

Item 11:**Adoption of Proposed Amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, §249.15, Disciplinary Action by State Board for Educator Certification, and §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, proposed amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, §249.15, Disciplinary Action by State Board for Educator Certification, and §249.16, Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53. The proposed amendment to 19 TAC §249.15 would conform this section to the proposed amendments approved by the SBEC to 19 TAC Chapter 229, Accountability System for Educator Preparation Programs. The proposed amendment to 19 TAC §249.16 would clarify that multiple statutory provisions provide the basis for certification actions based on criminal history. No changes are recommended since published as proposed.

STATUTORY AUTHORITY: The statutory authority for 19 TAC §249.15 is the Texas Education Code (TEC), §21.041(b)(1), (7), and (8). The statutory authority for 19 TAC §249.16 is the TEC, §§21.041(b)(7) and (8), 21.058(a) and (b), and 21.060; and Texas Occupations Code (TOC), §53.021 and §53.025.

EFFECTIVE DATE: The proposed effective date of the proposed amendments to 19 TAC §249.15 and §249.16 would be December 28, 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 249.15 was adopted effective March 31, 1999, and last amended effective October 17, 2013. Section 249.16 was adopted effective March 31, 1999, and last amended effective May 18, 2014.

At the August 2014 meeting, the SBEC approved the amendments to 19 TAC §249.15 and §249.16 for publication in *Texas Register* as proposed rules.

BACKGROUND INFORMATION AND SIGNIFICANT ISSUES: Section 249.15 lists the various types of disciplinary actions that the SBEC may pursue against certified educators when satisfactory evidence exists. Among other enumerated actions, §249.15 currently allows action to be taken by the SBEC when a certified educator has *willfully or recklessly* failed to provide information required to be provided by SBEC rule, including 19 TAC §229.3. The SBEC, at the May 2014 meeting, proposed changes to 19 TAC Chapter 229, Accountability System for

Educator Preparation Programs, that would remove the *willfully or recklessly* requirement when pursuing sanctions for failure to report required information. The proposed amendment to 19 TAC §249.15, shown in Attachment II, would remove in subsection (b)(7) the *willfully or recklessly* limitation when pursuing these types of actions to align with the proposed amendment to Chapter 229.

In addition, references in subsection (b)(10) would be updated to reflect proposed changes to §249.16. The proposed amendment would also update the rule wording from *crimes* to *offenses* to align with statutory language.

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. Section 249.16 discusses these actions.

In October 2007, an Attorney General opinion was requested by the commissioner of education regarding whether a rule the SBEC proposed relating 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, the SBEC amended 19 TAC §249.16 in 2009 to include subsection (d) to reflect that grounds for disciplinary action or denial of licensure under the TOC, Chapter 53, were cumulative of grounds and remedies under the TEC, §21.060.

Effective May 18, 2014, the SBEC last amended 19 TAC §249.16 to implement House Bill (HB) 798, 83rd Texas Legislature, Regular Session, 2013, which removed a licensing authority's power, under the TOC, to sanction or withhold certification for convictions of Class C misdemeanors unless the person is an applicant or holder of a license 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.

In discussions involving the most recent change to §249.16, it became clear that the section did not clearly differentiate between the varying sources of authority. The proposed amendment to 19 TAC §249.16, shown in Attachment II, would add language clearly identifying the varying sources of authority under which the SBEC may pursue disciplinary actions based on criminal history, namely the TOC and the TEC.

In addition, the proposed amendment would remove language in subsection (a) regarding the requirement that an offense be directly related to the duties and responsibilities of the education profession because it is redundant of the proposed language that offers a more complete definition in subsection (c).

The proposed amendment to subsection (b) would provide better language indicating that it is limited to actions pursued under the Texas Occupations Code.

The proposed amendment to subsection (c) would define which offenses directly relate to the duties and responsibilities of the education profession and would change references from *crimes* to *offenses* to match statutory language.

The proposed amendment to subsection (d) would provide clarifying language for how this subsection would work in conjunction with proposed new subsection (f).

The proposed amendment to subsection (f) would provide clear notice that SBEC will follow the procedures and timelines set out by that provision when pursuing actions under the TEC, §21.058.

The proposed amendment would also update the title to §249.16 to reference criminal history rather than criminal convictions and to incorporate the TEC, Chapter 21, along with the TOC, Chapter 53, as authority for certification actions.

No changes are recommended to §249.15 and §249.16 since published as proposed.

FISCAL IMPACT: The Texas Education Agency (TEA) staff has determined that there is no additional fiscal impact on state and local governments and there are no additional costs to persons or entities required to comply with the proposed amendments. 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 amendments would be clarification of the conduct that may result in a disciplinary action.

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

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

PUBLIC COMMENTS: Following the August 2014 SBEC meeting, the proposed amendments to 19 TAC §249.15 and §249.16 were filed with the *Texas Register*, initiating the official public comment period. Following is a summary of public comment received at the time this item was prepared and corresponding agency response. Any additional comments received will be provided to the SBEC under separate cover prior to the October 2014 meeting.

Comment: The Texas Classroom Teachers Association commented that the proposed amendment to 19 TAC §249.15(b)(7) (deleting "willfully and recklessly" to conform to changes adopted in Chapter 229) is overly broad and would extend to any submission of information rather than only the submissions contemplated in Chapter 229. The commenter suggested removing the phrase "SBEC rules, including, but not limited to" to limit the conforming amendment to information submitted under Chapter 229.

Agency Response: TEA staff notes that the same issue was raised at the August SBEC meeting during public comment on the proposed amendments to 19 TAC §249.15 and §249.16. The commenters suggested a similar change to the language. In response, the SBEC noted that they have discretion whether to pursue actions for failure to submit information. The SBEC approved the proposed amendment to 19 TAC §249.15 to be published as proposed with the *Texas Register* without making the suggested change.

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 amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, §249.15, Disciplinary Action by State Board for Educator Certification, and §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,

Ryan Franklin
Interim Associate Commissioner
Educator Leadership and Quality

Staff Members Responsible: Von Byer, General Counsel
Legal Services

Merle Dover, Associate Deputy Counsel
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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, §249.15, Disciplinary Action by State Board for Educator Certification, and §249.16, Eligibility of Persons with Criminal Convictions for a Certificate under Texas Occupations Code, Chapter 53

ATTACHMENT I**Statutory Citations Relating to Proposed Amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, §249.15, Disciplinary Action by State Board for Educator Certification, and §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:
- (1) provide for the regulation of educators and the general administration of this subchapter in a manner consistent with this subchapter;
 - (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, §21.058, Revocation of Certificate and Termination of Employment Based on Conviction of Certain Offenses (excerpts):

- (a) The procedures described by Subsections (b) and (c) apply only:
- (1) to conviction of a felony offense under Title 5, Penal Code, or an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; and
 - (2) if the victim of the offense is under 18 years of age.
- (b) Notwithstanding Section 21.041(b)(7), not later than the fifth day after the date the board receives notice under Article 42.018, Code of Criminal Procedure, of the conviction of a person who holds a certificate under this subchapter, the board shall:
- (1) revoke the certificate held by the person; and
 - (2) provide to the person and to any school district or open-enrollment charter school employing the person at the time of revocation written notice of:
 - (A) the revocation; and
 - (B) the basis for the revocation.

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 Occupations Code, §53.021, Authority to Revoke, Suspend, or Deny License:

- (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.
- (b) A license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.
- (c) Except as provided by Subsections (d) and (e), notwithstanding any other law, a licensing authority may not consider a person to have been convicted of an offense for purposes of this section if, regardless of the statutory authorization:
 - (1) the person entered a plea of guilty or nolo contendere;
 - (2) the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and
 - (3) at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.
- (d) A licensing authority may consider a person to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the person was discharged as described by Subsection (c) if:
 - (1) the person was charged with:

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- (A) any offense described by Article 62.001(5), Code of Criminal Procedure; or
 - (B) an offense other than an offense described by Paragraph (A) if:
 - (i) the person has not completed the period of supervision or the person completed the period of supervision less than five years before the date the person applied for the license; or
 - (ii) a conviction for the offense would make the person ineligible for the license by operation of law; and
 - (2) after consideration of the factors described by Sections 53.022 and 53.023(a), the licensing authority determines that:
 - (A) the person may pose a continued threat to public safety; or
 - (B) employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.
 - (e) Subsection (c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide:
 - (1) law enforcement or public health, education, or safety services; or
 - (2) financial services in an industry regulated by a person listed in Section 411.081(i)(19), Government Code.

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 Amendments to 19 TAC

Chapter 249. Disciplinary Proceedings, Sanctions, and Contested Cases

Subchapter B. Enforcement Actions and Guidelines

§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 ~~willfully or recklessly~~ failed to provide information required to be provided by SBEC rules, including, but not limited to, §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 ~~[a crime]~~ (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) ~~[§249.16(b)]~~ of this title (relating to Eligibility of Persons with Criminal History ~~[Convictions]~~ for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21). Such offenses ~~[crimes]~~ 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 ~~[crimes]~~ involving moral turpitude;
 - (B) offenses ~~[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;
 - (C) offenses ~~[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;
 - (D) offenses ~~[crimes]~~ involving school property or funds;
 - (E) offenses ~~[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;
 - (F) offenses ~~[crimes]~~ occurring wholly or in part on school property or at a school-sponsored activity; or
 - (G) felony offenses ~~[felonies]~~ 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.

(c)-(g) (No change.)

§249.16. Eligibility of Persons with Criminal History ~~[Convictions]~~ for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21 .

- (a) Pursuant to the Texas Occupations Code (TOC), Chapter 53, and the Texas Education Code (TEC), Chapter 21, Subchapter B ~~[Chapter 22, Subchapter C]~~, the State Board for Educator Certification (SBEC) 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, or take other disciplinary action because of a person's conviction of a felony or misdemeanor or certain other criminal history ~~[if the crime directly relates to the duties and responsibilities of the education profession]~~ .

- (b) Disciplinary action under the TOC, §53.021, ~~[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 offense [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) When statute or SBEC rule codified in the Texas Administrative Code, Title 19, Part 7, requires an offense to directly relate to the duties and responsibilities of the education profession, an offense is considered to directly relate if the offense ~~[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. Offenses ~~[Crimes]~~ considered to relate directly to the duties and responsibilities of the education profession include, but are not limited to:
- (1) offenses ~~[crimes]~~ involving moral turpitude;
 - (2) offenses ~~[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) offenses ~~[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) offenses ~~[crimes]~~ involving school property or funds;
 - (5) offenses ~~[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) offenses ~~[crimes]~~ occurring wholly or in part on school property or at a school-sponsored activity; or
 - (7) felony offenses ~~[felonies]~~ involving driving while intoxicated (DWI).
- (d) Except as provided in subsection (f) of this section, the Texas Education Agency (TEA) staff, pursuant ~~[Pursuant]~~ to the TOC ~~[Texas Occupations Code]~~, Chapter 53, and the requirements of this chapter, ~~[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) The grounds for revoking or suspending a certificate provided by this section and the TOC ~~[Texas Occupations Code]~~, Chapter 53, are cumulative of the other grounds and remedies provided by the TEC, §21.060, and this chapter.
- (f) The TEC, §21.058, shall control actions pursued under that section.