

Item 6:
Adoption of Proposed New 19 TAC Chapter 228,
Requirements for Educator Preparation Programs, §228.70,
Complaints and Investigations Procedures

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 new 19 TAC Chapter 228, Requirements for Educator Preparation Programs, §228.70, Complaints and Investigations Procedures. As part of its report to the 83rd Texas Legislature, Regular Session, 2013, the Sunset Advisory Commission recommended a management action that adopts procedures for educator preparation program (EPP) complaints that outline all phases of the EPP complaint process, as well as track and analyze complaint data. The proposed new rule would establish procedures for filing a complaint against an EPP, impose specific responsibilities on an EPP regarding complaints, and establish the consequences if an EPP is found to be in violation of SBEC rules and/or Texas Education Code, Chapter 21. Additional changes are recommended since published as proposed.

STATUTORY AUTHORITY: The statutory authority for proposed new 19 TAC §228.70 is the Texas Education Code (TEC), §§21.031, 21.041(b)(1), 21.045, and 21.049(a).

EFFECTIVE DATE: The proposed effective date of proposed new 19 TAC §228.70 would be March 22, 2015 (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: The SBEC discussed EPP complaints procedures at the August 1, 2014 SBEC meeting. At the October 24, 2014 meeting, the SBEC approved new 19 TAC §228.70 for publication in the *Texas Register* as a proposed rule.

BACKGROUND INFORMATION AND SIGNIFICANT ISSUES: The SBEC rules in 19 TAC Chapter 228 establish requirements for EPPs. Complaints regarding EPPs have been lodged with the Texas Education Agency (TEA), and the TEA has generally engaged in an informal mediating process between the individual and the EPP. As part of its report to the 83rd Texas Legislature (2013), the Sunset Advisory Commission recommended that the complaint procedures should be updated to better account for tracking and resolution.

At the August 2014 meeting, TEA staff presented for discussion an outline of a comprehensive complaint process. Following the August 2014 SBEC meeting, discussions were held during a stakeholder meeting with the Educator Preparation Advisory Committee on August 22, 2014, and with other stakeholders at meetings in September and October 2014. Following the October 2014 SBEC meeting, additional stakeholder meetings were held in November and December 2014.

Proposed new 19 TAC §228.70, shown in Attachment II, would establish the procedures for filing a complaint against an EPP. The new complaints procedure proposed would:

- direct EPPs to establish grievance procedures to attempt to solve the issue(s) at the EPP level first and, if unable to do so, to provide individuals access to complaint submission instructions either by directing the candidate to the relevant portion of the TEA website or by providing written instructions;
- require EPPs to comply with an investigation by TEA staff and authorize a presumption of non-compliance with the allegation(s) if the EPP fails to cooperate with an investigation; and
- authorize TEA staff to incorporate a determination of non-compliance into the review for the accreditation or continuing approval determination of an EPP.

Since published as proposed, TEA staff and SBEC legal counsel recommend the following changes.

- Language in subsection (c)(2)(D) would be added to clarify that TEA staff would determine whether a complainant knew or should have known about the events giving rise to a complaint more than two years before the earliest date the complainant filed a complaint with either TEA staff or the EPP.
- Language in subsection (c)(3)(D) would be reworded to remove vague language, which deems an EPP's non-compliance with the requirements set out in subsection (c)(3)(C) to be non-compliance with the SBEC rules and TEC, Chapter 21, and to clarify that an EPP's failure to comply may be treated as a violation of SBEC rules and of TEC, Chapter 21, and may result in having any violation in the original complaint being deemed admitted.
- References to Public Law 110-315, Sections 205-208, in subsection (c)(3)(D), (c)(4)(C), and (c)(4)(E) would not be included in the adopted rule because the rule without the references would adequately address EPP accountability.

FISCAL IMPACT: The 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 rule action. 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 rule action would be increased accountability for EPPs on the preparation of candidates.

PROCEDURAL AND REPORTING IMPLICATIONS: The TEA staff has determined that there would be a minimal increase in the procedural and reporting implications for EPPs because the proposal is similar to the TEA's current complaint process.

LOCALLY MAINTAINED PAPERWORK REQUIREMENTS: The TEA staff has determined that there would be a minimal increase in the locally maintained paperwork requirements for EPPs because the proposal is similar to the TEA's current complaint process.

PUBLIC COMMENTS: The public comment period on the proposal began November 14, 2014, and ended December 15, 2014. At the time this item was prepared, no comments had been received. Any comments received will be provided to the SBEC under separate cover prior to the January 9, 2015 special meeting. The SBEC will take registered oral and written comments on this item at the January 9, 2015 special meeting in accordance with the SBEC board operating policies and procedures.

ALTERNATIVES: None.

OTHER COMMENTS AND RELATED ISSUES: A separate item is presented for discussion and action in this agenda to adopt, subject to SBOE review, proposed amendments to 19 TAC Chapter 229, Accountability System for Educator Preparation Programs, §229.4, Determination of Accreditation Status, §229.5, Accreditation Sanctions and Procedures, and §229.6, Continuing Approval.

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

Approve for adoption, subject to State Board of Education review, proposed new 19 TAC Chapter 228, Requirements for Educator Preparation Programs, §228.70, Complaints and Investigations Procedures, with an effective date of 20 days after filing the adoption notice with the *Texas Register*.

Respectfully submitted,

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Associate Commissioner
Educator Leadership and Quality

Staff Members Responsible: Tim Miller, Director
Educator Preparation Programs

Attachments: I. Statutory Citations
II. Text of Proposed New 19 TAC Chapter 228, Requirements for Educator Preparation Programs, §228.70, Complaints and Investigations Procedures

ATTACHMENT I**Statutory Citations Relating to Proposed New 19 TAC Chapter 228, Requirements for Educator Preparation Programs, §228.70, Complaints and Investigations Procedures****Texas Education Code, §21.031, Purpose:**

- (a) The State Board for Educator Certification is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession. The board shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators.
- (b) In proposing rules under this subchapter, the board 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.

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;

Texas Education Code, §21.045, Accountability System for Educator Preparation Programs:

- (a) The board shall propose rules establishing standards to govern the approval and continuing accountability of all educator preparation programs based on the following information that is disaggregated with respect to sex and ethnicity:
 - (1) results of the certification examinations prescribed under Section 21.048(a);
 - (2) performance based on the appraisal system for beginning teachers adopted by the board;
 - (3) achievement, including improvement in achievement, of students taught by beginning teachers for the first three years following certification, to the extent practicable; and
 - (4) compliance with board requirements regarding the frequency, duration, and quality of structural guidance and ongoing support provided by field supervisors to beginning teachers during their first year in the classroom.
- (b) Each educator preparation program shall submit data elements as required by the board for an annual performance report to ensure access and equity. At a minimum, the annual report must contain the performance data from Subsection (a), other than the data required for purposes of Subsection (a)(3), and the following information, disaggregated by sex and ethnicity:
 - (1) the number of candidates who apply;
 - (2) the number of candidates admitted;
 - (3) the number of candidates retained;
 - (4) the number of candidates completing the program;
 - (5) the number of candidates employed in the profession after completing the program;

- (6) the number of candidates retained in the profession; and
 - (7) any other information required by federal law.
- (c) The board shall propose rules establishing performance standards for the Accountability System for Educator Preparation for accrediting educator preparation programs. At a minimum, performance standards must be based on Subsection (a). The board may propose rules establishing minimum standards for approval or renewal of approval of:
- (1) educator preparation programs; or
 - (2) certification fields authorized to be offered by an educator preparation program.

Texas Education Code, §21.049, Alternative Certification (excerpt):

- (a) To provide a continuing additional source of qualified educators, the board shall propose rules providing for educator certification programs as an alternative to traditional educator preparation programs. The rules may not provide that a person may be certified under this section only if there is a demonstrated shortage of educators in a school district or subject area.

ATTACHMENT II
Text of Proposed New 19 TAC

Chapter 228. Requirements for Educator Preparation Programs

§228.70. Complaints and Investigations Procedures.

- (a) Purpose. Texas Education Agency (TEA) staff shall maintain a process through which a candidate in an educator preparation program (EPP), an applicant for candidacy in an EPP, a cooperating teacher, a mentor, or an administrator in a school district, charter school, or private school may submit, in writing, a complaint about an EPP for investigation and resolution.
- (b) EPP responsibilities.
- (1) The EPP shall adopt and send to TEA staff, for inclusion in the EPP's records, a grievance procedure that requires the EPP to attempt to resolve grievances at the EPP level before the grievance is forwarded to TEA staff.
 - (2) The EPP shall post on its website a link to the TEA complaints website.
 - (3) The EPP shall post a notification at its physical site(s), in a conspicuous location, information regarding filing a written complaint with TEA staff.
 - (4) Upon request of an individual, the EPP shall provide information in writing regarding the procedures to submit a written complaint to TEA staff.
- (c) TEA responsibilities.
- (1) Filing a complaint. TEA staff will develop a complaint form to standardize information received from an individual making a complaint against an EPP. The complaint form will be available on the TEA website. All complaints filed against an EPP must be in writing on the complaint form. The written complaint must clearly state the facts that are the subject of the complaint and must state the measures the complainant has taken to attempt resolution of the complaint with the EPP. Anonymous complaints may not be accepted or investigated.
 - (2) Processing the complaint.
 - (A) TEA staff will record all complaints in the TEA complaints tracking system. Each complaint, no matter the severity, shall be assigned a tracking number.
 - (B) The complaint will be forwarded to the division responsible for educator preparation for further action, including assessing the complaint, providing a severity status and prioritizing the complaint accordingly, and determining jurisdiction.
 - (C) If TEA staff determines that the complaint is not within the State Board for Educator Certification's (SBEC's) jurisdiction, TEA staff shall notify the complainant that the complaint will be closed without action for lack of jurisdiction.
 - (D) If TEA staff determines the [a] complainant knew or should have known about the events giving rise to a complaint more than two years before the earliest date the complainant filed a complaint with either TEA staff or the EPP, TEA staff will notify the complainant that the complaint will be closed without action.
 - (E) TEA staff will not initiate an investigation if the complainant has not exhausted all grievance and appeal procedures that the EPP has established to address complaints.
 - (3) Investigating the complaint.
 - (A) If TEA staff determines a complaint is within the SBEC's jurisdiction, TEA staff will notify the respondent EPP that a complaint has been made, provide a summary of the allegations in the complaint, and request that the EPP respond to the complaint.
 - (B) TEA staff may request further information from the individual and from the EPP.

- (C) An EPP shall:
- (i) cooperate fully with any SBEC investigation; and
 - (ii) respond within 21 business days of receipt to requests for information regarding the complaint(s) and other requests for information from the TEA, except where:
 - (I) TEA staff imposes a different response date; or
 - (II) the EPP is unable to meet the initial response date and requests and receives a different response date from TEA staff.
- (D) If an EPP fails to comply with subparagraph (C) of this paragraph, the SBEC may amend the complaint to reflect the violation and may deem admitted the violation of [~~at any time during an investigation, fails to cooperate with the investigation, including failing to provide requested information in a timely manner, or provides insufficient information, the EPP may be deemed to be out of compliance with the~~] SBEC rules and/or [~~]~~ Texas Education Code (TEC), Chapter 21 [~~and/or Public Law 110 315, Sections 205 208~~], [~~as~~] alleged in the original complaint.
- (4) Resolving the complaint.
- (A) Upon completion of an investigation, TEA staff will notify both the individual and the EPP in writing of the findings of the investigation.
 - (B) Each party will have ten business days to present additional evidence or to dispute the findings of the investigation.
 - (C) After reviewing any additional evidence, TEA staff will make a proposed recommendation and notify both parties in writing. If TEA staff finds that the EPP has violated SBEC rules and/or [~~]~~ TEC, Chapter 21 [~~and/or Public Law 110 315, Sections 205 208~~], the proposed recommendation will include a recommendation that SBEC impose sanctions affecting the EPP's accreditation status in accordance with §229.5 of this title (relating to Accreditation Sanctions and Procedures) and/or continuing approval status in accordance with §229.6 of this title (relating to Continuing Approval).
 - (D) The EPP shall be entitled to an informal review of the proposed recommendation under the conditions and procedures set out in §229.7 of this title (regarding Informal Review of Texas Education Agency Recommendations).
 - (E) When a final recommendation following the opportunity for informal review finds that an EPP is out of compliance with SBEC rules and/or [~~]~~ TEC, Chapter 21 [~~and/or Public Law 110 315, Sections 205 208~~], the EPP shall provide to TEA staff evidence of compliance within 30 business days after receiving the final recommendation. If evidence of compliance is insufficient or is not received within the required time frame, SBEC may include a determination of non-compliance in the EPP's consumer information posted on the TEA website and may impose sanctions affecting the EPP's accreditation status in accordance with §229.5 of this title and continuing approval status in accordance with §229.6 of this title, in accordance with the procedures set out in §229.7 of this title, and §229.8 of this title (relating to Contested Cases for Accreditation Revocation). These sanctions for non-compliance may be in addition to sanctions imposed against the EPP for other violations of SBEC rules and/or [~~]~~ TEC, Chapter 21 [~~and/or Public Law 110 315, Sections 205 208~~].
 - (F) The final disposition of the complaint will be recorded in the TEA complaints tracking system.