

Item 15:**Discussion of Proposed Amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, Subchapter C, Prehearing Matters, Subchapter D, Hearing Procedures, and Subchapter E, Post-Hearing Matters****DISCUSSION**

SUMMARY: This item provides the State Board for Educator Certification (SBEC) an opportunity to discuss proposed amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, Subchapter C, Prehearing Matters, Subchapter D, Hearing Procedures, and Subchapter E, Post-Hearing Matters. The proposed amendments would amend the rule provisions regarding notice to educators of disciplinary proceedings against them by the SBEC to modernize them to include more service by email, to comport with changes the State Office of Administrative Hearings (SOAH) has made to its procedural rules, to reduce costs to the agency resulting from certified mailings that are not required by statute, and to clarify the method through which TEA staff will give the educator notice at each stage of educator discipline investigations and proceedings.

STATUTORY AUTHORITY: The statutory authority for 19 TAC Chapter 249, Subchapter B is Texas Education Code, §§21.006(a), (b), (b-1), (b-2), (c), (c-1), (c-2), (f), (g), (g-1), and (i); 21.0062; 21.007; 21.009(e); 21.031(a); 21.035; 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a), 21.058; 21.0581; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.085; 22.087; 22.092; and 22.093; Texas Government Code, §§411.090, 2001.054(c), 2001.058(e), and 2001.142(a); Texas Family Code, §261.308(d) and (e) and §261.406(a) and (b); Texas Occupations Code, §§53.021(a), 53.022–53.025, 53.051, 53.052 and 56.003; and the Every Student Succeeds Act (ESSA), 20 USC, §7926.

TEC, §21.006(a)–(c-2), (f)–(g-1), and (i), as amended by HB 3 and SB 1476, 86th Texas Legislature, Regular Session, 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 and there is evidence that the educator has engaged in certain misconduct, unless the superintendent or director completes an investigation before the educator resigns or is terminated and determines that the educator did not commit the alleged misconduct. It also requires principals to report to superintendents within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct. It further authorizes the SBEC to impose sanctions on educators who fail to report as required by the statute including authority to impose monetary administrative penalties, gives SBEC rulemaking authority as necessary to implement the statute, and requires the SBEC to create an internet portal to facilitate confidential and secure reporting.

TEC, §21.006(b-2), as amended by HB 3, 86th Texas Legislature, Regular Session, 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(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, created by SB 1230, 86th Texas Legislature, Regular Session, 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 and 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 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 an educator certificates, administer statutory requirements, provide for educator disciplinary proceedings and for enforcement of the educator's code of ethics.

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

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, §21.060, 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(c), 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(c), 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, Regular Session, 2019, requires school districts, charter schools and shared services arrangements to conduct finger-print criminal background checks on employees and refuse to hire those that have certain criminal history.

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, Regular Session, 2019, requires school districts, charter schools, districts of innovation, regional education service centers and shared services arrangements 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, Regular Session, 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 and there is evidence that the employee abused or otherwise committed and unlawful act with a student or minor, or was involved in a romantic relationship with a student or minor.

Texas Government Code, §411.090 allows the SBEC to get from the Texas Department of Public Safety all criminal history record information about any applicant for licensure as an educator.

Texas Government Code, §2001.054(c) requires the SBEC to give notice by personal service or by registered or certified mail to the license holder of the factors or conduct alleged to warrant suspension, revocation, annulment or withdrawal of an educator's certificate, and to give the certified educator an opportunity to show that the educator is in compliance with the relevant statutes and rules.

Texas Government Code, §2001.058(e) sets out the requirements for when the SBEC can make changes to a proposal for decision from an administrative law judge.

Texas Government Code, §2001.142 (a) requires all Texas state licensing agencies to notify parties to contested cases of orders or decisions of the agency by personal service, electronic means if the parties have agreed to it, first class, certified or registered mail, or by any method required under the agency's rules for a party to serve copies of pleadings in a contested case.

Texas Family Code, §261.308(d) and (e) requires the Texas Department of Family and Protective Services to release information regarding a person alleged to have committed abuse or neglect to the SBEC.

Texas Family Code, §261.406(a) and (b) requires the Texas Department of Family and Protective Services to send a copy of a completed investigation report involving allegations of abuse or neglect of a child in a public or private school to the TEA.

Texas Occupations Code, §53.021(a) allows the SBEC to suspend or revoke an educator's certificate, or refuse to issue a certificate, if a person is convicted of certain offenses.

Texas Occupations Code, §53.22 sets out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education.

Texas Occupations Code, §53.23 sets out additional factors for the SBEC to consider when deciding whether to allow a person convicted of a crime to serve as an educator.

Texas Occupations Code, §53.24 states that proceedings to deny or sanction an educator's certification are covered by the Texas Administrative Procedure Act, Chapter 2001, Texas Government Code.

Texas Occupations Code, §53.25 gives the SBEC rulemaking authority to issue guidelines to define which crimes relate to the profession of education.

Texas Occupations Code, §53.51 requires that the SBEC notify a license holder or applicant after denying, suspending, or revoking the certification.

Texas Occupations Code, §53.52 allows a person who has been denied an educator certification or had their educator certification revoked or suspended to file a petition for review in state district court after exhausting all administrative remedies.

Texas Occupations Code, §56.003 prohibits state agencies from taking disciplinary action against licensees for student loan non-payment or default.

ESSA, 20 USC, §7926, requires state educational agencies to make rules forbidding educators from aiding other school employees, contractors, or agents in getting jobs when the educator knows the job-seeker has committed sexual misconduct with a student or minor in violation of the law.

FUTURE ACTION EXPECTED: TEA staff expects to present this item to the SBEC for proposal in the *Texas Register* at the December 11, 2020 Board meeting.

BACKGROUND INFORMATION AND JUSTIFICATION: The Texas Education Agency Educator Leadership and Quality Department has historically devoted a significant portion of its budget on sending notices regarding educator discipline investigations and proceedings to certified educators by certified and regular mail. But over the past few decades, email has taken

on an increasingly large role in all communications in all aspects of life. Indeed, email addresses are now often a more reliable method of reaching an individual than physical addresses because individuals retain the same email address for many years even as they repeatedly move their physical address.

In light of this changing role of email, the State Office of Administrative Hearings (SOAH) recently adopted amendments to its rules that allow for e-filing of documents and for all methods of service permitted under Texas Rule of Civil Procedure 21a, including service by email without the prior agreement of the parties. Prior to the recent amendments, SOAH rules had only allowed service by email with the express agreement of the parties.

Under 19 Texas Administrative Code §230.91 (relating to Procedures in General), certified Texas educators are required to maintain their educator profiles with current mailing and email addresses by updating the profile within 45 calendar days of the effective date of any change. SBEC rules have historically relied on the accuracy of these addresses and have required that notices be sent via first-class and certified mail to the address in the educator's profile. The proposed amendments would allow staff to serve the notices of SBEC disciplinary actions to educators via email to the email address in the educator's profile. Serving notice to educators and applicants via email would result in a significant cost savings to the agency over the first five years the rule is in effect. It would also allow an educator to receive notice even if they moved and failed to update their physical address, so long as the email address in their educator profile remained accurate.

The proposed amendment in §249.12(c) would allow staff to send notice to an applicant for certification that their application was denied by either certified mail or email to the address the person has provided in the application. The amendment would allow TEA staff flexibility to use email, a cheaper and potentially more reliable method of service. In circumstances where email service was not appropriate or possible, the amendment would still allow staff to send the notice by certified mail.

The proposed amendment in §249.13(b) would clarify that the agency would send notice via certified or registered mail when notifying a certificate holder that the certificate will be canceled due to erroneous issuance. Texas Government Code §2001.054 requires state licensing agencies to send notice via registered or certified mail when "the license holder is given an opportunity to show compliance with all requirements of law for retention of the license" prior to "revocation, suspension, annulment, or withdrawal of a license." Thus, to comply with Texas Government Code §2001.054, the notice of license cancellation in §249.13 must be sent via certified or registered mail.

The proposed amendments in §249.14(m) would allow TEA staff to send notice to an educator that an investigation flag has been placed on the educator's certificate through either email or registered or certified mail. The amendment would allow TEA staff flexibility to use email, a cheaper and potentially more reliable method of service. In circumstances where email service was not appropriate or possible, the amendment would still allow staff to send the notice by certified mail.

The proposed amendment in §249.14(p) would clarify that prior to filing a petition to begin a contested case proceeding, TEA staff will send the respondent, by certified or registered mail to the address in the educator's profile, 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. This notice fulfills the requirements of Texas Government Code §2001.054, and therefore must be sent via certified or registered mail as the statute requires.

The proposed amendments in §249.26(b) and (c) would allow TEA staff to send the petition to a respondent by either email or certified or registered mail. The proposed amendment would allow TEA staff flexibility to use email, a cheaper and potentially more reliable method of service. In circumstances where email service was not appropriate or possible, the amendment would still allow staff to send the notice by certified mail. The proposed amendments would also add a presumption that a petition sent via email was received on the same day it was sent, as email requires no delay for postal handling time.

The proposed amendment in §249.27(a) would allow respondents to serve their answers to petitions on the agency via email, to parallel the methods that the proposed amendment to §249.26 would allow for serving the petition. Allowing service via email would save respondents mailing costs.

The proposed amendments in §249.30(b) – (d) would make the rule comport with the changes to SOAH rules that now require documents to be filed electronically and allow service in accordance with Texas Rule of Civil Procedure 21a, which in turn requires that documents filed electronically are served through the electronic filing manager to the parties' email addresses where possible but also allows service in person, by mail, by fax, or by email. Service through the electronic filing manager to the respondent's email would be both cheaper and more efficient because it will not incur the time or expense of mailing. In circumstances where email service was not appropriate or possible, the amendment would still allow staff the flexibility to send the notice by mail, facsimile, or other means.

The proposed amendments in §249.35(f)(1) would allow TEA staff to send the notice of default to a respondent by either email or certified or registered mail. The proposed amendment will allow TEA staff flexibility to use email, a cheaper and potentially more reliable method of service. In circumstances where email service was not appropriate or possible, the amendment still allows staff to send the notice by certified mail. The proposed amendments would also add a presumption that a petition sent via email was received on the same day it was sent, as email requires no delay for postal handling time.

The proposed amendments in §§249.39(b), 249.41(a), and 249.42(a) would allow TEA staff to send SBEC decisions and orders to a respondent by either email or certified or registered mail. Texas Government Code §2001.142 allows a state agency to notify a party to a contested case of any decision or order of the agency through service by a method required under the agency's rules for a party to serve copies of pleadings in a contested case. Under the recent amendments to the SOAH rules and these proposed amendments to the SBEC rules, parties to a contested case with the SBEC would be able to serve pleadings by either email or certified mail. This amendment would make the methods SBEC uses to send final orders comport with those amended rules. Allowing TEA staff flexibility to serve SBEC decisions by email will reduce costs to the agency. In circumstances where email service was not appropriate or possible, the amendment would still allow staff to send the notice by certified mail.

Additionally, a proposed amendment to §249.42(c) would parallel the language used in §249.41(b)(3) in describing when TEA staff will notify a school district that an educator has been sanctioned. By including the words "if known," the proposed amendment would reflect the fact that TEA staff is sometimes not aware of what school district is currently employing a

sanctioned educator and that TEA staff can only send notice to a known employing school district of a sanctioned educator.

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 Related 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:

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- (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 §21.044. Educator Preparation

- (a) The board shall propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program. The board shall specify the minimum academic qualifications required for a certificate.

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 §2001.054, Licenses.

- (c) A revocation, suspension, annulment, or withdrawal of a license is not effective unless, before institution of state agency proceedings:
 - (1) the agency gives notice by personal service or by registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action; and
 - (2) the license holder is given an opportunity to show compliance with all requirements of law for the retention of the license.

Texas Government Code §2001.058, Hearings Conducted by the State Office of Administrative Hearings (excerpt)

- (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 Government Code §2001.142. Notification of Decisions and Orders (excerpt)

- (a) A state agency shall notify each party to a contested case of any decision or order of the agency using at least one of the following methods of service:
- (1) personal service;
 - (2) if agreed to by the party to be notified, service by electronic means sent to the current e-mail address or facsimile number of the party's attorney of record or of the party if the party is not represented by counsel;
 - (3) service by first class, certified, or registered mail sent to the last known address of the party's attorney of record or of the party if the party is not represented by counsel; or
 - (4) service by a method required under the state agency's rules or orders for a party to serve copies of pleadings in a contested case.

Texas Family Code §261.308, Submission of Investigation Report (excerpt)

- (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 school principal or director 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 (excerpt)

- (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. On request, the department shall provide a copy of the completed report of the department's 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 school principal or director, unless the principal or director 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. 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 (excerpt)

- (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;
- (3) an offense listed in Article 42A.054, Code of Criminal Procedure; or
- (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

In determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider:

- (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, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Texas Occupations Code §53.023, Additional Factors for Licensing Authority to Consider

(a) 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) 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 of the prosecution, law enforcement, and correctional authorities as required by Subsection (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

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 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;
- (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 Action in Event of Default or Breach Prohibited (as amended by SB 37, 86th Texas Legislature, Regular Session, 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, §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, §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.
- (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 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, or email 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.

§249.13. Cancellation of an Erroneously Issued Certificate.

- (a) When satisfactory evidence indicates that a certificate was issued in error and the person issued the certificate has not fulfilled all certification requirements, the Texas Education Agency (TEA) staff shall cancel the certificate. The effective date of cancellation is the date the person's virtual certificate is updated to reflect that the certificate is no longer valid.
- (b) Before canceling the certificate, the TEA staff shall notify the person issued the certificate by registered or certified mail of the reasons for which the TEA intends to cancel the certificate and shall provide the person issued the certificate at least ten calendar days to respond and show cause why the certificate should not be canceled. Unless otherwise proved by the person, the show cause notice shall be deemed to have been received by the person no later than five calendar days after mailing to the most recent address the person is required to provide pursuant to §230.91 of this title (relating to Procedures in General).
- (c) The TEA staff shall notify the person and the person's employing school district, if any, that the person was issued a certificate in error, what actions the TEA staff have taken to cancel the erroneously issued certificate, and how the person can be issued a valid certificate.
- (d) The TEA staff will issue the person a valid certificate when it receives satisfactory evidence that all certification requirements have been fulfilled. The person will not be required to repeat any coursework, training, internship, or other certification requirements that an educator preparation program certifies that the person has completed.
- (e) The person whose erroneously issued certificate has been canceled may request a contested case hearing before the State Office of Administrative Hearings (SOAH). For the purposes of notice, time limits, appeal requirements, and determining the placement of the burden of proof at the SOAH contested case hearing, the person whose certificate has been canceled shall be deemed to have had his or her original application for the erroneously issued certificate administratively denied pursuant to §249.12 of this title (relating to Administrative Denial; Appeal) on the effective date of the cancellation.

§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, the director of a charter 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 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:
- (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;

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- (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, §21.006.
- (e) A person who serves as a principal in a school district, a district of innovation, or a 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 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 sent by registered or certified mail, or email ~~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 sent by registered or certified mail, or email ~~[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 certified or registered mail to the address a certified educator is required to provide pursuant to §230.91 of this title (relating to Procedures in General) 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.

Subchapter C. Prehearing Matters

§249.26. Petition.

- (a) The party seeking relief and requesting a contested case hearing under this chapter shall serve a petition as required under this chapter. The petitioner shall have the burden of proof by a preponderance of the evidence in all contested case proceedings brought under this chapter.
- (b) The petition shall contain the following items:
- (1) a statement of the legal authority and jurisdiction under which the disciplinary action is being sought and the hearing is to be held;
 - (2) a reference to the particular sections of the statutes and rules involved;
 - (3) a statement of the matters asserted;
 - (4) a statement regarding the failure of the parties to reach an agreed settlement of the matters asserted in the petition;
 - (5) the name, current mailing address, daytime telephone number, if any, and facsimile number, if any, of the petitioner and the petitioner's authorized representative; and
 - (6) if the petition seeks to impose sanctions against a certificate holder, a notification set forth as follows in at least 12-point boldface type: If you do not file a written answer to this petition with the Texas Education Agency staff WITHIN 30 CALENDAR DAYS of being served with this petition, the State Board for Educator Certification may grant the relief requested in this petition, including revocation of your certificate by default. The matters asserted in the petition will be deemed admitted unless your written answer specifically denies each assertion pled and is filed within the prescribed time period. If you file a written answer but then fail to attend a scheduled hearing, the State Board for Educator Certification may grant any relief requested in this petition, up to and including PERMANENT REVOCATION OF YOUR CERTIFICATE.
- (c) The petition shall be served on the respondent by United States certified mail, return receipt requested, and by regular first-class United States mail, or by email to the address a certified educator is required to provide pursuant to §230.91 of this title (relating to Procedures in General), or as otherwise specified in this chapter. If an educator, applicant, or examinee is the petitioner, the address to which the petition shall be served is Texas Education Agency, SBEC [~~Legal Certification~~] Enforcement Division, 1701 North Congress Avenue, Austin, Texas 78701. A certificate evidencing service shall be included in the petition. For purposes of this section and §249.27 of this title (relating to Answer), it is a rebuttable presumption that a petition was served on the respondent on the same day the email was sent if served by email, and no later than five calendar days after mailing if served by United States mail.

§249.27. Answer.

- (a) The party responding to a petition filed under this chapter shall file a written answer with the petitioner within 30 calendar days after being served with such petition. For purposes of this section and §249.26 of this title (relating to Petition), it is a rebuttable presumption that a petition was served on the respondent on the same day the email was sent if served by email, and no later than five calendar days after mailing if served by United States mail. The respondent shall serve the answer on the petitioner by email to the email address listed under the TEA attorney's signature on the Petition, by United States certified mail, return receipt requested, [~~and~~] or by regular first-class United States mail.
- (b) The answer shall specifically admit or deny each allegation in the petition and shall plead all affirmative defenses.
- (c) The answer shall contain the name, current mailing address, daytime telephone number, email address, and facsimile number, if any, of the respondent and the respondent's authorized representative.
- (d) All well-pled factual allegations in the petition will be deemed admitted unless the respondent's answer, containing specific denials to each allegation, is filed within the time period prescribed in subsection (a) of

this section. A general denial shall not be sufficient to controvert factual allegations contained in the petition.

- (e) An answer that does not comply with the requirements of this section and 1 Texas Administrative Code, Part 7, §155.301 (relating to Required Form of Pleadings) may provide grounds for default judgment in favor of the petitioner, as provided in this chapter.

Subchapter D. Hearing Procedures

§249.30. Notice of Hearing.

- (a) The notice of hearing is governed by the Texas Government Code, Chapter 2001; 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure); and this chapter.
- (b) The Texas Education Agency (TEA) staff may serve the notice of hearing by sending it [~~certified, return receipt requested, and regular first-class United States mail~~] through the electronic filing manager to the party's last known email address.
- (c) For purposes of this subsection, the last known email address is:
- (1) the address of record of the party or the party's authorized representative in the contested case, if any; or
 - (2) if the party has not made an appearance in the contested case, the last address provided in any response to the complaint or proposed action that is the subject of the contested case, if any; or
 - (3) if the party has not provided an address in response to the complaint or proposed action:
 - (A) for a certified educator, the address supplied by the educator pursuant to §230.91(c) of this title (relating to Procedures in General);
 - (B) for a certification applicant, the address provided in the certification application; or
 - (C) for an examinee, the address provided in the examination registration.
- (d) While notice to the last known email address is legally sufficient, notice may also be given by regular first-class United States mail, facsimile, [~~email~~] or any other means to any other possible address that is known to the TEA staff at the time that the notice is sent.

§249.35. Disposition Prior to Hearing; Default.

- (a) This chapter and 1 Texas Administrative Code (TAC), Part 7, Chapter 155 (relating to Rules of Procedure) shall govern disposition prior to hearing, default, and attendant relief.
- (b) The Texas Education Agency (TEA) staff or the commissioner of education may issue and sign orders on behalf of the State Board for Educator Certification (SBEC) resolving a case, prior to the issuance of a proposal for decision by the presiding administrative law judge (ALJ) at the State Office of Administrative Hearings (SOAH), by waiver, stipulation, compromise, agreed settlement, consent order, agreed statement of facts, or any other informal or alternative resolution agreed to by the parties and not precluded by law.
- (c) The SBEC or the SOAH may dispose of a case through dismissal, partial or final summary disposition, or any other procedure authorized by SOAH rules of procedure prior to a contested case hearing on the merits on the following grounds: unnecessary duplication of proceedings; res judicata; withdrawal; mootness; lack of jurisdiction; failure of a party requesting relief to timely file or file in proper form a pleading that would support an order or decision in that party's favor; failure to comply with an applicable order, deadline, rule, or other requirement issued by the SBEC, the TEA staff, or the presiding ALJ; failure to state a claim for which relief can be granted; or failure to prosecute.
- (d) In any contested case hearing conducted pursuant to this chapter, the findings made by a hearing examiner in a proceeding arising under the Texas Education Code, Chapter 21, Subchapter F, shall not be conclusive but, the record of such proceeding, including all testimony and evidence admitted in the hearing, as well as the findings of the hearing examiner, shall be deemed admissible in a proceeding brought pursuant to this chapter and shall be considered by the ALJ and the SBEC in issuing a proposed or final decision.

- (e) For purposes of this chapter, the following shall constitute a default in a contested case:
- (1) the failure of the respondent to timely file a written answer in proper form as required by this chapter;
 - (2) the failure of the petitioner in an administrative denial case to timely file a petition in proper form as required by this chapter; or
 - (3) the failure of the certificate holder or applicant to appear in person or by authorized representative on the day and at the time set for hearing in a contested case, regardless of whether a written answer or petition has been filed.
- (f) Upon the occurrence of an event of default as defined in this section, the SBEC may enter a default judgment, as authorized by the Texas Government Code, §2001.056, or 1 TAC, Part 7, §155.501 (relating to Default Proceedings).
- (1) If a respondent has failed to timely file a written answer or a petitioner in an administrative denial case has failed to timely file a petition, TEA staff will provide the certificate holder or applicant with a notice of default specifying the factual and legal basis for imposing the proposed sanction by United States certified mail, return receipt requested, and by regular first-class United States mail, or by email to the address provided pursuant to the requirements set forth in §230.91 of this title at least 30 calendar days prior to presenting a motion for default to the SBEC. It is a rebuttable presumption that the notice was served on the certificate holder or applicant on the same day the email was sent if served by email, and no later than five calendar days after mailing if served by United States mail.
 - (2) If the case is dismissed and remanded to the SBEC by the SOAH after a certificate holder or applicant failed to appear in person or by authorized representative on the day and at the time set for hearing in a contested case, the TEA staff attorney shall present to the SBEC a motion for default. After consideration of the petition and the motion for default, the SBEC may then issue a default order deeming the allegations in the petition as true.
 - (3) Prior to issuance of a default decision or order, the certificate holder may contest the issuance of a default judgment by written notice filed with TEA staff or by written request to appear before the SBEC at an SBEC meeting to show good cause for failure to file an answer or appear at the contested case proceeding.

Subchapter E. Post-Hearing Matters

§249.39. Final Decisions and Orders.

- (a) The chair having certified a quorum present at a State Board for Educator Certification (SBEC) meeting, a majority vote of the voting members present shall be required to make a final decision on a proposal for decision, an agreed order, or request for issuance of a default judgment, unless provided otherwise by this chapter.
- (b) ~~TEA staff shall send each party [Unless a party or the party's authorized representative, as appropriate, agrees in writing to receive it via facsimile or email,] a copy of the SBEC's decision or order [shall be delivered] by email or by certified mail to the parties or to their authorized representatives, as appropriate. TEA staff shall send the copy by facsimile or email to the State Office of Administrative Hearings (SOAH) if SOAH has issued a proposal for decision in the case.~~
- (c) All final decisions and orders of the SBEC under this chapter shall be in writing and signed by the chair or other board officer on behalf of the majority as provided by this chapter, board operating policies and procedures, and applicable law, unless members of the majority adopting the decision or order exercise their discretion to sign the decision or order. A final decision or order shall include findings of fact and conclusions of law separately stated. The findings of fact or conclusions of law may be adopted by reference to another document.
- (d) The SBEC may adopt an order modifying findings of fact or conclusions of law in a proposal for decision submitted by the administrative law judge (ALJ) in accordance with the Texas Government Code, Chapter

2001. The SBEC may remand the matter back to the ALJ with specific instructions for the ALJ to determine an essential finding of fact or to apply the correct burden or standard of proof.

§249.41. Procedure for Reprimand; Restriction.

- (a) Notice. When the State Board for Educator Certification (SBEC) reprimands an educator or restricts an educator's certificate, the Texas Education Agency (TEA) staff shall send [mail to the educator] a copy of the SBEC's order by email or by certified mail.
- (b) Inscribed reprimand.
 - (1) The TEA staff shall inscribe the reprimand upon the virtual certificate of the educator.
 - (2) A record of the SBEC's action publicly reprimanding the educator shall become part of the educator's official certification records maintained by the TEA staff.
 - (3) If known, the TEA staff shall also notify the employing school district of the SBEC's order reprimanding the educator.
- (c) Non-inscribed reprimand.
 - (1) The SBEC's action reprimanding the certificate holder shall only become part of the person's confidential investigative/litigation case file maintained by the TEA staff and shall not be available for public inspection except as required by law.
 - (2) The TEA staff, the presiding administrative law judge, and the SBEC may consider a non-inscribed reprimand in seeking, recommending, or ordering sanctions based on subsequently obtained evidence of improper or criminal conduct by the educator.
- (d) Restriction.
 - (1) A record of the SBEC's action restricting the educator's certificate shall be placed on the educator's virtual certificate and shall become part of the person's official records maintained by the TEA staff.
 - (2) If known, the TEA staff shall notify the employing school district of the SBEC's order restricting the educator's certificate.

§249.42. Procedure for the Suspension, Surrender, or Revocation of a Certificate.

- (a) When the State Board for Educator Certification (SBEC) issues an order of suspension, surrender, or revocation, the Texas Education Agency (TEA) staff shall send [mail to the educator] a copy of the order to the person who formerly held the certificate by email or by certified mail.
- (b) A record of the SBEC action suspending, accepting a surrender, or revoking the certificate shall be recorded on the educator's virtual certificate and shall become part of the person's official records maintained by the TEA staff.
- (c) If known, the [The] TEA staff shall also notify the employing school district of the SBEC's order when it becomes administratively final.