

Item 8:
Proposed Amendment to 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter C, Assessment of Educators, §230.25, Test Exemptions for Persons with a Hearing Impairment

DISCUSSION AND ACTION

SUMMARY: This item provides the State Board for Educator Certification (SBEC) an opportunity to discuss and propose an amendment to 19 Texas Administrative Code (TAC) Chapter 230, Professional Educator Preparation and Certification, Subchapter C, Assessment of Educators, §230.25, Test Exemptions for Persons with a Hearing Impairment. The proposed amendment would create a carve-out for the Science of Teaching Reading (STR) examination, removing the requirement that a candidate be unable to process only written linguistic information to allow an exemption; would remove the requirement that to qualify for an exemption, a person who is already certified in another state and seeking a one-year certificate in Texas must have a recommendation from an SBEC-approved Texas educator preparation program (EPP); and would eliminate the limitation that persons who qualify for an exemption to one certification examination cannot ever take another certification examination unless they have regained their ability to process written linguistic information.

STATUTORY AUTHORITY: The statutory authority for 19 TAC §230.25 is the Texas Education Code (TEC), §§21.031; 21.041(a), (b)(1)–(4), (7), and (8), and (c); 21.045(a)(1); and 21.048(a), (a-1), (a-2), (b), (c), and (d); and the Texas Occupations Code (TOC), §54.003.

TEC, §21.031, authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public-school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state.

TEC, §21.041(a), allows SBEC to adopt rules as necessary for its own procedures.

TEC, §21.041(b)(1)–(4), require the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate.

TEC, §21.041(b)(7)–(8), require the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by the Texas Government Code (TGC), Chapter 2001; and requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics."

TEC, §21.041(c), requires the SBEC to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of the TEC, Chapter 21, Subchapter B.

TEC, §21.045(a)(1), authorizes the SBEC to propose rules necessary to establish standards to govern the continuing accountability of all EPPs based on the following information that is disaggregated with respect to race, sex, and ethnicity: results of the certification examinations prescribed under the TEC, §21.048(a).

TEC, §21.048(a), (a-1), and (a-2), state that the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, that a person may not retake an examination more than four times unless the SBEC waives the limitations for good cause, and that all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination.

TEC, §21.048(b), (c), and (d), state that the SBEC may not administer a written examination to an educator who has a hearing impairment unless the examination has been field tested to determine its appropriateness, reliability and validity for persons with hearing impairments. It defines "hearing impairment" as "so severe that the person cannot process linguistic information with or without amplification;" that an educator who has a hearing impairment is exempt from taking a written examination for a period ending on the first anniversary of the date on which the SBEC determines, on the basis of appropriate field tests, that the examination complies with the standards specified in subsection (b) of this section; and that the definitions for hearing impairment, reliability, and validity when used in the TEC, §21.048.

TOC, §54.003, states a licensing authority shall provide accommodations and eligibility criteria for examinees diagnosed as having dyslexia.

The full text of statutory citations can be found in the statutory authority section of this agenda.

EFFECTIVE DATE: If approved for filing as proposed in December 2022, and if adopted, subject to State Board of Education (SBOE) review, at the February 10, 2023 SBEC meeting, the proposed effective date of the proposal would be May 11, 2023 (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: The SBEC last amended 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter C, Assessment of Educators, §230.25, Test Exemptions for Persons with a Hearing Impairment, effective August 28, 2016.

BACKGROUND INFORMATION AND JUSTIFICATION: TEC, §21.048(b) and (d), require the SBEC to give exemptions from required written examinations for persons with hearing impairments. While TEC, §21.048(d), defines *hearing impairment* as "so severe that the person cannot process linguistic information with or without amplification," the SBEC has further narrowed the exemption in 19 TAC §230.25(b)(1) to require proof "that the person cannot process written linguistic information."

Since 19 TAC §230.25(b)(1) was last revised, the Texas Legislature has created TEC, §21.048(a-2), which requires that in order to teach Prekindergarten-Grade 6, a person must have passed the STR examination. The STR examination is different from the other certification examinations the SBEC requires, in that it requires the test-taker to listen to recorded speech and phonetic sounds and answer written questions about them. Since this examination requires that test-takers be able to hear and process the linguistic information on the recording without any subtitles or other written translation indicating the errors in the speech, the exemption for individuals who are unable to process only written linguistic information is insufficient to address the difficulty that deaf candidates face when attempting the STR examination. To address this issue, the proposed amendment to §230.25(b)(1) and proposed new §230.25(b)(1)(A) and (B) would create a carve-out for the STR examination, to allow an exemption for any person who is unable to process *any* linguistic information with or without amplification—not only written linguistic information. The proposed amendment would maintain the requirement that a candidate be unable to process written linguistic information to qualify for an exemption for the other SBEC-required certification examinations, which do not include a listening component that requires interpretation of phonetic sounds.

The proposed amendment to §§230.25(b)(2) and (d) removes the requirement that to qualify for an exemption, a person who is already certified in another state and seeking a one-year certificate in Texas in accordance with 19 TAC Chapter 230, Subchapter H, Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States, must have a recommendation from an SBEC-approved Texas EPP. This amendment would allow hearing-impaired candidates who have already been vetted and certified in other states to get certified and begin teaching in Texas without incurring the additional time and expense required to get approval from a Texas EPP, which is not required of out-of-state hearing candidates.

The proposed amendment to §230.25(c) creates a relettering of subsections (c) and (d) and eliminates the limitation that persons who qualify for an exemption to one certification examination cannot ever take another certification examination unless they have regained their ability to process written linguistic information. The SBEC initially enacted this prohibition to prevent hearing-impaired persons from attaining certification in areas for which they were not qualified. In practice, however, it prevents qualified hearing-impaired educators from attaining more than one certification and from advancing their careers with administrator certifications. The number of individuals who request an exemption based on hearing impairment averages fewer than 20 annually. Given that Texas certifies approximately 20,000–30,000 educators every year, this small minority of hearing-impaired educators will not significantly harm the Texas education system, even if a few attain certificates through waived examinations for which they are not qualified.

FISCAL IMPACT: The Texas Education Agency (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: 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: 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: 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: 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: 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 regulations in proposed §230.25(b)(1) by allowing individuals with hearing impairment that prevents any type of processing of linguistic information to have an exemption from the STR examination and by allowing out-of-state educators to get one-year certificates in proposed §230.25(b)(2) and (c) without getting a recommendation from a Texas EPP. The proposed rulemaking would also repeal a regulation by removing the provision in current §230.25(c) that forbids hearing-impaired educators from getting an exemption from more than one certification examination.

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 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: The public benefit anticipated as a result of the proposal would be increased opportunities for hearing-impaired educators and more certified teachers for the Texas students they serve. The TEA staff has determined that there is no anticipated cost to persons required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: 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 begins December 30, 2022, and ends January 30, 2023. The SBEC will take registered oral and written comments on the proposal at the February 10, 2023, meeting in accordance with the SBEC board operating policies and procedures.

ASSOCIATE COMMISSIONER'S RECOMMENDATION:

Approve the proposed amendment to 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter C, Assessment of Educators, §230.25, Test Exemptions for Persons with a Hearing Impairment, to be published as proposed in the *Texas Register*.

Staff Members Responsible:

Jessica McLoughlin, Director, Talent Pathways
Jennifer Perez, Manager, Educator Testing

Attachment:

Text of Proposed Amendment to 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter C, Assessment of Educators, §230.25, Test Exemptions for Persons with a Hearing Impairment

ATTACHMENT
Text of Proposed Amendment to 19 TAC

Chapter 230. Professional Educator Preparation and Certification

Subchapter C. Assessment of Educators

§230.25. Test Exemptions for Persons with a Hearing Impairment.

- (a) A candidate who has a hearing impairment may request exemption from educator certification and competence examinations that have not been field-tested for appropriateness, reliability, and validity as applied to persons with hearing impairments.
- (b) A request for such an exemption shall include:
- (1) a report by a licensed audiologist dated no more than one year from the date of the request for the exemption, addressing the relationship between the candidate's age at the onset or diagnosis of hearing loss and the candidate's ability to process linguistic information, and documenting that the candidate has a hearing impairment so severe that : ~~the person cannot process written linguistic information. The report may not be dated more than one year from the date of the request for the exemption and should address the relationship between the candidate's age at the onset or diagnosis of hearing loss and the candidate's ability to process written linguistic information; and~~
 - (A) for a person requesting an exemption from the Science of Teaching Reading (STR) examination, the person cannot process linguistic information with or without amplification, or
 - (B) for a person requesting an exemption to an examination other than the STR examination, the person cannot process written linguistic information; and
 - (2) for candidates who are not seeking certification under Chapter 230, Subchapter H of this title (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States), a recommendation for exemption and certification of the candidate by an approved Texas educator preparation program (EPP). The recommendation shall be based on the EPP's determination of the candidate's qualification for the exemption and competency in each certification class and category in which certification is sought. The EPP shall make and document its determination of educator standards competency, as follows:
 - (A) by reviewing and approving transcripts from an accredited institution of higher education that demonstrate that the candidate has completed 24 semester credit hours in the educator standards, including 12 semester credit hours of upper division coursework, and documenting that the coursework is aligned to the Texas educator standards;
 - (B) if an EPP uses an alternative assessment to measure competency in any certification class and category in which a certification is being sought, by documenting the method and validity of the means of assessment, the results of the assessment, and the alignment of the assessment to the applicable Texas educator standards; and
 - (C) for the Texas pedagogy and professional responsibilities examination, by documenting successful completion of EPP coursework and training covering educator standards for the grade level for which certification is sought.
- ~~(c) The TEC, §21.048, provides that the SBEC may not administer a certification examination that has not been field tested for appropriateness, reliability, and validity to a person who is unable to process linguistic information. An educator who has been granted such an exemption may not subsequently take any other such certification examination without submitting a new audiologist's report that addresses the prior audiologist's report and documents that the educator is now able to process written linguistic information.~~
- (c) ~~(d)~~ This section does not affect the procedures for one-year certificates, extensions, and permits based on out-of-state credentials pursuant to §230.113 of this title (relating to Requirements for Texas Certificates Based on Certification from Other States or Territories of the United States) ~~[, but, to be issued a standard~~

~~certificate, a person must either satisfy the applicable examination requirements or be recommended for certification by an EPP] .~~

- (d) ~~(e)~~ As with other EPP completion and admission documentation under §228.40 of this title (relating to Assessment and Evaluation of Candidates for Certification and Program Improvement), all documentation required under this section shall be retained by an EPP for five years and is subject to audit by Texas Education Agency staff.