Item 15:

Pending or Contemplated Litigation, including Disciplinary Cases

DISCIPLINARY POLICY GUIDELINES

As provided in 19 Tex. Admin. Code (TAC) § 249.5, the primary purposes the State Board for Educator Certification (SBEC) seeks to achieve in educator disciplinary matters are to:

(1) protect the safety and welfare of Texas schoolchildren and school personnel;
(2) ensure educators and applicants are morally fit and worthy to instruct or to supervise the youth of the state; and
(3) fairly and efficiently resolve educator disciplinary proceedings.

The SBEC's focus on the safety and welfare of students is also reflected in the SBEC Mission Statement, Core Principles, and Goals that were adopted on February 6, 2009.

Without diminishing in any way the SBEC 19 TAC Chapter 249 procedural and substantive rights of educators to contest allegations of educator misconduct, it is the policy of the SBEC to fully investigate such allegations and, if those allegations are found to have merit, to ensure that any sanction that is imposed furthers these purposes.

A certified educator holds a unique position of public trust with almost unparalleled access to the hearts and minds of impressionable students. Therefore, the conduct of an educator must be held to the highest standard. Because SBEC sanctions are imposed for reasons of public policy, and are not penal in nature, criminal procedural and punishment standards are not appropriate to educator discipline proceedings.

General Principles:

1. Because the SBEC's primary duty is to safeguard the interests of Texas students, educator certification must be considered a privilege and not a right.

2. SBEC disciplinary sanctions are based on educator conduct that is proved by a preponderance of the evidence, without regard to whether there has been a criminal conviction, deferred adjudication or other type of community supervision, an indictment, or even an arrest. Under the Educators' Code of Ethics, an educator may be sanctioned for conduct underlying a criminal conviction even if the crime is not subject to sanction under the Texas Occupations Code, Chapter 53. An educator may also be sanctioned for conduct underlying a criminal conviction even if the conduct is not specifically listed in 19 TAC § 249.16, as long as the conduct renders the educator unworthy to instruct.

3. Because the SBEC recognizes that an educator's good moral character, as defined in 19 TAC § 249.3, constitutes the essence of the role model that the educator represents to students both inside and outside the classroom, criminal law, 19 TAC Chapter 247, the Educator's Code of Ethics, and 19 TAC Chapter 249, providing for educator disciplinary proceedings, are merely a minimum base line standard for educator conduct. Active community supervision, as well as conduct that indicates dishonesty, untruthfulness, habitual impairment through drugs or alcohol, abuse or neglect of students and minors,

including the educator's own children, or reckless endangerment of the safety of others, may demonstrate that the person lacks good moral character, is a negative role model to students, and does not possess the moral fitness necessary to be a certified educator.

4. "Unworthy to instruct or to supervise the youth of this state," which serves as a basis for sanctions under 19 TAC § 249.15(b) (2), is a broad concept that is not limited to the specific criminal convictions that are described in Texas Education Code (TEC) §§ 21.058 and 21.060. The SBEC 19 TAC § 249.3(45) definition of "the determination that a person is unfit to hold a certificate under the TEC, Chapter 21, Subchapter B, or to be allowed on a school campus under the auspices of an educator preparation program" predates the adoption of TEC §§ 21.058 and 21.060, and is based upon the TEC, Chapter 21, Subchapter B grant of authority to the SBEC to "regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators." As a Texas Court of Civil Appeals ruled in the seminal case of *Marrs v. Matthews*, 270 S.W. 586 (1925), "unworthy to instruct" "means the lack of 'worth'; the absence of those moral and mental qualities which are required to enable one to render the service essential to the accomplishment of the object which the law has in view." Therefore, the moral fitness of a person to instruct the youth of this state must be determined from an examination of all relevant conduct, is not limited to conduct that occurs while performing the duties of a professional educator, and is not limited to conduct that constitutes a criminal violation or results in a criminal conviction.

5. Educators have positions of authority, have extensive access to students when no other adults (or even other students, in some cases) are present, and have access to confidential information that could provide a unique opportunity to exploit student vulnerabilities. Therefore, educators must clearly understand the boundaries of the educator-student relationship that they are trusted not to cross. The SBEC considers any violation of that trust, such as soliciting or engaging in a romantic or sexual relationship with any student or minor, to be conduct that may result in permanent revocation of an educator's certificate.

6. The SBEC recognizes and considers evidence of rehabilitation with regard to educator conduct that could result in sanction, denial of a certification application, or denial of an application for reinstatement of a certificate, but must also consider the nature and seriousness of prior conduct, the potential danger the conduct poses to the health and welfare of students, the effect of the prior conduct upon any victims of the conduct, whether sufficient time has passed and sufficient evidence is presented to demonstrate that the educator or applicant has been rehabilitated from the prior conduct, and the effect of the conduct upon the educator's good moral character and ability to be a proper role model for students. Where appropriate, Agreed Orders will include a requirement for rehabilitation, counseling, or training programs.

On December 11, 2015, the Board adopted Educator Certification Disciplinary Policy Guidelines in order to articulate and provide notice of its guiding policy considerations in educator discipline matters.

Chapter 249. Disciplinary Proceedings, Sanctions, and Contested Cases

Subchapter B. Enforcement Actions and Guidelines

§249.17. Decision-Making Guidelines.

(a) Purpose. The purpose of these guidelines is to achieve the following objectives:

(1) to provide a framework of analysis for the Texas Education Agency (TEA) staff, the presiding administrative law judge (ALJ), and the State Board for Educator Certification (SBEC) in considering matters under this chapter;

(2) to promote consistency in the exercise of sound discretion by the TEA staff, the presiding ALJ, and the SBEC in seeking, proposing, and making decisions under this chapter; and

(3) to provide guidance for the informal resolution of potentially contested matters.

(b) Construction and application. This section shall be construed and applied so as to preserve SBEC members' discretion in making final decisions under this chapter. This section shall be further construed and applied so as to be consistent with §249.5(b) of this title (relating to Purpose; Policy Governing Disciplinary Proceedings) and this chapter, the Texas Education Code (TEC), and other applicable law, including SBEC decisions and orders.

(c) Consideration. The following factors may be considered in seeking, proposing, or making a decision under this chapter:

(1) the seriousness of the violation;

(2) whether the misconduct was premeditated or intentional;

(3) attempted concealment of misconduct;

(4) prior misconduct and SBEC sanctions;

(5) the potential danger the conduct poses to the health and welfare of students;

(6) the effect of the prior conduct upon any victims of the conduct;

(7) whether sufficient time has passed and sufficient evidence is presented to demonstrate that the educator or applicant has been rehabilitated from the prior conduct;

(8) the effect of the conduct upon the educator's good moral character and ability to be a proper role model for students;

(9) whether the sanction will deter future violations; and

(10) any other relevant circumstances or facts.

(d) Contract abandonment.

(1) Good cause. The following factors may be considered good cause when an educator is reported to have abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c):

(A) serious illness or health condition of the educator or close family member of the educator, as evidenced by documentation from a licensed medical provider;

(B) relocation to a new city as a result of change in employer of the educator's spouse or partner who resides with the educator as supported by documentation;

(C) significant change in the educator's family needs that requires the educator to relocate or to devote more time than allowed by current employment; or

(D) the educator's reasonable belief that the educator had written permission from the school district administration to resign.

(2) Mitigating factors. The following factors may be considered in seeking, proposing, or making a decision under this chapter regarding an educator who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c). A reduction of one month in suspension time will be given for each factor established, except for factors in subparagraphs (G)-(I) of this paragraph. The educator:

(A) gave written notice to school district 30 days or more in advance of the first day of instruction for which the educator will not be present;

(B) assisted school district in finding a replacement educator to fill the position;

(C) continued to work until the school district hired a replacement educator;

(D) assisted in training the replacement educator;

(E) showed good faith in communications and negotiations with school district;

(F) provided lesson plans for classes following educator's resignation;

(G) changes careers within the field of education:

(i) to a position that required a different class of educator certification as defined in §230.33(b) of this title (relating to Classes of Certificates);

(ii) to a position with a higher level of authority within the principal class of certificate; or

(iii) to a position in an open-enrollment charter school or a district of innovation that is equivalent to the positions described in clauses (i) and (ii) of this subparagraph;

(H) had a reduction in base pay, excluding stipends, as compared to the educator's base pay for the prior year at the same school district;

(I) resigned due to working conditions that reasonably posed an immediate threat of significant physical harm to the educator; or

(J) any other relevant circumstances or facts.

(3) Mandatory sanction for contract abandonment.

(A) An educator subject to sanction, who has abandoned a contract 44-30 days prior to the first day of instruction for the following school year in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), in a case where the factors listed in subsection (c) of this section or in paragraph (1) or (2)(B)-(J) of this subsection do not mitigate or apply, shall receive a sanction of an inscribed reprimand.

(B) An educator subject to sanction, who has abandoned a contract less than 30 days prior to the first day of instruction for the following school year or at any point during the school year in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), in a case where the factors listed in subsection (c) of this section or in paragraph (1) or (2) of this subsection do not mitigate or apply, may not receive a sanction of less than:

(i) suspension for one year from the first day that, without district permission, the educator failed to appear for work under the contract, provided that the educator has not worked as an educator during that year and the case is resolved within that one year through an agreed final order; or

(ii) suspension for one year from either the effective date of an agreed final order resolving the case or an agreed future date at the beginning of the following school year, if the educator has worked as an educator after abandoning the contract; or

(iii) suspension for one year from the date that the SBEC adopts an order that becomes final following a default under §249.35 of this title (relating to Disposition Prior to Hearing; Default) or a contested case hearing at the State Office of Administrative Hearings (SOAH).

(C) The factors listed in subsection (c) of this section and in paragraphs (1) and (2) of this subsection may mitigate an educator's sanction so significantly that the SBEC takes no disciplinary action.

(3) Mandatory minimum sanction for contract abandonment. An educator subject to sanction, who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c) in a case where the factors listed in paragraph (1) or (2) of this subsection do not apply, may not receive a sanction of less than:

(A) suspension for one year from the first day that, without district permission, the educator failed to appear for work under the contract, provided that the educator has not worked as an educator during that year and the case is resolved within that one year through an agreed final order; or

(B) suspension for one year from either the effective date of an agreed final order resolving the case or an agreed future date at the beginning of the following school year, if the educator has worked as an educator after abandoning the contract; or

(C) suspension for one year from the date that the SBEC adopts an order that becomes final following a default under §249.35 of this title (relating to Disposition Prior to Hearing; Default) or a contested case hearing at the State Office of Administrative Hearings (SOAH).

(e) Mandatory minimum sanction for felony-level conduct. An educator subject to sanction, who is court-ordered to complete a period of deferred adjudication, community supervision, or pretrial diversion for a felony-level criminal offense under state or federal law, may not receive a sanction of less than:

(1) suspension for a period concurrent with the term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has not been employed as an educator during the period of deferred adjudication or community supervision; or

(2) suspension beginning on the effective date of an agreed final order for a period extending beyond the end of the educator's deferred adjudication or community supervision but may be less than the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has been employed as an educator during the period of deferred adjudication or community supervision; or

(3) suspension beginning on the effective date of an agreed final order for a period at least half as long as the initial court-ordered term of deferred adjudication or community supervision, if the case is

resolved through an agreed final order after the educator has completed deferred adjudication or community supervision; or

(4) suspension for a period equal to the term of deferred adjudication or community supervision that the criminal court initially ordered but beginning from the date of the final board decision, if the case is resolved through a final board decision following a contested case hearing at the SOAH or a default under §249.35 of this title.

(f) Mandatory minimum sanction for misdemeanor-level conduct. If an educator is subject to sanction, and a court has ordered the educator to complete a period of deferred adjudication, community supervision, or pretrial diversion for a misdemeanor-level criminal offense under state or federal law, the educator may not receive a sanction of less than an inscribed reprimand.

(g) Mandatory minimum sanction for test security violation. An educator who intentionally, as defined in §247.1 of this title (relating to Purpose and Scope; Definitions), violates the security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, in a manner described by §101.3031(a)(3) of Part 2 of this title (relating to Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments), may not receive a sanction of less than a one year suspension.

(h) Mandatory minimum sanction for drugs and alcohol on school campus. An educator who is subject to sanction because the educator has tested positive for drugs or alcohol while on school campus, was under the influence of drugs or alcohol on school campus, or was in possession of drugs or alcohol on school campus may not receive a sanction of less than a one-year suspension and required completion of a drug or alcohol treatment program.

(i) Mandatory permanent revocation or denial. Notwithstanding subsection (c) of this section, the SBEC shall permanently revoke the teaching certificate of any educator or permanently deny the application of any applicant if, after a contested case hearing or a default under §249.35 of this title, it is determined that the educator or applicant:

(1) engaged in any sexual contact or romantic relationship with a student or minor;

(2) solicited any sexual contact or romantic relationship with a student or minor;

(3) possessed or distributed child pornography;

(4) was registered as a sex offender;

(5) committed criminal homicide;

(6) transferred, sold, distributed, or conspired to possess, transfer, sell, or distribute any controlled substance, the possession of which would be at least a Class A misdemeanor under the Texas Health and Safety Code, Chapter 481, on school property;

(7) intentionally, knowingly, or recklessly causes bodily injury to a student or minor when the conduct of the educator or applicant is not immune from disciplinary proceedings by TEC, §22.0512; or

(8) committed any offense described in the TEC, §21.058.

(j) Mandatory minimum for failure to report. An educator subject to sanction, who fails to report educator misconduct under the circumstances and in the manner required by the TEC, §21.006, and §249.14(d) - (f) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition), when the case is resolved through an agreed final order, may not receive a sanction of less than:

(1) an inscribed reprimand and a $5,000 administrative penalty for a superintendent or director who fails to file timely a report to the SBEC; or

(2) an inscribed reprimand and a $500 administrative penalty for a principal who fails to timely notify a superintendent or director.

(k) Mandatory minimum for electioneering. An educator subject to sanction, who is court-ordered to complete a period of deferred adjudication, community supervision, or pretrial diversion for an offense under Texas Election Code, Chapter 255, may not receive a sanction of less than a one-year suspension.

(l) Sanctioned misconduct in another state. The findings of fact contained in final orders from any other state jurisdiction may provide the factual basis for SBEC disciplinary action. If the underlying conduct for the administrative sanction of an educator's certificate or license issued in another state is a violation of SBEC rules, the SBEC may initiate a disciplinary action regarding the educator's Texas educator certificate and impose a sanction as provided under this chapter.

A. Defaults

No Answer Defaults

1. In the Matter of Charles Roberman; Action to be taken: Consideration of Issuance of Default Judgment

   Staff recommendation: 1-year suspension

2. In the Matter of Danny Kent Holland; Action to be taken: Consideration of Issuance of Default Judgment

   Staff recommendation: 1-year suspension

3. In the Matter of Dominique Roberts; Action to be taken: Consideration of Issuance of Default Judgment

   Staff recommendation: 1-year suspension

4. In the Matter of Isaiah Robinson; Action to be taken: Consideration of Issuance of Default Judgment

   Staff recommendation: Inscribed Reprimand

5. In the Matter of McKinley Young; Action to be taken: Consideration of Issuance of Default Judgment

   Staff recommendation: 1-year suspension

6. In the Matter of Jordan Cliff Mandel; Action to be taken: Consideration of Issuance of Default Judgment

   Staff recommendation: 2-year suspension

7. In the Matter of Arthur Hicks; Action to be taken: Consideration of Issuance of Default Judgment

   Staff recommendation: 3-year suspension and successful completion of an anger management program

8. In the Matter of Stefan Woods; Action to be taken: Consideration of Issuance of Default Judgment

   Staff recommendation: Permanent Revocation

B. Contested Cases

Proposals for Decision

1. Docket No. 701-25-18824.EC, Texas Education Agency, Educator Preparation, Certification, and Enforcement Division v Nicholas Charles Moore; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

   ALJ Recommendation: No disciplinary action be taken

   Staff Recommendation: Accept ALJ recommendation

2. Docket No. 701-25-18200.EC, Texas Education Agency, Educator Preparation, Certification, and Enforcement Division v Doyl Watson; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

   ALJ Recommendation: Training, counseling, supervised teaching practice, and/or any other intervention SBEC sees fit

   Staff Recommendation: 1-year suspension with classes on student-teacher boundaries

3. Docket No. 701-25-08848.EC, Blake Clark v. Texas Education Agency, Educator Preparation, Certification, and Enforcement Division; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

   ALJ Recommendation: Denial of certification

   Staff Recommendation: Accept ALJ recommendation

4. Docket No. 701-25-23874.EC, Texas Education Agency, Educator Preparation, Certification, and Enforcement Division v Noe Franco Cano; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

   ALJ Recommendation: Permanent revocation

   Staff Recommendation: Accept ALJ recommendation