

Item 14:

COVER PAGE

Type of Agenda Rule Item:

- Discussion Only:** TEA staff will present rule items with an update, potential future rule changes, and/or seek SBEC direction on potential rule changes. TEA staff will draft rule changes from the Board's discussion on the item and start preparing rule text for proposal to the Board.
- Proposal:** First SBEC reading (vote). SBEC members will give input on proposed rule text and will approve rule changes that will go out for public comment as a proposed rule with the *Texas Register*. Important to make substantive changes now because only non-substantive changes can be made at adoption.
- Adoption:** Second and final SBEC reading (vote). Only non-substantive changes are permissible at adoption phase. If approved will go to SBOE for review and filed as an SBEC rule with *Texas Register* if SBOE takes no action.

Summary:

This item is an adoption of amendments to 19 TAC Chapter 247, which covers the Educators' Code of Ethics. The proposed amendments to 19 TAC 247 would make conforming changes to correctly refer to the titles of cross-referenced sections from 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, would implement the Every Student Succeeds Act (ESSA) and would make it a violation of the Educators' Code of Ethics for an educator to be intoxicated on school property or during school activities when students are present. At the August SBEC meeting, the Board approved the proposed amendments, and there are no changes are being recommended since proposed.

Statutory Authority:

All of the relevant statutes pertaining to this chapter are listed for you on the agenda title page and the entire statutory language is on Attachment I. This is always helpful in referencing the law the TEA staff was working under when preparing this item.

TEA Staff Recommendation:

To approve, for adoption, the proposed amendments as presented.

Relevant SBEC Core Principles:

- *We believe well-prepared educators are essential.*
- *We believe student success is primary, and we must ensure the safety and welfare of Texas school children.*
- *We believe educators must be held to high standards of ethical conduct.*
- *We believe we must continually improve our policies and processes in response to changing needs.*
- *We believe that a certified educator holds a unique position of trust with almost unparalleled access to the hearts and minds of impressionable students and therefore, the conduct of an educator must be held to the highest standard.*

Item 14:
**Consider and Take Appropriate Action on Adoption of
Proposed Amendments to 19 TAC Chapter 247, Educators'
Code of Ethics**

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, amendments to 19 TAC Chapter 247, Educators' Code of Ethics. The proposed amendment to 19 TAC §247.1 would make conforming changes to correctly refer to the titles of cross-referenced sections from 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases. The proposed amendment to 19 TAC §247.2 would implement the Every Student Succeeds Act (ESSA) and would make it a violation of the Educators' Code of Ethics for an educator to be intoxicated on school property or during school activities when students are present. No changes are recommended since published as proposed.

STATUTORY AUTHORITY: The statutory authority for 19 TAC §247.1 and §247.2 is Texas Education Code (TEC), §21.031(a) and §21.041(a) and (b)(1), (7), and (8); and 20 United States Code, §7926 (ESSA).

TEC, §21.031(a), charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators.

TEC, §21.041(a), authorizes the SBEC to adopt rules as necessary to implement its procedures. TEC, §21.041(b)(1), (7), and (8), give the SBEC rulemaking authority to regulate educators, provide for disciplinary proceedings against educators, and create and enforce an educator's code of ethics.

20 United States Code, §7926 (ESSA), requires state educational agencies to adopt rules prohibiting school employees from assisting another school employee in obtaining a new job, if the school employee seeking employment has engaged in illegal sexual misconduct with a student or minor.

EFFECTIVE DATE: The proposed effective date of the proposed amendments to 19 TAC §247.1 and §247.2 would be December 27, 2016 (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: At the August 2016 meeting, the SBEC approved the amendments to 19 TAC Chapter 247 for publication in the *Texas Register* as proposed rules.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 TAC Chapter 247 establish the purpose and scope of the Educators' Code of Ethics and standard practices for Texas educators.

The proposed amendment to 19 TAC §247.1 would conform the titles of cross-referenced sections in 19 TAC Chapter 249 to the new titles of those sections following recent revisions to Chapter 249.

The proposed amendment to 19 TAC §247.2(1)(M) is intended to prohibit educators from being under the influence of alcohol while working as educators. Without language explicitly prohibiting educators from being under the influence of alcohol, it has been difficult for the SBEC to penalize educators who exhibit symptoms of alcohol intoxication while working as educators, but are not witnessed actually drinking on campus.

The proposed amendment that would add new 19 TAC §247.2(1)(N) is intended to implement the ESSA, 20 United States Code, §7926 (2015), which requires state educational agencies that receive federal funds to adopt rules that prohibit school employees from assisting other school employees from obtaining new jobs if the individual knows or has probable cause to believe that the individual seeking a job has engaged in sexual misconduct regarding a minor or student.

No changes are recommended to the proposed amendments to 19 TAC §247.1 and §247.2 as published.

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 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. There is no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC AND STUDENT BENEFIT: The public and student benefit anticipated as a result of the proposed amendments to 19 TAC §247.1 and §247.2 would be updated definitions and standards of professional conduct more closely reflecting the expectations of the citizens of the state and the SBEC.

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

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

PUBLIC COMMENTS: The public comment period on the proposal began August 26, 2016, and ended September 26, 2016. Any comments received will be provided to the SBEC under separate cover prior to the October 7, 2016 meeting. The SBEC will take registered oral and written comments on this item at the October 7, 2016 meeting in accordance with the SBEC board operating policies and procedures.

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 247, Educators' Code of Ethics, with an effective date of 20 days after filing the adoption notice with the *Texas Register*.

Staff Members Responsible: Laura Moriaty, Director
Legal Services for Educator Leadership and Quality

Doug Phillips, Director
Educator Investigations

Attachments:

- I. Statutory Citations
- II. Text of Proposed Amendments to 19 TAC Chapter 247, Educators' Code of Ethics

ATTACHMENT I**Statutory Citations Relating to Proposed Amendments to 19 TAC Chapter 247,
Educators' Code of Ethics****Texas Education Code, §21.031, Purpose (excerpt):**

- (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.

Texas Education Code, §21.041, Rules; Fees (excerpts):

- (a) The board may adopt rules as necessary for its own procedures.
- (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;

20 United States Code, §7926, Prohibition on Aiding and Abetting Sexual Abuse (Every Student Succeeds Act):

- (a) In general
- A State, State educational agency, or local educational agency in the case of a local educational agency that receives Federal funds under this chapter shall have laws, regulations, or policies that prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.
- (b) Exception
- The requirements of subsection (a) shall not apply if the information giving rise to probable cause-
- (1) (A) has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and
 - (B) has been properly reported to any other authorities as required by Federal, State, or local law, including title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the regulations implementing such title under part 106 of title 34, Code of Federal Regulations, or any succeeding regulations; and
 - (2) (A) the matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations

and notified school officials that there is insufficient information to establish probable cause that the school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law;

- (B) the school employee, contractor, or agent has been charged with, and acquitted or otherwise exonerated of the alleged misconduct; or
- (C) the case or investigation remains open and there have been no charges filed against, or indictment of, the school employee, contractor, or agent within 4 years of the date on which the information was reported to a law enforcement agency.

(c) Prohibition

The Secretary shall not have the authority to mandate, direct, or control the specific measures adopted by a State, State educational agency, or local educational agency under this section.

(d) Construction

Nothing in this section shall be construed to prevent a State from adopting, or to override a State law, regulation, or policy that provides, greater or additional protections to prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee who engaged in sexual misconduct regarding a minor or student in violation of the law in obtaining a new job.

ATTACHMENT II
Text of Proposed Amendments to 19 TAC

Chapter 247. Educators' Code of Ethics

§247.1. Purpose and Scope; Definitions.

- (a) In compliance with the Texas Education Code, §21.041(b)(8), the State Board for Educator Certification (SBEC) adopts an Educators' Code of Ethics as set forth in §247.2 of this title (relating to Code of Ethics and Standard Practices for Texas Educators). The SBEC may amend the ethics code in the same manner as any other formal rule.
- (b) The Texas educator shall comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community and shall safeguard academic freedom. The Texas educator, in maintaining the dignity of the profession, shall respect and obey the law, demonstrate personal integrity, and exemplify honesty and good moral character. The Texas educator, in exemplifying ethical relations with colleagues, shall extend just and equitable treatment to all members of the profession. The Texas educator, in accepting a position of public trust, shall measure success by the progress of each student toward realization of his or her potential as an effective citizen. The Texas educator, in fulfilling responsibilities in the community, shall cooperate with parents and others to improve the public schools of the community. This chapter shall apply to educators and candidates for certification.
- (c) The SBEC is solely responsible for enforcing the Educators' Code of Ethics for purposes related to certification disciplinary proceedings. The Educators' Code of Ethics is enforced through the disciplinary procedure set forth in Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) pursuant to the purposes stated therein.
- (d) As provided in §249.5 of this title (relating to Purpose ; Policy Governing Disciplinary Proceedings), the primary goals the SBEC seeks to achieve in educator disciplinary matters are:
- (1) to protect the safety and welfare of Texas schoolchildren and school personnel;
 - (2) to ensure educators and applicants are morally fit and worthy to instruct or to supervise the youth of the state; and
 - (3) to fairly and efficiently resolve educator disciplinary proceedings at the least expense possible to the parties and the state.
- (e) The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) Abuse--Includes the following acts or omissions:
 - (A) mental or emotional injury to a student or minor that results in an observable and material impairment in the student's or minor's development, learning, or psychological functioning;
 - (B) causing or permitting a student or minor to be in a situation in which the student or minor sustains a mental or emotional injury that results in an observable and material impairment in the student's or minor's development, learning, or psychological functioning;
 - (C) physical injury that results in substantial harm to a student or minor, or the genuine threat of substantial harm from physical injury to the student or minor, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline; or
 - (D) sexual conduct harmful to a student's or minor's mental, emotional, or physical welfare.
 - (2) Applicant--A party seeking issuance, renewal, or reinstatement of a certificate from the Texas Education Agency staff or the State Board for Educator Certification.
 - (3) Code of Ethics--The Educators' Code of Ethics codified in this chapter.

- (4) Complaint--A written statement submitted to the Texas Education Agency staff that contains essential facts alleging improper conduct by an educator, applicant, or examinee, the complainant's verifiable contact information, including full name, complete address, and phone number, which provides grounds for sanctions.
- (5) Contested case--A proceeding under this chapter in which the legal rights, duties, and privileges related to a party's educator certificate are to be determined by the State Board for Educator Certification and/or the State Office of Administrative Hearings commencing when a petition is properly served under this chapter.
- (6) Disciplinary proceedings--Any matter arising under this chapter or Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) that results in a final order or finding issued by the Texas Education Agency staff, the State Office of Administrative Hearings, or the State Board for Educator Certification relating to the legal rights, duties, privileges, and status of a party's educator certificate.
- (7) Educator--A person who is required to hold a certificate issued under the Texas Education Code, Chapter 21, Subchapter B.
- (8) Endanger--Exposure of a student or minor to unjustified risk of injury or to injury that jeopardizes the physical health or safety of the student or minor without regard to whether there has been an actual injury to the student or minor.
- (9) Good moral character--The virtues of a person as evidenced by patterns of personal, academic, and occupational behaviors that, in the judgment of the State Board for Educator Certification, indicate honesty, accountability, trustworthiness, reliability, and integrity. Lack of good moral character may be evidenced by the commission of crimes relating directly to the duties and responsibilities of the education profession as described in §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), or by the commission of acts involving moral turpitude, but conduct that evidences a lack of good moral character is not necessarily limited to such crimes or acts.
- (10) Intentionally--An educator acts intentionally, or with intent, with respect to the nature of his or her conduct or to a result of his or her conduct when it is his or her conscious objective or desire to engage in the conduct or cause the result.
- (11) Knowingly--An educator acts knowingly, or with knowledge, with respect to the nature of his or her conduct or to circumstances surrounding his or her conduct when he or she is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his or her conduct when he or she is aware that the conduct is reasonably certain to cause the result.
- (12) Minor--A person under 18 years of age.
- (13) Moral turpitude--Improper conduct, including, but not limited to, the following: dishonesty; fraud; deceit; theft; misrepresentation; deliberate violence; base, vile, or depraved acts that are intended to arouse or to gratify the sexual desire of the actor; drug or alcohol related offenses as described in §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); or acts constituting abuse or neglect under the Texas Family Code, §261.001.
- (14) Neglect--The placing or leaving of a student or minor in a situation where the student or minor would be exposed to a substantial risk of physical or mental harm.
- (15) Recklessly--An educator acts recklessly, or is reckless, with respect to circumstances surrounding his or her conduct or the results of his or her conduct when he or she is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur.
- (16) Sanction--A disciplinary action by the State Board for Educator Certification, including a restriction, reprimand, suspension, revocation of a certificate, or a surrender in lieu of disciplinary action.

- (17) State Board for Educator Certification--The State Board for Educator Certification acting through its voting members in a decision-making capacity.
- (18) State Board for Educator Certification member(s)--One or more of the members of the State Board for Educator Certification, appointed and qualified under the Texas Education Code, §21.033.
- (19) Student--A person enrolled in a primary or secondary school, whether public, private, or charter, regardless of the person's age, or a person 18 years of age or younger who is eligible to be enrolled in a primary or secondary school, whether public, private, or charter.
- (20) Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.
- (21) Worthy to instruct or to supervise the youth of this state--Presence of those moral, mental, and psychological qualities that are required to enable an educator to render the service essential to the accomplishment of the goals and mission of the State Board for Educator Certification policy and this chapter.

§247.2. Code of Ethics and Standard Practices for Texas Educators.

Enforceable Standards.

- (1) Professional Ethical Conduct, Practices and Performance.
 - (A) Standard 1.1. The educator shall not intentionally, knowingly, or recklessly engage in deceptive practices regarding official policies of the school district, educational institution, educator preparation program, the Texas Education Agency, or the State Board for Educator Certification (SBEC) and its certification process.
 - (B) Standard 1.2. The educator shall not knowingly misappropriate, divert, or use monies, personnel, property, or equipment committed to his or her charge for personal gain or advantage.
 - (C) Standard 1.3. The educator shall not submit fraudulent requests for reimbursement, expenses, or pay.
 - (D) Standard 1.4. The educator shall not use institutional or professional privileges for personal or partisan advantage.
 - (E) Standard 1.5. The educator shall neither accept nor offer gratuities, gifts, or favors that impair professional judgment or to obtain special advantage. This standard shall not restrict the acceptance of gifts or tokens offered and accepted openly from students, parents of students, or other persons or organizations in recognition or appreciation of service.
 - (F) Standard 1.6. The educator shall not falsify records, or direct or coerce others to do so.
 - (G) Standard 1.7. The educator shall comply with state regulations, written local school board policies, and other state and federal laws.
 - (H) Standard 1.8. The educator shall apply for, accept, offer, or assign a position or a responsibility on the basis of professional qualifications.
 - (I) Standard 1.9. The educator shall not make threats of violence against school district employees, school board members, students, or parents of students.
 - (J) Standard 1.10. The educator shall be of good moral character and be worthy to instruct or supervise the youth of this state.
 - (K) Standard 1.11. The educator shall not intentionally or knowingly misrepresent his or her employment history, criminal history, and/or disciplinary record when applying for subsequent employment.

- (L) Standard 1.12. The educator shall refrain from the illegal use or distribution of controlled substances and/or abuse of prescription drugs and toxic inhalants.
 - (M) Standard 1.13. The educator shall not be under the influence of alcohol or consume alcoholic beverages on school property or during school activities when students are present.
 - (N) Standard 1.14. The educator shall not assist another educator, school employee, contractor, or agent in obtaining a new job as an educator or in a school, apart from the routine transmission of administrative and personnel files, if the educator knows or has probable cause to believe that such person engaged in sexual misconduct regarding a minor or student in violation of the law.
- (2) Ethical Conduct Toward Professional Colleagues.
- (A) Standard 2.1. The educator shall not reveal confidential health or personnel information concerning colleagues unless disclosure serves lawful professional purposes or is required by law.
 - (B) Standard 2.2. The educator shall not harm others by knowingly making false statements about a colleague or the school system.
 - (C) Standard 2.3. The educator shall adhere to written local school board policies and state and federal laws regarding the hiring, evaluation, and dismissal of personnel.
 - (D) Standard 2.4. The educator shall not interfere with a colleague's exercise of political, professional, or citizenship rights and responsibilities.
 - (E) Standard 2.5. The educator shall not discriminate against or coerce a colleague on the basis of race, color, religion, national origin, age, gender, disability, family status, or sexual orientation.
 - (F) Standard 2.6. The educator shall not use coercive means or promise of special treatment in order to influence professional decisions or colleagues.
 - (G) Standard 2.7. The educator shall not retaliate against any individual who has filed a complaint with the SBEC or who provides information for a disciplinary investigation or proceeding under this chapter.
- (3) Ethical Conduct Toward Students.
- (A) Standard 3.1. The educator shall not reveal confidential information concerning students unless disclosure serves lawful professional purposes or is required by law.
 - (B) Standard 3.2. The educator shall not intentionally, knowingly, or recklessly treat a student or minor in a manner that adversely affects or endangers the learning, physical health, mental health, or safety of the student or minor.
 - (C) Standard 3.3. The educator shall not intentionally, knowingly, or recklessly misrepresent facts regarding a student.
 - (D) Standard 3.4. The educator shall not exclude a student from participation in a program, deny benefits to a student, or grant an advantage to a student on the basis of race, color, gender, disability, national origin, religion, family status, or sexual orientation.
 - (E) Standard 3.5. The educator shall not intentionally, knowingly, or recklessly engage in physical mistreatment, neglect, or abuse of a student or minor.
 - (F) Standard 3.6. The educator shall not solicit or engage in sexual conduct or a romantic relationship with a student or minor.
 - (G) Standard 3.7. The educator shall not furnish alcohol or illegal/unauthorized drugs to any person under 21 years of age unless the educator is a parent or guardian of that child or knowingly allow any person under 21 years of age unless the educator is a parent or

guardian of that child to consume alcohol or illegal/unauthorized drugs in the presence of the educator.

- (H) Standard 3.8. The educator shall maintain appropriate professional educator-student relationships and boundaries based on a reasonably prudent educator standard.
- (I) Standard 3.9. The educator shall refrain from inappropriate communication with a student or minor, including, but not limited to, electronic communication such as cell phone, text messaging, email, instant messaging, blogging, or other social network communication. Factors that may be considered in assessing whether the communication is inappropriate include, but are not limited to:
 - (i) the nature, purpose, timing, and amount of the communication;
 - (ii) the subject matter of the communication;
 - (iii) whether the communication was made openly or the educator attempted to conceal the communication;
 - (iv) whether the communication could be reasonably interpreted as soliciting sexual contact or a romantic relationship;
 - (v) whether the communication was sexually explicit; and
 - (vi) whether the communication involved discussion(s) of the physical or sexual attractiveness or the sexual history, activities, preferences, or fantasies of either the educator or the student.