

## Item 12:

# Consider and Take Appropriate Action on the Memorandum of Agreement (MOA) Between the State Board for Educator Certification (SBEC) and the Texas Education Agency (TEA)

### DISCUSSION AND ACTION

**SUMMARY:** This item presents the State Board for Educator Certification (SBEC) an opportunity to consider and ratify the Memorandum of Agreement (MOA) with the Texas Education Agency (TEA) that clarifies the process by which the TEA will continue to provide the SBEC's administrative services and functions pursuant to the Texas Education Code (TEC) §21.035. This MOA reflects the current commissioner and SBEC Chair as signees, updates dates, and clarifies that the MOA continues in operation absent a decision by one of the parties to end the agreement.

**PROJECTED IMPLEMENTATION DATE:** TEA has been providing SBEC's administrative services and functions since September 1, 2005. This proposed agreement continues the agreements between SBEC and TEA.

**BACKGROUND INFORMATION:** The Texas Education Code (TEC) §21.039 was adopted in 1995 to authorize the SBEC to hire an executive director and staff to administer its educator certification functions. In 2005, the Texas Legislature repealed §21.039 and amended §21.035 to provide that all the administrative functions and services of the SBEC would thereafter be provided by the TEA. Based on that statutory authority, the TEA has provided those functions and services under informal agreements and understandings with the SBEC. In 2006, TEA and SBEC entered into a Memorandum of Agreement regarding the delivery of administrative functions. A new agreement was adopted in April of 2010 with the intention that it renew each year unless notice by either SBEC or TEA was provided.

The purpose of the agreement is to clarify the roles and responsibilities of the parties in accordance with the understandings and practices of the parties and the provisions of Chapter 21, Subchapter B of the TEC. The MOA provides that the SBEC shall be responsible for rulemaking, development of policy, approving and sanctioning educator preparation programs, and determining the final order that shall be entered when a proposal for decision has been referred by the State Office of Administrative Hearings (SOAH) after a contested educator discipline proceeding.

To avoid conflicts of interest, the MOA provides that the Attorney General's office rather than TEA staff shall act as the SBEC General Counsel, but the TEA shall provide attorneys to advise the SBEC on matters of ethics and to represent the SBEC in contested educator discipline matters before the SOAH. To provide for the efficient administration of educator discipline cases, the MOA reiterates the prior delegation to the Commissioner or the Commissioner's designee of the authority to execute agreed settlements of contested matters.

The MOA also restates the delegation of authority to the Commissioner or the Commissioner's designee to administer and implement SBEC rules and carry out SBEC functions, including

legal and audit requirements, and reiterates that the scope of this delegation is as broad as the SBEC's delegation of authority to its executive director prior to September 1, 2005.

The new agreement replicates the 2010 agreement with three changes. The agreement uses the current commissioner rather than the former. It updates relevant dates. It clarifies the language that the agreement will automatically continue absent notice by either the SBEC or TEA.

**PREVIOUS BOARD ACTION:** The Board first adopted the MOA on July 28, 2006, and readopted it with amendments on April 9, 2010.

**FISCAL IMPACT:** None

**PUBLIC AND STUDENT BENEFIT:** This MOA will clarify responsibilities and help TEA administer SBEC certification policy, resulting in continued improvement in the quality of Texas educators and consequent benefits to Texas public education.

**ASSOCIATE COMMISSIONER'S RECOMMENDATION:** For the reasons stated, I recommend that the SBEC:

Approve the proposed MOA with TEA and authorize Jill Druesedow, SBEC chairperson, to execute the attached agreement on behalf of the SBEC.

**Staff Members Responsible:** Laura Moriaty, Director  
Legal Services for Educator Leadership and Quality

**Attachment:** Proposed MOA between the SBEC and the TEA

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**ATTACHMENT****MEMORANDUM OF AGREEMENT**

STATE OF TEXAS           §  
  §       KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF TRAVIS       §

This **MEMORANDUM OF AGREEMENT (AGREEMENT)** is between the **STATE BOARD FOR EDUCATOR CERTIFICATION (BOARD)**, a Texas state agency acting through its Chair, and the **TEXAS EDUCATION AGENCY (TEA)**, a Texas state agency acting through the Commissioner of Education. The **AGREEMENT'S** purpose is to establish the process by which **TEA** will provide administrative support and services to the **BOARD**.

**WHEREAS**, Section 21.035(a) of the Texas Education Code provides that the Board is administratively attached to TEA;

**WHEREAS**, Education Code, chapter 21 authorizes the Board to adopt rules and fees relating to the regulation of educators and the administration of chapter 21, and certain other topics specified in chapter 21

**NOW, THEREFORE**, in recognition of the foregoing, **THE BOARD AND TEA AGREE AS FOLLOWS:**

**I.       PERIOD OF AGREEMENT:**

This agreement becomes effective upon signature of the representatives of the parties and continues in effect unless notice is given by either party at least 60 days in advance of a requested termination date.

**II.      PURPOSE OF AGREEMENT:**

The purpose of this agreement is to implement the legislative directive that TEA provide administrative support for the Board, to provide for the efficient and orderly discharge of the Board's duties and responsibilities pursuant to the Board's instruction, and to memorialize the cooperative relationship between TEA and the Board.

**III.     OBLIGATIONS:**

(1)     The Commissioner of Education will assign staff members to assist in carrying out the duties of the Board. In addition to general administrative support, TEA staff will:

(A) develop an operating budget for the certification function and other functions of the Board for which TEA receives an appropriation;

(B) provide to the members of the Board, as often as necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees;

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- (C) file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report, in the form and within the time provided by the General Appropriations Act, accounting for all funds received and disbursed by TEA for the certification function during the preceding fiscal year; and
- (D) execute contracts to perform administrative functions and services.
- (2) The Board will carry out its duties, including but not limited to the duties required by section 21.040:
- (A) to appoint the members of any advisory committee to the Board;
- (B) for each class of educator certificate, appoint an advisory committee composed of members of that class to recommend standards for that class to the Board; and
- (C) develop and implement rules and policies.
- (3) The Board must approve the following final actions:
- (A) entry of a final order based upon a proposal for decision issued by the State Office of Administrative hearings;
- (B) approval or sanction of an education preparation entity; and
- (C) proposal, amendment, or adoption of Board rules.
- (4) Although the Board will propose and adopt all rules authorized by statute, TEA staff shall be responsible for performing the duties of drafting and revising the rules in accordance with the instruction of the Board, transmitting the proposed and adopted rules to the *Texas Register* and ensuring that they are properly and timely filed, as required by the Texas Administrative Procedure Act (chapter 2001 of the Texas Government Code). When processing rules for adoption, the TEA internal rule preparation process shall be followed in conjunction with the Board's Operating Policies and Procedures.
- (5) The Attorney General's Office will represent the Board in General Counsel matters, and any necessary fees or expenses paid to the Attorney General's Office for such representation shall be paid by TEA from appropriated funds.
- (6) The Commissioner of Education will assign one or more attorneys to represent the Board in disciplinary matters (including contested case hearings) to which the Board may be a party. TEA staff will regularly provide the Board with reports regarding pending disciplinary cases.
- (7) The Commissioner or the Commissioner's designee may issue and sign orders on behalf of the Board resolving a case by stipulation, compromise, agreed settlement, consent order, agreed settlement of facts, or any other informal or alternative dispute resolution process agreed by the parties, and not precluded by law.

(8) The Board delegates to the Commissioner or Commissioner’s designee the authority to administer and implement all Board rules and take all actions necessary to perform the administrative functions of the Board. The intent of this delegation is to delegate to the Commissioner or the Commissioner’s designee the authority that was previously delegated to the Board’s executive director in former TEC §21.039 and in Board Rule 19 TAC 249.35(b) prior to its 2007 amendment.

(9) The Commissioner of Education will appoint staff to serve as the Board's Officer of Public Information as required by section 552.201 of the Texas Government Code and will appoint a person or staff to act for the Board for any other purpose required by law.

(10) The Commissioner of Education will appoint staff to perform internal audit functions, as authorized by the Board.

Executed in multiple original copies by the parties this \_\_\_\_ day of \_\_\_\_\_, 2017.

**TEXAS EDUCATION AGENCY**

**STATE BOARD FOR EDUCATOR CERTIFICATION**

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

\_\_\_\_\_  
Mike Morath,  
*Commissioner of Education*

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Jill Druesedow, *Chair, State Board  
for Educator Certification*