

Item 10:**Adoption of Proposed Amendment to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, §249.16, Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53****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, a proposed amendment to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, §249.16, Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53. The proposed amendment would be necessary as a result of House Bill (HB) 798, 83rd Texas Legislature, Regular Session, 2013, which amended the Texas Occupations Code (TOC), §53.021, to define the types of misdemeanor convictions that may be pursued under the TOC. The proposed amendment to 19 TAC §249.16 would align the requirements to conform with HB 798. No changes are recommended since published as proposed.

STATUTORY AUTHORITY: The statutory authority for 19 TAC §249.16 is the Texas Education Code (TEC), §21.041(b)(7) and (8) and §21.060; and Texas Occupations Code, §53.021(a) and (a-1) and §53.025.

EFFECTIVE DATE: The proposed effective date of the proposed amendment to 19 TAC §249.16 would be May 18, 2014 (20 days after filing as adopted with the *Texas Register*). The proposed effective date is also based on the SBEC and SBOE meeting schedules.

PREVIOUS BOARD ACTION: Section 249.16 was adopted effective March 31, 1999, and amended effective June 21, 2009.

The SBEC approved the amendment to 19 TAC §249.16 for filing as proposed at the October 2013 meeting.

BACKGROUND INFORMATION AND SIGNIFICANT ISSUES: The TEC, §21.060, and the TOC, §53.021, provide the SBEC authority to suspend, revoke, or disqualify the certification of an educator on the basis of a criminal conviction.

In October 2007, an Attorney General opinion was requested by the commissioner of education regarding whether a proposed rule of the SBEC that related to certification eligibility of persons with criminal convictions was "preempted" by the TEC, §21.060. Subsequently, Attorney General Opinion No. GA-0614, issued April 7, 2008, ruled that the two provisions are nonexclusive. As a result, in 2009, 19 TAC §249.16 was amended to include subsection (d) to

reflect that grounds under the TOC, Chapter 53, were cumulative of grounds and remedies under the TEC, §21.060.

The 83rd Texas Legislature (2013) enacted HB 798, which modified the TOC, §53.021. This legislation removes a licensing authority's power existing under that provision to sanction or withhold certification for convictions of Class C misdemeanors unless the person is an applicant for or holder of a license that authorizes the person to possess a firearm and the misdemeanor crime was domestic violence as defined by 18 United States Code, §921. Class C misdemeanors are punishable only by a fine not to exceed \$500. The following describes the proposed amendment in response to HB 798.

The proposed amendment to 19 TAC §249.16, shown in Attachment II, would add subsection (b) to implement the requirements of HB 798 when exercising authority under the TOC, §53.021. Subsequent subsections would be re-lettered accordingly. No changes are recommended since published as proposed.

FISCAL IMPACT: The TEA staff has determined that there is no fiscal impact on state and local governments and there are no additional costs to persons or entities required to comply with the proposed amendment. In addition, there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

PUBLIC AND STUDENT BENEFIT: The public and student benefit anticipated as a result of the proposed amendment to 19 TAC §249.16 would be aligning the SBEC rule with prevailing statutory authority.

PROCEDURAL AND REPORTING IMPLICATIONS: The proposed amendment would have no procedural and reporting implications.

LOCALLY MAINTAINED PAPERWORK REQUIREMENTS: The proposed amendment would have no locally maintained paperwork requirements.

PUBLIC COMMENTS: Following the October 2013 SBEC meeting, the proposed amendment to 19 TAC §249.16 was filed with the *Texas Register* initiating the official public comment period. At the time this item was prepared, no comments had been received. Any public comments received will be provided to the SBEC under separate cover prior to the February 2014 meeting.

ALTERNATIVES: None.

OTHER COMMENTS AND RELATED ISSUES: None.

ASSOCIATE COMMISSIONER'S RECOMMENDATION: I recommend that the State Board for Educator Certification:

Approve for adoption, subject to State Board of Education review, the proposed amendment to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, §249.16, Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53, with an effective date of 20 days after filing the adoption notice with the *Texas Register*.

Respectfully submitted,

Michele Moore
Associate Commissioner
Educator Leadership and Quality

Staff Members Responsible: Merle Dover, Associate Deputy Counsel
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Attachments:

- I. Statutory Citations
- II. Text of Proposed Amendment to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, §249.16, Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53

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, §249.16, Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53****Texas Education Code, §21.041, Rules; Fees (excerpt):**

- (b) The board shall propose rules that:
- (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, §21.060, 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, §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.
- (g) Expired.

Texas Education Code, §22.085, Employees and Applicants Convicted of Certain Offenses (excerpt):

- (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 if the educator knows or should have known, through a criminal history record information review, that the employee or applicant has been convicted of an offense described by Subsection (a).

Texas Occupations Code, §53.021, Authority to Revoke, Suspend, or Deny License, as amended by House Bill 798, 83rd Texas Legislature, Regular Session, 2013 (excerpts):

- (a) 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 that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license;
 - (3) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or
 - (4) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.
- (a-1) Subsection (a) does not apply to a person who has been convicted only of an offense punishable as a Class C misdemeanor unless:
 - (1) the person is an applicant for or the holder of a license that authorizes the person to possess a firearm; and

(2) the offense for which the person was convicted is a misdemeanor crime of domestic violence as that term is defined by 18 U.S.C. Section 921.

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.

ATTACHMENT II
Text of Proposed Amendment to 19 TAC

Chapter 249. Disciplinary Proceedings, Sanctions, and Contested Cases

Subchapter B. Enforcement Actions and Guidelines

§249.16. Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53.

- (a) Pursuant to the Texas Occupations Code, Chapter 53, and the Texas Education Code (TEC), Chapter 22, Subchapter C, the State Board for Educator Certification may suspend or revoke an existing valid certificate, deny an applicant a certificate, or bar a person from being assessed or examined for a certificate because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the education profession.
- (b) Subsection (a) of this section does not apply to a person convicted only of an offense punishable as a Class C misdemeanor unless the person is an applicant for or the holder of a license that authorizes the person to possess a firearm and the person was convicted of the misdemeanor crime of domestic violence as defined by 18 United States Code, §921, when the enforcement action is pursued under the authority granted through the Texas Occupations Code, Chapter 53.
- (c) ~~(b)~~ Subsection (a) of this section applies to a crime that indicates a threat to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague; interferes with the orderly, efficient, or safe operation of a school district, campus, or activity; or indicates impaired ability or misrepresentation of qualifications to perform the functions of an educator. Crimes considered to relate directly to the duties and responsibilities of the education profession include, but are not limited to:
- (1) crimes involving moral turpitude;
 - (2) crimes involving any form of sexual or physical abuse or neglect of a student or minor or other illegal conduct with a student or minor;
 - (3) crimes 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;
 - (4) crimes involving school property or funds;
 - (5) crimes 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;
 - (6) crimes occurring wholly or in part on school property or at a school-sponsored activity; or
 - (7) felonies involving driving while intoxicated (DWI).
- (d) ~~(c)~~ Pursuant to the Texas Occupations Code, Chapter 53, the Texas Education Agency (TEA) staff shall notify the applicant or certificate holder in writing of the TEA staff's intent to seek disciplinary action, including denial or revocation, and the reasons for the proposed action. The applicant or certificate holder shall have the opportunity to be heard according to the procedures set forth in this chapter.
- (e) ~~(d)~~ The grounds for revoking or suspending a certificate provided by this section and the Texas Occupations Code, Chapter 53, are cumulative of the other grounds and remedies provided by the TEC, §21.060, and this chapter.