

The State Board for Educator Certification (SBEC) proposes amendments to 19 Texas Administrative Code (TAC) §§249.15, 249.17, and 249.42, concerning disciplinary proceedings, sanctions, and contested cases. The proposed amendments would implement House Bill (HB) 2519, 87th Texas Legislature, Regular Session, 2021, by amending the SBEC's rules to allow the SBEC to put conditions on a certificate without any additional sanction; to reduce the minimum sanction for contract abandonment that occurs 30-44 days in advance of the first day of instruction for the next school year; to clarify that sanctions for contract abandonment are subject to all mitigating factors and that mitigating factors can reduce a sanction to the point that the SBEC takes no disciplinary action against an educator; and to clarify the notice that the Texas Education Agency (TEA) sends sanctioned educators regarding the necessity of filing a motion for rehearing if the respondent wants to appeal the decision. The proposed amendments also reflect the results of the SBEC's recent work session on contract abandonment by expanding the definition of *good cause* for contract abandonment to include instances when an educator resigns after receiving written permission from school administration and by adding new mitigating factors that allow lower sanctions for contract abandonment when an educator gets a promotion, is assigned to another campus, has their salary reduced, or faces a threat of immediate physical harm.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Chapter 249 covers educator discipline, including investigations, sanction guidelines, and procedures for contested cases. Texas Education Code (TEC), §§21.105, 21.160, and 21.210, give educators the right to resign without penalty at the end of a school year, up to 45 days before the first day of instruction for the following school year. Contract abandonment occurs when an educator resigns from a teaching contract less than 45 days before the first day of instruction for the following school year. The SBEC engaged in discussions during the July 22, 2021 work session and July 23, 2021 SBEC meeting regarding contract abandonment rules and procedures. Proposed rule changes would implement the results of those discussions and recent legislation regarding contract abandonment.

#### *House Bill 2519*

HB 2519, 87th Texas Legislature, Regular Session, 2021, created new requirements and limitations for the SBEC in educator discipline cases involving either contract abandonment or a suspension sanction.

HB 2519 amended TEC, §§21.105(e), 21.160(e), and 21.210(e), to state that the SBEC in considering contract abandonment cases "may consider alternatives to sanctions, including additional continuing education or training." The SBEC has historically interpreted "additional" in 19 TAC §249.15(a)(5) to mean that the SBEC had to impose another sanction, such as a non-inscribed reprimand, before it could put other conditions or restrictions on a certificate, such as requiring continuing education. To allow the SBEC to require training without having to issue any other sanction in accordance with the intent of HB 2519, the proposed amendment would remove the word "additional" from 19 TAC §249.15(a)(5).

Through changes to TEC, §§21.105, 21.160, and 21.210, HB 2519 forbids the SBEC from issuing a sanction of suspension or revocation for educators who abandon their contracts with school districts 30 days or more before the first day of instruction for the next school year. The proposed amendment would therefore change the sanction guidance for contract abandonment in 19 TAC §249.17(d)(3) to make an inscribed reprimand the standard sanction when an educator abandons a contract 30-44 days prior to the first day of instruction and no mitigating factors apply. HB 2519 made no changes to the deadline for educator resignations; an educator can still resign without penalty 45 days prior to the first day of instruction. Thus, under the proposed rule, an educator who resigns 45 days prior to the first day of instruction is not subject to sanction by the SBEC, an educator who resigns 44-30 days prior to the first day of instruction is subject to an inscribed reprimand if no mitigating factors apply, and an educator who resigns fewer than 30 days before the first day of instruction or at any point during the school year is subject to at least a one-year suspension if no mitigating factors apply. In a case where the educator resigned 44-30 days prior to the first day of instruction and mitigating factors applied, under the proposed rule, the educator would receive a sanction of less than an inscribed reprimand--a non-inscribed reprimand, a requirement to complete continuing education with no reprimand, or no reprimand at all--depending on the strength of the mitigating factors and at the SBEC's discretion. Similarly, in a case where the educator resigns fewer than 30 days prior to the first day of instruction or during the school year and mitigating factors apply, under the proposed rule, the educator would receive a sanction of less than a one-year suspension--a shorter suspension, an inscribed reprimand, a non-inscribed reprimand, a requirement to complete continuing education with no reprimand, or no reprimand at all--depending on the strength of the mitigating factors and at the SBEC's discretion. In any case where the educator had good cause for contract

abandonment as defined in 19 TAC §249.17(d)(1), the educator would not be subject to sanction by the SBEC regardless of when the educator resigned.

HB 2519 amended TEC, §§21.105(e), 21.160(e), and 21.210(e) to require that the SBEC consider "any mitigating factors relevant to the teacher's conduct" prior to imposing a sanction for contract abandonment. The proposed amendment to 19 TAC §249.17(d)(2) would change "may" to "shall" to reflect this new statutory requirement by removing the SBEC's discretion on whether to review mitigating factors in contract abandonment cases. The proposed amendment to 19 TAC §249.17(d)(2) would also include technical edits that would add "the educator" as a lead in and would make corresponding technical edits to subparagraphs (A)-(F). The proposed amendment to 19 TAC §249.17(d)(3) would add new §249.17(d)(3)(A) and (B) to include specific cross-references to the factors the SBEC considers under 19 TAC §249.17(c), among which would include a broad catch-all factor, "any other relevant circumstances or facts," to make it clear that the SBEC will consider all mitigating factors in contract abandonment cases.

The proposed amendment to 19 TAC §249.17(d)(3)(B) would also provide a technical edit to reorganize subparagraphs (A)-(C) to clauses (i)-(iii).

The proposed amendment would also include new 19 TAC §249.17(d)(3)(C), which would clarify that mitigating factors can reduce an educator's sanction to such an extent that the SBEC takes no disciplinary action against the educator. This change is proposed to reduce confusion among SBEC members and stakeholders regarding the limits of the SBEC's discretion in considering mitigating factors. The SBEC cannot be arbitrary or capricious in determining the value of a mitigating factor or a sanction, but the SBEC can decide that the unique mitigating facts in a specific case are so extreme and compelling that they necessitate reducing the educator's sanction to the point that an educator subject to discipline receives no sanction.

In TEC, §21.065(b), HB 2519 imposes requirements on the SBEC to give notice to an educator whose certificate has been suspended of "the basis for the suspension" and "information regarding the method in which the teacher may respond to the suspension." The SBEC already sends sanctioned educators such notices with the final order, informing the educators that they must file a Motion for Rehearing with the SBEC if they do not agree with the SBEC's decision and if they want to appeal in keeping with Texas Government Code (TGC), §2001.145. The proposed amendment would add language to 19 TAC §249.42(a) that would reflect and clarify this procedure and the language used in the letters to educators.

This proposal would include technical edits to further define a cross reference to 19 TAC Chapter 101 in §249.15(b)(8).

#### *SBEC Work Session and Board Meeting*

On July 22, 2021, the SBEC conducted a work session to examine ways to improve its contract abandonment sanctioning guidelines. The results of the work session and July 23, 2021 SBEC meeting are reflected in the proposed amendment to 19 TAC §249.17(d)(1) and (2), which adds to the definition of good cause for contract abandonment and to the mitigating factors that apply specifically to contract abandonment cases. These provisions offer guidance and predictability to educators, TEA staff, State Office of Administrative Hearings judges, and the SBEC regarding in what situations the SBEC will take no action against an educator due to good cause and in what situations the SBEC will issue reduced sanctions against an educator for contract abandonment based on applicable mitigating factors.

The proposed amendment to 19 TAC §249.17(d)(1) would expand the definition of *good cause* for contract abandonment. Proposed new §249.17(d)(1)(D) would make written permission from school district administration good cause for contract abandonment. The proposed amendment would cause the SBEC to take no disciplinary action against an educator who abandoned a contract under those specific conditions because an educator should be able to resign without penalty when the educator reasonably understands that he or she has received written permission from the school administration to resign.

The proposed amendment to 19 TAC §249.17(d)(2) would add mitigating factors that reduce an educator's sanction for contract abandonment. Proposed new §249.17(d)(2)(G) would reduce an educator's sanction if the educator had

resigned in order to take a position that amounted to a career change from one certification class to another or to a more advanced position within the principal certificate class. For example, the proposed amendment would reduce the sanction for an educator who resigned in order to become a librarian, a counselor, an assistant principal, a principal, or a superintendent. The proposed amendment also would reduce the sanction for an assistant principal who resigned to become a principal, a superintendent, or another more senior administration position that requires a principal or superintendent certificate. This proposed amendment would give teachers more flexibility to advance their careers within education without fear of long suspension sanctions from SBEC due to contract abandonment.

Proposed new 19 TAC §249.17(d)(2)(H) would allow a reduced sanction when an educator resigns due to a decrease in the educator's base pay, excluding stipends, as compared to the prior year at the same school district. Due to school district board meeting schedules, some educators do not learn what their salary will be for the school year until after the 45th day before the first day of instruction, when educators can no longer resign without penalty. The commissioner of education has held that an educator's contract remains valid even if the educator's salary is set at a later school district board meeting, so long as educator's final salary is within the salary range that the educator was offered when the educator signed the contract. An educator can thus find themselves in a year-long contract for salary that is less than the educator had earned the year before and be unable to resign without penalty. Under proposed new 19 TAC §249.17(d)(2)(H), an educator who resigned in such circumstances would still be subject to discipline for contract abandonment but would receive a lesser sanction than the default one-year suspension.

Proposed new 19 TAC §249.17(d)(2)(I) would allow a reduced contract abandonment sanction when an educator resigns following a change in the educator's campus assignment that causes a significant adverse impact on the educator's family needs or health condition. In geographically large school districts, a change in campus assignment can cause an educator to have a commute that is much longer than the educator had expected, which can cause the educator to be unable to pick up his or her children on time or can adversely affect the educator's health. This proposed change would give educators confronted with a change in campus assignment and contemplating resignation some predictability that the SBEC will reduce the penalty for contract abandonment to reflect the severity of the impact the change in assignment had on the educator's health or family needs.

Proposed new 19 TAC §249.17(d)(2)(J) would allow lower sanctions for contract abandonment when an educator resigns a contract due to working conditions that reasonably posed an immediate threat of physical harm to the educator. This proposed change would allow the SBEC to reduce the penalty in a contract abandonment case to reflect the severity of the risk of physical harm an educator faced before resigning. It would give educators some comfort and predictability that they would not face a long suspension for contract abandonment if they resign due to physically dangerous working conditions.

While TEA staff may make sanction recommendations, the SBEC would retain discretion to determine the final sanction and the amount of reduction in penalty allowed for each mitigating factor prescribed in 19 TAC §249.17(d)(2).

**FISCAL IMPACT:** Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five-year period the proposal is in effect, there is no additional fiscal impact on state or local governments and that there are no additional costs to entities required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under TGC, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in TGC, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to TGC, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under TGC, §2007.043.

**GOVERNMENT GROWTH IMPACT:** The TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation by reducing the minimum sanction for contract abandonment 30 days prior to the first day of instruction when no mitigating factors apply from a one-year suspension to an inscribed reprimand. It would further limit an existing regulation by creating more mitigating factors and ways that a respondent can meet the definition of good cause, reducing the number of respondents who will be subject to sanction.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** The public benefit anticipated as a result of the proposal would be predictability and transparency in contract abandonment sanctioning by the SBEC. There is no anticipated cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no new data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** The TEA staff has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins October 22, 2021, and ends November 22, 2021. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/SBEC\\_Rules\\_\(TAC\)/Proposed\\_State\\_Board\\_for\\_Educator\\_Certification\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will take registered oral and written comments on the proposal at the December 10, 2021 meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Department of Educator Preparation, Certification, and Enforcement, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Ms. Emily Garcia, associate commissioner for educator preparation, certification, and enforcement, not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 22, 2021.

**STATUTORY AUTHORITY.** The amendments are proposed under Texas Education Code (TEC), §21.006(a)-(c-2), (f)-(g-1), and (i), which require 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 State Board for Educator Certification (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 when 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 the SBEC rulemaking authority as necessary to implement the statute, requires the SBEC to create an internet portal to facilitate confidential and secure reporting, and 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, §21.007, which gives the SBEC authority to place a notice that an educator is under investigation for alleged misconduct on the educator's public certification records, which requires the SBEC to give the educator notice and an opportunity to show cause, which requires that the SBEC limit the amount of time the notice can appear on the educator's certification, and which gives the SBEC rulemaking authority as necessary to implement the provision; TEC, §21.009(e), which 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),

which 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, which states that TEA staff provide administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commissioner of education or to Texas Education Agency (TEA) staff the authority to settle or otherwise informally dispose of contested cases involving educator certification; TEC, §21.040(4), which requires the SBEC to develop policies that delineate the respective responsibilities of the SBEC and TEA staff; TEC, §21.041, which authorizes the SBEC to adopt rules as necessary for its own procedures, to regulate educators, specify the requirements for issuance or renewal of educator certificates, administer statutory requirements, provide for educator disciplinary proceedings, and for enforcement of the Educator's Code of Ethics; TEC, §21.058, which requires the SBEC to revoke the certification of an educator convicted or placed on deferred adjudication community supervision for certain offenses; TEC, §21.0581, which allows the SBEC to suspend, revoke, or sanction an educator's certificate, or refuse to issue a certificate, if the person has assisted another person in obtaining employment at a school district, private school, or open-enrollment charter school, other than by the routine transmission of administrative and personnel files when the person knew the other person had engaged in sexual misconduct with a student or minor in violation of the law; TEC, §21.060, which sets out crimes that relate to the education profession and authorizes the SBEC to sanction or to refuse to issue a certificate to any person who has been convicted of one of these offenses; TEC, §21.065, as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, which sets requirements for the notice SBEC must send when it suspends an educator's certificate; TEC, §21.105(c), as amended by HB 2519, 87th Texas Legislature, Regular Session, 2021, which allows the SBEC to impose sanctions against an educator who abandons a probationary contract; TEC, §21.105(e), as added by House Bill (HB) 2519, 87th Texas Legislature, Regular Session, 2021, which requires the SBEC to consider any mitigating factors relevant to the teacher's conduct and allows the SBEC to consider alternatives to sanctions, including additional continuing education or training; TEC, §21.105(f), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, which 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), as amended by HB 2519, 87th Texas Legislature, Regular Session, 2021, which allows the SBEC to impose sanctions against an educator who abandons a continuing contract; TEC, §21.160(e), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, which requires the SBEC to consider any mitigating factors relevant to the teacher's conduct and allows the SBEC to consider alternatives to sanctions, including additional continuing education or training; TEC, §21.160(f), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, which 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), as amended by HB 2519, 87th Texas Legislature, Regular Session, 2021, which allows the SBEC to impose sanctions against an educator who abandons a term contract; TEC, §21.210(e), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, which requires the SBEC to consider any mitigating factors relevant to the teacher's conduct and allows the SBEC to consider alternatives to sanctions, including additional continuing education or training; TEC, §21.210(f), as added by HB 2519, 87th Texas Legislature, Regular Session, 2021, which 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, which requires the SBEC to subscribe to the criminal history clearinghouse and allows the SBEC to obtain any criminal history from any closed case file; TEC, §22.0831, which requires the SBEC to review the criminal history of certified educators and applicants for certification; TEC, §22.085, which requires school districts, charter schools, and shared services arrangements to conduct fingerprint criminal background checks on employees and to refuse to hire those who have certain criminal history; TEC, §22.087, which 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 clearinghouse; TEC, §22.092, which requires school districts, charter schools, districts of innovation, regional education service centers, and shared services arrangements to discharge or to refuse to hire any person listed on the registry of persons not eligible for employment in Texas public schools; TEC, §22.093(a)-(f), which 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 an unlawful act with a student or minor, or was involved in a romantic relationship with a student or minor; Texas Government Code (TGC), §411.090, which 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; TGC, §2001.058(e), which sets out the requirements for when the SBEC can make changes to a proposal for decision from an administrative law judge; TGC, §2001.142(a), which 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 (TFC), §261.308(d) and (e), which 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; TFC, §261.406(a) and (b), which 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; and Texas Occupations Code (TOC), §53.021(a), 53.022-53.025, 53.051, and 53.052, which allow the SBEC to suspend or revoke an educator's certificate or refuse to issue a certificate if a person is convicted of certain offenses; which set out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education; which set out additional factors for the SBEC to consider when deciding whether to allow a person convicted of a crime to serve as an educator; which set 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; which state that proceedings to deny or sanction an educator's certification are covered by the Texas Administrative Procedure Act, Chapter 2001, TGC; which give the SBEC rulemaking authority to issue guidelines to define which crimes relate to the profession of education; which require that the SBEC notify a license holder or applicant after denying, suspending, or revoking the certification; and which allow a person who has been denied an educator certification or had an educator certification revoked or suspended to file a petition for review in state district court after exhausting all administrative remedies; TOC, §56.003, which prohibits state agencies from taking disciplinary action against licensees for student loan non-payment or default; and Every Student Succeeds Act, 20 United States Code, §7926, which 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 job-seeker has committed sexual misconduct with a student or minor in violation of the law.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§21.006(a)-(c-2), (f)-(g-1), and (i); 21.007; 21.009(e); 21.031(a); 21.035; 21.041; 21.058; 21.0581; 21.060; 21.065, as added by House Bill (HB) 2519, 87th Texas Legislature, Regular Session, 2021; 21.105(c), (e), and (f), as amended and added by HB 2519, 87th Texas Legislature, Regular Session, 2021; 21.160(c), (e), and (f), as amended and added by HB 2519, 87th Texas Legislature, Regular Session, 2021; 21.210(c), (e), and (f), as amended and added by HB 2519, 87th Texas Legislature, Regular Session, 2021; 22.082; 22.0831; 22.085; 22.087; 22.092; and 22.093(a)-(f); Texas Government Code, §§411.090, 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, 20 United States Code, §7926.

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§249.15. Disciplinary Action by State Board for Educator Certification.

(a) Pursuant to this chapter, the State Board for Educator Certification (SBEC) may take any of the following actions:

- (1) place restrictions on the issuance, renewal, or holding of a certificate, either indefinitely or for a set term;
  - (2) issue an inscribed or non-inscribed reprimand;
  - (3) suspend a certificate for a set term or issue a probated suspension for a set term;
  - (4) revoke or cancel, which includes accepting the surrender of, a certificate without opportunity for reapplication for a set term or permanently;
  - (5) impose any ~~additional~~ conditions or restrictions upon a certificate that the SBEC deems necessary to facilitate the rehabilitation and professional development of the educator or to protect students, parents of students, school personnel, or school officials; or
  - (6) impose an administrative penalty of \$500-\$10,000 on a superintendent or director who fails to file timely a report required under §249.14(d) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition) or on a principal who fails to timely notify a superintendent or director as required under §249.14(e) of this title under the circumstances and in the manner required by the Texas Education Code (TEC), §21.006.
- (b) The SBEC may take any of the actions listed in subsection (a) of this section based on satisfactory evidence that:
- (1) the person has conducted school or education activities in violation of law;
  - (2) the person is unworthy to instruct or to supervise the youth of this state;
  - (3) the person has violated a provision of the Educators' Code of Ethics;

- (4) the person has failed to report or has hindered the reporting of child abuse pursuant to the Texas Family Code, §261.001, or has failed to notify the SBEC, the commissioner of education, or the school superintendent or director under the circumstances and in the manner required by the TEC, §21.006, §21.0062, §22.093, and §249.14(d)-(f) of this title;
- (5) the person has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c);
- (6) the person has failed to cooperate with the Texas Education Agency (TEA) in an investigation;
- (7) the person has failed to provide information required to be provided by §229.3 of this title (relating to Required Submissions of Information, Surveys, and Other Data);
- (8) the person has violated the security or integrity of any assessment required by the TEC, Chapter 39, Subchapter B, as described in subsection (g) of this section or has committed an act that is a departure from the test administration procedures established by the commissioner of education in Chapter 101 of Part 2 of this title (relating to Assessment);
- (9) the person has committed an act described in §249.14(k)(1) of this title, which constitutes sanctionable Priority 1 conduct, as follows:
  - (A) any conduct constituting a felony criminal offense;
  - (B) indecent exposure;
  - (C) public lewdness;
  - (D) child abuse and/or neglect;
  - (E) possession of a weapon on school property;
  - (F) drug offenses occurring on school property;
  - (G) sale to or making alcohol or other drugs available to a student or minor;
  - (H) sale, distribution, or display of harmful material to a student or minor;
  - (I) certificate fraud;
  - (J) state assessment testing violations;
  - (K) deadly conduct; or
  - (L) conduct that involves inappropriate communication with a student as described in §247.2(3)(I) of this title (relating to Code of Ethics and Standard Practices for Texas Educators), inappropriate professional educator-student relationships and boundaries as described in §247.2(3)(H) of this title, or otherwise soliciting or engaging in sexual conduct or a romantic relationship with a student or minor;
- (10) the person has committed an act that would constitute an offense (without regard to whether there has been a criminal conviction) that is considered to relate directly to the duties and responsibilities of the education profession, as described in §249.16(c) of this title (relating to Eligibility of Persons with Criminal History for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21). Such offenses indicate a threat to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague; interfere with the orderly, efficient, or safe operation of a school district, campus, or activity; or indicate impaired ability or misrepresentation of qualifications to perform the functions of an educator and include, but are not limited to:
  - (A) offenses involving moral turpitude;
  - (B) offenses involving any form of sexual or physical abuse or neglect of a student or minor or other illegal conduct with a student or minor;
  - (C) offenses involving any felony possession or conspiracy to possess, or any misdemeanor or felony transfer, sale, distribution, or conspiracy to transfer, sell, or distribute any controlled substance defined in the Texas Health and Safety Code, Chapter 481;
  - (D) offenses involving school property or funds;
  - (E) offenses involving any attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;
  - (F) offenses occurring wholly or in part on school property or at a school-sponsored activity; or
  - (G) felony offenses involving driving while intoxicated (DWI);
- (11) the person has intentionally failed to comply with the reporting, notification, and confidentiality requirements specified in the Texas Code of Criminal Procedure, §15.27(a), relating to student arrests, detentions, and juvenile referrals for certain offenses;
- (12) the person has failed to discharge an employee or to refuse to hire an applicant when the employee or applicant was employed in a public school and on the registry of persons who are not eligible to be employed under TEC, §22.092, when the person knew that the employee or applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor in accordance with the TEC, §21.009(e), or when the person knew or should

have known through a criminal history record information review that the employee or applicant had been placed on community supervision or convicted of an offense in accordance with the TEC, §22.085;

(13) the person assisted another educator, school employee, contractor, or agent in obtaining a new job as an educator or in a school, apart from the routine transmission of administrative and personnel files, when the educator knew or had probable cause to believe that such person engaged in an inappropriate relationship with a minor or student;

(14) the person is a superintendent of a school district or the chief operating officer of an open-enrollment charter school who falsely or inaccurately certified to the commissioner of education that the district or charter school had complied with the TEC, §22.085; or

(15) the person has failed to comply with an order or decision of the SBEC.

(c) The TEA staff may commence a contested case to take any of the actions listed in subsection (a) of this section by serving a petition to the certificate holder in accordance with this chapter describing the SBEC's intent to issue a sanction and specifying the legal and factual reasons for the sanction. The certificate holder shall have 30 calendar days to file an answer as provided in §249.27 of this title (relating to Answer).

(d) Upon the failure of the certificate holder to file a written answer as required by this chapter, the TEA staff may file a request for the issuance of a default judgment from the SBEC imposing the proposed sanction in accordance with §249.35 of this title (relating to Disposition Prior to Hearing; Default).

(e) If the certificate holder files a timely answer as provided in this section, the case will be referred to the State Office of Administrative Hearings (SOAH) for hearing in accordance with the SOAH rules; the Texas Government Code, Chapter 2001; and this chapter.

(f) The provisions of this section are not exclusive and do not preclude consideration of other grounds or measures available by law to the SBEC or the TEA staff, including child support arrears. The SBEC may request the Office of the Attorney General to pursue available civil, equitable, or other legal remedies to enforce an order or decision of the SBEC under this chapter.

(g) The statewide assessment program as defined by the TEC, Chapter 39, Subchapter B, is a secure testing program.

(1) Procedures for maintaining security shall be specified in the appropriate test administration materials.

(2) Secure test materials must be accounted for before, during, and after each test administration. Only authorized personnel may have access to secure test materials.

(3) The contents of each test booklet and answer document are confidential in accordance with the Texas Government Code, Chapter 551, and the Family Educational Rights and Privacy Act of 1974. Individual student performance results are confidential as specified under the TEC, §39.030(b).

(4) Violation of security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, shall be prohibited. A person who engages in conduct prohibited by this section may be subject to sanction of credentials, including any of the sanctions provided by subsection (a) of this section.

(5) Charter school test administrators are not required to be certified; however, any irregularity in the administration of any test required by the TEC, Chapter 39, Subchapter B, would cause the charter itself to come under review by the commissioner of education for possible sanctions or revocation, as provided under the TEC, §12.115(a)(4).

(6) Conduct that violates the security and confidential integrity of a test is evidenced by any departure from the test administration procedures established by the commissioner of education. Conduct of this nature may include, but is not limited to, the following acts and omissions:

(A) viewing a test before, during, or after an assessment unless specifically authorized to do so;

(B) duplicating secure examination materials;

(C) disclosing the contents of any portion of a secure test;

(D) providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;

(E) changing or altering a response or answer of an examinee to a secure test item or prompt;

(F) aiding or assisting an examinee with a response or answer to a secure test item or prompt;

(G) fraudulently exempting or preventing a student from the administration of a required state assessment;

(H) encouraging or assisting an individual to engage in the conduct described in paragraphs (1)-(7) of this subsection; or

(I) failing to report to an appropriate authority that an individual has engaged in conduct outlined in paragraphs (1)-(8) of this subsection.

(7) Any irregularities in test security or confidential integrity may also result in the invalidation of student results.

(8) The superintendent and campus principal of each school district and chief administrative officer of each charter school and any private school administering the tests as allowed under the TEC, §39.033, shall develop procedures to ensure the security and confidential integrity of the tests specified in the TEC, Chapter 39, Subchapter B, and



shall be responsible for notifying the TEA in writing of conduct that violates the security or confidential integrity of a test administered under the TEC, Chapter 39, Subchapter B. A person who fails to report such conduct as required by this subsection may be subject to any of the sanctions provided by subsection (a) of this section.

§249.17. Decision-Making Guidelines.

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

- (1) to provide a framework of analysis for the Texas Education Agency (TEA) staff, the presiding administrative law judge (ALJ), and the State Board for Educator Certification (SBEC) in considering matters under this chapter;
- (2) to promote consistency in the exercise of sound discretion by the TEA staff, the presiding ALJ, and the SBEC in seeking, proposing, and making decisions under this chapter; and
- (3) to provide guidance for the informal resolution of potentially contested matters.

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

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

- (1) the seriousness of the violation;
- (2) whether the misconduct was premeditated or intentional;
- (3) attempted concealment of misconduct;
- (4) prior misconduct and SBEC sanctions;
- (5) the potential danger the conduct poses to the health and welfare of students;
- (6) the effect of the prior conduct upon any victims of the conduct;
- (7) whether sufficient time has passed and sufficient evidence is presented to demonstrate that the educator or applicant has been rehabilitated from the prior conduct;
- (8) the effect of the conduct upon the educator's good moral character and ability to be a proper role model for students;
- (9) whether the sanction will deter future violations; and
- (10) any other relevant circumstances or facts.

(d) Contract abandonment.

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

- (A) serious illness or health condition of the educator or close family member of the educator;
- (B) relocation to a new city as a result of change in employer of the educator's spouse or partner who resides with the educator; ~~or~~
- (C) significant change in the educator's family needs that requires the educator to relocate or to devote more time than allowed by current employment or; ~~[-]~~
- (D) the educator's reasonable belief that the educator had written permission from the school district administration to resign.

(2) Mitigating factors. The following factors shall ~~may~~ be considered in seeking, proposing, or making a decision under this chapter regarding an educator who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c) . The educator :

- (A) ~~educator~~ 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) ~~educator~~ assisted the school district in finding a replacement educator to fill the position;
- (C) ~~educator~~ continued to work until the school district hired a replacement educator;
- (D) ~~educator~~ assisted in training the replacement educator;
- (E) ~~educator~~ showed good faith in communications and negotiations with the school district; ~~or~~
- (F) ~~educator~~ provided lesson plans for classes following the educator's resignation ; ~~[-]~~
- (G) changed careers within the field of education 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) or to a position with a higher level of authority within the principal class of certificate;
- (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) had a change in the educator's campus assignment that caused a significant adverse impact on the educator's health condition or family needs; or

(J) resigned due to working conditions that reasonably posed an immediate threat of significant physical harm to the educator.

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

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

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

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

(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.

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STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §21.031(a), which 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, which states that TEA staff provide 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, §21.040(4), which requires the SBEC to develop policies that delineate the respective responsibilities of the SBEC and TEA staff; TEC, §21.041, which authorizes the SBEC to adopt rules as necessary for its own procedures, to regulate educators, specify the requirements for issuance or renewal of educator certificates, administer statutory requirements, provide for educator disciplinary proceedings, and for enforcement of the Educator's Code of Ethics; and Texas Occupations Code, §§53.021(a), 53.022-53.025, and 53.051, which allow the SBEC to suspend or revoke an educator's certificate or refuse to issue a certificate if a person is convicted of certain offenses; set out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education; set out additional factors for the SBEC to consider when deciding whether to allow a person convicted of a crime to serve as an educator; set 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; state that proceedings to deny or sanction an educator's certification are covered by the Texas Administrative Procedure Act, Chapter 2001, Texas Government Code; give the SBEC rulemaking authority to issue guidelines to define which crimes relate to the profession of education; and require that the SBEC notify a license holder or applicant after denying, suspending, or revoking the certification.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§21.031(a); 21.035; 21.040(4); and 21.041(a), and (b)(1), (4), and (7); and Texas Occupations Code, §§53.021(a), 53.022-53.025, and 53.051.

<rule>

§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 SBEC based its decision, and a statement that should the person desire to request that the SBEC reconsider the decision, the person should file a Motion for Rehearing with the SBEC.

(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.