

Text of Adopted Amendments to 19 TAC

Chapter 249. Disciplinary Proceedings, Sanctions, and Contested Cases

Subchapter A. General Provisions

§249.3. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1)-(49) (No change.)

~~[(50) — Serious state assessment testing violation— Failure to observe the requirements of test administration, security, and confidentiality of any assessment required by the Texas Education Code, Chapter 39, Subchapter B, in a manner that involves dishonesty or intent to affect the test score of a student, the evaluation of an educator, or the state or federal accountability rating of a school district or a campus. The term does not include benchmark tests or other locally required assessments.]~~

(50) ~~[(51)]~~ Solicitation of a romantic relationship--Deliberate or repeated acts that can be reasonably interpreted as the solicitation by an educator of a relationship with a student that is romantic in nature. A romantic relationship is often characterized by a strong emotional or sexual attachment and/or by patterns of exclusivity, but does not include appropriate educator-student relationships that arise out of legitimate contexts such as familial connections or longtime acquaintance. The following acts, considered in context, may constitute prima facie evidence of the solicitation by an educator of a romantic relationship with a student:

(A)-(K) (No change.)

~~(51) State assessment testing violation--Conduct that violates the security or confidential integrity of any test or assessment required by the Texas Education Code, Chapter 39, Subchapter B, or conduct that is a departure from the test administration procedures established by the commissioner of education in Chapter 101 of this title (relating to Assessment). The term does not include benchmark tests or other locally required assessments.~~

(52)-(60) (No change.)

Subchapter B. Enforcement Actions and Guidelines

§249.13. Cancellation of an Erroneously Issued Certificate.

(a) (No change.)

(b) Before canceling the certificate, the TEA staff shall notify the person issued the certificate of the reasons for which the TEA intends to cancel the certificate and shall provide the person issued the certificate at least ten calendar days to respond and show cause why the certificate should not be canceled. Unless otherwise proved by the person, the show cause notice shall be deemed to have been received by the person no later than five calendar days after mailing to the most recent address the person is required to provide pursuant to §230.91 ~~§230.431~~ of this title (relating to Procedures in General).

(c)-(e) (No change.)

§249.14. Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition.

(a)-(g) (No change.)

(h) To efficiently administer and implement the SBEC's purpose under this chapter and the TEC, the TEA staff may set priorities for the investigation of complaints based on the severity and immediacy of the allegations and the likelihood of harm posed by the subject of the investigation. All cases accepted for investigation shall be assigned one of the following priorities.

- (1) Priority 1: conduct that may result in the placement of an investigative notice pursuant to the TEC, §21.007, and subsection (i) of this section because it presents a risk to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague, including, but not limited to, the following:
 - (A)-(I) (No change.)
 - (J) ~~serious~~ state assessment testing violations;
 - (K)-(L) (No change.)
- (2) (No change.)
- (i) (No change.)
- (j) The following procedures must be followed for placing an investigative notice on the educator's certification records.
 - (1) At the time of placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a student or minor, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.
 - (A) Within ten calendar days of placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.91 ~~§230.431~~ of this title (relating to Procedures in General).
 - (B) (No change.)
 - (2) Prior to placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (h)(1) of this section, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.
 - (A) At least ten calendar days before placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.91 ~~§230.431~~ of this title.
 - (B) (No change.)
 - (3) (No change.)
- (k)-(m) (No change.)

§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; or
 - (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.

(b) The SBEC may take any of the actions listed in subsection (a) of this section based on satisfactory evidence that:

(1)-(7) (No change.)

(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 this title (relating to Assessment) [including, but not limited to, conduct or omissions described in §101.65 of this title (relating to Penalties)] ;

(9) the person has committed an act described in §249.14(h)(1) of this title, which constitutes sanctionable Priority 1 conduct, as follows:

(A)-(I) (No change.)

(J) [serious] state assessment testing violations;

(K)-(L) (No change.)

(10)-(11) (No change.)

(c)-(f) (No change.)

(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.

Subchapter C. Prehearing Matters

§249.26. Petition.

- (a)-(b) (No change.)
- (c) The petition shall be served on the respondent by United States certified mail, return receipt requested, and by regular first-class United States mail, to the address a certified educator is required to provide pursuant to §230.91 [~~§230.431~~] of this title (relating to Procedures in General), or as otherwise specified in this chapter. If an educator, applicant, or examinee is the petitioner, the address to which the petition shall be served is Texas Education Agency, Legal Certification Enforcement Division, 1701 North Congress Avenue, Austin, Texas 78701. A certificate evidencing service shall be included in the petition. For purposes of this section and §249.27 of this title (relating to Answer), it is a rebuttable presumption that a petition was served on the respondent no later than five calendar days after mailing.

Subchapter D. Hearing Procedures

§249.30. Notice of Hearing.

- (a)-(b) (No change.)
- (c) For purposes of this subsection, the last known address is:
 - (1)-(2) (No change.)
 - (3) if the party has not provided an address in response to the complaint or proposed action:
 - (A) for a certified educator, the address supplied by the educator pursuant to §230.91(c) [~~§230.431(e)~~] of this title (relating to Procedures in General);
 - (B)-(C) (No change.)
- (d) (No change.)