

Item 13:**Discussion of 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases****DISCUSSION ONLY**

SUMMARY: This item provides the State Board for Educator Certification (“SBEC” or “the Board”) an opportunity to discuss potential amendments to 19 Texas Administrative Code (TAC) Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases.

STATUTORY AUTHORITY: The statutory authority for 19 TAC Chapter 249, Subchapter B and Subchapter E is Texas Education Code, §§21.006(a), (b), (b-1), (b-2), (c), (c-1), (c-2), (f), (g), (g-1), and (i); 21.0062; 21.007; 21.009(e); 21.031(a); 21.035; 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; Texas Government Code, §§411.090, 2001.054(c), 2001.058(e), and 2001.142(a); Texas Family Code, §261.308(d) and (e) and §261.406(a) and (b); Texas Occupations Code, §§53.021(a), 53.022–53.025, 53.051, 53.052 and 56.003; and the Every Student Succeeds Act (ESSA), 20 USC, §7926.

TEC, §21.006(a)–(c-2), (f)–(g-1), and (i), requires the superintendent or director of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center or shared services arrangement to report to the SBEC within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct, unless the superintendent or director completes an investigation before the educator resigns or is terminated and determines that the educator did not commit the alleged misconduct. It also requires principals to report to superintendents within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct. It further authorizes the SBEC to impose sanctions on educators who fail to report as required by the statute including authority to impose monetary administrative penalties, gives SBEC rulemaking authority as necessary to implement the statute, and requires the SBEC to create an internet portal to facilitate confidential and secure reporting.

TEC, §21.006(b-2), requires a principal of a school district, district of innovation, or charter school to notify the superintendent within seven days when an educator is terminated or resigns and there is evidence that the educator engaged in misconduct.

TEC, §§21.006(f) and (g) give the SBEC rulemaking authority to implement TEC, §21.006.

TEC, §21.006(i), gives the SBEC authority to impose administrative penalties on principals and superintendents who fail to fulfill their reporting obligations to the SBEC under TEC, §21.006.

TEC, §21.0062, requires the chief administrative officer of a private school to notify the SBEC within seven days when a private school educator resigns before the completion of an investigation or is terminated and there is evidence that the educator has engaged in certain misconduct, and gives the SBEC rulemaking authority to implement the section.

TEC, §21.007 gives the SBEC authority to place a notice that an educator is under investigation for alleged misconduct on the educator's public certification records, requires the SBEC give the educator notice and an opportunity to show cause, requires that the SBEC limit the amount of time the notice can appear on the educator's certification, and gives the SBEC rulemaking authority as necessary to implement the provision.

TEC, §21.009(e), states that the SBEC may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a student or minor.

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

TEC, §21.035, states that Texas Education Agency (TEA) staff provides administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commissioner of education or to TEA staff the authority to settle or otherwise informally dispose of contested cases involving educator certification.

TEC, §21.041, authorizes the SBEC to adopt rules as necessary for its own procedures, to regulate educators, specify the requirements for issuance or renewal of an educator certificates, administer statutory requirements, provide for educator disciplinary proceedings and for enforcement of the educator's code of ethics.

TEC, §21.044(a), authorizes the SBE to adopt rules establishing training requirements and academic qualifications required for a person to obtain an educator certificate.

TEC, §21.058, requires the SBEC to revoke the certification of an educator convicted or placed on deferred adjudication community supervision for certain offenses.

TEC, §21.060, sets out crimes that relate to the education profession and authorizes the SBEC to sanction or refuse to issue a certificate to any person who has been convicted of one of these offenses.

TEC, §21.065, sets requirements for the notice SBEC must send when it suspends an educator's certificate.

TEC, §21.105(a), allows the SBEC to impose sanctions against an educator who abandons a probationary contract.

TEC, §21.105(e), requires the Board to consider any mitigating factors relevant to the teacher's conduct and allows the Board to consider alternatives to sanctions, including additional continuing education or training.

TEC, §21.105(f), forbids the SBEC from issuing a sanction of suspension or revocation for educators who abandon their contracts with school districts more than 30 days prior to the first day of instruction for the next school year.

TEC, §21.160(c), allows the SBEC to impose sanctions against an educator who abandons a continuing contract.

TEC, §21.160(e), requires the Board to consider any mitigating factors relevant to the teacher's conduct and allows the Board to consider alternatives to sanctions, including additional continuing education or training.

TEC, §21.160(f), forbids the SBEC from issuing a sanction of suspension or revocation for educators who abandon their contracts with school districts more than 30 days prior to the first day of instruction for the next school year.

TEC, §21.210(c), allows the SBEC to impose sanctions against an educator who abandons a term contract.

TEC, §21.210(e), requires the Board to consider any mitigating factors relevant to the teacher's conduct and allows the Board to consider alternatives to sanctions, including additional continuing education or training.

TEC, §21.210(f), forbids the SBEC from issuing a sanction of suspension or revocation for educators who abandon their contracts with school districts more than 30 days prior to the first day of instruction for the next school year.

TEC, §22.082, requires the SBEC to subscribe to the criminal history clearing house and allows the SBEC to obtain any criminal history from any closed case file.

TEC, §22.0831, requires the SBEC to review the criminal history of certified educators and applicants for certification.

TEC, §22.085, requires school districts, charter schools and shared services arrangements to conduct finger-print criminal background checks on employees and refuse to hire those that have certain criminal history.

TEC, §22.087, requires superintendents and directors of school districts, charter schools, private schools, regional education service centers and shared services arrangement to notify the SBEC if an applicant for a certification has criminal history that is not in the criminal history clearing house.

TEC, §22.092, requires school districts, charter schools, districts of innovation, regional education service centers and shared services arrangements discharge or refuse to hire any person listed on the registry of persons not eligible for employment in Texas public schools.

TEC, §22.093, requires superintendents or directors of school districts, districts of innovation, charter schools, regional education service centers, or shared services arrangements to notify the Commissioner of Education if an employee resigned or was terminated and there is evidence that the employee abused or otherwise committed and unlawful act with a student or minor, or was involved in a romantic relationship with a student or minor.

Texas Government Code, §411.090 allows the SBEC to get from the Texas Department of Public Safety all criminal history record information about any applicant for licensure as an educator.

Texas Government Code, §2001.054(c) requires the SBEC to give notice by personal service or by registered or certified mail to the license holder of the factors or conduct alleged to warrant suspension, revocation, annulment or withdrawal of an educator's certificate, and to give the

certified educator an opportunity to show that the educator is in compliance with the relevant statutes and rules.

Texas Government Code, §2001.058(e) sets out the requirements for when the SBEC can make changes to a proposal for decision from an administrative law judge.

Texas Government Code, §2001.142 (a) requires all Texas state licensing agencies to notify parties to contested cases of orders or decisions of the agency by personal service, electronic means if the parties have agreed to it, first class, certified or registered mail, or by any method required under the agency's rules for a party to serve copies of pleadings in a contested case.

Texas Family Code, §261.308(d) and (e) requires the Texas Department of Family and Protective Services to release information regarding a person alleged to have committed abuse or neglect to the SBEC.

Texas Family Code, §261.406(a) and (b) requires the Texas Department of Family and Protective Services to send a copy of a completed investigation report involving allegations of abuse or neglect of a child in a public or private school to the TEA.

Texas Occupations Code, §53.021(a) allows the SBEC to suspend or revoke an educator's certificate, or refuse to issue a certificate, if a person is convicted of certain offenses.

Texas Occupations Code, §53.022 sets out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education.

Texas Occupations Code, §53.023 sets out additional factors for the SBEC to consider when deciding whether to allow a person convicted of a crime to serve as an educator.

Texas Occupations Code, §53.0231 sets out information the SBEC must give an applicant when it denies a license, and requires that the SBEC allow 30 days for the applicant to submit any relevant information to the SBEC.

Texas Occupations Code, §53.024 states that proceedings to deny or sanction an educator's certification are covered by the Texas Administrative Procedure Act, Chapter 2001, Texas Government Code.

Texas Occupations Code, §53.025 gives the SBEC rulemaking authority to issue guidelines to define which crimes relate to the profession of education.

Texas Occupations Code, §53.051 requires that the SBEC notify a license holder or applicant after denying, suspending, or revoking the certification.

Texas Occupations Code, §53.052 allows a person who has been denied an educator certification or had their educator certification revoked or suspended to file a petition for review in state district court after exhausting all administrative remedies.

Texas Occupations Code, §56.003 prohibits state agencies from taking disciplinary action against licensees for student loan non-payment or default.

ESSA, 20 USC, §7926, requires state educational agencies to make rules forbidding educators from aiding other school employees, contractors, or agents in getting jobs when the educator

knows the jobseeker has committed sexual misconduct with a student or minor in violation of the law.

FUTURE ACTION EXPECTED: TEA staff expects to present this item for discussion and possible action at a future SBEC meeting.

BACKGROUND INFORMATION AND JUSTIFICATION: SBEC implemented new requirements in 19 TAC Chapter 249 in 2021 after significant stakeholder engagement and Board discussion. Due to a rise in complaints, TEA staff is seeking guidance from the SBEC on prioritization of complaints and case processing.

Historically, EPCE has devoted a significant portion of its budget to sending notices regarding educator discipline proceedings to certified educators and educator applicants by certified and regular mail. Email addresses are often a more reliable method of communication than physical addresses because individuals retain the same email address.

The State Office of Administrative Hearings (SOAH) adopted amendments to its rules to allow for all methods of service permitted under Texas Rule of Civil Procedure 21a, including service by email without the prior agreement of the parties.

Under 19 TAC §230.91 (relating to Procedures in General), certified Texas educators are required to maintain their educator profiles with current mailing and email addresses by updating their Educator Certification Online System (ECOS) profile within 45 calendar days of the effective date of any change. The potential change would allow staff to serve the notices of SBEC disciplinary proceedings to educators and educator applicants via electronic mail to the email address in the educator's ECOS profile. Serving notice to educators and applicants via electronic mail would result in significant cost savings to the agency over the first five years the rule is in effect.

Currently, under 19 TAC §249.14(k), staff may set priorities for the investigation of complaints and requires staff to assign either Priority 1 or Priority 2 conduct to every investigation. As part of ongoing discussions, staff would like to ensure alignment of investigation prioritization with SBEC.

Additionally, staff is seeking to make technical edits to the rule text.

Staff Members Responsible:

Sarah Wolfe, Director, EPCE Law & Policy

David Rodriguez, Director, Educator Investigations

Attachments:

I. 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****§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.

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- (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 information, 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.

§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.

§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.

§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.

§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.

§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.

§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.

§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.

Subchapter B, Enforcement Actions and Guidelines**§249.15. Disciplinary Action by State Board for Educator Certification.**

- (a) Pursuant to this chapter, the State Board for Educator Certification (SBEC) may take any of the following actions:
- (1) place restrictions on the issuance, renewal, or holding of a certificate, either indefinitely or for a set term;
 - (2) issue an inscribed or non-inscribed reprimand;
 - (3) suspend a certificate for a set term or issue a probated suspension for a set term;
 - (4) revoke or cancel, which includes accepting the surrender of, a certificate without opportunity for reapplication for a set term or permanently;

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- (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;

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- (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).

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- (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,
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§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.

§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;
 - (C) significant change in the educator's family needs that requires the educator to relocate or to devote more time than allowed by current employment; or
 - (D) the educator's reasonable belief that the educator had written permission from the school district administration to resign.

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- (2) Mitigating factors. The following factors shall 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). The educator:
- (A) gave written notice to the school district 30 days or more in advance of the first day of instruction for which the educator will not be present;
 - (B) assisted the school district in finding a replacement educator to fill the position;
 - (C) continued to work until the school district hired a replacement educator;
 - (D) assisted in training the replacement educator;
 - (E) showed good faith in communications and negotiations with the school district;
 - (F) provided lesson plans for classes following the educator's resignation;
 - (G) changed careers within the field of education:
 - (i) to a position that required a different class of educator certification as defined in §230.33(b) of this title (relating to Classes of Certificates);
 - (ii) to a position with a higher level of authority within the principal class of certificate; or
 - (iii) to a position in an open-enrollment charter school or a district of innovation that is equivalent to the positions described in clauses (i) and (ii) of this subparagraph;
 - (H) had a reduction in base pay, excluding stipends, as compared to the educator's base pay for the prior year at the same school district;
 - (I) resigned due to working conditions that reasonably posed an immediate threat of significant physical harm to the educator; or
 - (J) any other relevant circumstances or facts.
- (3) Mandatory sanction for contract abandonment
- (A) An educator subject to sanction, who has abandoned a contract 44-30 days prior to the first day of instruction for the following school year in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), in a case where the factors listed in subsection (c) of this section or in paragraph (1) or (2)(B)-(J) of this subsection do not mitigate or apply, shall receive a sanction of an inscribed reprimand.
 - (B) An educator subject to sanction, who has abandoned a contract less than 30 days prior to the first day of instruction for the following school year or at any point during the school year in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), in a case where the factors listed in subsection (c) of this section or in paragraph (1) or (2) of this subsection do not mitigate or apply, may not receive a sanction of less than:
 - (i) suspension for one year from the first day that, without district permission, the educator failed to appear for work under the contract, provided that the educator has not worked as an educator during that year and the case is resolved within that one year through an agreed final order; or
 - (ii) suspension for one year from either the effective date of an agreed final order resolving the case or an agreed future date at the beginning of the following school year, if the educator has worked as an educator after abandoning the contract; or
 - (iii) suspension for one year from the date that the SBEC adopts an order that becomes final following a default under §249.35 of this title (relating to Disposition Prior to Hearing; Default) or a contested case hearing at the State Office of Administrative Hearings (SOAH).

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

Subchapter C. Prehearing Matters

§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.

§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).

§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).

§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).

§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.

§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.

§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.

§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.

§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.

§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.

§249.28. Stipulations.

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

§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.

Subchapter E, Post-Hearing Matters

§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. If the parties have not agreed to the terms of the order, TEA staff shall send a notice with the order including the findings of fact and conclusions of law on which the Board based its decision and a statement that should the person desire to request that the Board reconsider the decision, the person should file a Motion for Rehearing with the Board.
- (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.