

Item 14:

Discussion of Proposed Amendments to 19 TAC Chapter 249, Decision-Making Guidelines

DISCUSSION

SUMMARY: This item provides the State Board for Educator Certification (SBEC) an opportunity to discuss proposed revisions to 19 Texas Administrative Code (TAC) §249.17. The proposed revisions would add a new factor to the definition of good cause for contract abandonment and would add a cross-reference to the mitigating factors that the SBEC considers when evaluating a contract abandonment case.

STATUTORY AUTHORITY: The statutory authority for 19 TAC §249.17 is TEC, §§21.006(a), (b), (b-1), (b-2), (c), (c-1), (c-2), as amended by HB 3 and SB 1476, 86th Texas Legislature, 2019, (f), (g); and (i), as amended by HB 3, 86th Texas Legislature, 2019; 21.031(a); 21.035; 21.041; 21.058; 21.0581; 21.060; 21.105(c); 21.160(c); 21.210(c); and 22.087; and Texas Government Code §2001.056.

TEC, §21.006(a), (b), (c), (c-1), and (c-2) as amended by HB 3 and SB 1476, 86th Texas Legislature, 2019, requires 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 when 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.

TEC, §21.006(b-2), as amended by HB 3, 86th Texas Legislature, 2019, requires a principal of a school district, district of innovation, or charter school to notify the superintendent within seven days when an educator is terminated or resigns, and there is evidence that the educator engaged in misconduct.

TEC, §21.006(f) and (g), give the SBEC rulemaking authority to implement TEC, §21.006.

TEC, §21.006(i), as amended by HB 3, 86th Texas Legislature, Regular Session, 2019, 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, §21.031(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 Texas Education Agency (TEA) staff provides 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, §21.041, 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(a), as amended by SB 1230, 86th Texas Legislature, 2019, gives the SBEC authority to sanction the educator certification of person who assists another person in obtaining employment at a school district, private school, or open-enrollment charter school when the certified educator knew the other person had previously engaged in sexual misconduct with a minor or student in violation of the law.

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

TEC, §21.105(c), allows the SBEC to impose sanctions against an educator who abandons a probationary contract.

TEC, §21.160(c), allows the SBEC to impose sanctions against an educator who abandons a continuing contract.

TEC, §21.210(c), allows the SBEC to impose sanctions against an educator who abandons a term contract.

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 clearing house.

Texas Government Code 2001.056, allows a state agency to informally dispose of a contested case by stipulation, agreed settlement, consent order or default.

FUTURE ACTION EXPECTED: Texas Education Agency (TEA) staff anticipate presenting proposed revisions to 19 TAC §249.17 to the SBEC at the May 1, 2020 meeting for approval to be published as proposed in the *Texas Register*.

BACKGROUND INFORMATION AND JUSTIFICATION: During the July, October, and December 2019 SBEC board meetings, SBEC members expressed concerns regarding the rules that define good cause for contract abandonment and that set out mitigating factors for contract abandonment cases.

TEA staff consolidated all of the suggestions board members had made over the course of those meetings and presented those suggestions to a group of stakeholders that included representatives from the Texas School Alliance, Association of Texas Professional Educators, Texas Association of Community Schools, Texas Association of School Personnel Administrators, Texas Urban Council of Superintendents, Texas Elementary Principals and Supervisors Association, Texas Classroom Teachers Association, Texas Association of School Administrators, Texas Association of School Boards, Texas American Federation of Teachers,

and the Texas State Teachers Association. The stakeholder group met with staff on January 13, 2020 to discuss the SBEC's suggested changes.

The definition of good cause and the mitigating factors that apply to contract abandonment are relatively new rules—SBEC adopted them effective May 15, 2016. Prior to that point, there was no rule that defined good cause and the only mitigating factors were those described in 19 TAC §249.17(c) that apply to all SBEC cases. All parties to the stakeholder meeting expressed support for having a definition of good cause because it provides guidance and predictability for teachers, administrators, agency staff, and the administrative law judges at the State Office of Administrative Hearings (SOAH). All the stakeholders similarly expressed support for having particularized mitigating factors that apply only in contract abandonment cases, since contract abandonment cases are very different from other types of SBEC educator discipline cases, and because the mitigating factors provide guidance for teachers, administrators, TEA staff, and SOAH judges on what the SBEC considers important regarding the conditions surrounding an educator's resignation.

With regard to the definition of "good cause," all the stakeholders at the meeting were opposed to adding language to §249.17(d)(1) to the effect that "a school district board of trustees' finding that good cause did not exist for an educator's contract abandonment is presumed correct and will not be overturned unless the educator proves that he or she had good cause." The stakeholders felt that the provision in §249.14(j), which states a school board's finding that good cause did not exist "constitutes prima facie evidence of the educator's lack of good cause, but is not a conclusive determination," already addresses the issue so there is no need to add a redundant clause to §249.17.

All the stakeholders at the meeting unanimously expressed opposition to the idea of adding a broad catch-all provision to the definition of good cause in §249.17 such as "any other relevant circumstances or facts that when considered in their totality show that it would be manifestly unjust to require the educator to remain contractually obligated." Stakeholders expressed concerns that this sort of provision was so broad it would essentially nullify the rule. Stakeholders also raised concerns that this sort of provision would defeat the purpose of defining good cause in a rule because it would make it difficult for teachers, administrators, TEA staff, and SOAH judges to predict what other circumstances the SBEC would find to be good cause. Stakeholders noted that "manifestly unjust" was very vague and would result in varying interpretations by stakeholders, TEA staff and SOAH judges. The stakeholders noted that the mitigating factors in 19 TAC §249.17(c) apply to all SBEC cases including contract abandonment cases, and that those factors include the broad catch-all "any other relevant circumstances or facts," which allows the SBEC to consider any relevant factor in determining the appropriate sanction for an educator or in determining whether to sanction an educator at all.

All the stakeholders at the meeting expressed support for adding to the definition of "good cause" an educator's "change to a position that requires a new class of educator certification as defined in §230.33(b) of this title (relating to Classes of Certificates)." The stakeholders felt that this addition to "good cause" would implement state-wide a policy that most districts have already implemented at the local level. The stakeholders expressed support for using the word "change" rather than "promotion" to include educators who choose to change careers in a way that is not necessarily a promotion, such as going from librarian to counsellor or from counsellor to diagnostician.

The stakeholders disagreed on the question of whether “reasonable reliance on a written acceptance of the educator’s resignation by a person acting with actual or apparent authority to accept resignations delegated by the school district board of trustees” should be added to the definition of good cause. The stakeholders were particularly split between teacher representatives and administrator representatives on the addition of apparent authority to the definition. The administrators were adamantly opposed, arguing that case law shows there is no such thing as apparent authority as a legal construct in the school district context. The teacher associations argued that a provision with only “actual authority” was just an unnecessary and confusing restatement of existing law. The stakeholders discussed moving the provision from the definition of “good cause” to be instead a mitigating factor but remained unmoved in their positions on the question of whether “apparent authority” should be included. Given this strong opposition with no compromise in sight, the provision is not included in the draft rule text.

With regard to mitigating factors for contract abandonment, all the stakeholders at the meeting felt that §249.17(d)(2) could be clarified by adding language that explicitly states that the factors listed in §249.17(c) also apply to contract abandonment cases.

The stakeholders discussed adding a mitigating factor that the Texas Classroom Teachers Association put forward for the group’s consideration: “educator resigned due to working conditions that pose a reasonable risk of harm to the health or safety of the educator.” The stakeholders expressed concern that there were many working conditions for teachers—including violent special needs children, aging school buildings, and work-related stress—that were assumed risks inherent part of the teaching experience but that could be interpreted by an administrative law judge as a “reasonable risk of harm.” The stakeholders were unable to agree on wording for this factor, and therefore did not recommend it as a group for the SBEC’s consideration.

With regard to the issue of educators who abandon their contracts with one-year probationary and intern certificates that expire before the SBEC can effectuate the minimum one-year suspension sanction for contract abandonment, the stakeholders felt that the existing methods for sanctioning an educator under 19 TAC §249.15 were sufficient and that changes to 19 TAC §249.12 or §249.15 were unnecessary.

The stakeholders’ feedback has been reflected in the rule text that appears in Attachment II.

Staff Member Responsible:

Laura Moriaty, Director, SBEC Enforcement

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

ATTACHMENT I

Statutory Citations Relating to Proposed Amendment to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, Section 249.17, Decision-Making Guidelines**Texas Education Code, §21.006, Requirement to Report Misconduct, as amended by HB 3, 86th Texas Legislature, 2019 (excerpts):**

- (a) In this section:
- (1) "Abuse" [~~,"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, 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, 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, [ø] open-enrollment charter school, other charter entity campus must notify the superintendent or director of the school district, district of innovation, [ø] 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) 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) [~~4~~] in writing; and
 - (B) [~~2~~] 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).
- (d) The superintendent or director shall notify the board of trustees or governing body of the school district, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement and the educator of the filing of the report required by Subsection (c).
- (e) A superintendent, director, or principal of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement who in good faith and while acting in an official capacity files a report with the State Board for Educator Certification under this section or communicates with another superintendent, director, or principal concerning an

- educator's criminal record or alleged incident of misconduct is immune from civil or criminal liability that might otherwise be incurred or imposed.
- (f) The State Board for Educator Certification shall determine whether to impose sanctions, 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.
 - (h) The name of a student or minor who is the victim of abuse or unlawful conduct by an educator must be included in a report filed under this section, but the name of the student or minor is not public information under Chapter 552, Government Code.
 - (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, §21.031, 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 of Authority; Administration by Agency (excerpts):

- (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, §21.041, 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, §21.0581, Revocation for Assisting Person Who Engaged in Sexual Misconduct Obtain Employment, as amended by SB 1230, 86th Texas Legislature, 2019 (excerpts):

- (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, §21.105, Resignations Under Probationary Contract (excerpt):

- (c) On written complaint by the employing district, the State Board for Educator Certification may impose sanctions against a teacher employed under a probationary contract who:
 - (1) resigns;
 - (2) fails without good cause to comply with Subsection (a) or (b); and

- (3) fails to perform the contract.

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

- (c) On written complaint by the employing district, the State Board for Educator Certification may impose sanctions against a teacher who is employed under a continuing contract that obligates the district to employ the person for the following school year and who:
 - (1) resigns;
 - (2) fails without good cause to comply with Subsection (a) or (b); and
 - (3) fails to perform the contract.

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

- (c) On written complaint by the employing district, the State Board for Educator Certification may impose sanctions against a teacher who is employed under a term contract that obligates the district to employ the person for the following school year and who:
 - (1) resigns;
 - (2) fails without good cause to comply with Subsection (a) or (b); and
 - (3) fails to perform the contract.

Texas Education Code, §22.087, 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 Government Code §2001.056, Informal Disposition of a Contested Case

Unless precluded by law, an informal disposition may be made of a contested case by:

- (1) stipulation;
- (2) agreed settlement;
- (3) consent order; or
- (4) default.

ATTACHMENT II
Text of Proposed Amendments to 19 TAC

Chapter 249. Disciplinary Proceedings, Sanctions, and Contested Cases

Subchapter B. Enforcement Actions and Guidelines

Section 249.17. Decision-Making Guidelines

- (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 ~~or~~
 - (D) change to a position that requires a new class of educator certification as defined in §230.33(b) of this title (relating to Classes of Certificates).
- (2) Mitigating factors. In addition to the factors set out in subsection (c) of this section, ~~t~~he following factors 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):
- (A) educator gave written notice to 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 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 school district; or
 - (F) educator provided lesson plans for classes following educator's resignation.