

Item 7:

Proposed Review of 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases

DISCUSSION AND ACTION

SUMMARY: Texas Government Code (TGC), §2001.039, establishes a four-year rule review cycle for all state agency rules, including State Board for Educator Certification (SBEC) rules. This item presents for SBEC approval the proposed review of 19 Texas Administrative Code (TAC) Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases. The rules under review set out SBEC's authority and procedures for sanctioning certified educators and denying certification to unfit applicants.

STATUTORY AUTHORITY: Statutory authority for the rule review is TGC, §2001.039. The statutory authority for 19 TAC Chapter 249 is the Texas Education Code, (TEC), §§21.006; 21.0062; 21.007; 21.009; 21.031(a); 21.035; 21.040(4); 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a); 21.058; 21.0581; 21.060; 21.065; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.085; 22.087; 22.092; and 22.093; TGC, §§411.087, 411.090, and 2001.058(d-1), (e), and (f); and 2001.142(a); Texas Family Code, §261.308(d) and (e), and §261.406(a) and (b); Texas Occupations Code, §§53.021(a), 53.022, 53.023, 53.024, 53.025, 53.051, 53.052, and 56.003; Texas Penal Code, §21.12(a); and Every Student Succeeds Act, 20 United States Code, §7926.

The full text of statutory citations can be found in the statutory authority section of this agenda.

FUTURE ACTION EXPECTED: The review of 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, is scheduled to be presented to the SBEC for adoption at the April 28, 2023 meeting. Any rule changes resulting from the rule review process will also be presented to the SBEC for consideration.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 TAC Chapter 249 establish requirements for disciplinary proceedings, sanctions, and contested cases against educators who are alleged to have violated the laws and rules relevant to educator certification.

The rules currently in effect in 19 TAC Chapter 249 are shown in the attachment.

ANTICIPATED REVISIONS TO RULES: No changes to rules in 19 TAC Chapter 249 are anticipated at this time.

PUBLIC COMMENTS: The Texas Education Agency will file the notice of proposed review of 19 TAC Chapter 249 with the *Texas Register* following the February 2023 SBEC meeting. The SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 249 continue to exist. The public comment period on the proposed rule review begins March 17, 2023, and ends April 17, 2023. The SBEC will take registered oral and written comments on this item at the April 28, 2023 meeting in accordance with the SBEC board operating policies and procedures.

The filing of the notice of proposed review soliciting comments as to whether the reasons for adoption continue to exist would not preclude any amendments that may be proposed at the same time or at different times through a separate rulemaking process.

ASSOCIATE COMMISSIONER'S RECOMMENDATION:

Approve the proposed review of 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, to be published as proposed in the *Texas Register*.

Staff Member Responsible:

Laura Moriaty, Senior Director, EPCE Law and Policy

Attachment:

Text of 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases

ATTACHMENT
Text of 19 TAC

Chapter 249. Disciplinary Proceedings, Sanctions, and Contested Cases

Subchapter A. General Provisions

Statutory Authority: The provisions of this Subchapter A issued under the Texas Education Code, §§21.006(b-1) and (g); 21.009; 21.007; 21.031(a); 21.035; 21.040(4); 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a); 21.058; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.085; and 22.087; Texas Government Code, §§411.087, 411.090, and 2001.058(e); Texas Family Code, §261.308(d) and (e) and 261.406(a) and (b); Texas Occupations Code, §§53.021(a), 53.022-53.025, 53.051, and 53.052; and Texas Penal Code, §21.12(a), unless otherwise noted.

§249.3. Definitions.

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) Administrative denial--A decision or action by the Texas Education Agency staff, acting on behalf of the State Board for Educator Certification, to deny certification (including certification following revocation, cancellation, or surrender of a previously issued certificate), renewal of certification, or reinstatement of a previously suspended certificate based on the withholding or voiding of certification test scores; the invalidation of a certification test registration; evidence of a lack of good moral character; or evidence of improper conduct.
- (3) Administrative law judge--A person appointed by the chief judge of the State Office of Administrative Hearings under the Texas Government Code, Chapter 2003.
- (4) Answer--The responsive pleading filed in reply to factual and legal issues raised in a petition.
- (5) Applicant--A party seeking issuance, renewal, or reinstatement of a certificate from the Texas Education Agency staff or the State Board for Educator Certification.
- (6) Cancellation--The invalidation of an erroneously issued certificate.
- (7) Certificate--The whole or part of any educator credential, license, or permit issued under the Texas Education Code, Chapter 21, Subchapter B. The official certificate is the record of the certificate as maintained on the Texas Education Agency's website.
- (8) Certificate holder--A person who holds an educator certificate issued under the Texas Education Code, Chapter 21, Subchapter B.

- (9) Chair--The presiding officer of the State Board for Educator Certification, elected pursuant to the Texas Education Code, §21.036, or other person designated by the chair to act in his or her absence or inability to serve.
- (10) Chief judge--The chief administrative law judge of the State Office of Administrative Hearings.
- (11) Code of Ethics--The Educators' Code of Ethics codified in Chapter 247 of this title (relating to the Educators' Code of Ethics).
- (12) 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.
- (13) 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.
- (14) Conviction--An adjudication of guilt for a criminal offense. The term does not include the imposition of deferred adjudication for which the judge has not proceeded to an adjudication of guilt.
- (15) Deferred adjudication--The resolution of a criminal charge, based on a defendant's plea to the offense of guilty or nolo contendere, which results in the suspension of adjudication of the defendant's guilt and the imposition of conditions such as community supervision or restitution, and, upon successful completion of those conditions, the dismissal of the criminal case. In a contested case under this chapter, the defendant's acceptance of deferred adjudication in a criminal case may be considered as provided by the Texas Occupations Code, §53.021.
- (16) Disciplinary proceedings--Any matter arising under this chapter or Chapter 247 of this title (relating to the Educators' Code of Ethics) 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.
- (17) Educator--A person who is required to hold a certificate issued under the Texas Education Code, Chapter 21, Subchapter B.
- (18) Effective date--The date the decision or action taken by the State Board for Educator Certification or the Texas Education Agency staff becomes final under the appropriate legal authority.
- (19) 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.
- (20) Examinee--A person who registers to take or who takes any examination required by the State Board for Educator Certification for admission to an educator preparation program or to obtain an educator certificate.
- (21) Expired--No longer valid because a specific period or term of validity of a certificate has ended; an expired certificate is not subject to renewal or revalidation and a new certificate must be issued.
- (22) Filing--Any written petition, answer, motion, response, other written instrument, or item appropriately filed under this chapter with the Texas Education Agency staff, the State Board for Educator Certification, or the State Office of Administrative Hearings.
- (23) 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 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.

- (24) Inactive--Lacking current effectiveness. An inactive certificate does not currently entitle the certificate holder to work as a professional educator in Texas public schools. An inactive certificate is distinguished from a certificate that is void or expired by the fact that it can be reactivated by satisfying the condition or conditions that caused it to be placed in inactive status (failure to renew, failure to submit fingerprint information, or payment of fees), subject to any other certification requirements applicable to active certificates.
- (25) Inappropriate relationship--A violation of Texas Penal Code, §21.12(a); a sexual or romantic relationship with a student or minor; or solicitation of a sexual or romantic relationship with a student or minor.
- (26) Informal conference--An informal meeting between the Texas Education Agency staff and an educator, applicant, or examinee; such a meeting may be used to give the person an opportunity to show compliance with all requirements of law for the granting or retention of a certificate or test score pursuant to Texas Government Code, §2001.054(c).
- (27) Invalid--Rendered void; lacking legal or administrative efficacy.
- (28) Law--The United States and Texas Constitutions, state and federal statutes, regulations, rules, relevant case law, and decisions and orders of the State Board for Educator Certification and the commissioner of education.
- (29) Mail--Certified United States mail, return receipt requested, unless otherwise provided by this chapter.
- (30) Majority--A majority of the voting members of the State Board for Educator Certification who are present and voting on the issue at the time the vote is recorded.
- (31) 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 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.
- (32) 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.
- (33) Party--Each person named or admitted to participate in a contested case under this chapter.
- (34) Permanent revocation--Revocation without the opportunity to reapply for a new certificate.
- (35) Person--Any individual, representative, corporation, or other entity, including the following: an educator, applicant, or examinee; the Texas Education Agency staff; or the State Board for Educator Certification, the State Office of Administrative Hearings, or any other agency or instrumentality of federal, state, or local government.
- (36) Petition--The written pleading served by the petitioner in a contested case under this chapter.
- (37) Petitioner--The party seeking relief, requesting a contested case hearing under this chapter, and having the burden of proof by a preponderance of the evidence in any contested case hearing or proceeding under this chapter.
- (38) Physical mistreatment--Any act of unreasonable or offensive touching that would be offensive to a reasonable person in a similar circumstance. It is an affirmative defense that any unreasonable or offensive touching was justified under the circumstances, using a reasonable person standard.
- (39) Presiding officer--The chair or acting chair of the State Board for Educator Certification.

- (40) Proposal for decision--A recommended decision issued by an administrative law judge in accordance with the Texas Government Code, §2001.062.
- (41) Quorum--A majority of the 14 members appointed to and serving on the State Board for Educator Certification (SBEC) pursuant to the Texas Education Code, §21.033; eight SBEC members, including both voting and non-voting members, as specified in the SBEC Operating Policies and Procedures.
- (42) 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 that the result will occur.
- (43) Reinstatement--The restoration of a suspended certificate to valid status by the State Board for Educator Certification.
- (44) Reported criminal history--Information concerning any formal criminal justice system charges and dispositions. The term includes, without limitation, arrests, detentions, indictments, criminal informations, convictions, deferred adjudications, and probations in any state or federal jurisdiction.
- (45) Representative--A person representing an educator, applicant, or examinee in matters arising under this chapter; in a contested case proceeding before the State Office of Administrative Hearings (SOAH), an attorney licensed to practice law in the State of Texas or other person authorized as a party representative under SOAH rules.
- (46) Reprimand--The State Board for Educator Certification's formal censuring of a certificate holder.
- (A) An "inscribed reprimand" is a formal, published censure appearing on the face of the educator's virtual certificate.
- (B) A "non-inscribed reprimand" is a formal, unpublished censure that does not appear on the face of the educator's virtual certificate.
- (47) Respondent--The party who contests factual or legal issues or both raised in a petition; the party filing an answer in response to a petition.
- (48) Restricted--The condition of an educator certificate that has had limitations or conditions on its use imposed by State Board for Educator Certification order.
- (49) Revocation--A sanction imposed by the State Board for Educator Certification invalidating an educator's certificate.
- (50) 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.
- (51) Solicitation of a romantic relationship--Deliberate or repeated acts that can be reasonably interpreted as the solicitation by an educator of a relationship with a student that is romantic in nature. A romantic relationship is often characterized by a strong emotional or sexual attachment and/or by patterns of exclusivity but does not include appropriate educator-student relationships that arise out of legitimate contexts such as familial connections or longtime acquaintance. The following acts, considered in context, may constitute prima facie evidence of the solicitation by an educator of a romantic relationship with a student:
- (A) behavior, gestures, expressions, or communications with a student that are unrelated to the educator's job duties and evidence a romantic intent or interest in the student, including statements of love, affection, or attraction. Factors that may be considered in determining the romantic intent of such communications or behavior, include, without limitation:
- (i) the nature of the communications;

- (ii) the timing of the communications;
 - (iii) the extent of the communications;
 - (iv) whether the communications were made openly or secretly;
 - (v) the extent that the educator attempts to conceal the communications;
 - (vi) if the educator claims to be counseling a student, the State Board for Educator Certification may consider whether the educator's job duties included counseling, whether the educator reported the subject of the counseling to the student's guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the educator reported the abuse or neglect to the appropriate authorities; and
 - (vii) any other evidence tending to show the context of the communications between educator and student;
- (B) making inappropriate comments about a student's body, creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images;
 - (C) making sexually demeaning comments to a student;
 - (D) making comments about a student's potential sexual performance;
 - (E) requesting details of a student's sexual history;
 - (F) requesting a date, sexual contact, or any activity intended for the sexual gratification of the educator;
 - (G) engaging in conversations regarding the sexual problems, preferences, or fantasies of either party;
 - (H) inappropriate hugging, kissing, or excessive touching;
 - (I) providing the student with drugs or alcohol;
 - (J) violating written directives from school administrators regarding the educator's behavior toward a student;
 - (K) suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage; and
 - (L) any other acts tending to show that the educator solicited a romantic relationship with a student.
- (52) State assessment testing violation--Conduct that violates the security or confidential integrity of any test or assessment required by the Texas Education Code, Chapter 39, Subchapter B, or conduct that is a departure from the test administration procedures established by the commissioner of education in Chapter 101 of this title (relating to Assessment). The term does not include benchmark tests or other locally required assessments.
- (53) State Board for Educator Certification--The State Board for Educator Certification acting through its voting members in a decision-making capacity.
- (54) 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.
- (55) 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.
- (56) Surrender--An educator's voluntary relinquishment of a particular certificate in lieu of disciplinary proceedings under this chapter resulting in an order of revocation of the certificate.

- (57) Suspension--A sanction imposed by the State Board for Educator Certification (SBEC) temporarily invalidating a particular certificate until reinstated by the SBEC.
- (58) Test administration rules or procedures--Rules and procedures governing professional examinations administered by the State Board for Educator Certification through the Texas Education Agency staff and a test contractor, including policies, regulations, and procedures set out in a test registration bulletin.
- (59) 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.
- (60) Unworthy to instruct or to supervise the youth of this state--Absence 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 Chapter 247 of this title (relating to Educators' Code of Ethics). Unworthy to instruct serves as a basis for sanctions under §249.15(b)(2) of this title (relating to Disciplinary Action by State Board for Educator Certification) and for administrative denial under §249.12(b) of this title (relating to Administrative Denial; Appeal). A determination that a person is unworthy to instruct does not require a criminal conviction. It is a rebuttable presumption that an educator who violates written directives from school administrators regarding the educator's behavior toward a student is unworthy to instruct or to supervise the youth of this state.
- (61) Virtual certificate--The official record of a person's certificate status as maintained on the Texas Education Agency's website.

Statutory Authority: The provisions of this §249.3 issued under the Texas Education Code, §§21.009, 21.031, 21.035, 21.041(b)(1), (7), and (8), 21.060, 22.085; Texas Government Code, §2001.058; Texas Occupations Code, §§53.021(a), 53.022-53.025, 53.051, and 53.052; Texas Penal Code, §21.12(a); and Every Student Succeeds Act, 20 United States Code, §7926.

Source: The provisions of this §249.3 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective June 21, 2009, 34 TexReg 3944; amended to be effective December 26, 2010, 35 TexReg 11249; amended to be effective December 19, 2011, 36 TexReg 8533; amended to be effective October 17, 2013, 38 TexReg 7113; amended to be effective March 8, 2018, 43 TexReg 1273; amended to be effective October 21, 2018, 43 TexReg 6841.

§249.4. Applicability.

- (a) In conjunction with the rules of practice and procedure of the State Office of Administrative Hearings (SOAH), (1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure)) and other applicable law, this chapter shall govern disciplinary matters before the State Board for Educator Certification (SBEC), including the following proceedings:
 - (1) sanctions sought against a certificate holder;
 - (2) appeals of administrative denials;
 - (3) appeals of the administrative cancellation or withholding of test scores for alleged violation of test administration rules;
 - (4) reinstatement of a suspended certificate;
 - (5) complaints of contract abandonment filed with the Texas Education Agency (TEA) staff pursuant to Texas Education Code (TEC), §§21.105(c), 21.160(c), or 21.210(c);
 - (6) sanctions sought against a certificate for the holder's knowing failure to report criminal history or other information required to be reported under the TEC, Chapter 22, Subchapter C; Texas Family Code, Chapter 261, Subchapter B; or this chapter; and

- (7) sanctions sought against a certificate pursuant to Chapter 101 of this title (relating to Assessment) for violations of security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B.
- (b) The SOAH shall conduct all contested case hearings held under this chapter.
- (c) This chapter shall apply to any matter referred for a contested case hearing.
- (d) This chapter does not apply to matters related to the proposal or adoption of the SBEC rules under the Texas Government Code, Chapter 2001, or to internal personnel policies or practices of the TEA staff or the SBEC. The provisions of this chapter may not be used to seek sanctions against a member of the SBEC or the TEA staff acting in that capacity.

Source: The provisions of this §249.4 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.5. Purpose; Policy Governing Disciplinary Proceedings.

- (a) Purpose. The purpose of this chapter is:
 - (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;
 - (3) to regulate and to enforce the standards of conduct of educators and applicants;
 - (4) to provide for disciplinary proceedings in conformity with the Texas Government Code, Chapter 2001, and the rules of practice and procedure of the State Office of Administrative Hearings;
 - (5) to enforce an educators' code of ethics;
 - (6) to fairly and efficiently resolve disciplinary proceedings at the least expense possible to the parties and the state;
 - (7) to promote the development of legal precedents through State Board for Educator Certification (SBEC) decisions to the end that disciplinary proceedings may be justly resolved; and
 - (8) to provide for regulation and general administration pursuant to the SBEC's enabling statutes.
- (b) Policy governing disciplinary proceedings.
 - (1) A certified educator holds a unique position of public trust with almost unparalleled access to the hearts and minds of impressionable students. 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 disciplinary proceedings.
 - (2) The following general principles shall apply.
 - (A) 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.
 - (B) The SBEC may pursue disciplinary proceedings and sanctions based on convictions of felonies and misdemeanors as provided by the Texas Education Code (TEC), §21.060; the Texas Occupations Code, Chapter 53; and this chapter.
 - (C) The SBEC may also pursue disciplinary proceedings and sanctions based on educator conduct that is proved by a preponderance of the evidence, and such proceedings and sanctions do not require a criminal conviction, deferred adjudication, community supervision, an indictment, or an arrest.
 - (D) An educator's good moral character, as defined in §249.3 of this title (relating to Definitions), constitutes the essence of the role model that the educator represents to students both inside and outside the classroom. Chapter 247 of this title (relating to

Educators' Code of Ethics) and this chapter provide for educator disciplinary proceedings and provide a minimum standard for educator conduct. Conduct or conditions that may demonstrate that an educator or applicant lacks good moral character, is a negative role model to students, and does not possess the moral fitness necessary to be a certified educator include, but are not limited to:

- (i) active community supervision or criminal probation;
 - (ii) conduct that indicates dishonesty or untruthfulness;
 - (iii) habitual impairment through drugs or alcohol;
 - (iv) abuse or neglect of students and minors, including the educator's own children; and
 - (v) reckless endangerment of the safety of others.
- (E) "Unworthy to instruct or to supervise the youth of this state," defined in §249.3 of this title, which serves as a basis for sanctions under §249.15(b)(2) of this title (relating to Disciplinary Action by State Board for Educator Certification), is a broad concept that is not limited to the specific criminal convictions that are described in the TEC, §21.058 and §21.060. 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 or to conduct that constitutes a violation of Chapter 247 of this title. It is a rebuttable presumption that an educator who violates written directives from school administrators regarding the educator's behavior toward a student is unworthy to instruct or to supervise the youth of this state.
- (F) 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. Educators must clearly understand the boundaries of the educator-student relationship that they are trusted not to cross. Any violation of that trust, such as soliciting or engaging in a romantic or sexual relationship with any student or minor, is considered conduct that may result in permanent revocation of an educator's certificate.
- (G) Administrators who hold Superintendent, Principal, or Mid-Management Administrator certificates issued by the SBEC have, as a result of their actual or potential positions of authority over both students and other educators, an even greater obligation to maintain good moral character than teachers and paraprofessionals. When an administrator's conduct demonstrates that the administrator lacks good moral character, is a negative role model to students, or does not possess the moral fitness necessary to be a certified educator as described in subparagraph (D) of this paragraph, the administrator may be subject to greater sanction than a teacher or paraprofessional would receive for the same conduct.
- (H) 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 shall be recognized and considered. In addition, the following shall also be considered:
- (i) the nature and seriousness of prior conduct;
 - (ii) the potential danger the conduct poses to the health and welfare of students;
 - (iii) the effect of the prior conduct upon any victims of the conduct;
 - (iv) 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

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

Statutory Authority: The provisions of this §249.5 issued under the Texas Education Code, §§21.009; 21.031(a); 20.035; 21.040(4); 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a); 21.058; 21.060; 22.082; 22.0831; 22.085; and 22.087; the Texas Government Code, §411.087 and §411.090; Texas Occupations Code, §§53.021(a); 53.022-53.025; 53.051; and 53.052; and Every Student Succeeds Act, 20 United States Code, §7926.

Source: The provisions of this §249.5 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 23, 2013, 38 TexReg 9362; as amended to be effective May 15, 2016, 41 TexReg 3310; amended to be effective October 21, 2018, 43 TexReg 6841.

§249.6. Construction.

- (a) This chapter shall be liberally construed in conformity with the Texas Government Code, Chapter 2001, and the rules of practice and procedure of the State Office of Administrative Hearings so as to achieve the purposes for which it was adopted, without changing the statutory jurisdiction, powers, or authority of the State Board for Educator Certification (SBEC).
- (b) "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.
- (c) If any provision of this chapter is declared invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this chapter that can be applied without the invalid provision. To that end, the SBEC declares the provisions of this chapter to be severable.

Source: The provisions of this §249.6 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112.

§249.7. Signature Authority.

- (a) The State Board for Educator Certification (SBEC) may delegate to the chair the authority to sign on behalf of a majority of the SBEC members a decision made or order issued under this chapter.
- (b) As provided by this chapter and any memorandum of agreement between the Texas Education Agency (TEA) and SBEC, TEA staff may sign final orders resolving or dismissing cases by agreement of the parties or by non-suit of the petitioner, as well as orders relating to other matters authorized by this chapter.

Source: The provisions of this §249.7 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.8. Agreements to Be in Writing.

Unless otherwise provided in this chapter, no agreement between parties or their representatives related to a matter under this chapter will be enforced unless it be in writing and signed by the parties to the agreement or their representatives and appropriately filed with the papers as part of the record.

Source: The provisions of this §249.8 adopted to be effective March 31, 1999, 24 TexReg 2304.

§249.9. Ex Parte Communications.

Parties, their authorized representatives, and any other person acting on a party's behalf shall not communicate or attempt to communicate with any State Board for Educator Certification member regarding a complaint, investigation, or disciplinary proceeding under this chapter, except as allowed by law. The chair may impose sanctions against a violator of this section.

Source: The provisions of this §249.9 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.10. Conduct and Decorum.

- (a) Parties, authorized representatives, witnesses, and other persons involved in a proceeding, hearing, or other matter under this chapter shall conduct themselves with proper dignity, courtesy, and respect for the State Board for Educator Certification (SBEC), Texas Education Agency staff, administrative law judge (ALJ), and all other participants. Disorderly conduct shall not be tolerated. The rules of the State Office of Administrative Hearings (SOAH) governing conduct and decorum under 1 Texas Administrative Code (TAC), Part 7, Chapter 155 (relating to Rules of Procedure), shall also apply to matters referred to the SOAH.
- (b) Authorized representatives shall also observe any other standards of conduct applicable to the professional capacity in which they are appearing.
- (c) The presiding officer or ALJ may impose sanctions against a violator of this section, including barring the person from attending further proceedings. Sanctions allowed by the rules of the SOAH under 1 TAC, Part 7, Chapter 155, in SOAH proceedings may also be imposed by the chair in a proceeding before the SBEC.

Source: The provisions of this §249.10 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

Subchapter B. Enforcement Actions and Guidelines**§249.11. Test Irregularities; Appeal; Sanctions.**

- (a) Upon satisfactory evidence that the examinee has violated certification test administration rules or procedures, the State Board for Educator Certification may cancel the examinee's test scores or registration and bar the person from being admitted to future test administrations. The Texas Education Agency (TEA) staff shall provide written notice of this action and the factual and legal reasons for it to the examinee by personal service, registered or certified mail, or email to the most recent address provided to the TEA or its test contractor by the examinee. The examinee may attempt to show compliance with test administration rules or procedures by written submission or by requesting an informal conference, and/or may appeal and request a State Office of Administrative Hearings (SOAH) hearing as hereafter provided.
- (b) The examinee may appeal and request a SOAH hearing of the administrative cancellation of test scores and/or test admission bar. The appeal of an administrative cancellation shall be in the form of a petition that complies in content and form with §249.26 of this title (relating to Petition) and 1 Texas Administrative Code, Part 7, §155.301 (relating to Required Form of Pleadings).
- (c) In order to be referred to the SOAH for a contested case hearing, an appeal petition must be filed with the TEA staff within 30 calendar days after the examinee received or is deemed to have received written notice of the TEA staff's action. Unless otherwise proved by the examinee, the notice shall be deemed to have been received by the examinee no later than five calendar days after mailing to the most recent address provided by the examinee. The TEA staff may dismiss an appeal not timely filed.
- (d) The TEA staff shall send an answer to the petition to the examinee and shall refer the petition and answer to the SOAH for a contested case hearing.

Statutory Authority: The provisions of this §249.11 issued under the Texas Education Code, §§21.006(b-1) and (g); 21.007; 21.031(a); 21.035; 21.040(4); 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a); 21.058; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; and 22.087; Texas Government Code, §§411.087; 411.090, and 2001.058(e); Texas Family Code, §261.308(d) and (e) and §261.406(a) and (b); and Texas Occupations Code, §§53.021(a), 53.022-53.025, and 53.051.

Source: The provisions of this §249.11 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.12. Administrative Denial; Appeal.

- (a) This section applies to administrative denials, as that term is defined in §249.3 of this title (relating to Definitions). This section does not apply to the denial of an application for a certificate that has been permanently revoked, and it does not apply to the failure to issue a certificate because specific certification requirements have not been met.
- (b) The Texas Education Agency (TEA) staff may administratively deny any of the matters set out in subsection (a) of this section based on satisfactory evidence that:
- (1) the person filed a fraudulent application;
 - (2) the person assisted another person in obtaining employment at a school district or open-enrollment charter school, other than by the routine transmission of administrative or personnel files when the person knew that the other person had previously engaged in an inappropriate relationship with a minor or student in violation of the law;
 - (3) the person has committed an act that would make them subject to required revocation under the Texas Education Code, §21.058;
 - (4) the person has committed an act that would make them subject to mandatory permanent revocation or denial under §249.17(i) of this title (relating to Decision-Making Guidelines);
 - (5) the person has engaged in conduct or committed a crime or an offense that:
 - (A) demonstrates that the person lacks good moral character;
 - (B) demonstrates that the person is unworthy to instruct or to supervise the youth of this state; or
 - (C) constitutes the elements of a crime or offense relating directly to the duties and responsibilities of the education profession; or
 - (6) the person failed to comply with the terms or conditions of an order issued by or on behalf of the State Board for Educator Certification or the TEA staff.
- (c) The TEA staff shall provide written notice of the denial and the factual and legal reasons for it to the person whose application or request has been administratively denied. The notice shall be given by registered or certified mail to the address the person has provided in the application or request that is being denied. The person may attempt to show compliance with legal requirements by written submission or by requesting an informal conference, and/or may appeal and request a State Office of Administrative Hearings (SOAH) hearing as hereafter provided. The 30-day deadline to appeal and request a hearing is not tolled during any attempts to show cause.
- (d) The appeal and request for a SOAH hearing of an administrative denial shall be in the form of a petition that complies in content and form with §249.26 of this title (relating to Petition) and 1 Texas Administrative Code, Part 7, §155.301 (relating to Required Form of Pleadings). In order to be referred to the SOAH for a contested case hearing, an appeal petition must be filed with the TEA staff within 30 calendar days after the person received or is deemed to have received written notice of the administrative denial. Unless otherwise proved by the person, the notice shall be deemed to have been received by the examinee no later than five calendar days after mailing to the most recent address provided by the person. The TEA staff may dismiss an appeal that is not timely filed without further action.
- (e) The TEA staff shall send an answer to the petition to the person appealing an administrative denial and shall refer the petition and answer to the SOAH for a contested case hearing.

Statutory Authority: The provisions of this §249.12 issued under the Texas Education Code, §§21.006(b-1) and (g); 21.007; 21.031(a); 21.035; 21.040(4); 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a); 21.058; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; and 22.087; Texas Government Code, §§411.087; 411.090, and 2001.058(e); Texas Family Code, §261.308(d) and (e) and §261.406(a) and (b); and Texas Occupations Code, §§53.021(a), 53.022-53.025, 53.051, and 53.052.

Source: The provisions of this §249.12 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533; amended to be effective March 8, 2018, 43 TexReg 1273; amended to be effective March 5, 2020, 45 TexReg 1413.

§249.13. Cancellation of an Erroneously Issued Certificate.

- (a) When satisfactory evidence indicates that a certificate was issued in error and the person issued the certificate has not fulfilled all certification requirements, the Texas Education Agency (TEA) staff shall cancel the certificate. The effective date of cancellation is the date the person's virtual certificate is updated to reflect that the certificate is no longer valid.
- (b) Before canceling the certificate, the TEA staff shall notify the person issued the certificate of the reasons for which the TEA intends to cancel the certificate and shall provide the person issued the certificate at least ten calendar days to respond and show cause why the certificate should not be canceled. Unless otherwise proved by the person, the show cause notice shall be deemed to have been received by the person no later than five calendar days after mailing to the most recent address the person is required to provide pursuant to §230.91 of this title (relating to Procedures in General).
- (c) The TEA staff shall notify the person and the person's employing school district, if any, that the person was issued a certificate in error, what actions the TEA staff have taken to cancel the erroneously issued certificate, and how the person can be issued a valid certificate.
- (d) The TEA staff will issue the person a valid certificate when it receives satisfactory evidence that all certification requirements have been fulfilled. The person will not be required to repeat any coursework, training, internship, or other certification requirements that an educator preparation program certifies that the person has completed.
- (e) The person whose erroneously issued certificate has been canceled may request a contested case hearing before the State Office of Administrative Hearings (SOAH). For the purposes of notice, time limits, appeal requirements, and determining the placement of the burden of proof at the SOAH contested case hearing, the person whose certificate has been canceled shall be deemed to have had his or her original application for the erroneously issued certificate administratively denied pursuant to §249.12 of this title (relating to Administrative Denial; Appeal) on the effective date of the cancellation.

Statutory Authority: The provisions of this §249.13 issued under the Texas Education Code, §21.041(b)(1), (7), and (8).

Source: The provisions of this §249.13 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533; amended to be effective October 17, 2013, 38 TexReg 7113.

§249.14. Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition.

- (a) The Texas Education Agency (TEA) staff may obtain and investigate information concerning alleged improper conduct by an educator, applicant, examinee, or other person subject to this chapter that would warrant the State Board for Educator Certification (SBEC) denying relief to or taking disciplinary action against the person or certificate.
- (b) Complaints against an educator, applicant, or examinee must be filed in writing.
- (c) The TEA staff may also obtain and act on other information providing grounds for investigation and possible action under this chapter.
- (d) A person who serves as the superintendent of a school district or district of innovation, the director of a charter school, regional education service center, or shared services arrangement, or the chief administrative officer of a private school may notify the SBEC of any educator misconduct that the person believes in good faith may be subject to sanctions under this chapter and/or Chapter 247 of this title (relating to Educators' Code of Ethics). However, under any of the following circumstances, a person who serves in such a position shall promptly notify the SBEC in writing by filing a report with the TEA staff within seven business days of the date the person either receives a report from a principal under subsection (e) of this section or knew of any of the following circumstances, except if the person is a superintendent or

director of a public school and has completed an investigation in accordance with Texas Education Code (TEC), §21.006(c-2), resulting in a determination that the educator did not engage in misconduct:

- (1) that an applicant for or a holder of a certificate has a reported criminal history, which the superintendent or director obtained information by a means other than the criminal history clearinghouse established under Texas Government Code, §411.0845;
 - (2) that a certificate holder was terminated from employment and there is evidence that he or she committed any of the following acts:
 - (A) sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor;
 - (B) possessed, transferred, sold, or distributed a controlled substance;
 - (C) illegally transferred, appropriated, or expended school property or funds;
 - (D) attempted by fraudulent or unauthorized means to obtain or to alter any certificate or permit that would entitle the individual to be employed in a position requiring such certificate or permit or to receive additional compensation associated with a position;
 - (E) committed a crime, any part of such crime having occurred on school property or at a school-sponsored event; or
 - (F) solicited or engaged in sexual conduct or a romantic relationship with a student or minor;
 - (3) that a certificate holder has submitted a notice of resignation and that there exists evidence that he or she committed one of the acts specified in paragraph (2) of this subsection.
 - (A) Before accepting an employee's resignation that, under this paragraph, requires a person to notify the SBEC by filing a report with the TEA staff, the person shall inform the certificate holder in writing that such a report will be filed and that sanctions against his or her certificate may result as a consequence.
 - (B) A person required to comply with this paragraph shall notify the governing body of the employing school district before filing the report with the TEA staff.
 - (C) A superintendent or director of a school district shall complete an investigation of an educator if there is reasonable cause to believe the educator may have engaged in misconduct described in paragraph (2)(A) of this subsection despite the educator's resignation from district employment before completion of the investigation; or
 - (4) any other circumstances requiring a report under the TEC, §21.006.
- (e) A person who serves as a principal in a school district, a district of innovation, or a charter school must notify the superintendent or director of the school district, district of innovation, or charter school and may be subject to sanctions for failure to do so no later than seven business days after:
- (1) an educator's termination or resignation following an alleged incident of misconduct involving one of the acts described in subsection (d)(2) of this section; or
 - (2) the principal knew about an educator's reported criminal history.
- (f) Pursuant to the TEC, §21.006(b-2), (c), (h), and (i), a report filed under subsections (d) and (e) of this section must include:
- (1) the name or names of any student or minor who is the victim of abuse or unlawful conduct by an educator; and
 - (2) the factual circumstances requiring the report and the subject of the report by providing the following available information:
 - (A) name and any aliases; certificate number, if any, or social security number;
 - (B) last known mailing address and home and daytime phone numbers;

- (C) all available contact information for any alleged victim or victims;
 - (D) name or names and any available contact information of any relevant witnesses to the circumstances requiring the report;
 - (E) current employment status of the subject, including any information about proposed termination, notice of resignation, or pending employment actions; and
 - (F) involvement by a law enforcement or other agency, including the name of the agency.
- (g) Pursuant to the Family Educational Rights and Privacy Act (FERPA), 20 United States Code, §1232g(a)(4), and the federal regulations interpreting it at 34 Code of Federal Regulations, §99.3, education records that are protected by FERPA must be records that are directly related to a student, and the term "education records" does not include records that relate to a school employee in his or her capacity as a school employee.
- (h) A person who is required to file a report under subsections (d) and (e) of this section but fails to do so timely is subject to sanctions under this chapter.
- (i) If a school district board of trustees learns of a failure by the superintendent of the district or a district principal to provide a notice required under the Texas Code of Criminal Procedure (TCCP), §15.27(a), (a-1), or (b), the board of trustees shall report the failure to the SBEC. If the governing body of a private primary or secondary school learns of a failure by the principal of the school to provide a notice required under the TCCP, §15.27(e), and the principal holds a certificate issued under the TEC, Chapter 21, Subchapter B, the governing body shall report the failure to the SBEC.
- (j) The TEA staff shall not pursue sanctions against an educator who is alleged to have abandoned his or her TEC, Chapter 21, contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), subject to the limitations imposed by the TEC, §21.4021(g), unless the board of trustees of the employing school district:
- (1) submits a written complaint to the TEA staff within 30 calendar days after the effective date of the educator's separation from employment from the school district. For purposes of this section, unless the school district and the educator have a written agreement to the contrary, the effective date of separation from employment is the first day that, without district permission, the educator fails to appear for work under the contract;
 - (2) renders a finding that good cause did not exist under the TEC, §§21.105(c)(2), 21.160(c)(2), or 21.210(c)(2). This finding constitutes prima facie evidence of the educator's lack of good cause, but is not a conclusive determination; and
 - (3) submits the following required attachments to the written complaint:
 - (A) the educator's resignation letter, if any;
 - (B) the agreement with the educator regarding the effective date of separation from employment, if any;
 - (C) the educator's contract; and
 - (D) school board meeting minutes indicating a finding of "no good cause" (if the board does not meet within 30 calendar days of the educator's separation from employment, the minutes may be submitted within 10 calendar days after the next board meeting).
- (k) To efficiently administer and implement the SBEC's purpose under this chapter and the TEC, the TEA staff may set priorities for the investigation of complaints based on the severity and immediacy of the allegations and the likelihood of harm posed by the subject of the investigation. All cases accepted for investigation shall be assigned one of the following priorities.
- (1) Priority 1: conduct that may result in the placement of an investigative notice pursuant to the TEC, §21.007, and subsection (l) of this section because it presents a risk to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague, including, but not limited to, the following:
 - (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; and
 - (L) conduct that involves inappropriate communication with a student as described in §247.2(3)(I) of this title (relating to Code of Ethics and Standard Practices for Texas Educators), inappropriate professional educator-student relationships and boundaries, or otherwise soliciting or engaging in sexual conduct or a romantic relationship with a student or minor.
- (2) Priority 2: any sanctionable conduct that is not Priority 1 conduct under paragraph (1) of this subsection. An investigative notice will not be placed on an educator's certification records on the basis of an allegation of Priority 2 conduct. The TEA staff may change a case's priority at any time based on information received. Priority 2 conduct includes, but is not limited to, the following:
- (A) any conduct constituting a misdemeanor criminal offense or testing violation that is not Priority 1 conduct;
 - (B) contract abandonment; and
 - (C) code of ethics violations that do not constitute Priority 1 conduct.
- (l) After accepting a case for investigation, if the alleged conduct indicates a risk to the health, safety, or welfare of a student or minor, as described in subsection (k)(1) of this section, the TEA staff shall immediately place an investigative notice on the certificate holder's certification records stating that the certificate holder is currently under investigation. The placement of such an investigative notice must follow the procedures set forth in subsection (m)(1) of this section. After accepting a case for investigation, if the alleged conduct indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (k)(1) of this section, the TEA staff may place an investigative notice on the certificate holder's certification records stating that the certificate holder is currently under investigation. The placement of an investigative notice must follow the procedures set forth in subsection (m)(2) of this section.
- (m) The following procedures must be followed for placing an investigative notice on the educator's certification records.
- (1) At the time of placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a student or minor, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.
 - (A) Within ten calendar days of placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.91 of this title (relating to Procedures in General).
 - (B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide

- the certificate holder the opportunity to show cause within ten calendar days why the notice should be removed from the educator's certification records.
- (2) Prior to placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (k)(1) of this section, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.
 - (A) At least ten calendar days before placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.91 of this title.
 - (B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide the certificate holder the opportunity to show cause within ten calendar days why the notice should not be placed on the educator's certification records.
 - (3) The TEA staff shall determine whether or not to remove or place an investigative notice on the educator's certification records, taking into account the educator's response, if any, to the letter notifying the certificate holder of the investigation.
- (n) An investigative notice is subject to the following time limits.
- (1) An investigative notice may remain on the certification records of a certificate holder for a period not to exceed 240 calendar days.
 - (2) The TEA staff may toll this time limit if information is received indicating that there is a pending criminal or administrative matter related to the alleged act of misconduct that gives rise to the investigative notice. For purposes of this subsection, a criminal or administrative matter includes an audit by a state or federal agency, an arrest, an investigation, related litigation or other enforcement action brought by a state or federal administrative agency, or a prosecution by a criminal law enforcement agency. Upon receiving notice that the criminal or administrative matter has been resolved the tolling period shall end. As part of its procedure, the TEA staff will attempt to make bimonthly (once every two months) contact with the agency where a related matter is pending to determine whether the related matter has been closed or otherwise resolved.
 - (3) The TEA staff may toll this time limit if the matter is referred for a contested case hearing, upon agreement of the parties, or while the matter is pending action by the SBEC on a proposed agreed order.
- (o) The TEA staff shall remove an investigative notice from an educator's certification records:
- (1) when a case's final disposition occurs within the time limits established in subsection (n) of this section; or
 - (2) when the time limits for an investigative notice have been exceeded, if:
 - (A) the certificate holder has made a written demand to the TEA staff that the investigative notice be removed because the time limits have been exceeded; and
 - (B) the TEA staff has failed to refer the matter to the State Office of Administrative Hearings for a contested case hearing within 30 calendar days from the date of receipt of the written demand to remove the investigative notice.
- (p) Only the TEA staff may file a petition seeking sanctions under §249.15 of this title. Prior to filing a petition, the TEA staff shall mail to the certificate holder affected by written notice of the facts or conduct alleged to warrant the intended action and shall provide the certificate holder an opportunity to show compliance with all requirements of law.

Statutory Authority: The provisions of this §249.14 issued under the Texas Education Code, §§21.006(a)-(c-2), (f)-(g-1), and (i); 21.0062; 21.007; 21.009(e); 21.031(a); 21.035; 21.041; 21.058; 21.0581; 21.060; 21.105(c);

21.160(c); 21.210(c); 22.082; 22.0831; 22.085; 22.087; 22.092; and 22.093; Texas Government Code, §411.090 and §2001.058; Texas Family Code, §261.308(d) and (e) and §261.406(a) and (b); Texas Occupations Code, §§53.021(a), 53.022-53.025, 53.051, 53.052, and 56.003; and the Every Student Succeeds Act, 20 United States Code, §7926.

Source: The provisions of this §249.14 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective August 9, 2007, 32 TexReg 4756; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective October 25, 2009, 34 TexReg 7203; amended to be effective December 19, 2011, 36 TexReg 8533; amended to be effective October 17, 2013, 38 TexReg 7113; amended to be effective October 8, 2015, 40 TexReg 6892; amended to be effective December 27, 2016, 41 TexReg 10330; amended to be effective March 8, 2018, 43 TexReg 1273; amended to be effective March 5, 2020, 45 TexReg 1413.

§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;
 - (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; or
 - (6) impose an administrative penalty of \$500-\$10,000 on a superintendent or director who fails to file timely a report required under §249.14(d) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition) or on a principal who fails to timely notify a superintendent or director as required under §249.14(e) of this title under the circumstances and in the manner required by the Texas Education Code (TEC), §21.006.
- (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, the commissioner of education, or the school superintendent or director under the circumstances and in the manner required by the TEC, §21.006, §21.0062, §22.093, and §249.14(d)-(f) of this title;
 - (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 failed to provide information required to be provided by §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(k)(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 inappropriate communication with a student as described in §247.2(3)(I) of this title (relating to Code of Ethics and Standard Practices for Texas Educators), inappropriate professional educator-student relationships and boundaries as described in §247.2(3)(H) of this title, or otherwise 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 (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) of this title (relating to Eligibility of Persons with Criminal History for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21). Such offenses 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 involving moral turpitude;
 - (B) offenses 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 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 involving school property or funds;
 - (E) offenses 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 occurring wholly or in part on school property or at a school-sponsored activity; or
 - (G) felony offenses involving driving while intoxicated (DWI);
- (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;

- (12) the person has failed to discharge an employee or to refuse to hire an applicant when the employee or applicant was employed in a public school and on the registry of persons who are not eligible to be employed under TEC, §22.092, when the person knew that the employee or applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor in accordance with the TEC, §21.009(e), or when the person knew or should have known through a criminal history record information review that the employee or applicant had been placed on community supervision or convicted of an offense in accordance with the TEC, §22.085;
 - (13) the person assisted 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, when the educator knew or had probable cause to believe that such person engaged in an inappropriate relationship with a minor or student;
 - (14) the person is a superintendent of a school district or the chief operating officer of an open-enrollment charter school who falsely or inaccurately certified to the commissioner of education that the district or charter school had complied with the TEC, §22.085; or
 - (15) the person has failed to comply with an order or decision of the SBEC.
- (c) The TEA staff may commence a contested case to take any of the actions listed in subsection (a) of this section by serving a petition to the certificate holder in accordance with this chapter describing the SBEC's intent to issue a sanction and specifying the legal and factual reasons for the sanction. The certificate holder shall have 30 calendar days to file an answer as provided in §249.27 of this title (relating to Answer).
 - (d) Upon the failure of the certificate holder to file a written answer as required by this chapter, the TEA staff may file a request for the issuance of a default judgment from the SBEC imposing the proposed sanction in accordance with §249.35 of this title (relating to Disposition Prior to Hearing; Default).
 - (e) If the certificate holder files a timely answer as provided in this section, the case will be referred to the State Office of Administrative Hearings (SOAH) for hearing in accordance with the SOAH rules; the Texas Government Code, Chapter 2001; and this chapter.
 - (f) The provisions of this section are not exclusive and do not preclude consideration of other grounds or measures available by law to the SBEC or the TEA staff, including child support arrears. The SBEC may request the Office of the Attorney General to pursue available civil, equitable, or other legal remedies to enforce an order or decision of the SBEC under this chapter.
 - (g) The statewide assessment program as defined by the TEC, Chapter 39, Subchapter B, is a secure testing program.
 - (1) Procedures for maintaining security shall be specified in the appropriate test administration materials.
 - (2) Secure test materials must be accounted for before, during, and after each test administration. Only authorized personnel may have access to secure test materials.
 - (3) The contents of each test booklet and answer document are confidential in accordance with the Texas Government Code, Chapter 551, and the Family Educational Rights and Privacy Act of 1974. Individual student performance results are confidential as specified under the TEC, §39.030(b).
 - (4) Violation of security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, shall be prohibited. A person who engages in conduct prohibited by this section may be subject to sanction of credentials, including any of the sanctions provided by subsection (a) of this section.
 - (5) Charter school test administrators are not required to be certified; however, any irregularity in the administration of any test required by the TEC, Chapter 39, Subchapter B, would cause the charter itself to come under review by the commissioner of education for possible sanctions or revocation, as provided under the TEC, §12.115(a)(4).

- (6) Conduct that violates the security and confidential integrity of a test is evidenced by any departure from the test administration procedures established by the commissioner of education. Conduct of this nature may include, but is not limited to, the following acts and omissions:
- (A) viewing a test before, during, or after an assessment unless specifically authorized to do so;
 - (B) duplicating secure examination materials;
 - (C) disclosing the contents of any portion of a secure test;
 - (D) providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;
 - (E) changing or altering a response or answer of an examinee to a secure test item or prompt;
 - (F) aiding or assisting an examinee with a response or answer to a secure test item or prompt;
 - (G) fraudulently exempting or preventing a student from the administration of a required state assessment;
 - (H) encouraging or assisting an individual to engage in the conduct described in paragraphs (1)-(7) of this subsection; or
 - (I) failing to report to an appropriate authority that an individual has engaged in conduct outlined in paragraphs (1)-(8) of this subsection.
- (7) Any irregularities in test security or confidential integrity may also result in the invalidation of student results.
- (8) The superintendent and campus principal of each school district and chief administrative officer of each charter school and any private school administering the tests as allowed under the TEC, §39.033, shall develop procedures to ensure the security and confidential integrity of the tests specified in the TEC, Chapter 39, Subchapter B, and shall be responsible for notifying the TEA in writing of conduct that violates the security or confidential integrity of a test administered under the TEC, Chapter 39, Subchapter B. A person who fails to report such conduct as required by this subsection may be subject to any of the sanctions provided by subsection (a) of this section.

Statutory Authority: The provisions of this §249.15 issued under the Texas Education Code, §§21.006(a)-(c-2), (f)-(g-1), and (i); 21.007; 21.009(e); 21.031(a); 21.035; 21.041; 21.058; 21.0581; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.085; 22.087; 22.092; and 22.093; Texas Government Code, §411.090 and §2001.058; Texas Family Code, §261.308(d) and (e) and §261.406(a) and (b); and Texas Occupations Code, §§53.021(a), 53.022-53.025, 53.051, 53.052, and 56.003; and the Every Student Succeeds Act, 20 United States Code, §7926.

Source: The provisions of this §249.15 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective June 21, 2009, 34 TexReg 3944; amended to be effective December 19, 2011, 36 TexReg 8533; amended to be effective October 17, 2013, 38 TexReg 7113; amended to be effective December 28, 2014, 39 TexReg 10010; amended to be effective October 8, 2015, 40 TexReg 6892; amended to be effective May 15, 2016, 41 TexReg 3310; amended to be effective March 8, 2018, 43 TexReg 1273; amended to be effective October 21, 2018, 43 TexReg 6841; amended to be effective March 5, 2020, 45 TexReg 1413.

§249.16. Eligibility of Persons with Criminal History 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, the State Board for Educator Certification (SBEC) may suspend or revoke an existing valid certificate, deny an applicant a certificate, 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.

- (b) Disciplinary action under the TOC, §53.021, 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 of domestic violence as defined by 18 United States Code, §921.
- (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 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 considered to relate directly to the duties and responsibilities of the education profession include, but are not limited to:
- (1) offenses involving moral turpitude;
 - (2) offenses 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 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 involving school property or funds;
 - (5) offenses 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 occurring wholly or in part on school property or at a school-sponsored activity; or
 - (7) felony offenses involving driving while intoxicated (DWI).
- (d) Except as provided in subsection (f) of this section, the Texas Education Agency (TEA) staff, pursuant to the TOC, Chapter 53, and the requirements of this chapter, 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, 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.

Statutory Authority: The provisions of this §249.16 issued under the Texas Education Code, §§21.041(b)(1), (7), and (8), 21.058(a) and (b), and 21.060; and Texas Occupations Code, §53.021 and §53.025.

Source: The provisions of this §249.16 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective June 21, 2009, 34 TexReg 3944; amended to be effective May 18, 2014, 39 TexReg 3710 ; amended to be effective December 28, 2014, 39 TexReg 10010.

§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;
 - (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; or
 - (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.
 - (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) educator 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) educator assisted school district in finding a replacement educator to fill the position;
 - (C) educator continued to work until the school district hired a replacement educator;
 - (D) educator assisted in training the replacement educator;
 - (E) educator showed good faith in communications and negotiations with school district; or
 - (F) educator provided lesson plans for classes following educator's resignation.
 - (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 or community supervision 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 manipulates the results or violates the security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, may not receive a sanction of less than suspension for one year from the effective date of an agreed final order or a final board decision following a contested case hearing at the SOAH.
- (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) 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.

Statutory Authority: The provisions of this §249.17 issued under the Texas Education Code, §§21.006(a)-(c), (f), and (g); 21.031(a); 21.035; 21.041(a) and (b)(1), (4), (7), and (8); 21.058; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.085; and 22.087; Texas Government Code, §2001.058; and Texas Occupations Code, §§53.021(a), 53.022-53.025, 53.051, and 53.052.

Source: The provisions of this §249.17 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533; amended to be effective December 23, 2013, 38 TexReg 9362; amended to be effective October 27, 2014, 39 TexReg 8402; amended to be effective May 15, 2016, 41 TexReg 3310; amended to be effective December 27, 2016, 41 TexReg 10330; amended to be effective March 8, 2018, 43 TexReg 1273.

Subchapter C. Prehearing Matters

Statutory Authority: The provisions of this Subchapter C issued under the Texas Education Code, §§21.031(a); 21.035; 21.040(4); 21.041(a), and (b)(1) and (7); Texas Government Code, §2001.058(e); and Texas Occupations Code, §53.024 and §53.051, unless otherwise noted.

§249.18. Jurisdiction.

- (a) A contested case commences under this chapter when a petition is properly served with the Texas Education Agency (TEA) staff.
- (b) The TEA staff shall refer the case to the State Office of Administrative Hearings (SOAH) if the TEA staff determines:
 - (1) in an administrative denial case, the applicant has timely served a petition pursuant to §249.12(d) of this title (relating to Administrative Denial; Appeal); or

- (2) the certificate holder has timely served an answer pursuant to §249.15(d) of this title (relating to Disciplinary Action by State Board for Educator Certification).
- (c) Nothing in this section precludes the TEA staff from referring the case to the SOAH prior to the receipt of a petition or answer.
- (d) Jurisdiction of the SOAH is determined by the administrative law judge under 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure) and this chapter after the TEA staff have referred the case to the SOAH.

Source: The provisions of this §249.18 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.19. Powers and Duties of Administrative Law Judge.

The powers and duties of an administrative law judge are determined by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure).

Source: The provisions of this §249.19 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.20. Recusal and Disqualification of Administrative Law Judge.

The recusal or disqualification of an administrative law judge shall be governed by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure).

Source: The provisions of this §249.20 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.21. Substitution of Administrative Law Judge.

Substitution of an administrative law judge shall be governed by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure).

Source: The provisions of this §249.21 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.22. Classification of Parties; Current Addresses.

- (a) Regardless of errors as to designation of a party, parties shall be accorded their true status in the proceeding.
- (b) The petitioner in a contested case proceeding under this chapter and 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure) is the party in a contested case seeking relief from the decision maker and requesting an adjudicative hearing with the State Office of Administrative Hearings. The petitioner shall have the burden of proof to show by a preponderance of the evidence entitlement to such relief.
- (c) Parties shall keep the Texas Education Agency (TEA) staff apprised of their current addresses and shall notify the TEA staff of a change of address within five calendar days of the effective date of such change.

Source: The provisions of this §249.22 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.23. Representation of Parties.

- (a) Representatives of parties shall notify the State Office of Administrative Hearings (SOAH) and other parties of the representation.
- (b) At an informal conference offered pursuant to the Texas Government Code, Chapter 2001, a person may be represented by a person who is not an attorney.

- (c) Parties in contested cases before the SOAH may represent themselves or be represented by an attorney licensed to practice law in the State of Texas.

Source: The provisions of this §249.23 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112.

§249.24. Filing or Serving Documents on the Texas Education Agency Staff or the Administrative Law Judge.

- (a) The following original papers shall be served upon the Texas Education Agency (TEA) staff:
- (1) appeal of an administrative denial;
 - (2) appeal of the imposition of an administrative sanction and request for a contested case hearing under this chapter;
 - (3) exceptions and replies to the proposal for decision of the administrative law judge (ALJ); and
 - (4) motions for rehearing.
- (b) It is a rebuttable presumption that the date of service is the file stamp date affixed by the TEA staff.
- (c) All papers may be served upon the TEA staff by any method allowed by the State Office of Administrative Hearings (SOAH) rules or any electronic transmission agreed to by the parties.
- (d) The filing of papers with the SOAH or service of documents on the ALJ in contested cases shall be governed by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure), unless modified by order of the ALJ as allowed by law.

Source: The provisions of this §249.24 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.25. Pleadings.

- (a) Pleadings include petitions, answers, replies, exceptions, and motions. Regardless of any error in its designation, a pleading shall be accorded its true status in the proceeding in which it is filed.
- (b) Amended and supplemental pleadings may be filed at such time so as not to operate as a surprise on the opposing party.
- (c) The administrative law judge may allow a pleading to be amended during the contested case evidentiary hearing on the merits and shall do so freely when the trial amendment will facilitate determining the merits of the case but will not unduly prejudice the objecting party.
- (d) In addition to this chapter, 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure) shall also govern the following matters related to pleadings:
- (1) content generally of pleadings;
 - (2) purpose and effect of motions;
 - (3) general requirements for motions;
 - (4) responses to motions generally;
 - (5) motions to intervene;
 - (6) motions for continuance;
 - (7) responses to written motions for continuance; and
 - (8) amendment of pleadings.

Source: The provisions of this §249.25 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.26. Petition.

- (a) The party seeking relief and requesting a contested case hearing under this chapter shall serve a petition as required under this chapter. The petitioner shall have the burden of proof by a preponderance of the evidence in all contested case proceedings brought under this chapter.
- (b) The petition shall contain the following items:
 - (1) a statement of the legal authority and jurisdiction under which the disciplinary action is being sought and the hearing is to be held;
 - (2) a reference to the particular sections of the statutes and rules involved;
 - (3) a statement of the matters asserted;
 - (4) a statement regarding the failure of the parties to reach an agreed settlement of the matters asserted in the petition;
 - (5) the name, current mailing address, daytime telephone number, if any, and facsimile number, if any, of the petitioner and the petitioner's authorized representative; and
 - (6) if the petition seeks to impose sanctions against a certificate holder, a notification set forth as follows in at least 12-point boldface type: If you do not file a written answer to this petition with the Texas Education Agency staff WITHIN 30 CALENDAR DAYS of being served with this petition, the State Board for Educator Certification may grant the relief requested in this petition, including revocation of your certificate by default. The matters asserted in the petition will be deemed admitted unless your written answer specifically denies each assertion pled and is filed within the prescribed time period. If you file a written answer but then fail to attend a scheduled hearing, the State Board for Educator Certification may grant any relief requested in this petition, up to and including REVOCATION OF YOUR CERTIFICATE.
- (c) The petition shall be served on the respondent by United States certified mail, return receipt requested, and by regular first-class United States mail, to the address a certified educator is required to provide pursuant to §230.91 of this title (relating to Procedures in General), or as otherwise specified in this chapter. If an educator, applicant, or examinee is the petitioner, the address to which the petition shall be served is Texas Education Agency, Legal Certification Enforcement Division, 1701 North Congress Avenue, Austin, Texas 78701. A certificate evidencing service shall be included in the petition. For purposes of this section and §249.27 of this title (relating to Answer), it is a rebuttable presumption that a petition was served on the respondent no later than five calendar days after mailing.

Statutory Authority: The provisions of this §249.26 issued under the Texas Education Code, §21.041(b)(1), (7), and (8).

Source: The provisions of this §249.26 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533; amended to be effective October 17, 2013, 38 TexReg 7113.

§249.27. Answer.

- (a) The party responding to a petition filed under this chapter shall file a written answer with the petitioner within 30 calendar days after being served with such petition. For purposes of this section and §249.26 of this title (relating to Petition), it is a rebuttable presumption that a petition was served on the respondent no later than five calendar days after mailing. The respondent shall serve the answer on the petitioner by United States certified mail, return receipt requested, and by regular first-class United States mail.
- (b) The answer shall specifically admit or deny each allegation in the petition and shall plead all affirmative defenses.
- (c) The answer shall contain the name, current mailing address, daytime telephone number, email address, and facsimile number, if any, of the respondent and the respondent's authorized representative.
- (d) All well-pled factual allegations in the petition will be deemed admitted unless the respondent's answer, containing specific denials to each allegation, is filed within the time period prescribed in subsection (a) of

this section. A general denial shall not be sufficient to controvert factual allegations contained in the petition.

- (e) An answer that does not comply with the requirements of this section and 1 Texas Administrative Code, Part 7, §155.301 (relating to Required Form of Pleadings) may provide grounds for default judgment in favor of the petitioner, as provided in this chapter.

Source: The provisions of this §249.27 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.28. Stipulations.

Stipulations shall be governed by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure).

Source: The provisions of this §249.28 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.29. Discovery.

The Texas Government Code, Chapter 2001; 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure); this chapter; and the Texas Rules of Civil Procedure, as applicable, shall govern discovery.

Source: The provisions of this §249.29 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

Subchapter D. Hearing Procedures

Statutory Authority: The provisions of this Subchapter D issued under the Texas Education Code, §§21.031(a); 21.035; 21.040(4); and 21.041(a) and (b)(1) and (7); Texas Government Code, §2001.058(e); and Texas Occupations Code, §53.024 and §53.051, unless otherwise noted.

§249.30. Notice of Hearing.

- (a) The notice of hearing is governed by the Texas Government Code, Chapter 2001; 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure); and this chapter.
- (b) The Texas Education Agency (TEA) staff may serve the notice of hearing by sending it certified, return receipt requested, and regular first-class United States mail to the party's last known address.
- (c) For purposes of this subsection, the last known address is:
- (1) the address of record of the party or the party's authorized representative in the contested case, if any; or
 - (2) if the party has not made an appearance in the contested case, the last address provided in any response to the complaint or proposed action that is the subject of the contested case, if any; or
 - (3) if the party has not provided an address in response to the complaint or proposed action:
 - (A) for a certified educator, the address supplied by the educator pursuant to §230.91(c) of this title (relating to Procedures in General);
 - (B) for a certification applicant, the address provided in the certification application; or
 - (C) for an examinee, the address provided in the examination registration.
- (d) While notice to the last known address is legally sufficient, notice may also be given by regular first-class United States mail, facsimile, email, or any other means to any other possible address that is known to the TEA staff at the time that the notice is sent.

Statutory Authority: The provisions of this §249.30 issued under the Texas Education Code, §21.041(b)(1), (7), and (8).

Source: The provisions of this §249.30 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533; amended to be effective October 17, 2013, 38 TexReg 7113.

§249.31. Venue.

Hearings shall be conducted in Austin, Texas, at a site designated by the State Office of Administrative Hearings in accordance with applicable law and 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure).

Source: The provisions of this §249.31 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.32. Conduct and Record of Hearings.

The rules of the State Office of Administrative Hearings under 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure) shall govern the procedure at the hearing and the making of a record of a contested case.

Source: The provisions of this §249.32 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.33. Use of Deposition Transcripts in Contested Case Hearings.

The use of deposition transcripts in contested case hearings shall be governed by Rule 203 of the Texas Rules of Civil Procedure. The terms "court proceedings" and "trial" used in Rule 203 are deemed to refer to "contested case hearing(s)" for purposes of applying this section and Rule 203 to contested case hearings before the State Office of Administrative Hearings.

Source: The provisions of this §249.33 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112.

§249.34. Consolidated Proceedings.

A party may move to consolidate two or more proceedings under this chapter if:

- (1) the proceedings involve common questions of law and fact; and
- (2) separate proceedings would result in unwarranted expense, delay, or substantial injustice.

Source: The provisions of this §249.34 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.35. Disposition Prior to Hearing; Default.

- (a) This chapter and 1 Texas Administrative Code (TAC), Part 7, Chapter 155 (relating to Rules of Procedure) shall govern disposition prior to hearing, default, and attendant relief.
- (b) The Texas Education Agency (TEA) staff or the commissioner of education may issue and sign orders on behalf of the State Board for Educator Certification (SBEC) resolving a case, prior to the issuance of a proposal for decision by the presiding administrative law judge (ALJ) at the State Office of Administrative Hearings (SOAH), by waiver, stipulation, compromise, agreed settlement, consent order, agreed statement of facts, or any other informal or alternative resolution agreed to by the parties and not precluded by law.
- (c) The SBEC or the SOAH may dispose of a case through dismissal, partial or final summary disposition, or any other procedure authorized by SOAH rules of procedure prior to a contested case hearing on the merits on the following grounds: unnecessary duplication of proceedings; res judicata; withdrawal; mootness; lack of jurisdiction; failure of a party requesting relief to timely file or file in proper form a pleading that would support an order or decision in that party's favor; failure to comply with an applicable order, deadline, rule, or other requirement issued by the SBEC, the TEA staff, or the presiding ALJ; failure to state a claim for which relief can be granted; or failure to prosecute.

- (d) In any contested case hearing conducted pursuant to this chapter, the findings made by a hearing examiner in a proceeding arising under the Texas Education Code, Chapter 21, Subchapter F, shall not be conclusive but, the record of such proceeding, including all testimony and evidence admitted in the hearing, as well as the findings of the hearing examiner, shall be deemed admissible in a proceeding brought pursuant to this chapter and shall be considered by the ALJ and the SBEC in issuing a proposed or final decision.
- (e) For purposes of this chapter, the following shall constitute a default in a contested case:
- (1) the failure of the respondent to timely file a written answer in proper form as required by this chapter;
 - (2) the failure of the petitioner in an administrative denial case to timely file a petition in proper form as required by this chapter; or
 - (3) the failure of the certificate holder or applicant to appear in person or by authorized representative on the day and at the time set for hearing in a contested case, regardless of whether a written answer or petition has been filed.
- (f) Upon the occurrence of an event of default as defined in this section, the SBEC may enter a default judgment, as authorized by the Texas Government Code, §2001.056, or 1 TAC, Part 7, §155.501 (relating to Default Proceedings).
- (1) If a respondent has failed to timely file a written answer or a petitioner in an administrative denial case has failed to timely file a petition, TEA staff will provide the certificate holder or applicant with a notice of default specifying the factual and legal basis for imposing the proposed sanction at least 30 calendar days prior to presenting a motion for default to the SBEC. It is a rebuttable presumption that the notice was served on the certificate holder or applicant no later than five calendar days after mailing.
 - (2) If the case is dismissed and remanded to the SBEC by the SOAH after a certificate holder or applicant failed to appear in person or by authorized representative on the day and at the time set for hearing in a contested case, the TEA staff attorney shall present to the SBEC a motion for default. After consideration of the petition and the motion for default, the SBEC may then issue a default order deeming the allegations in the petition as true.
 - (3) Prior to issuance of a default decision or order, the certificate holder may contest the issuance of a default judgment by written notice filed with TEA staff or by written request to appear before the SBEC at an SBEC meeting to show good cause for failure to file an answer or appear at the contested case proceeding.

Statutory Authority: The provisions of this §249.35 issued under the Texas Education Code, §§21.031(a); 21.035; 21.040(4); and 21.041(a) and (b)(1), (4), (7), and (8); and the Texas Government Code, §2001.058(d-1) and (e).

Source: The provisions of this §249.35 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533; amended to be effective October 8, 2015, 40 TexReg 6892; amended to be effective May 15, 2016, 41 TexReg 3310; amended to be effective March 8, 2018, 43 TexReg 1273.

Subchapter E. Post-Hearing Matters

Statutory Authority: The provisions of this Subchapter E issued under the Texas Education Code, §§21.031(a); 21.035; 21.040(4); and 21.041(a) and (b)(1), (4), and (7); Texas Government Code, §2001.058(e); and Texas Occupations Code, §§53.021(a), 53.022-53.025, and 53.051, unless otherwise noted.

§249.36. Proposal for Decision.

- (a) As appropriate, the presiding administrative law judge (ALJ) shall prepare a proposal for decision containing separately stated findings of fact and conclusions of law.
- (b) The ALJ may amend the proposal for decision pursuant to exceptions, replies to exceptions, and briefs.
- (c) The ALJ shall submit the proposal for decision to the SBEC, with a copy to each party.

- (d) Except as otherwise provided or prohibited by these rules and other applicable law, the SBEC's general counsel may issue procedural directives relating to matters that arise after the submission of the proposal for decision to the SBEC and that are not delegated to the State Office of Administrative Hearings for action or decision.

Source: The provisions of this §249.36 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.37. Exceptions and Replies.

- (a) A party may file any exceptions to the proposal for decision within 15 calendar days of the date of the proposal for decision. Any replies to the exceptions shall be filed by other parties within 15 calendar days of the filing of exceptions. These time limits may be extended by agreement of the parties and the administrative law judge (ALJ). Exceptions and replies shall be:
- (1) served upon the other party by mail, hand-delivery, facsimile, any method allowed by the State Office of Administrative Hearings rules, or any electronic transmission agreed to by the parties; and
 - (2) filed with the ALJ in accordance with 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure).
- (b) Any disagreement with a factual finding or conclusion of law in the proposal for decision not contained in an exception to the proposal shall be waived.
- (c) Each exception or reply to a finding of fact or conclusion of law shall be concisely stated and shall summarize the evidence in support of each exception.
- (1) Any evidence or arguments relied upon shall be grouped under the exceptions to which they relate.
 - (2) In summarizing evidence, the parties shall include a specific citation to the hearing record where such evidence appears or shall attach the relevant excerpts from the hearing record.
 - (3) Arguments shall be logical and coherent and citations to authorities shall be complete.
- (d) Exceptions to the proposal for decision may be based on the following:
- (1) the ALJ has made an incorrect conclusion of law;
 - (2) the ALJ has failed to make an essential fact finding;
 - (3) the ALJ applied the incorrect burden or standard of proof;
 - (4) the findings of fact do not support the conclusions of law; or
 - (5) the ALJ has made a finding of fact that is not supported by the preponderance of the evidence.

Source: The provisions of this §249.37 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.38. Review and Presentation of Proposal to Board.

The State Board for Educator Certification (SBEC) shall review the proposal for decision and any amended proposals for decision, the exceptions and any replies to exceptions, the relevant excerpts from the record of the hearing conducted by the State Office of Administrative Hearings, and oral arguments by the parties (if any) before making a final decision or issuing an order in a case. The SBEC may require the presiding administrative law judge to make a presentation on the proposal for decision at a public meeting of the SBEC.

Source: The provisions of this §249.38 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112.

§249.39. Final Decisions and Orders.

- (a) The chair having certified a quorum present at a State Board for Educator Certification (SBEC) meeting, a majority vote of the voting members present shall be required to make a final decision on a proposal for decision, an agreed order, or request for issuance of a default judgment, unless provided otherwise by this chapter.
- (b) Unless a party or the party's authorized representative, as appropriate, agrees in writing to receive it via facsimile or email, a copy of the SBEC's decision or order shall be delivered by certified mail to the parties or to their authorized representatives, as appropriate. TEA staff shall send the copy by facsimile or email to the State Office of Administrative Hearings (SOAH) if SOAH has issued a proposal for decision in the case.
- (c) All final decisions and orders of the SBEC under this chapter shall be in writing and signed by the chair or other board officer on behalf of the majority as provided by this chapter, board operating policies and procedures, and applicable law, unless members of the majority adopting the decision or order exercise their discretion to sign the decision or order. A final decision or order shall include findings of fact and conclusions of law separately stated. The findings of fact or conclusions of law may be adopted by reference to another document.
- (d) The SBEC may adopt an order modifying findings of fact or conclusions of law in a proposal for decision submitted by the administrative law judge (ALJ) in accordance with the Texas Government Code, Chapter 2001. The SBEC may remand the matter back to the ALJ with specific instructions for the ALJ to determine an essential finding of fact or to apply the correct burden or standard of proof.

Statutory Authority: The provisions of this §249.39 issued under the Texas Education Code, §§21.031(a); 21.035; 21.040(4); and 21.041(a) and (b)(1), (4), (7), and (8); Texas Government Code, §2001.058(e); and Texas Occupations Code, §§53.021(a), 53.025, 53.051, and 53.052.

Source: The provisions of this §249.39 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533; amended to be effective October 8, 2015, 40 TexReg 6892.

§249.40. Motion for Rehearing; Administrative Finality; Appeal.

- (a) A motion for rehearing of the State Board for Educator Certification's (SBEC's) decision in a contested case and the determination of administrative finality shall be governed by the Texas Government Code, Chapter 2001; applicable case law; and this section.
- (b) A motion for rehearing unsupported by satisfactory evidence shall be overruled. This subsection does not limit the overruling of a motion for rehearing on other grounds or by operation of law.
- (c) Appeals from a final order of the SBEC shall be under the substantial evidence standard of review and governed by the Texas Government Code, Chapter 2001; applicable case law; and this section.
- (d) The costs of transcribing the testimony and preparing the record for an appeal by judicial review shall be paid by the party who appeals. Texas Education Agency's services in preparing a record for appeal at the request of another party shall be reimbursed on the same basis as the charges for providing public information pursuant to 1 Texas Administrative Code, Part 3, Chapter 70 (relating to Cost of Copies of Public Information).

Source: The provisions of this §249.40 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.41. Procedure for Reprimand; Restriction.

- (a) Notice. When the State Board for Educator Certification (SBEC) reprimands an educator or restricts an educator's certificate, the Texas Education Agency (TEA) staff shall mail to the educator a copy of the SBEC's order.
- (b) Inscribed reprimand.

- (1) The TEA staff shall inscribe the reprimand upon the virtual certificate of the educator.
 - (2) A record of the SBEC's action publicly reprimanding the educator shall become part of the educator's official certification records maintained by the TEA staff.
 - (3) If known, the TEA staff shall also notify the employing school district of the SBEC's order reprimanding the educator.
- (c) Non-inscribed reprimand.
- (1) The SBEC's action reprimanding the certificate holder shall only become part of the person's confidential investigative/litigation case file maintained by the TEA staff and shall not be available for public inspection except as required by law.
 - (2) The TEA staff, the presiding administrative law judge, and the SBEC may consider a non-inscribed reprimand in seeking, recommending, or ordering sanctions based on subsequently obtained evidence of improper or criminal conduct by the educator.
- (d) Restriction.
- (1) A record of the SBEC's action restricting the educator's certificate shall be placed on the educator's virtual certificate and shall become part of the person's official records maintained by the TEA staff.
 - (2) If known, the TEA staff shall notify the employing school district of the SBEC's order restricting the educator's certificate.

Source: The provisions of this §249.41 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.42. Procedure for the Suspension, Surrender, or Revocation of a Certificate.

- (a) When the State Board for Educator Certification (SBEC) issues an order of suspension, surrender, or revocation, the Texas Education Agency (TEA) staff shall mail a copy of the order to the person who formerly held the certificate.
- (b) A record of the SBEC action suspending, accepting a surrender, or revoking the certificate shall be recorded on the educator's virtual certificate and shall become part of the person's official records maintained by the TEA staff.
- (c) The TEA staff shall also notify the employing school district of the SBEC's order when it becomes administratively final.

Source: The provisions of this §249.42 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.43. Procedure for Reinstating a Suspended Certificate.

- (a) At the end of the suspension period designated by the State Board for Educator Certification (SBEC), the person whose certificate was suspended may submit a written request that the Texas Education Agency (TEA) staff reinstate the certificate, together with proof of compliance with the order of suspension, and payment of the appropriate fee. The TEA staff shall run a criminal background check on an educator who requests reinstatement of a suspended certificate and may deny the reinstatement based on any subsequent criminal history or other misconduct occurring or discovered after the effective date of the order suspending the certificate. The educator must also meet all other requirements necessary to maintain educator certification or, if applicable, to reactivate an inactive standard certificate.
- (b) A record of reinstatement of the certificate shall become part of the educator's official certification records and shall be recorded on the educator's virtual certificate together with the record of the suspension.

Source: The provisions of this §249.43 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.

§249.44. Reapplication Following Denial, Surrender, or Revocation.

- (a) Except as provided by this section, the Texas Education Agency (TEA) staff shall process and review in its usual and customary manner the certificate application of a person whose previous application was denied or whose certificate was revoked or surrendered by the State Board for Educator Certification (SBEC) under this chapter. Such an applicant shall be subject to the same requirements and qualifications as any other current applicant, as specified in Chapter 230 of this title (relating to Professional Educator Preparation and Certification), including recommendation from an approved educator preparation program, if applicable, and all other prerequisites for certification at the time the application is received.
- (b) A person whose certificate has been denied, surrendered, or revoked under this chapter shall not reapply for a certificate before the fifth anniversary after the date of the SBEC's order denying, accepting a surrender, or revoking a certificate became administratively final. The TEA staff shall reject without processing or further proceedings any application received in violation of this subsection. A person reapplying for certification after denial, revocation, or surrender must be recommended for certification by an approved educator preparation program and must satisfy the same requirements for certification that are applicable to any other new applicant.
- (c) In addition to other sanctions available under this chapter, the SBEC may order that a person whose certificate has been denied, surrendered, or revoked under this chapter shall not reapply for a certificate for a time period of five years or longer after the order of denial, surrender, or revocation becomes administratively final. The SBEC may order that a certificate be permanently revoked or surrendered or that an application be permanently denied without opportunity to reapply for certification, pursuant to §249.17(d) of this title (relating to Decision-Making Guidelines), or otherwise as the SBEC may deem appropriate. The TEA staff shall reject without processing or further proceedings any application received in violation of such an order. A rejection pursuant to this section is not considered an administrative denial and is not subject to a contested case hearing.
- (d) In reviewing a certificate application, the TEA staff, the presiding administrative law judge, and the SBEC shall consider prior SBEC orders denying, accepting a surrender, or revoking a certificate previously applied for or held by the applicant. The applicant may not contest the underlying basis for the prior order.
- (e) A person whose petition for relief under this section has been denied by the SBEC, in whole or in part, shall not file a subsequent application or petition earlier than the fifth anniversary of the effective date of such denial.
- (f) The TEA staff shall publish notice of any certificate issued to a person whose previous application was denied or whose certificate was canceled or revoked by the SBEC under this chapter by updating the educator's virtual certificate.

Source: The provisions of this §249.44 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.