

Text of Proposed Amendments to 19 TAC

Chapter 249. Disciplinary Proceedings, Sanctions, and Contested Cases

Subchapter B. Enforcement Actions and Guidelines

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

- (a) The Texas Education Agency (TEA) staff may obtain and investigate information concerning alleged improper conduct by an educator, applicant, examinee, or other person subject to this chapter that would warrant the State Board for Educator Certification (SBEC) denying relief to or taking disciplinary action against the person or certificate.
- (b) Complaints against an educator, applicant, or examinee must be filed in writing.
- (c) The TEA staff may also obtain and act on other information providing grounds for investigation and possible action under this chapter.
- (d) A person who serves as the superintendent of a school district or the director of an open-enrollment charter school, private school, regional education service center, or shared services arrangement may notify the SBEC of any educator misconduct that the person believes in good faith may be subject to sanctions under this chapter and/or Chapter 247 of this title (relating to Educators' Code of Ethics). However, under any of the following circumstances, a person who serves in such a position shall promptly notify the SBEC in writing ~~[the SBEC]~~ by filing a report with the TEA staff within seven calendar days of the date the person first obtains or has knowledge of those circumstances, and may be subject to sanctions for failure to do so, pursuant to §249.15(b)(4) of this title (relating to Disciplinary Action by State Board for Educator Certification):
 - (1) that an applicant for or a holder of a certificate has a reported criminal history;
 - (2) that a certificate holder was terminated from employment based on a determination that he or she committed any of the following acts:
 - (A) sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor;
 - (B) possessed, transferred, sold, or distributed a controlled substance;
 - (C) illegally transferred, appropriated, or expended school property or funds;
 - (D) attempted by fraudulent or unauthorized means to obtain or to alter any certificate or permit that would entitle the individual to be employed in a position requiring such certificate or permit or to receive additional compensation associated with a position;
 - (E) committed a crime, any part of such crime having occurred on school property or at a school-sponsored event; or
 - (F) solicited or engaged in sexual conduct or a romantic relationship with a student or minor;
 - (3) that a certificate holder has submitted a notice of resignation [resigned] and that there exists [reasonable] evidence that would support a finding that [supported a recommendation by the person to terminate a certificate holder because] he or she committed one of the acts specified in paragraph (2) of this subsection.
 - (A) Before accepting an employee's resignation that, under this paragraph, requires a person to notify the SBEC by filing a report with the TEA staff, the person shall inform the certificate holder in writing that such a report will be filed and that sanctions against his or her certificate may result as a consequence.
 - (B) A person required to comply with this paragraph shall notify the governing body of the employing school district before filing the report with the TEA staff.

- (C) A superintendent or director of a school district shall complete an investigation of an educator if there is ~~[that is based on]~~ reasonable cause to believe the educator may have engaged in misconduct described in paragraph (2)(A) of this subsection despite the educator's resignation from district employment before completion of the investigation; or
 - (4) any other circumstances requiring a report under the Texas Education Code (TEC), §21.006.
- (e) Pursuant to the TEC, §21.006(c) and (h), a report filed under subsection (d) of this section must include the name or names of any student or minor who is the victim of abuse or unlawful conduct by an educator and shall, at a minimum, describe in detail the factual circumstances requiring the report and identify the subject of the report by providing the following available information: name and any aliases; certificate number, if any, or social security number; last known mailing address and home and daytime phone numbers; all available contact information for any alleged victim or victims; and name or names and any available contact information of any relevant witnesses to the circumstances requiring the report. Pursuant to the Family Educational Rights and Privacy Act (FERPA), 20 United States Code, §1232g(a)(4), and the federal regulations interpreting it at 34 Code of Federal Regulations, §99.3, education records that are protected by FERPA must be records that are directly related to a student, and the term "education records" does not include records that relate to a school employee in his or her capacity as a school employee. A person who is required to file a report under subsection (d) of this section but fails to do so timely is subject to sanctions under this chapter.
- (f) If a school district board of trustees learns of a failure by the superintendent of the district or a district principal to provide a notice required under the Texas Code of Criminal Procedure (TCCP), §15.27(a), (a-1), or (b), the board of trustees shall report the failure to the SBEC. If the governing body of a private primary or secondary school learns of a failure by the principal of the school to provide a notice required under the TCCP, §15.27(e), and the principal holds a certificate issued under the TEC, Chapter 21, Subchapter B, the governing body shall report the failure to the SBEC.
- (g) The TEA staff shall not pursue sanctions against an educator who is alleged to have abandoned his or her TEC, Chapter 21, contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), subject to the limitations imposed by the TEC, §21.4021(g), unless the board of trustees of the employing school district:
 - (1) submits a written complaint to the TEA staff within 30 calendar days after the effective date of the educator's separation from employment from the school district. For purposes of this section, unless the school district and the educator have a written agreement to the contrary, the effective date of separation from employment is the first day that, without district permission, the educator fails to appear for work under the contract;
 - (2) renders a finding that good cause did not exist under the TEC, §§21.105(c)(2), 21.160(c)(2), or 21.210(c)(2). This finding constitutes prima facie evidence of the educator's lack of good cause, but is not a conclusive determination; and
 - (3) submits the following required attachments to the written complaint:
 - (A) the educator's resignation letter, if any;
 - (B) the agreement with the educator regarding the effective date of separation from employment, if any;
 - (C) the educator's contract; and
 - (D) school board meeting minutes indicating a finding of "no good cause" (if the board does not meet within 30 calendar days of the educator's separation from employment, the minutes may be submitted within 10 calendar days after the next board meeting).
- (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) 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; and
 - (L) conduct that involves soliciting or engaging in sexual conduct or a romantic relationship with a student or minor.
 - (2) Priority 2: any sanctionable conduct that is not Priority 1 conduct under paragraph (1) of this subsection. An investigative notice will not be placed on an educator's certification records on the basis of an allegation of Priority 2 conduct. The TEA staff may change a case's priority at any time based on information received. Priority 2 conduct includes, but is not limited to, the following:
 - (A) any conduct constituting a misdemeanor criminal offense or testing violation that is not Priority 1 conduct;
 - (B) contract abandonment; and
 - (C) code of ethics violations that do not constitute Priority 1 conduct.
- (i) After accepting a case for investigation, if the alleged conduct indicates a risk to the health, safety, or welfare of a student or minor, as described in subsection (h)(1) of this section, the TEA staff shall immediately place an investigative notice on the certificate holder's certification records stating that the certificate holder is currently under investigation. The placement of such an investigative notice must follow the procedures set forth in subsection (j)(1) of this section. After accepting a case for investigation, if the alleged conduct indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (h)(1) of this section, the TEA staff may place an investigative notice on the certificate holder's certification records stating that the certificate holder is currently under investigation. The placement of an investigative notice must follow the procedures set forth in subsection (j)(2) of this section.
- (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 of this title (relating to Procedures in General).

- (B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide the certificate holder the opportunity to show cause within ten calendar days why the notice should be removed from the educator's certification records.
 - (2) Prior to placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (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 of this title.
 - (B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide the certificate holder the opportunity to show cause within ten calendar days why the notice should not be placed on the educator's certification records.
 - (3) The TEA staff shall determine whether or not to remove or place an investigative notice on the educator's certification records, taking into account the educator's response, if any, to the letter notifying the certificate holder of the investigation.
- (k) An investigative notice is subject to the following time limits.
- (1) An investigative notice may remain on the certification records of a certificate holder for a period not to exceed 240 calendar days.
 - (2) The TEA staff may toll this time limit if information is received indicating that there is a pending criminal matter related to the alleged act of misconduct that gives rise to the investigative notice. For purposes of this subsection, a criminal matter includes an arrest, an investigation, or a prosecution by a criminal law enforcement agency. Upon receiving notice that the criminal matter has been resolved the tolling period shall end. As part of its procedure, the TEA staff will attempt to make bimonthly (once every two months) contact with a law enforcement agency where a criminal investigation is pending to determine whether the criminal investigation has been closed or otherwise resolved.
 - (3) The TEA staff may toll this time limit if the matter is referred for a contested case hearing, ~~(or)~~ upon agreement of the parties, or while the matter is pending action by the SBEC on a proposed agreed order.
- (l) The TEA staff shall remove an investigative notice from an educator's certification records:
- (1) when a case's final disposition occurs within the time limits established in subsection (k) of this section; or
 - (2) when the time limits for an investigative notice have been exceeded, if:
 - (A) the certificate holder has made a written demand to the TEA staff that the investigative notice be removed because the time limits have been exceeded; and
 - (B) the TEA staff has failed to refer the matter to the State Office of Administrative Hearings for a contested case hearing within 30 calendar days from the date of receipt of the written demand to remove the investigative notice.
- (m) Only the TEA staff may file a petition seeking sanctions under §249.15 of this title. Prior to filing a petition, the TEA staff shall mail to the certificate holder affected by written notice of the facts or conduct alleged to warrant the intended action and shall provide the certificate holder an opportunity to show compliance with all requirements of law.

§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) 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 under the circumstances and in the manner required by the Texas Education Code (TEC), §21.006, and §249.14(d) and (e) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition);
 - (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 this title (relating to Assessment);
 - (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) 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 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); ~~or~~
- (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 person knew or should have known through a criminal history record information review that the employee or applicant had been convicted of an offense in accordance with the TEC, §22.085; or
- (13) 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.
- (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 student loan default or 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.