

Item 11:**Consider and Take Appropriate Action on Proposed Amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases****DISCUSSION AND ACTION**

SUMMARY: This item provides the State Board for Educator Certification (SBEC) an opportunity to consider and take appropriate action on proposed amendments to 19 Texas Administrative Code (TAC) Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines. The proposed amendments would implement House Bill (HB) 3, Senate Bills (SBs) 1230, 1476, and 37, 86th Texas Legislature, 2019, by reflecting new reporting requirements for superintendents, principals, and directors of public schools and private school administrative officers; adding individuals listed on the registry of persons ineligible to work in public schools to the people that must be fired or refused employment by a certified educator; and removing the reference to student loan default as a ground for discipline by the SBEC. The proposed amendments would also expand the factors for "good cause" for contract abandonment and allow the SBEC to deny the application for certification of any person who had abandoned a Texas Education Code (TEC), Chapter 21, contract within the preceding 12 months. The proposed amendments would also make technical changes to improve the readability of provisions and to align citations.

STATUTORY AUTHORITY: The statutory authority for 19 TAC Chapter 249, Subchapter B is TEC, §§21.006(a), (b), (b-1), (b-2), (c), (c-1), (c-2), as amended by HB 3 and SB 1476, 86th Texas Legislature, 2019, (f), (g), (g-1), as added by HB 3 and SB 1476, 86th Texas Legislature, 2019; and (i), as amended by HB 3, 86th Texas Legislature, 2019; 21.0062, as added by SB 1230, 86th Texas Legislature, 2019; 21.007; 21.009(e); 21.031(a); 21.035; 21.041; 21.058; 21.0581; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.085, as amended by HB 3, 86th Texas Legislature, 2019; 22.087; 22.092, as added by HB 3, 86th Texas Legislature, 2019; and 22.093, as added by HB 3, 86th Texas Legislature, 2019; Texas Government Code, §411.090 and §2001.058(e); Texas Family Code (TFC), §261.308(d) and (e) and §261.406(a) and (b), as amended by SB 1231, 86th Texas Legislature, 2019; Texas Occupations Code (TOC), §§53.021(a), as amended by SB 1342, 86th Texas Legislature, 2019; 53.022 and 53.023, as amended by SB 1342, 86th Texas Legislature, 2019, 53.024, 53.025, 53.051, as amended by SB 1342, 86th Texas Legislature, 2019, 53.052, and 56.003, as amended by SB 37, 86th Texas Legislature, 2019; and the Every Student Succeeds Act (ESSA), 20 USC, §7926.

TEC, §21.006(a), (b), (c), (c-1), and (c-2) as amended by HB 3 and SB 1476, 86th Texas Legislature, 2019, 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 when 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.

TEC, §21.006(b–2), as amended by HB 3, 86th Texas Legislature, 2019, 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(g–1), as added by HB 3, 86th Texas Legislature, 2019, requires the SBEC to develop and maintain an internet portal through which a superintendent or director can file a report confidentially and securely.

TEC, §21.006(i), as amended by HB 3, 86th Texas Legislature, Regular Session, 2019, 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, added by SB 1230, 86th Texas Legislature, 2019, 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 when 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 that 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 educator certificates, administer statutory requirements, provide for educator disciplinary proceedings and for enforcement of the educator's code of ethics.

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, §21.0581(a), as amended by SB 1230, 86th Texas Legislature, 2019, gives the SBEC authority to sanction the educator certification of person who assists another person in obtaining employment at a school district, private school, or open-enrollment charter school when the

certified educator knew the other person had previously engaged in sexual misconduct with a minor or student in violation of the law.

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

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

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

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, as amended by HB 3, 86th Texas Legislature, 2019, requires school districts, charter schools, and shared services arrangements to conduct fingerprint criminal background checks on employees and to 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, as added by HB 3, 86th Texas Legislature, 2019, requires school districts, charter schools, districts of innovation, regional education service centers, and shared services arrangements to discharge or refuse to hire any person listed on the registry of persons not eligible for employment in Texas public schools.

TEC, §22.093, as added by HB 3, 86th Texas Legislature, 2019, 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 when 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, 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(d–1) and (e), sets out the requirements for when the SBEC can make changes to a proposal for decision from an administrative law judge.

TFC, §261.308(d) and € , 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), as amended by SB 1231, 86th Texas Legislature, 2019, 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.

TOC, §53.021(a), as amended by SB 1342, 86th Texas Legislature, 2019, 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.

TOC, §53.022, as amended by SB 1342, 86th Texas Legislature, 2019, sets out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education.

TOC, §53.023, as amended by SB 1342, 86th Texas Legislature, 2019, 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.

TOC, §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.

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

TOC, §53.051, as amended by SB 1342, 86th Texas Legislature, 2019, requires that the SBEC notify a license holder or applicant after denying, suspending or revoking the certification.

TOC, §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.

TOC, §56.003, as amended by SB 37, 86th Texas Legislature, 2019, 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 job-seeker has committed sexual misconduct with a student or minor in violation of the law.

EFFECTIVE DATE: If approved for filing as proposed in October 2019, and if adopted, subject to State Board of Education (SBOE) review, at the December 6, 2019 SBEC meeting, the proposed effective date of the proposal would be March 5, 2020 (20 days after filing as adopted with the *Texas Register*). The proposed effective date is based on the SBEC and SBOE meeting schedules.

PREVIOUS BOARD ACTION: The SBEC last amended §249.12, §249.14, and §249.17 effective March 8, 2018, and last amended §249.15 effective October 21, 2018.

BACKGROUND INFORMATION AND JUSTIFICATION:**Contract Abandonment**

The proposed amendment to §249.12, Administrative Denial; Appeal, would add a new subsection (b)(7) to allow the SBEC to deny the certificate of a person who has abandoned a TEC, Chapter 21, contract within the past 12 months. The intern and probationary certificates that the SBEC issues to beginning teachers last only 12 months. When a person's certification expires, the SBEC loses jurisdiction over the person and cannot impose sanctions. Under 19 TAC §249.17(d)(3), the minimum sanction for contract abandonment is a one-year suspension. In most cases when an educator on an intern or probationary certificate abandons his or her contract, there is not enough time left before the certificate expires for the SBEC to impose a full one-year suspension. Under the current wording of §249.12, these educators can reapply for certification as soon as their intern or probationary certification expires and the SBEC could not deny them certification unless the SBEC could prove that they were unworthy to instruct. While beginning educators who abandon contracts with school districts may not be permanently unworthy to instruct, they may need time to consider whether the education profession is right for them and time to get additional training before attempting to teach again—lest they abandon another contract the next year, disrupting the lives and learning of another classroom full of Texas students.

The proposed rule would allow SBEC to deny individuals who reapply within 12 months of abandoning a contract to ensure that those who abandon contracts have taken at least a 12-month break from teaching for self-reflection and additional training before they make another attempt. The proposed rule would only impact educators whose intern and probationary certificates have expired so that the person must reapply for a new certificate. The proposed rule would not impact educators on standard certificates who allow their certificates to go inactive. SBEC maintains jurisdiction over inactive certificates because they can be renewed without the educator having to fully reapply and, therefore, SBEC can sanction a standard certificate with the typical one-year suspension for contract abandonment required by 19 TAC §249.17(d)(3) without losing jurisdiction.

At the July 26, 2019 SBEC meeting, there was a request from board members that staff add new factors to the definition of "good cause" for contract abandonment in §249.17(d). The proposed rule defines "good cause" to include promotion to a position that requires a new class of educator certificate—for example, from classroom teacher to principal, classroom teacher to librarian, or principal to superintendent. This allows educators to benefit from promotions without facing a sanction for abandoning their contracts. The proposed new rule further defines "good cause" to include educators who have resigned their contracts in reliance on a written statement accepting their resignation from a person with delegated authority from the school district board of trustees to accept resignations. This reflects the general concept of detrimental reliance in contract law, that if a person takes some action to the person's detriment in reasonable reliance on another's statement or promise, then the promise should be enforced. The final proposed addition to the "good cause" definition gives the SBEC discretion to determine good cause based on the specific facts presented in any given case, to maximize the SBEC's flexibility in determining good cause.

House Bill 3, 86th Texas Legislature, 2019

Throughout §249.14, Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition, and §249.15, Disciplinary Action by State Board for Educator Certification, the

proposed amendments would modify “open-enrollment charter school” to read “charter school” to comport with the changes to TEC, Chapter 21, in HB 3, which now includes all forms of charter entities, whether open-enrollment or otherwise.

HB 3 also creates a registry of persons not eligible for employment in Texas public schools and 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 when 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. To reflect these new requirements, the proposed amendments would add reporting to the commissioner of education under TEC, §22.093, to the list of required reporting for which an educator can be disciplined if the educator fails to report under §249.15(b)(4). The proposed amendments would also reflect the registry of persons ineligible to work in public schools in §249.15(b)(12), which allows for SBEC to sanction an educator if the educator hires or fails to fire an employee on the register.

HB 3 also modifies the requirements of TEC, §22.085, which sets out the criminal history that requires a school district, charter school, or shared services arrangement to discharge or refuse to hire an employee or applicant, to parallel TEC, §21.058, by including individuals on deferred adjudication community supervision for which a defendant is required to register as a sex offender. To reflect these modifications, the proposed amendments would add language regarding community supervision to the reference to TEC, §22.085, in §249.15(b)(12).

Senate Bills 1230 and 1476, 86th Texas Legislature, 2019

To implement Senate Bill (SB) 1230, a proposed amendment to §249.14(d) would reflect the statute's language requiring a "chief administrative officer of a private school" to report to SBEC rather than to the "director of a private school." This semantic change does not change the meaning of the rule, which already required private school heads to report misconduct to the SBEC.

Similarly, to reflect the creation of misconduct reporting requirements for private school chief administrative officers in SB 1230, the proposed amendments would add TEC, §21.0062, to the list of reporting obligations for which the SBEC can discipline a certified educator if the educator fails to comply.

To reflect the requirements of SB 1476 and SB 1230, a proposed amendment to §249.14(d) would allow superintendents and directors of public schools not to report evidence of misconduct if the superintendent or director has completed an investigation before the educator resigned and determined that the educator did not engage in misconduct.

Senate Bill 37, 86th Texas Legislature, 2019

To implement SB 37, the proposed amendments would remove a reference to student loan default as a ground for discipline by the SBEC in §249.15(f).

The proposed amendments also include technical edits to remove language regarding sanctions for failing to report from §§249.14(d) and € because this language is redundant with §249.14(h) and makes §§249.14(d) and € difficult to read. The proposed amendments would also make the list of “Priority 1” conduct match in §249.15(b)(9) and §249.14(k)(1).

FISCAL IMPACT: The TEA staff has determined that 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 would have no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code (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. The proposed rule would limit the regulation that allows SBEC to sanction educators who abandon contracts by adding new definitions of “good cause.” The proposed rule would also limit the requirement that a superintendent or director report educator misconduct to the SBEC by removing the requirement that a superintendent report when the investigation is complete and would exonerate the educator, in accordance with HB 3. The proposed rule would expand the reporting requirements for which the SBEC can sanction an educator if the educator fails to report in compliance with the statutory requirements. The proposed rule would also expand the reporting requirements for chief administrative officers in private schools, in accordance with SB 1230. The proposed rule would expand the enumerated reasons for which an educator’s application can be denied to include educators who have abandoned a contract within the preceding 12 months. The proposed rule would expand the reasons for which SBEC may sanction an educator to include hiring or failing to fire someone listed on the registry of persons who are not eligible to be employed under TEC, §22.092, in accordance with HB 3. The proposed rule would repeal the existing regulation that allowed the SBEC to consider sanctioning an educator for student loan default, in accordance with SB 37.

The proposed rule 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 increase or decrease fees paid to the agency, would not create a new regulation; would not increase or decrease the number of individuals subject to the rule's applicability, or 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 to ensure clarity and consistency in contract abandonment sanctions by the SBEC and improved student safety through enhanced enforceability of the new administrator reporting requirements imposed by the 86th Texas Legislature. The TEA staff has determined that there is no anticipated cost to persons required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impacts that were not directly created by HB 3 or SB 1246.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA staff has determined that the proposal would not require any additional written reports or other paperwork to be completed by a principal or classroom teacher that were not directly required by the 86th Texas Legislature through HB 3.

PUBLIC COMMENTS: The public comment period on the proposal begins October 25, 2019 and ends November 25, 2019. The SBEC will take registered oral and written comments on the proposal at the December 6, 2019 meeting in accordance with the SBEC board operating policies and procedures.

ASSOCIATE COMMISSIONER'S RECOMMENDATION:

Approve the proposed amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, to be published as proposed in the *Texas Register*.

Staff Members Responsible:

Laura Moriaty, Director, SBEC Enforcement
David Rodriguez, Director, Educator Investigations

Attachments:

- I. Statutory Citations
- II. Text of Proposed Amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases

ATTACHMENT I

Statutory Citations Relating to Proposed Amendment to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines**Texas Education Code, §21.006, Requirement to Report Misconduct, as amended by HB 3, 86th Texas Legislature, 2019 (excerpts):**

- (a) In this section:
- (1) "Abuse" [-,"abuse"] has the meaning assigned by Section 261.001, Family Code, and includes any sexual conduct involving an educator and a student or minor.
 - (2) "Other charter entity" means:
 - (A) a school district operating under a home-rule school district charter adopted under Subchapter B, Chapter 12;
 - (B) a campus or campus program operating under a charter granted under Subchapter C, Chapter 12; and
 - (C) an entity that contracts to partner with a school district under Section 11.174(a)(2) to operate a district campus under a charter granted to the entity by the district under Subchapter C, Chapter 12.
- (b) In addition to the reporting requirement under Section 261.101, Family Code, 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 shall notify the State Board for Educator Certification if:
- (1) an educator employed by or seeking employment by the school district, district of innovation, charter school, other charter entity, service center, or shared services arrangement has a criminal record and the school district, district of innovation, charter school, other charter entity, service center, or shared services arrangement obtained information about the educator's criminal record by a means other than the criminal history clearinghouse established under Section 411.0845, Government Code;
 - (2) an educator's employment at the school district, district of innovation, charter school, other charter entity, service center, or shared services arrangement was terminated and there is evidence that the educator:
 - (A) abused or otherwise committed an unlawful act with a student or minor;
 - (A-1) was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor;
 - (B) possessed, transferred, sold, or distributed a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;
 - (C) illegally transferred, appropriated, or expended funds or other property of the school district, district of innovation, charter school, service center, or shared services arrangement;

- (D) attempted by fraudulent or unauthorized means to obtain or alter a professional certificate or license for the purpose of promotion or additional compensation; or
 - (E) committed a criminal offense or any part of a criminal offense on school property or at a school-sponsored event;
 - (3) the educator resigned and there is evidence that the educator engaged in misconduct described by Subdivision (2); or
 - (4) the educator engaged in conduct that violated the assessment instrument security procedures established under Section 39.0301.
- (b-1) A 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 shall complete an investigation of an educator that involves evidence that the educator may have engaged in misconduct described by Subsection (b)(2)(A) or (A-1), despite the educator's resignation from employment before completion of the investigation.
- (b-2) The principal of a school district, district of innovation, [ø] open-enrollment charter school, other charter entity campus must notify the superintendent or director of the school district, district of innovation, [ø] charter school, or other charter entity not later than the seventh business day after the date:
- (1) of an educator's termination of employment or resignation following an alleged incident of misconduct described by Subsection (b); or
 - (2) the principal knew about an educator's criminal record under Subsection (b)(1).
- (c) The superintendent or director must notify the State Board for Educator Certification by filing a report with the board not later than the seventh business day after the date the superintendent or director receives a report from a principal under Subsection (b-2) or knew about an educator's termination of employment or resignation following an alleged incident of misconduct described by Subsection (b) or an employee's criminal record under Subsection (b)(1).
- (c-1) The report under Subsection (c) :
- (1) must be:
 - (A) [(4)] in writing; and
 - (B) [(2)] in a form prescribed by the board; and
 - (2) may be filed through the Internet portal developed and maintained by the State Board for Educator Certification under Subsection (g-1).
- (d) The superintendent or director shall notify the board of trustees or governing body of the school district, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement and the educator of the filing of the report required by Subsection (c).
- (e) A superintendent, director, or principal of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement who in good faith and while acting in an official capacity files a report with the State Board for Educator Certification under this section or communicates with another superintendent, director, or principal concerning an

- educator's criminal record or alleged incident of misconduct is immune from civil or criminal liability that might otherwise be incurred or imposed.
- (f) The State Board for Educator Certification shall determine whether to impose sanctions, including an administrative penalty under Subsection (i), against a principal who fails to provide notification to a superintendent or director in violation of Subsection (b-2) or against a superintendent or director who fails to file a report in violation of Subsection (c).
 - (g) The State Board for Educator Certification shall propose rules as necessary to implement this section.
 - (g-1) The State Board for Educator Certification shall develop and maintain an Internet portal through which a report required under Subsection (c) may be confidentially and securely filed.
 - (h) The name of a student or minor who is the victim of abuse or unlawful conduct by an educator must be included in a report filed under this section, but the name of the student or minor is not public information under Chapter 552, Government Code.
 - (i) If an educator serving as a superintendent or director is required to file a report under Subsection (c) and fails to file the report by the date required by that subsection, or if an educator serving as a principal is required to notify a superintendent or director about an educator's criminal record or alleged incident of misconduct under Subsection (b-2) and fails to provide the notice by the date required by that subsection, the State Board for Educator Certification may impose on the educator an administrative penalty of not less than \$500 and not more than \$10,000. The State Board for Educator Certification may not renew the certification of an educator against whom an administrative penalty is imposed under this subsection until the penalty is paid.
 - (j) A superintendent or director required to file a report under Subsection (c) commits an offense if the superintendent or director fails to file the report by the date required by that subsection with intent to conceal an educator's criminal record or alleged incident of misconduct. A principal required to notify a superintendent or director about an educator's criminal record or alleged incident of misconduct under Subsection (b-2) commits an offense if the principal fails to provide the notice by the date required by that subsection with intent to conceal an educator's criminal record or alleged incident of misconduct. An offense under this subsection is a state jail felony.

Texas Education Code §21.0062, Requirement to Report Misconduct: Private Schools, as added by SB 1230, 86th Texas Legislature, 2019 (excerpt):

- (a) In this section:
 - (1) "Abuse" has the meaning assigned by Section 261.001, Family Code, and includes any sexual conduct involving a student or minor and private school educator.
 - (2) "Private school educator" means a person employed by or seeking employment in a private school for a position in which the person would be required to hold a certificate issued under Subchapter B if the person were employed by a school district.
- (b) In addition to the reporting requirement under Section 261.101, Family Code, the chief administrative officer of a private school shall notify the State Board for Educator Certification if a private school educator:

- (1) has a criminal record and the private school obtained information about the educator's criminal record; or
- (2) was terminated and there is evidence that the educator:
 - (A) abused or otherwise committed an unlawful act with a student or minor; or
 - (B) was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor.
- (c) If there is evidence that a private school educator may have engaged in misconduct described by Subsection (b) and the educator resigns from employment before completion of the investigation, the chief administrative officer of the private school shall submit the evidence of misconduct collected to the State Board for Educator Certification.
- (d) The chief administrative officer of the private school must notify the State Board for Educator Certification by filing a report with the board not later than the seventh business day after the date the chief administrative officer knew that a private school educator:
 - (1) has a criminal record under Subsection (b)(1); or
 - (2) was terminated following an alleged incident of misconduct described by Subsection (b)(2).
- (e) The report filed under Subsection (d) must be:
 - (1) in writing; and
 - (2) in a form prescribed by the board.
- (f) Any person who knows or has reason to believe that a private school educator engaged in the misconduct described by Subsection (b)(2) may file a report with the State Board for Educator Certification under this section.
- (i) The State Board for Educator Certification shall propose rules as necessary to implement this section.

Texas Education Code §21.007, Notice on Certification Record of Alleged Misconduct

- (a) In this section, "board" means the State Board for Educator Certification.
- (b) The board shall adopt a procedure for placing a notice of alleged misconduct on an educator's public certification records. The procedure adopted by the board must provide for immediate placement of a notice of alleged misconduct on an educator's public certification records if the alleged misconduct presents a risk to the health, safety, or welfare of a student or minor as determined by the board.
- (c) The board must notify an educator in writing when placing a notice of an alleged incident of misconduct on the public certification records of the educator.
- (d) The board must provide an opportunity for an educator to show cause why the notice should not be placed on the educator's public certification records. The board shall propose rules establishing the length of time that a notice may remain on the educator's public certification records before the board must:
 - (1) initiate a proceeding to impose a sanction on the educator on the basis of the alleged misconduct; or

- (2) remove the notice from the educator's public certification records.
- (e) If it is determined that the educator has not engaged in the alleged incident of misconduct, the board shall immediately remove the notice from the educator's public certification records.
- (f) The board shall propose rules necessary to administer this section.

Texas Education Code, §21.009, Pre-Employment Affidavit, as amended by SB 1230, 86th Texas Legislature, 2019 (excerpt):

- (e) The State Board for Educator Certification may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant for a position described by Section 21.003(a) or (b) despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor.

Texas Education Code, §21.031, Purpose (excerpt):

- (a) The State Board for Educator Certification is established to recognize public school educators as professionals and to grant educators the authority to govern the standards of their profession. The board shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators.

Texas Education Code, §21.035, Delegation of Authority; Administration by Agency (excerpts):

- (a) The board is permitted to make a written delegation of authority to the commissioner or the agency to informally dispose of a contested case involving educator certification.
- (b) The agency shall provide the board's administrative functions and services.

Texas Education Code, §21.041, Rules; Fees (excerpts):

- (a) The board may adopt rules as necessary for its own procedures.
- (b) The board shall propose rules that:
 - (1) provide for the regulation of educators and the general administration of this subchapter in a manner consistent with this subchapter;
 - (4) specify the requirements for the issuance and renewal of an educator certificate;
 - (7) provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Chapter 2001, Government Code;
 - (8) provide for the adoption, amendment, and enforcement of an educator's code of ethics;

Texas Education Code, §21.058, Revocation of Certificate and Termination of Employment Based on Conviction of or Placement on Deferred Adjudication Community Supervision for Certain Offenses:

- (a) The procedures described by Subsections (b) and (c) apply only:
 - (1) to conviction of a felony offense under Title 5, Penal Code, or an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; and

- (2) if the victim of the offense is under 18 years of age.
- (b) Notwithstanding Section 21.041(b)(7), not later than the fifth day after the date the board receives notice under Article 42.018, Code of Criminal Procedure, of the conviction or placement on deferred adjudication community supervision of a person who holds a certificate under this subchapter, the board shall:
 - (1) revoke the certificate held by the person; and
 - (2) provide to the person and to any school district or open-enrollment charter school employing the person at the time of revocation written notice of:
 - (A) the revocation; and
 - (B) the basis for the revocation.
- (c) A school district or open-enrollment charter school that receives notice under Subsection (b) of the revocation of a certificate issued under this subchapter shall:
 - (1) immediately remove the person whose certificate has been revoked from campus or from an administrative office, as applicable, to prevent the person from having any contact with a student; and
 - (2) if the person is employed under a probationary, continuing, or term contract under this chapter, with the approval of the board of trustees or governing body or a designee of the board or governing body:
 - (A) suspend the person without pay;
 - (B) provide the person with written notice that the person's contract is void as provided by Subsection (c-2); and
 - (C) terminate the employment of the person as soon as practicable.
- (c-1) If a school district or open-enrollment charter school becomes aware that a person employed by the district or school under a probationary, continuing, or term contract under this chapter has been convicted of or received deferred adjudication for a felony offense, and the person is not subject to Subsection (c), the district or school may, with the approval of the board of trustees or governing body or a designee of the board of trustees or governing body:
 - (1) suspend the person without pay;
 - (2) provide the person with written notice that the person's contract is void as provided by Subsection (c-2); and
 - (3) terminate the employment of the person as soon as practicable.
- (c-2) A person's probationary, continuing, or term contract is void if, with the approval of the board of trustees or governing body or a designee of the board or governing body, the school district or open-enrollment charter school takes action under Subsection (c)(2)(B) or (c-1)(2).
- (d) A person whose certificate is revoked under Subsection (b) may reapply for a certificate in accordance with board rules.
- (e) Action taken by a school district or open-enrollment charter school under Subsection (c) or (c-1) is not subject to appeal under this chapter, and the notice and hearing requirements of this chapter do not apply to the action.

Texas Education Code, §21.0581, Revocation for Assisting Person Who Engaged in Sexual Misconduct Obtain Employment, as amended by SB 1230, 86th Texas Legislature, 2019 (excerpts):

- (a) The board may suspend or revoke a certificate held by a person under this subchapter, impose other sanctions against the person, or refuse to issue a certificate to the person under this subchapter if:
 - (1) the person assists 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; and
 - (2) the person knew that the other person has previously engaged in sexual misconduct with a minor or student in violation of the law.
- (b) The commissioner may require a school district to revoke or decline to issue a school district teaching permit under Section 21.055 issued to or requested by a person subject to board action under Subsection (a).

Texas Education Code, §21.060, Eligibility of Persons Convicted of Certain Offenses:

The board may suspend or revoke the certificate or permit held by a person under this subchapter, impose other sanctions against the person, or refuse to issue a certificate or permit to a person under this subchapter if the person has been convicted of a felony or misdemeanor offense relating to the duties and responsibilities of the education profession, including:

- (1) an offense involving moral turpitude;
- (2) an offense involving a form of sexual or physical abuse of a minor or student or other illegal conduct in which the victim is a minor or student;
- (3) a felony offense involving the possession, transfer, sale, or distribution of or conspiracy to possess, transfer, sell, or distribute a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq.;
- (4) an offense involving the illegal transfer, appropriation, or use of school district funds or other district property; or
- (5) an offense involving an attempt by fraudulent or unauthorized means to obtain or alter a professional certificate or license issued under this subchapter.

Texas Education Code, §21.105, Resignations Under Probationary Contract (excerpt):

- (c) On written complaint by the employing district, the State Board for Educator Certification may impose sanctions against a teacher employed under a probationary contract who:
 - (1) resigns;
 - (2) fails without good cause to comply with Subsection (a) or (b); and
 - (3) fails to perform the contract.

Texas Education Code, §21.160, Resignation Under Continuing Contract (excerpt):

- (c) On written complaint by the employing district, the State Board for Educator Certification may impose sanctions against a teacher who is employed under a continuing contract that obligates the district to employ the person for the following school year and who:

- (1) resigns;
- (2) fails without good cause to comply with Subsection (a) or (b); and
- (3) fails to perform the contract.

Texas Education Code, §21.210, Resignation Under Term Contract (excerpt):

- (c) On written complaint by the employing district, the State Board for Educator Certification may impose sanctions against a teacher who is employed under a term contract that obligates the district to employ the person for the following school year and who:
 - (1) resigns;
 - (2) fails without good cause to comply with Subsection (a) or (b); and
 - (3) fails to perform the contract.

Texas Education Code, §22.082, Access to Criminal History Records by State Board for Educator Certification:

The State Board for Educator Certification shall subscribe to the criminal history clearinghouse as provided by Section 411.0845, Government Code, and may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21.

Texas Education Code, §22.0831, National Criminal History Record Information Review of Certified Educators:

- (a) In this section, "board" means the State Board for Educator Certification.
- (b) This section applies to a person who is an applicant for or holder of a certificate under Subchapter B, Chapter 21, and who is employed by or is an applicant for employment by a school district, open-enrollment charter school, or shared services arrangement.
- (c) The board shall review the national criminal history record information of a person who has not previously submitted fingerprints to the department or been subject to a national criminal history record information review.
- (d) The board shall place an educator's certificate on inactive status for failure to comply with a deadline for submitting information required under this section.
- (e) The board may allow a person who is applying for a certificate under Subchapter B, Chapter 21, and who currently resides in another state to submit the person's fingerprints and other required information in a manner that does not impose an undue hardship on the person.
- (f) The board may propose rules to implement this section, including rules establishing:
 - (1) deadlines for a person to submit fingerprints and photographs in compliance with this section; and
 - (2) sanctions for a person's failure to comply with the requirements of this section, including suspension or revocation of a certificate or refusal to issue a certificate.

Texas Education Code, §22.085, Employees and Applicants Convicted of Certain Offenses:

- (a) A school district, open-enrollment charter school, or shared services arrangement shall discharge or refuse to hire an employee or applicant for employment if the district, school, or shared services arrangement obtains information through a criminal history record information review that:
- (1) the employee or applicant has been convicted of:
 - (A) a felony offense under Title 5, Penal Code;
 - (B) an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or
 - (C) an offense under the laws of another state or federal law that is equivalent to an offense under Paragraph (A) or (B); and
 - (2) at the time the offense occurred, the victim of the offense described by Subdivision (1) was under 18 years of age or was enrolled in a public school.
- (b) Subsection (a) does not apply if the employee or applicant for employment committed an offense under Title 5, Penal Code and:
- (1) the date of the offense is more than 30 years before:
 - (A) the effective date of S.B. No. 9, Acts of the 80th Legislature, Regular Session, 2007, in the case of a person employed by a school district, open-enrollment charter school, or shared services arrangement as of that date; or
 - (B) the date the person's employment will begin, in the case of a person applying for employment with a school district, open-enrollment charter school, or shared services arrangement after the effective date of S.B. No. 9, Acts of the 80th Legislature, Regular Session, 2007; and
 - (2) the employee or applicant for employment satisfied all terms of the court order entered on conviction.
- (c) A school district, open-enrollment charter school, or shared services arrangement may not allow a person who is an employee of or applicant for employment by an entity that contracts with the district, school, or shared services arrangement to serve at the district or school or for the shared services arrangement if the district, school, or shared services arrangement obtains information described by Subsection (a) through a criminal history record information review concerning the employee or applicant. A school district, open-enrollment charter school, or shared services arrangement must ensure that an entity that the district, school, or shared services arrangement contracts with for services has obtained all criminal history record information as required by Section 22.0834 or 22.08341.
- (d) A school district, open-enrollment charter school, private school, regional education service center, or shared services arrangement may discharge an employee if the district or school obtains information of the employee's conviction of a felony or of a misdemeanor involving moral turpitude that the employee did not disclose to the State Board for Educator Certification or the district, school, service center, or shared services arrangement. An employee discharged under this section is considered to have been discharged for misconduct for purposes of Section 207.044, Labor Code.

- (e) The State Board for Educator Certification 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, through a criminal history record information review, that the employee or applicant has been convicted of an offense described by Subsection (a).
- (f) Each school year, the superintendent of a school district or chief operating officer of an open-enrollment charter school shall certify to the commissioner that the district or school has complied with this section.

Texas Education Code, §22.087, Notification to State Board for Educator Certification:

The superintendent of a school district or the director of an open-enrollment charter school, private school, regional education service center, or shared services arrangement shall promptly notify the State Board for Educator Certification in writing if:

- (1) the person obtains or has knowledge of information showing that an applicant for or holder of a certificate issued under Subchapter B Chapter 21, has a reported criminal history; and
- (2) the person obtained the information by a means other than the criminal history clearinghouse established under Section 411.0845, Government Code.

Texas Education Code, §22.092, Registry of Persons Not Eligible for Employment in Public Schools, as added by HB 3, 86th Texas Legislature, 2019:

- (a) The agency shall maintain and make available through the Internet portal developed and maintained by the agency under Section 22.095 a registry of persons who are not eligible to be employed by a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement.
- (b) A school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement shall discharge or refuse to hire a person listed on the registry maintained under this section.
- (c) The registry maintained under this section must list the following persons as not eligible to be employed by public schools:
 - (1) a person determined by the agency under Section 22.0832 as a person who would not be eligible for educator certification under Subchapter B, Chapter 21;
 - (2) a person determined by the agency to be not eligible for employment based on the person's criminal history record information review, as provided by Section 22.0833;
 - (3) a person who is not eligible for employment based on criminal history record information received by the agency under Section 21.058(b);
 - (4) a person whose certification or permit issued under Subchapter B, Chapter 21, is revoked by the State Board for Educator Certification on a finding that the person engaged in misconduct described by Section 21.006(b)(2)(A) or (A-1); and
 - (5) a person who is determined by the commissioner under Section 22.094 to have engaged in misconduct described by Section 22.093(c)(1)(A) or (B).
- (d) The agency shall provide private schools and public schools equivalent access to the registry maintained under this section.

(e) The agency shall adopt rules as necessary to implement this section.

Texas Education Code, §22.093, Requirement to Report Employee Misconduct, as added by HB 3, 86th Texas Legislature, 2019 (excerpts):

(a) In this section, "abuse" has the meaning assigned by Section 261.001, Family Code, and includes any sexual conduct involving a student or minor.

(b) This section applies to a person who is employed by a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center, or shared services arrangement and who does not hold a certification or permit issued under Subchapter B, Chapter 21.

(c) In addition to the reporting requirement under Section 261.101, Family Code, 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 shall notify the commissioner if:

(1) an employee's employment at the school district, district of innovation, charter school, other charter entity, service center, or shared services arrangement was terminated and there is evidence that the employee:

(A) abused or otherwise committed an unlawful act with a student or minor; or

(B) was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor; or

(2) the employee resigned and there is evidence that the employee engaged in misconduct described by Subdivision (1).

(d) A 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 shall complete an investigation of an employee that involves evidence that the employee may have engaged in misconduct described by Subsection (c)(1)(A) or (B), despite the employee's resignation from employment before completion of the investigation.

(e) The principal of a school district, district of innovation, open-enrollment charter school, or other charter entity campus must notify the superintendent or director of the school district, district of innovation, charter school, or other charter entity not later than the seventh business day after the date of an employee's termination of employment or resignation following an alleged incident of misconduct described by Subsection (c)(1)(A) or (B).

(f) The superintendent or director must notify the commissioner by filing a report with the commissioner not later than the seventh business day after the date the superintendent or director receives a report from a principal under Subsection (e) or knew about an employee's termination of employment or resignation following an alleged incident of misconduct described by Subsection (c)(1)(A) or (B). The report must be:

(1) in writing; and

(2) in a form prescribed by the commissioner.

Texas Government Code, §411.090, Access to Criminal History Record Information: State Board for Educator Certification:

- (a) The State Board for Educator Certification is entitled to obtain from the department any criminal history record information maintained by the department about a person who has applied to the board for a certificate under Subchapter B, Chapter 21, Education Code.
- (b) Criminal history record information obtained by the board in the original form or any subsequent form:
 - (1) may be used only for a purpose related to the issuance, denial, suspension, or cancellation of a certificate issued by the board;
 - (2) may not be released to any person except:
 - (A) the person who is the subject of the information;
 - (B) the Texas Education Agency;
 - (C) a local or regional educational entity as provided by Section 411.097; or
 - (D) by court order;
 - (3) is not subject to disclosure as provided by Chapter 552; and
 - (4) shall be destroyed by the board after the information is used for the authorized purposes.
- (c) The department shall notify the State Board for Educator Certification of the arrest of any educator, as defined by Section 5.001, Education Code, who has fingerprints on file with the department. Any record of the notification or any information contained in the notification is not subject to disclosure as provided by Chapter 552.

Texas Government Code, §2001.058, Hearing Conducted by State Office of Administrative Hearings, as amended by SB 1231, 86th Texas Legislature, 2019 (excerpts):

- (d-1) On making a finding that a party to a contested case has defaulted under the rules of the State Office of Administrative Hearings, the administrative law judge may dismiss the case from the docket of the State Office of Administrative Hearings and remand it to the referring agency for informal disposition under Section 2001.056. After the case is dismissed and remanded, the agency may informally dispose of the case by applying its own rules or the procedural rules of the State Office of Administrative Hearings relating to default proceedings. This subsection does not apply to a contested case in which the administrative law judge is authorized to render a final decision.
- (e) A state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines:
 - (1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided under Subsection (c), or prior administrative decisions;
 - (2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or
 - (3) that a technical error in a finding of fact should be changed.

The agency shall state in writing the specific reason and legal basis for a change made under this subsection.

Texas Family Code, §261.308, Submission of Investigation Report, as amended by SB 1231, 86th Texas Legislature, 2019 (excerpts):

- (d) The department shall release information regarding a person alleged to have committed abuse or neglect to persons who have control over the person's access to children, including, as appropriate, the Texas Education Agency, the State Board for Educator Certification, the local school board or the school's governing body, the superintendent of the school district, ~~[or] the public school principal or director,~~ the director of the open enrollment charter school, or the chief executive officer of the private school if the department determines that:
- (1) the person alleged to have committed abuse or neglect poses a substantial and immediate risk of harm to one or more children outside the family of a child who is the subject of the investigation; and
 - (2) the release of the information is necessary to assist in protecting one or more children from the person alleged to have committed abuse or neglect.
- (e) On request, the department shall release information about a person alleged to have committed abuse or neglect to the State Board for Educator Certification if the board has a reasonable basis for believing that the information is necessary to assist the board in protecting children from the person alleged to have committed abuse or neglect.

Texas Family Code, §261.406, Investigations in Schools, as amended by SB 1231, 86th Texas Legislature, 2019 (excerpts):

- (a) On receipt of a report of alleged or suspected abuse or neglect of a child in a public or private school ~~[under the jurisdiction of the Texas Education Agency]~~, the department shall perform an investigation as provided by this chapter.
- (b) The department shall send a copy of the completed report of the department's investigation to the Texas Education Agency or, in the case of a private school, the school's chief executive officer. On request, the department shall provide a copy of the report of investigation to the State Board for Educator Certification, the local school board or the school's governing body, the superintendent of the school district, ~~[and] the public school principal or director,~~ or the chief executive officer of the private school, unless the principal, ~~[or] director,~~ or the chief executive officer is alleged to have committed the abuse or neglect, for appropriate action. On request, the department shall provide a copy of the report of investigation to the parent, managing conservator, or legal guardian of a child who is the subject of the investigation and to the person alleged to have committed the abuse or neglect. The report of investigation shall be edited to protect the identity of the persons who made the report of abuse or neglect. Except as otherwise provided by this subsection ~~[Other than the persons authorized by the section to receive a copy of the report]~~, Section 261.201(b) applies to the release of the report relating to the investigation of abuse or neglect under this section and to the identity of the person who made the report of abuse or neglect.

Texas Occupations Code, §53.021, Authority to Revoke, Suspend, or Deny License, as amended by SB 1342, 86th Texas Legislature, 2019 (excerpt):

- (a) Subject to Section 53.0231, a [A] licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of:
- (1) an offense that directly relates to the duties and responsibilities of the licensed occupation;
 - (2) ~~[an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license;]~~
 - (2) ~~(3)~~ an offense listed in Article 42A.054, Code of Criminal Procedure; or
 - (3) ~~(4)~~ a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

Texas Occupations Code, §53.022, Factors in Determining Whether Conviction Relates to Occupation, as amended by SB 1342, 86th Texas Legislature, 2019:

In determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed ~~[an]~~ occupation, the licensing authority shall consider each of the following factors:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; ~~[and]~~
- (4) the relationship of the crime to the ability, or capacity~~[-or fitness]~~ required to perform the duties and discharge the responsibilities of the licensed occupation; and ~~[-]~~
- (5) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

Texas Occupations Code, §53.023, Additional Factors for Licensing Authority to Consider After Determining Conviction Directly Relates to Occupation, as amended by SB 1342, 86th Texas Legislature, 2019:

- (a) If a licensing authority determines under Section 53.022 that a criminal conviction directly relates to the duties and responsibilities of a licensed occupation, ~~[In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime,]~~ the licensing authority shall consider~~[-, in addition to the factors listed in Section 53.022]~~:
- (1) the extent and nature of the person's past criminal activity;
 - (2) the age of the person when the crime was committed;
 - (3) the amount of time that has elapsed since the person's last criminal activity;
 - (4) the conduct and work activity of the person before and after the criminal activity;

- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; ~~and~~
- (6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and
- (7) ~~(6)~~ other evidence of the person's fitness, including letters of recommendation ~~from:~~
 - ~~(A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;~~
 - ~~(B) the sheriff or chief of police in the community where the person resides; and~~
 - ~~(C) any other person in contact with the convicted person.]~~
- (b) The applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations described ~~[of the prosecution, law enforcement, and correctional authorities as required]~~ by Subsection (a)(7) ~~[(a)(6)]~~.
- (c) In addition to fulfilling the requirements of Subsection (b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has:
 - (1) maintained a record of steady employment;
 - (2) supported the applicant's dependents;
 - (3) maintained a record of good conduct; and
 - (4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

Texas Occupations Code, §53.024, Proceedings Governed by Administrative Procedure Act:

A proceeding before a licensing authority to establish factors required to be considered under this subchapter is governed by Chapter 2001, Government Code.

Texas Occupations Code, §53.025, Guidelines:

- (a) Each licensing authority shall issue guidelines relating to the practice of the licensing authority under this chapter. The guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.
- (b) A state licensing authority that issues guidelines under this section shall file the guidelines with the secretary of state for publication in the Texas Register.
- (c) A local or county licensing authority that issues guidelines under this section shall post the guidelines at the courthouse for the county in which the licensing authority is located or publish the guidelines in a newspaper having countywide circulation in that county.
- (d) Amendments to the guidelines, if any, shall be issued annually.

Texas Occupations Code, §53.051, Notice, as amended by SB 1342, 86th Texas Legislature, 2019:

A licensing authority that suspends or revokes a license or denies a person a license or the opportunity to be examined for a license because of the person's prior conviction of

an offense ~~[a crime and the relationship of the crime to the license]~~ shall notify the person in writing of:

- (1) the reason for the suspension, revocation, denial, or disqualification, including any factor considered under Section 53.022 or 53.023 that served as the basis for the suspension, revocation, denial, or disqualification;
- (2) the review procedure provided by Section 53.052; and
- (3) the earliest date the person may appeal the action of the licensing authority.

Texas Occupations Code, §53.052, Judicial Review:

- (a) A person whose license has been suspended or revoked or who has been denied a license or the opportunity to take an examination under Section 53.021 and who has exhausted the person's administrative appeals may file an action in the district court in the county in which the licensing authority is located for review of the evidence presented to the licensing authority and the decision of the licensing authority.
- (b) The petition for an action under Subsection (a) must be filed not later than the 30th day after the date the licensing authority's decision is final and appealable.

Texas Occupations Code §56.003, Disciplinary [Authority to Take] Action in Event of Default or Breach Prohibited, as amended by SB 37, 86th Texas Legislature, 2019:

A ~~[On receipt of information from an administering entity that a person has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract by failing to perform the person's service obligation under the contract, a]~~ licensing authority may not take disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including by:

- (1) denying ~~[deny]~~ the person's application for a license or license renewal;
- (2) suspending ~~[suspend]~~ the person's license; or
- (3) taking ~~[take]~~ other disciplinary action against the person.

Every Student Succeeds Act, 20 United States Code (USC), §7926, Prohibition on Aiding and Abetting Sexual Abuse (excerpt):

- (a) In general

A State, State educational agency, or local educational agency in the case of a local educational agency that receives Federal funds under this chapter shall have laws, regulations, or policies that prohibit any individual who is a school employee, contractor, or agent, or any State educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.

ATTACHMENT II
Text of Proposed Amendments to 19 TAC

Chapter 249. Disciplinary Proceedings, Sanctions, and Contested Cases

Subchapter B. Enforcement Actions and Guidelines

§249.12. Administrative Denial; Appeal.

- (a) This section applies to administrative denials, as that term is defined in §249.3 of this title (relating to Definitions). This section does not apply to the denial of an application for a certificate that has been permanently revoked, and it does not apply to the failure to issue a certificate because specific certification requirements have not been met.
- (b) The Texas Education Agency (TEA) staff may administratively deny any of the matters set out in subsection (a) of this section based on satisfactory evidence that:
- (1) the person filed a fraudulent application;
 - (2) the person assisted another person in obtaining employment at a school district or open-enrollment charter school, other than by the routine transmission of administrative or personnel files when the person knew that the other person had previously engaged in an inappropriate relationship with a minor or student in violation of the law;
 - (3) the person has committed an act that would make them subject to required revocation under the Texas Education Code (TEC) , §21.058;
 - (4) the person has committed an act that would make them subject to mandatory permanent revocation or denial under §249.17(i) of this title (relating to Decision-Making Guidelines);
 - (5) the person has engaged in conduct or committed a crime or an offense that:
 - (A) demonstrates that the person lacks good moral character;
 - (B) demonstrates that the person is unworthy to instruct or to supervise the youth of this state; or
 - (C) constitutes the elements of a crime or offense relating directly to the duties and responsibilities of the education profession; or
 - (6) the person failed to comply with the terms or conditions of an order issued by or on behalf of the State Board for Educator Certification or the TEA staff ; [x]
 - (7) TEA staff has previously received a timely report from a school district that the person is subject to sanctions for having abandoned a TEC, Chapter 21, contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c) and less than 12 months has elapsed from the first day that, without district permission, the person failed to appear for work under the contract.
- (c) The TEA staff shall provide written notice of the denial and the factual and legal reasons for it to the person whose application or request has been administratively denied. The notice shall be given by registered or certified mail to the address the person has provided in the application or request that is being denied. The person may attempt to show compliance with legal requirements by written submission or by requesting an informal conference, and/or may appeal and request a State Office of Administrative Hearings (SOAH) hearing as hereafter provided. The 30-day deadline to appeal and request a hearing is not tolled during any attempts to show cause.
- (d) The appeal and request for a SOAH hearing of an administrative denial shall be in the form of a petition that complies in content and form with §249.26 of this title (relating to Petition) and 1 Texas Administrative Code, Part 7, §155.301 (relating to Required Form of Pleadings). In order to be referred to the SOAH for a contested case hearing, an appeal petition must be filed with the TEA staff within 30 calendar days after the person received or is deemed to have received written notice of the administrative denial. Unless otherwise proved by the person, the notice shall be deemed to have been received by the

examinee no later than five calendar days after mailing to the most recent address provided by the person. The TEA staff may dismiss an appeal that is not timely filed without further action.

- (e) The TEA staff shall send an answer to the petition to the person appealing an administrative denial and shall refer the petition and answer to the SOAH for a contested case hearing.

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

- (a) The Texas Education Agency (TEA) staff may obtain and investigate information concerning alleged improper conduct by an educator, applicant, examinee, or other person subject to this chapter that would warrant the State Board for Educator Certification (SBEC) denying relief to or taking disciplinary action against the person or certificate.
- (b) Complaints against an educator, applicant, or examinee must be filed in writing.
- (c) The TEA staff may also obtain and act on other information providing grounds for investigation and possible action under this chapter.
- (d) A person who serves as the superintendent of a school district or district of innovation, ~~or~~ the director of a ~~an open enrollment~~ charter school, ~~private school~~ regional education service center, or shared services arrangement, ~~or the chief administrative officer of a private school~~ may notify the SBEC of any educator misconduct that the person believes in good faith may be subject to sanctions under this chapter and/or Chapter 247 of this title (relating to Educators' Code of Ethics). However, under any of the following circumstances, a person who serves in such a position shall promptly notify the SBEC in writing by filing a report with the TEA staff within seven business days of the date the person either receives a report from a principal under subsection (e) of this section or knew of those circumstances, any of the following circumstances, except if the person is a superintendent or director of a public school and has completed an investigation in accordance with Texas Education Code (TEC), §21.006(c-2), resulting in a determination that the educator did not engage in misconduct [and may be subject to sanctions for failure to do so, pursuant to §249.15(b)(4) of this title (relating to Disciplinary Action by State Board for Educator Certification)] :
- (1) that an applicant for or a holder of a certificate has a reported criminal history, which the superintendent or director obtained information by a means other than the criminal history clearinghouse established under Texas Government Code, §411.0845;
 - (2) that a certificate holder was terminated from employment and there is evidence that he or she committed any of the following acts:
 - (A) sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor;
 - (B) possessed, transferred, sold, or distributed a controlled substance;
 - (C) illegally transferred, appropriated, or expended school property or funds;
 - (D) attempted by fraudulent or unauthorized means to obtain or to alter any certificate or permit that would entitle the individual to be employed in a position requiring such certificate or permit or to receive additional compensation associated with a position;
 - (E) committed a crime, any part of such crime having occurred on school property or at a school-sponsored event; or
 - (F) solicited or engaged in sexual conduct or a romantic relationship with a student or minor;
 - (3) that a certificate holder has submitted a notice of resignation and that there exists evidence that he or she committed one of the acts specified in paragraph (2) of this subsection.
 - (A) Before accepting an employee's resignation that, under this paragraph, requires a person to notify the SBEC by filing a report with the TEA staff, the person shall inform the certificate holder in writing that such a report will be filed and that sanctions against his or her certificate may result as a consequence.

- (B) A person required to comply with this paragraph shall notify the governing body of the employing school district before filing the report with the TEA staff.
- (C) A superintendent or director of a school district shall complete an investigation of an educator if there is reasonable cause to believe the educator may have engaged in misconduct described in paragraph (2)(A) of this subsection despite the educator's resignation from district employment before completion of the investigation; or
- (4) any other circumstances requiring a report under the TEC [~~Texas Education Code (TEC)~~], §21.006.
- (e) A person who serves as a principal in a school district, a district of innovation, or a ~~an open enrollment~~ charter school must notify the superintendent or director of the school district, district of innovation, or charter school and may be subject to sanctions for failure to do so ~~[, pursuant to §249.15(b)(4) of this title (relating to Disciplinary Action by State Board for Educator Certification),]~~ no later than seven business days after:
 - (1) an educator's termination or resignation following an alleged incident of misconduct involving one of the acts described in subsection (d)(2) of this section; or
 - (2) the principal knew about an educator's reported criminal history.
- (f) Pursuant to the TEC, §21.006(b-2), (c), (h), and (i), a report filed under subsections (d) and (e) of this section must include:
 - (1) the name or names of any student or minor who is the victim of abuse or unlawful conduct by an educator; and
 - (2) the factual circumstances requiring the report and the subject of the report by providing the following available information:
 - (A) name and any aliases; certificate number, if any, or social security number;
 - (B) last known mailing address and home and daytime phone numbers;
 - (C) all available contact information for any alleged victim or victims;
 - (D) name or names and any available contact information of any relevant witnesses to the circumstances requiring the report;
 - (E) current employment status of the subject, including any information about proposed termination, notice of resignation, or pending employment actions; and
 - (F) involvement by a law enforcement or other agency, including the name of the agency.
- (g) Pursuant to the Family Educational Rights and Privacy Act (FERPA), 20 United States Code, §1232g(a)(4), and the federal regulations interpreting it at 34 Code of Federal Regulations, §99.3, education records that are protected by FERPA must be records that are directly related to a student, and the term "education records" does not include records that relate to a school employee in his or her capacity as a school employee.
- (h) A person who is required to file a report under subsections (d) and (e) of this section but fails to do so timely is subject to sanctions under this chapter.
- (i) If a school district board of trustees learns of a failure by the superintendent of the district or a district principal to provide a notice required under the Texas Code of Criminal Procedure (TCCP), §15.27(a), (a-1), or (b), the board of trustees shall report the failure to the SBEC. If the governing body of a private primary or secondary school learns of a failure by the principal of the school to provide a notice required under the TCCP, §15.27(e), and the principal holds a certificate issued under the TEC, Chapter 21, Subchapter B, the governing body shall report the failure to the SBEC.
- (j) The TEA staff shall not pursue sanctions against an educator who is alleged to have abandoned his or her TEC, Chapter 21, contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), subject to the limitations imposed by the TEC, §21.4021(g), unless the board of trustees of the employing school district:

- (1) submits a written complaint to the TEA staff within 30 calendar days after the effective date of the educator's separation from employment from the school district. For purposes of this section, unless the school district and the educator have a written agreement to the contrary, the effective date of separation from employment is the first day that, without district permission, the educator fails to appear for work under the contract;
 - (2) renders a finding that good cause did not exist under the TEC, §§21.105(c)(2), 21.160(c)(2), or 21.210(c)(2). This finding constitutes prima facie evidence of the educator's lack of good cause, but is not a conclusive determination; and
 - (3) submits the following required attachments to the written complaint:
 - (A) the educator's resignation letter, if any;
 - (B) the agreement with the educator regarding the effective date of separation from employment, if any;
 - (C) the educator's contract; and
 - (D) school board meeting minutes indicating a finding of "no good cause" (if the board does not meet within 30 calendar days of the educator's separation from employment, the minutes may be submitted within 10 calendar days after the next board meeting).
- (k) To efficiently administer and implement the SBEC's purpose under this chapter and the TEC, the TEA staff may set priorities for the investigation of complaints based on the severity and immediacy of the allegations and the likelihood of harm posed by the subject of the investigation. All cases accepted for investigation shall be assigned one of the following priorities.
- (1) Priority 1: conduct that may result in the placement of an investigative notice pursuant to the TEC, §21.007, and subsection (l) of this section because it presents a risk to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague, including, but not limited to, the following:
 - (A) any conduct constituting a felony criminal offense;
 - (B) indecent exposure;
 - (C) public lewdness;
 - (D) child abuse and/or neglect;
 - (E) possession of a weapon on school property;
 - (F) drug offenses occurring on school property;
 - (G) sale to or making alcohol or other drugs available to a student or minor;
 - (H) sale, distribution, or display of harmful material to a student or minor;
 - (I) certificate fraud;
 - (J) state assessment testing violations;
 - (K) deadly conduct; and
 - (L) conduct that involves inappropriate communication with a student as described in §247.2(3)(I) of this title (relating to Code of Ethics and Standard Practices for Texas Educators), inappropriate professional educator-student relationships and boundaries, or otherwise soliciting or engaging in sexual conduct or a romantic relationship with a student or minor.
 - (2) Priority 2: any sanctionable conduct that is not Priority 1 conduct under paragraph (1) of this subsection. An investigative notice will not be placed on an educator's certification records on the basis of an allegation of Priority 2 conduct. The TEA staff may change a case's priority at any time based on information received. Priority 2 conduct includes, but is not limited to, the following:

- (A) any conduct constituting a misdemeanor criminal offense or testing violation that is not Priority 1 conduct;
 - (B) contract abandonment; and
 - (C) code of ethics violations that do not constitute Priority 1 conduct.
- (l) After accepting a case for investigation, if the alleged conduct indicates a risk to the health, safety, or welfare of a student or minor, as described in subsection (k)(1) of this section, the TEA staff shall immediately place an investigative notice on the certificate holder's certification records stating that the certificate holder is currently under investigation. The placement of such an investigative notice must follow the procedures set forth in subsection (m)(1) of this section. After accepting a case for investigation, if the alleged conduct indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (k)(1) of this section, the TEA staff may place an investigative notice on the certificate holder's certification records stating that the certificate holder is currently under investigation. The placement of an investigative notice must follow the procedures set forth in subsection (m)(2) of this section.
- (m) The following procedures must be followed for placing an investigative notice on the educator's certification records.
- (1) At the time of placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a student or minor, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.
 - (A) Within ten calendar days of placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.91 of this title (relating to Procedures in General).
 - (B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide the certificate holder the opportunity to show cause within ten calendar days why the notice should be removed from the educator's certification records.
 - (2) Prior to placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (k)(1) of this section, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.
 - (A) At least ten calendar days before placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.91 of this title.
 - (B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide the certificate holder the opportunity to show cause within ten calendar days why the notice should not be placed on the educator's certification records.
 - (3) The TEA staff shall determine whether or not to remove or place an investigative notice on the educator's certification records, taking into account the educator's response, if any, to the letter notifying the certificate holder of the investigation.
- (n) An investigative notice is subject to the following time limits.
- (1) An investigative notice may remain on the certification records of a certificate holder for a period not to exceed 240 calendar days.
 - (2) The TEA staff may toll this time limit if information is received indicating that there is a pending criminal or administrative matter related to the alleged act of misconduct that gives rise to the

investigative notice. For purposes of this subsection, a criminal or administrative matter includes an audit by a state or federal agency, an arrest, an investigation, related litigation or other enforcement action brought by a state or federal administrative agency, or a prosecution by a criminal law enforcement agency. Upon receiving notice that the criminal or administrative matter has been resolved the tolling period shall end. As part of its procedure, the TEA staff will attempt to make bimonthly (once every two months) contact with the agency where a related matter is pending to determine whether the related matter has been closed or otherwise resolved.

- (3) The TEA staff may toll this time limit if the matter is referred for a contested case hearing, upon agreement of the parties, or while the matter is pending action by the SBEC on a proposed agreed order.
- (o) The TEA staff shall remove an investigative notice from an educator's certification records:
 - (1) when a case's final disposition occurs within the time limits established in subsection (n) of this section; or
 - (2) when the time limits for an investigative notice have been exceeded, if:
 - (A) the certificate holder has made a written demand to the TEA staff that the investigative notice be removed because the time limits have been exceeded; and
 - (B) the TEA staff has failed to refer the matter to the State Office of Administrative Hearings for a contested case hearing within 30 calendar days from the date of receipt of the written demand to remove the investigative notice.
- (p) Only the TEA staff may file a petition seeking sanctions under §249.15 of this title. Prior to filing a petition, the TEA staff shall mail to the certificate holder affected by written notice of the facts or conduct alleged to warrant the intended action and shall provide the certificate holder an opportunity to show compliance with all requirements of law.

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

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

- (4) the person has failed to report or has hindered the reporting of child abuse pursuant to the Texas Family Code, §261.001, or has failed to notify the SBEC, the commissioner of education, or the school superintendent or director under the circumstances and in the manner required by the TEC, §21.006, §21.0062, §22.093, and §249.14(d)-(f) of this title;
- (5) the person has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c);
- (6) the person has failed to cooperate with the Texas Education Agency (TEA) in an investigation;
- (7) the person has failed to provide information required to be provided by §229.3 of this title (relating to Required Submissions of Information, Surveys, and Other Data);
- (8) the person has violated the security or integrity of any assessment required by the TEC, Chapter 39, Subchapter B, as described in subsection (g) of this section or has committed an act that is a departure from the test administration procedures established by the commissioner of education in Chapter 101 of this title (relating to Assessment);
- (9) the person has committed an act described in §249.14(k)(1) of this title, which constitutes sanctionable Priority 1 conduct, as follows:
 - (A) any conduct constituting a felony criminal offense;
 - (B) indecent exposure;
 - (C) public lewdness;
 - (D) child abuse and/or neglect;
 - (E) possession of a weapon on school property;
 - (F) drug offenses occurring on school property;
 - (G) sale to or making alcohol or other drugs available to a student or minor;
 - (H) sale, distribution, or display of harmful material to a student or minor;
 - (I) certificate fraud;
 - (J) state assessment testing violations;
 - (K) deadly conduct; or
 - (L) conduct that involves inappropriate communication with a student as described in §247.2(3)(I) of this title (relating to Code of Ethics and Standard Practices for Texas Educators), inappropriate professional educator-student relationships and boundaries, 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 ~~[student loan default or]~~ 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 ; ~~;~~
 - (D) reasonable reliance on a written acceptance of the educator's resignation by a person acting with actual authority to accept resignations delegated by the school district board of trustees;
 - (E) promotion to a position that requires a new class of educator certification as defined in §230.33(b) of this title (relating to Classes of Certificates); or
 - (F) any other relevant circumstances or facts.
 - (2) Mitigating factors. The following factors may be considered in seeking, proposing, or making a decision under this chapter regarding an educator who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c):
 - (A) educator gave written notice to school district 30 days or more in advance of the first day of instruction for which the educator will not be present;
 - (B) educator assisted school district in finding a replacement educator to fill the position;
 - (C) educator continued to work until the school district hired a replacement educator;
 - (D) educator assisted in training the replacement educator;
 - (E) educator showed good faith in communications and negotiations with school district; or

- (F) educator provided lesson plans for classes following educator's resignation.
- (3) Mandatory minimum sanction for contract abandonment. An educator subject to sanction, who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c) in a case where the factors listed in paragraph (1) or (2) of this subsection do not apply, may not receive a sanction of less than:
 - (A) suspension for one year from the first day that, without district permission, the educator failed to appear for work under the contract, provided that the educator has not worked as an educator during that year and the case is resolved within that one year through an agreed final order; or
 - (B) suspension for one year from either the effective date of an agreed final order resolving the case or an agreed future date at the beginning of the following school year, if the educator has worked as an educator after abandoning the contract; or
 - (C) suspension for one year from the date that the SBEC adopts an order that becomes final following a default under §249.35 of this title (relating to Disposition Prior to Hearing; Default) or a contested case hearing at the State Office of Administrative Hearings (SOAH).
- (e) Mandatory minimum sanction for felony-level conduct. An educator subject to sanction, who is court-ordered to complete a period of deferred adjudication or community supervision for a felony-level criminal offense under state or federal law, may not receive a sanction of less than:
 - (1) suspension for a period concurrent with the term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has not been employed as an educator during the period of deferred adjudication or community supervision; or
 - (2) suspension beginning on the effective date of an agreed final order for a period extending beyond the end of the educator's deferred adjudication or community supervision but may be less than the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has been employed as an educator during the period of deferred adjudication or community supervision; or
 - (3) suspension beginning on the effective date of an agreed final order for a period at least half as long as the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order after the educator has completed deferred adjudication or community supervision; or
 - (4) suspension for a period equal to the term of deferred adjudication or community supervision that the criminal court initially ordered but beginning from the date of the final board decision, if the case is resolved through a final board decision following a contested case hearing at the SOAH or a default under §249.35 of this title.
- (f) Mandatory minimum sanction for misdemeanor-level conduct. If an educator is subject to sanction, and a court has ordered the educator to complete a period of deferred adjudication, community supervision, or pretrial diversion for a misdemeanor-level criminal offense under state or federal law, the educator may not receive a sanction of less than an inscribed reprimand.
- (g) Mandatory minimum sanction for test security violation. An educator who intentionally manipulates the results or violates the security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, may not receive a sanction of less than suspension for one year from the effective date of an agreed final order or a final board decision following a contested case hearing at the SOAH.
- (h) Mandatory minimum sanction for drugs and alcohol on school campus. An educator who is subject to sanction because the educator has tested positive for drugs or alcohol while on school campus, was under the influence of drugs or alcohol on school campus, or was in possession of drugs or alcohol on school campus may not receive a sanction of less than a one-year suspension and required completion of a drug or alcohol treatment program.

- (i) Mandatory permanent revocation or denial. Notwithstanding subsection (c) of this section, the SBEC shall permanently revoke the teaching certificate of any educator or permanently deny the application of any applicant if, after a contested case hearing or a default under §249.35 of this title, it is determined that the educator or applicant:
- (1) engaged in any sexual contact or romantic relationship with a student or minor;
 - (2) solicited any sexual contact or romantic relationship with a student or minor;
 - (3) possessed or distributed child pornography;
 - (4) was registered as a sex offender;
 - (5) committed criminal homicide;
 - (6) transferred, sold, distributed, or conspired to possess, transfer, sell, or distribute any controlled substance, the possession of which would be at least a Class A misdemeanor under the Texas Health and Safety Code, Chapter 481, on school property;
 - (7) intentionally, knowingly, or recklessly causes bodily injury to a student or minor when the conduct of the educator or applicant is not immune from disciplinary proceedings by TEC, §22.0512; or
 - (8) committed any offense described in the TEC, §21.058.
- (j) Mandatory minimum for failure to report. An educator subject to sanction, who fails to report educator misconduct under the circumstances and in the manner required by the TEC, §21.006, and §249.14(d)-(f) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition), when the case is resolved through an agreed final order, may not receive a sanction of less than:
- (1) an inscribed reprimand and a \$5,000 administrative penalty for a superintendent or director who fails to file timely a report to the SBEC; or
 - (2) an inscribed reprimand and a \$500 administrative penalty for a principal who fails to timely notify a superintendent or director.
- (k) Sanctioned misconduct in another state. The findings of fact contained in final orders from any other state jurisdiction may provide the factual basis for SBEC disciplinary action. If the underlying conduct for the administrative sanction of an educator's certificate or license issued in another state is a violation of SBEC rules, the SBEC may initiate a disciplinary action regarding the educator's Texas educator certificate and impose a sanction as provided under this chapter.