The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 249 in the March 15, 2019 issue of the Texas Register (44 TexReg 1449).

Relating to the review of 19 TAC Chapter 249, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. The SBEC received a comment relating to the review of Chapter 249. The following is a summary of the public comment received and the response.

Comment: The Texas State Teachers Association (TSTA) requested that the SBEC remove the language creating 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" from 19 TAC §249.3(60) and §249.5(b)(2)(E). TSTA asserts that such directives are only opinions issued from one educator to another and can be unreliable, inaccurate, or made in bad faith. TSTA commented that shifting the burden of proof onto the educator who has violated a written directive regarding the educator's behavior toward a student is unfair and unwarranted. TSTA implies that these rules create illegal standards that are more burdensome than those of the controlling statute.

Response: The SBEC disagrees. As an initial matter, it is important to note that these provisions are among the most recent amendments to 19 TAC Chapter 249, only becoming effective on October 21, 2018. TSTA's comments on this rule review are substantively similar to the comments TSTA made before the SBEC voted to adopt these rule amendments in 2018.

It is essential to recognize that the existence of a directive regarding an educator's behavior toward students does not shift the burden of proof to the educator under these rules. Rather, it is the educator's subsequent violation of the written directive that creates a presumption that the educator is unworthy to instruct. An educator's violation of a directive regarding his or her behavior toward students shows that the educator received a warning and still could not stop the improper behavior. The educator's violation of a directive shows that there was no accident, misunderstanding, or simple misinterpretation: an administrator told the educator that his or her behavior was wrong, and the educator still chose to persist in the same inappropriate behavior toward a student. An educator who cannot stop himself or herself from misbehavior with students is an educator who should not be allowed in a classroom.

Moreover, an educator who has violated a directive regarding behavior toward a student still receives due process. The educator has an opportunity at the contested case hearing before the administrative law judge at the State Office of Administrative Hearings (SOAH) to show that the administrator who made the directive was biased or incorrect, that the directive was unreasonable, or that the directive in some other way does not show that the educator is unworthy to instruct. Such evidence would overcome and rebut the rebuttable presumption and would allow an innocent educator to escape discipline by the SBEC even if he or she had violated a directive regarding behavior toward students.

Furthermore, this rebuttable presumption is not a standard more burdensome than those of the controlling statute, as TSTA asserts. The Texas Education Code (TEC) gives the SBEC extremely broad latitude in educator discipline, setting out no specific standards outside of the conduct that causes automatic revocation under TEC, §21.058. The SBEC has broad rulemaking authority under TEC, §21.041(b)(1) and (7), to "provide for the regulation of educators" and to "provide for disciplinary proceedings, including the suspension or revocation of an educator certificate." That vast authority includes the ability to make rules that tell the administrative law judges at the SOAH what kinds of evidence are sufficient to prove violations of the Educators' Code of Ethics and what weight to put on certain types of evidence. These rules are squarely within the authority of the SBEC under TEC, §21.041.

TSTA's comments do not indicate that the reasons for initially adopting the rules do not continue to exist. The Texas Education Agency staff do not recommend any future changes in response to TSTA's comments.

This concludes the review of 19 TAC Chapter 249.