

Item 11:
Discussion of 19 TAC Chapter 247, Educators' Code of Ethics, and 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 247, Educators' Code of Ethics, and Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, as the result of legislation from the 89th Legislative Session.

STATUTORY AUTHORITY: The statutory authority for 19 TAC Chapter 247 and Chapter 249, is Texas Education Code, §§ 21.031(a); 21.035; 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a); 21.0581; 21.060; 21.065; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.087; 22A.001; 22A.051; 22A.052; 22A.054; 22A.055; 22A.151; 22A.157; 22A.201; 22A.202; 22A.203; and 22A.301; Texas Government Code, §§411.090, 2001.054(c), 2001.058(e), and 2001.142(a); Texas Family Code, §§261.308(d) and (e); §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.

Texas Education Code, §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.

Texas Education Code, §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.

Texas Education Code, §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.

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

Texas Education Code, §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.

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

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

Texas Education Code, §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.

Texas Education Code, §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.

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

Texas Education Code, §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.

Texas Education Code, §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.

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

Texas Education Code, §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.

Texas Education Code, §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.

Texas Education Code, §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.

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

Texas Education Code, §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.

Texas Education Code, §22A.001 provides definitions for Chapter 22A.

Texas Education Code, §22A.051(a) requires that the superintendent or director of an educational entity notify the SBEC if an educator employed by or seeking employment has a criminal record and the entity obtained information about the criminal record by a means other than the criminal history clearinghouse, if an educator's employment was terminated or the educator resigned and there is evidence that the educator engaged in specific conduct or the superintendent, or if the superintendent or director becomes aware that the educator engaged in specific conduct.

Texas Education Code, §22A.051(d) requires that the superintendent or director notify the SBEC by filing a report with the SBEC not later than 48 hours after the superintendent or director receives notice from a principal or becomes aware of evidence of misconduct under §22A.051(a)(2)(A), (B), (C) or (D).

Texas Education Code, §22A.051(c), requires a principal of a school district, district of innovation, or charter school to notify the superintendent within 48 hours after the principal becomes aware of misconduct described by §22A.051(a)(2)(A), (B), (C) or (D).

Texas Education Code, §§22A.051(h) and (i) give the SBEC rulemaking authority to implement Texas Education Code, §22A.051.

Texas Education Code, §22A.051(i), gives the SBEC authority to impose administrative penalties on principals and superintendents who fail to fulfill their reporting obligations to the SBEC under Texas Education Code, §21.006.

Texas Education Code, §22A.052, requires superintendents or directors of educational entities to notify the Commissioner of Education if an employee or service provider resigned or was terminated and there is evidence that the person engaged in misconduct described by §22A.051(a)(2)(A), (B), (C) or (D) or the superintendent or director becomes aware of evidence that he person engaged in misconduct described by §22A.051(a)(2)(A), (B), (C) or (D).

Texas Education Code, §22A.054 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. Provides that the SBEC shall also notify the agency for purposes of placing an educator on the registry.

Texas Education Code, §22A.055(f), 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 a person or accepted services from a service provider despite being aware that the person knowingly failed to disclose information required to be disclosed under this section.

Texas Education Code, §22A.151, requires educational entities to discharge or refuse to hire or terminate or refuse to accept services from any person listed on the registry of persons not eligible for employment in Texas public schools. Provides that an educational entity may not allow a person who is listed on the registry to act as a service provider for an educational entity.

Texas Education Code, §22A.157, 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. Provides that the SBEC may impose a sanction on an educator who does not discharge an employee or refuse to hire an applicant if the educator knows or should have known that the employee or applicant has certain criminal history.

Texas Education Code, §22A.201, requires the SBEC to revoke the certification of an educator convicted or placed on deferred adjudication community supervision for certain offenses.

Texas Education Code, §22A.202, requires the SBEC to temporarily suspend an educator's certification or permit if the SBEC finds that the educator's continued certification or permit

issuance constitutes a continuing and imminent threat to the public welfare. Provides that the SBEC shall propose rules to implement this section.

Texas Education Code, §22A.203, requires the SBEC to temporarily suspend an educator's certification or permit if the educator is arrested for specific offenses. Provides that the SBEC shall propose rules to implement this section.

Texas Education Code, §22A.301, requires the chief administrative officer of a private school to notify the SBEC no later than 48 hours after the chief administrative officer becomes aware of evidence of an alleged incident of misconduct described §22A.051(a)(2)(A), (B), (C) or (D). Provides that the SBEC shall propose rules to implement this section.

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 will engage in stakeholder meetings and expect to present this item for discussion and possible action at a future SBEC meeting.

BACKGROUND INFORMATION AND JUSTIFICATION: During the 89th Legislative Session, two bills were passed that significantly impact the SBEC's educator misconduct work, Senate Bill 571 and Senate Bill 12. S.B. 571 amended multiple statutory provisions related to educator misconduct, including mandatory reporting and the creation of temporary suspension authority. S.B. 12 created new requirements for public school employees and prohibitions related to instruction, diversity, equity, and inclusion duties, as well as social transitioning.

The SBEC rules in 19 TAC Chapter 247 and Chapter 249 establish the Educators' Code of Ethics, the minimum sanctions for violations of SBEC rules, and the practice procedures for SBEC contested case proceedings. Both Chapter 247 and Chapter 249 will need to be updated based on the changes in S.B. 571 and S.B. 12. This discussion item will give the SBEC the opportunity to discuss the implementation of these bills. Staff will seek input from the SBEC on the implementation of S.B. 12 and conforming amendments to the Educators' Code Ethics, including definitions and additions to the Code of Ethics. Staff will also seek input from the SBEC on the implementation of S.B. 571 including updates to Chapter 249 related to temporary suspension authority, reporting requirements, and minimum sanctions for violations of Chapters 247 and 249. Staff will also seek feedback from the SBEC related to the SBEC's priorities related to misconduct and the implementation of temporary suspensions.

Staff Members Responsible:

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