district,

school, or shared services arrangement obtains information through a criminal history record information review that the employee or applicant has been:

- (1) convicted of or placed on deferred adjudication community supervision for an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or
  - (2) convicted of:
    - (A) a felony offense under Title 5, Penal Code, if the victim of the offense was under 18 years of age at the time the offense was committed; or
    - (B) an offense under the laws of another state or federal law that is equivalent to an offense under Subdivision (1) or Paragraph (A).
- (b) Subsection (a) does not apply if the employee or applicant for employment committed an offense under Title 5, Penal Code and:
- (1) the date of the offense is more than 30 years before:
    - (A) the effective date of S.B. No. 9, Acts of the 80th Legislature, Regular Session, 2007, in the case of a person employed by a school district, open-enrollment charter school, or shared services arrangement as of that date; or
    - (B) the date the person's employment will begin, in the case of a person applying for employment with a school district, open-enrollment charter school, or shared services arrangement after the effective date of S.B. No. 9, Acts of the 80th Legislature, Regular Session, 2007; and
  - (2) the employee or applicant for employment satisfied all terms of the court order entered on conviction.
- (c) A school district, open-enrollment charter school, or shared services arrangement may not allow a person who is an employee of or applicant for employment by an entity that contracts with the district, school, or shared services arrangement to serve at the district or school or for the shared services arrangement if the district, school, or shared services arrangement obtains information described by Subsection (a) through a criminal history record information review concerning the employee or applicant. A school district, open-enrollment charter school, or shared services arrangement must ensure that an entity that the district, school, or shared services arrangement contracts with for services has obtained all criminal history record information as required by Section 22.0834 or 22.08341.
- (d) A school district, open-enrollment charter school, private school, regional education service center, or shared services arrangement may discharge an employee if the district or school obtains information of the employee's conviction of a felony or of a misdemeanor involving moral turpitude that the employee did not disclose to the State Board for Educator Certification or the district, school, service center, or shared services arrangement. An employee discharged under this section is considered to have been discharged for misconduct for purposes of Section 207.044, Labor Code.
- (e) The State Board for Educator Certification may impose a sanction on an educator who does not discharge an employee or refuse to hire an applicant for employment if the educator knows or should have known, through a criminal history record information review, that the employee or applicant has been:

- (1) convicted of or placed on deferred adjudication community supervision for an offense described by Subsection (a)(1); or
  - (2) convicted of an offense described by Subsection (a)(2).
- (f) Each school year, the superintendent of a school district or chief operating officer of an open-enrollment charter school shall certify to the commissioner that the district or school has complied with this section.

**Texas Education Code, §22.087, Notification to State Board for Educator Certification:**

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:

- (1) 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; and
- (2) the person obtained the information by a means other than the criminal history clearinghouse established under Section 411.0845, Government Code.

**Texas Education Code, §22.092, Registry of Persons Not Eligible for Employment in Public Schools:**

- (a) The agency shall maintain and make available through the Internet portal developed and maintained by the agency under Section 22.095 a registry of persons who are not eligible to be employed by a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement.
- (b) A school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement shall discharge or refuse to hire a person listed on the registry maintained under this section.
- (c) The registry maintained under this section must list the following persons as not eligible to be employed by public schools:
  - (1) a person determined by the agency under Section 22.0832 as a person who would not be eligible for educator certification under Subchapter B, Chapter 21;
  - (2) a person determined by the agency to be not eligible for employment based on the person's criminal history record information review, as provided by Section 22.0833;
  - (3) a person who is not eligible for employment based on criminal history record information received by the agency under Section 21.058(b);
  - (4) a person whose certification or permit issued under Subchapter B, Chapter 21, is revoked by the State Board for Educator Certification on a finding that the person engaged in misconduct described by Section 21.006(b)(2)(A) or (A-1); and
  - (5) a person who is determined by the commissioner under Section 22.094 to have engaged in misconduct described by Section 22.093(c)(1)(A) or (B).
- (d) The agency shall provide private schools and public schools equivalent access to the registry maintained under this section.
- (e) The agency shall adopt rules as necessary to implement this section.

**Texas Education Code, §22.093, Requirement to Report Employee Misconduct (excerpts):**

- (a) In this section, "abuse" has the meaning assigned by Section 261.001, Family Code, and includes any sexual conduct involving a student or minor.
- (b) This section applies to a person who is employed by a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement and who does not hold a certification or permit issued under Subchapter B, Chapter 21.
- (c) In addition to the reporting requirement under Section 261.101, Family Code, the superintendent or director of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement shall notify the commissioner if:
  - (1) an employee's employment at the school district, district of innovation, charter school, other charter entity, service center, or shared services arrangement was terminated and there is evidence that the employee:
    - (A) abused or otherwise committed an unlawful act with a student or minor; or
    - (B) was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor; or
  - (2) the employee resigned and there is evidence that the employee engaged in misconduct described by Subdivision (1).
- (d) A superintendent or director of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement shall complete an investigation of an employee that involves evidence that the employee may have engaged in misconduct described by Subsection (c)(1)(A) or (B), despite the employee's resignation from employment before completion of the investigation.
- (e) The principal of a school district, district of innovation, open-enrollment charter school, or other charter entity campus must notify the superintendent or director of the school district, district of innovation, charter school, or other charter entity not later than the seventh business day after the date of an employee's termination of employment or resignation following an alleged incident of misconduct described by Subsection (c)(1)(A) or (B).
- (f) The superintendent or director must notify the commissioner by filing a report with the commissioner not later than the seventh business day after the date the superintendent or director receives a report from a principal under Subsection (e) or knew about an employee's termination of employment or resignation following an alleged incident of misconduct described by Subsection (c)(1)(A) or (B). The report must be:
  - (1) in writing; and
  - (2) in a form prescribed by the commissioner.

**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.

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- (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 or any information contained in the notification is not subject to disclosure as provided by Chapter 552.

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

- (e) A state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines:
- (1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided under Subsection (c), or prior administrative decisions;
  - (2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or
  - (3) that a technical error in a finding of fact should be changed. The agency shall state in writing the specific reason and legal basis for a change made under this subsection.

**Texas Government Code, §2001.142, Notification of Decisions and Orders (excerpt):**

- (a) A state agency shall notify each party to a contested case of any decision or order of the agency using at least one of the following methods of service:
- (1) personal service;
  - (2) if agreed to by the party to be notified, service by electronic means sent to the current e-mail address or facsimile number of the party's attorney of record or of the party if the party is not represented by counsel;
  - (3) service by first class, certified, or registered mail sent to the last known address of the party's attorney of record or of the party if the party is not represented by counsel; or

- (4) service by a method required under the state agency's rules or orders for a party to serve copies of pleadings in a contested case.

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

- (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 or, in the case of a private school, the school's chief executive officer. On request, the department shall provide a copy of the completed report of the department's investigation to the State Board for Educator Certification, the local school board or the school's governing body, the superintendent of the school district, and the public school principal or director, or the chief executive officer of the private school, unless the principal, director or chief executive officer 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. Except as otherwise provided by this subsection, 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) Subject to Section 53.0231, 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 listed in Article 42A.054, Code of Criminal Procedure; or

- (3) 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 the duties and responsibilities of a licensed occupation, the licensing authority shall consider each of the following factors:

- (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 or capacity required to perform the duties and discharge the responsibilities of the licensed occupation; and
- (5) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

**Texas Occupations Code, §53.023, Additional Factors for Licensing Authority to Consider After Determining Conviction Directly Relates to Occupation:**

- (a) If a licensing authority determines under Section 53.022 that a criminal conviction directly relates to the duties and responsibilities of a licensed occupation, the licensing authority shall consider the following in determining whether to take an action authorized by Section 53.021:
  - (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;
  - (6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and
  - (7) other evidence of the person's fitness, including letters of recommendation.
- (b) The applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations described by Subsection (a)(7).

**Texas Occupations Code, §53.0231, Notice of Pending Denial of License:**

- (a) Notwithstanding any other law, a licensing authority may not deny a person a license or the opportunity to be examined for a license because of the person's prior conviction of an offense unless the licensing authority:
  - (1) provides written notice to the person of the reason for the intended denial and



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- (2) allows the person not less than 30 days to submit any relevant information to the licensing authority.
  - (b) A notice required under Subsection (a) must contain, as applicable:
    - (1) a statement that the person is disqualified from receiving the license or being examined for the license because of the person's prior conviction of an offense specified in the notice; or
    - (2) a statement that:
      - (A) the final decision of the licensing authority to deny the person a license or the opportunity to be examined for the license will be based on the factors listed in Section 53.023(a); and
      - (B) it is the person's responsibility to obtain and provide to the licensing authority evidence regarding the factors listed in Section 53.023(a).

**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 an offense shall notify the person in writing of:

- (1) the reason for the suspension, revocation, denial, or disqualification, including any factor considered under Section 53.022 or 53.023 that served as the basis 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.

**Texas Occupations Code, §56.003, Disciplinary Action in Event of Default or Breach Prohibited:**

A licensing authority may not take disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including by:

- (1) denying the person's application for a license or license renewal;
- (2) suspending the person's license; or
- (3) taking other disciplinary action against the person.

**Every Student Succeeds Act, 20 United States Code, §7926, Prohibition on Aiding and Abetting Sexual Abuse (excerpt):**

- (a) In general

A State, State educational agency, or local educational agency in the case of a local educational agency that receives Federal funds under this chapter shall have laws, regulations, or policies that prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.

**ATTACHMENT II**  
**Text of Proposed Amendments to 19 TAC**

**Chapter 249. Disciplinary Proceedings, Sanctions, and Contested Cases**

**Subchapter B. Enforcement Actions and Guidelines**

**§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;
  - (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; or
  - (6) impose an administrative penalty of \$500-\$10,000 on a superintendent or director who fails to file timely a report required under §249.14(d) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition) or on a principal who fails to timely notify a superintendent or director as required under §249.14(e) of this title under the circumstances and in the manner required by the Texas Education Code (TEC), §21.006.
- (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;
  - (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, the commissioner of education, or the school superintendent or director under the circumstances and in the manner required by the TEC, §21.006, §21.0062, §22.093, and §249.14(d)-(f) of this title;
  - (5) the person has abandoned a contract in violation of the TEC, §§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;
  - (7) the person has failed to provide information required to be provided by §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, as described in subsection (g) of this section or has committed an act that is a departure from the test administration procedures established by the commissioner of education in Chapter 101 of Part 2 of this title (relating to Assessment);
  - (9) the person has committed an act described in §249.14(k)(1) of this title, which constitutes sanctionable Priority 1 conduct, as follows:
    - (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) state assessment testing violations;
  - (K) deadly conduct; or
  - (L) conduct that involves inappropriate communication with a student as described in §247.2(3)(I) of this title (relating to Code of Ethics and Standard Practices for Texas Educators), inappropriate professional educator-student relationships and boundaries as described in §247.2(3)(H) of this title, or otherwise 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 an offense (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(c) of this title (relating to Eligibility of Persons with Criminal History for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21). Such offenses 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) offenses involving moral turpitude;
  - (B) offenses 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) offenses 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) offenses involving school property or funds;
  - (E) offenses 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) offenses occurring wholly or in part on school property or at a school-sponsored activity; or
  - (G) felony offenses involving driving while intoxicated (DWI);
- (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;
- (12) the person has failed to discharge an employee or to refuse to hire an applicant when the employee or applicant was employed in a public school and on the registry of persons who are not eligible to be employed under TEC, §22.092, when the person knew that the employee or applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor in accordance with the TEC, §21.009(e), or when the person knew or should have known through a criminal history record information review that the employee or applicant had been placed on community supervision or convicted of an offense in accordance with the TEC, §22.085;

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- (13) the person assisted another educator, school employee, contractor, or agent in obtaining a new job as an educator or in a school, apart from the routine transmission of administrative and personnel files, when the educator knew or had probable cause to believe that such person engaged in an inappropriate relationship with a minor or student;
  - (14) the person is a superintendent of a school district or the chief operating officer of an open-enrollment charter school who falsely or inaccurately certified to the commissioner of education that the district or charter school had complied with the TEC, §22.085; or
  - (15) the person has failed to comply with an order or decision of the SBEC.
- (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).
  - (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).
  - (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.
  - (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 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.
  - (g) The statewide assessment program as defined by the TEC, Chapter 39, Subchapter B, is a secure testing program.
    - (1) Procedures for maintaining security shall be specified in the appropriate test administration materials.
    - (2) Secure test materials must be accounted for before, during, and after each test administration. Only authorized personnel may have access to secure test materials.
    - (3) The contents of each test booklet and answer document are confidential in accordance with the Texas Government Code, Chapter 551, and the Family Educational Rights and Privacy Act of 1974. Individual student performance results are confidential as specified under the TEC, §39.030(b).
    - (4) Violation of security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, shall be prohibited. A person who engages in conduct prohibited by this section may be subject to sanction of credentials, including any of the sanctions provided by subsection (a) of this section.
    - (5) Charter school test administrators are not required to be certified; however, any irregularity in the administration of any test required by the TEC, Chapter 39, Subchapter B, would cause the charter itself to come under review by the commissioner of education for possible sanctions or revocation, as provided under the TEC, §12.115(a)(4).
    - (6) Conduct that violates the security and confidential integrity of a test is evidenced by any departure from the test administration procedures established by the commissioner of education. Conduct of this nature may include, but is not limited to, the following acts and omissions:
      - (A) viewing a test before, during, or after an assessment unless specifically authorized to do so;
      - (B) duplicating secure examination materials;
      - (C) disclosing the contents of any portion of a secure test;

- (D) providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;
  - (E) changing or altering a response or answer of an examinee to a secure test item or prompt;
  - (F) aiding or assisting an examinee with a response or answer to a secure test item or prompt;
  - (G) fraudulently exempting or preventing a student from the administration of a required state assessment;
  - (H) encouraging or assisting an individual to engage in the conduct described in paragraphs (1)-(7) of this subsection; or
  - (I) failing to report to an appropriate authority that an individual has engaged in conduct outlined in paragraphs (1)-(8) of this subsection.
- (7) Any irregularities in test security or confidential integrity may also result in the invalidation of student results.
- (8) The superintendent and campus principal of each school district and chief administrative officer of each charter school and any private school administering the tests as allowed under the TEC, §39.033, shall develop procedures to ensure the security and confidential integrity of the tests specified in the TEC, Chapter 39, Subchapter B, and shall be responsible for notifying the TEA in writing of conduct that violates the security or confidential integrity of a test administered under the TEC, Chapter 39, Subchapter B. A person who fails to report such conduct as required by this subsection may be subject to any of the sanctions provided by subsection (a) of this section.

**§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 §249.5(b) of this title (relating to Purpose; Policy Governing Disciplinary Proceedings) and this chapter, the Texas Education Code (TEC), 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 and SBEC sanctions;
  - (5) the potential danger the conduct poses to the health and welfare of students;
  - (6) the effect of the prior conduct upon any victims of the conduct;
  - (7) whether sufficient time has passed and sufficient evidence is presented to demonstrate that the educator or applicant has been rehabilitated from the prior conduct;
  - (8) the effect of the conduct upon the educator's good moral character and ability to be a proper role model for students;

- (9) whether the sanction will deter future violations; and
- (10) any other relevant circumstances or facts.
- (d) Contract abandonment.
- (1) Good cause. The following factors may be considered good cause when an educator is reported to have abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c):
- (A) serious illness or health condition of the educator or close family member of the educator;
  - (B) relocation to a new city as a result of change in employer of the educator's spouse or partner who resides with the educator; ~~or~~
  - (C) significant change in the educator's family needs that requires the educator to relocate or to devote more time than allowed by current employment ; ~~or~~ ~~]~~
  - (D) the educator's reasonable belief that the educator had written permission from the school district administration to resign.
- (2) Mitigating factors. The following factors ~~shall~~ ~~may~~ be considered in seeking, proposing, or making a decision under this chapter regarding an educator who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c) . The educator :
- (A) ~~educator~~ gave written notice to the school district 30 days or more in advance of the first day of instruction for which the educator will not be present;
  - (B) ~~educator~~ assisted the school district in finding a replacement educator to fill the position;
  - (C) ~~educator~~ continued to work until the school district hired a replacement educator;
  - (D) ~~educator~~ assisted in training the replacement educator;
  - (E) ~~educator~~ showed good faith in communications and negotiations with the school district; ~~or~~
  - (F) ~~educator~~ provided lesson plans for classes following the educator's resignation ; ~~]~~
  - (G) changed careers within the field of education to a position that required a different class of educator certification as defined in §230.33(b) of this title (relating to Classes of Certificates) or to a position with a higher level of authority within the principal class of certificate;
  - (H) had a reduction in base pay, excluding stipends, as compared to the educator's base pay for the prior year at the same school district;
  - (I) had a change in the educator's campus assignment that caused a significant adverse impact on the educator's health condition or family needs; or
  - (J) resigned due to working conditions that reasonably posed an immediate threat of significant physical harm to the educator.
- (3) Mandatory ~~minimum~~ sanction for contract abandonment. ~~[An educator subject to sanction, who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c) in a case where the factors listed in paragraph (1) or (2) of this subsection do not apply, may not receive a sanction of less than:]~~
- (A) An educator subject to sanction, who has abandoned a contract 44-30 days prior to the first day of instruction for the following school year in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), in a case where the factors listed in subsection (c) of this section or in paragraph (1) or (2) of this subsection do not mitigate or apply, shall receive a sanction of an inscribed reprimand.
  - (B) An educator subject to sanction, who has abandoned a contract less than 30 days prior to the first day of instruction for the following school year or at any point during the school

year in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), in a case where the factors listed in subsection (c) of this section or in paragraph (1) or (2) of this subsection do not mitigate or apply, may not receive a sanction of less than:

(i)~~(A)~~ suspension for one year from the first day that, without district permission, the educator failed to appear for work under the contract, provided that the educator has not worked as an educator during that year and the case is resolved within that one year through an agreed final order; or

(ii)~~(B)~~ suspension for one year from either the effective date of an agreed final order resolving the case or an agreed future date at the beginning of the following school year, if the educator has worked as an educator after abandoning the contract; or

(iii)~~(C)~~ suspension for one year from the date that the SBEC adopts an order that becomes final following a default under §249.35 of this title (relating to Disposition Prior to Hearing; Default) or a contested case hearing at the State Office of Administrative Hearings (SOAH).

(C) The factors listed in subsection (c) of this section and in paragraphs (1) and (2) of this subsection may mitigate an educator's sanction so significantly that the SBEC takes no disciplinary action.

- (e) Mandatory minimum sanction for felony-level conduct. An educator subject to sanction, who is court-ordered to complete a period of deferred adjudication or community supervision for a felony-level criminal offense under state or federal law, may not receive a sanction of less than:
- (1) suspension for a period concurrent with the term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has not been employed as an educator during the period of deferred adjudication or community supervision; or
  - (2) suspension beginning on the effective date of an agreed final order for a period extending beyond the end of the educator's deferred adjudication or community supervision but may be less than the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has been employed as an educator during the period of deferred adjudication or community supervision; or
  - (3) suspension beginning on the effective date of an agreed final order for a period at least half as long as the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order after the educator has completed deferred adjudication or community supervision; or
  - (4) suspension for a period equal to the term of deferred adjudication or community supervision that the criminal court initially ordered but beginning from the date of the final board decision, if the case is resolved through a final board decision following a contested case hearing at the SOAH or a default under §249.35 of this title.
- (f) Mandatory minimum sanction for misdemeanor-level conduct. If an educator is subject to sanction, and a court has ordered the educator to complete a period of deferred adjudication, community supervision, or pretrial diversion for a misdemeanor-level criminal offense under state or federal law, the educator may not receive a sanction of less than an inscribed reprimand.
- (g) Mandatory minimum sanction for test security violation. An educator who intentionally manipulates the results or violates the security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, may not receive a sanction of less than suspension for one year from the effective date of an agreed final order or a final board decision following a contested case hearing at the SOAH.
- (h) Mandatory minimum sanction for drugs and alcohol on school campus. An educator who is subject to sanction because the educator has tested positive for drugs or alcohol while on school campus, was under the influence of drugs or alcohol on school campus, or was in possession of drugs or alcohol on school



campus may not receive a sanction of less than a one-year suspension and required completion of a drug or alcohol treatment program.

- (i) Mandatory 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 or a default under §249.35 of this title, it is determined that the educator or applicant:
  - (1) engaged in any sexual contact or romantic relationship with a student or minor;
  - (2) solicited any sexual contact or romantic relationship with a student or minor;
  - (3) possessed or distributed child pornography;
  - (4) was registered as a sex offender;
  - (5) committed criminal homicide;
  - (6) transferred, sold, distributed, or conspired to possess, transfer, sell, or distribute any controlled substance, the possession of which would be at least a Class A misdemeanor under the Texas Health and Safety Code, Chapter 481, on school property;
  - (7) intentionally, knowingly, or recklessly causes bodily injury to a student or minor when the conduct of the educator or applicant is not immune from disciplinary proceedings by TEC, §22.0512; or
  - (8) committed any offense described in the TEC, §21.058.
- (j) Mandatory minimum for failure to report. An educator subject to sanction, who fails to report educator misconduct under the circumstances and in the manner required by the TEC, §21.006, and §249.14(d)-(f) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition), when the case is resolved through an agreed final order, may not receive a sanction of less than:
  - (1) an inscribed reprimand and a \$5,000 administrative penalty for a superintendent or director who fails to file timely a report to the SBEC; or
  - (2) an inscribed reprimand and a \$500 administrative penalty for a principal who fails to timely notify a superintendent or director.
- (k) Sanctioned misconduct in another state. The findings of fact contained in final orders from any other state jurisdiction may provide the factual basis for SBEC disciplinary action. If the underlying conduct for the administrative sanction of an educator's certificate or license issued in another state is a violation of SBEC rules, the SBEC may initiate a disciplinary action regarding the educator's Texas educator certificate and impose a sanction as provided under this chapter.

### **Subchapter E. Post-Hearing Matters**

#### **§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. If the parties have not agreed to the terms of the order, TEA staff shall send a notice with the order, including the findings of fact and conclusions of law on which the SBEC based its decision, and a statement that should the person desire to request that the SBEC reconsider the decision, the person should file a Motion for Rehearing with the SBEC.
- (b) A record of the SBEC action suspending, accepting a surrender, 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) The TEA staff shall also notify the employing school district of the SBEC's order when it becomes administratively final.