

Item 21:

COVER PAGE

Type of Agenda Rule Item:

- ✓ **Discussion Only:** TEA staff will present rule items with an update, potential future rule changes, and/or seek SBEC direction on potential rule changes. TEA staff will draft rule changes from the board's discussion on the item and start preparing rule text for proposal to the board.
- ☐ **Proposal:** First SBEC reading (vote). SBEC members will give input on proposed rule text and will approve rule changes that will go out for public comment as a proposed rule with the *Texas Register*. Important to make substantive changes now because only non-substantive changes can be made at adoption.
- ☐ **Adoption:** Second and final SBEC reading (vote). Only non-substantive changes are permissible at adoption phase. If approved will go to SBOE for review and filed as an SBEC rule with *Texas Register* if SBOE takes no action.

Summary:

This item is a discussion of 19 TAC Chapter 249, which covers all matters relating to educator discipline proceedings, sanctions and contested cases on behalf of the SBEC to ensure the safety and welfare of Texas school children and school personnel. This item has potential draft rule text as a result of recent legislation as well as to propose amendments relating to inappropriate communications, relationships and boundaries with a student, and to create mandatory minimum sanctions for certain offenses.

Statutory Authority:

All of the relevant statutes pertaining to this chapter are listed for you on the agenda title page and the entire statutory language is on Attachment I. This is always helpful in referencing the law the TEA staff was working under when preparing this item.

Relevant SBEC Core Principles:

- *We believe well-prepared educators are essential.*
- *We believe high certification standards measured by rigorous and reliable assessments are essential.*
- *We believe student success is primary, and we must ensure the safety and welfare of Texas school children.*
- *We believe stakeholder input is essential, and we are accountable to all Texas stakeholders.*
- *We believe educators must be held to high standards of ethical conduct.*
- *We believe we must continually improve our policies and processes in response to changing needs.*
- *We believe that a certified educator holds a unique position of trust with almost unparalleled access to the hearts and minds of impressionable students and therefore, the conduct of an educator must be held to the highest standard.*

Item 21:**Discussion of Proposed Amendments to 19 TAC
Chapter 249, Disciplinary Proceedings, Sanctions, and
Contested Cases, Subchapter B, Enforcement Actions and
Guidelines, §249.14, Complaint, Required Reporting, and
Investigation; Investigative Notice; Filing of Petition; and
§249.17, Decision-Making Guidelines****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, §249.14, Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition; and §249.17, Decision-Making Guidelines. The proposed amendment to 19 TAC §249.14(d) would align the rule on superintendent reporting to SBEC with changes to the Texas Education Code (TEC), §21.006, as a result of House Bill (HB) 1783, 84th Texas Legislature, Regular Session, 2015. The proposed amendment to §249.14(h) would include inappropriate communications with a student and inappropriate educator-student relationships and boundaries to the behaviors by an educator toward students that qualify as "Priority 1" conduct for purposes of investigation priority, investigative notices, and sanction authority. The proposed amendment to 19 TAC §249.17 would create a mandatory minimum sanction for an educator who tests positive for, possesses, or is under the influence of drugs or alcohol on campus and would require permanent revocation for educators who abuse students without justification.

STATUTORY AUTHORITY: The statutory authority for 19 TAC §249.14 and §249.17 is TEC, §§21.006(a)-(c), (f), and (g); 21.007; 21.031(a); 21.035; 21.041(a) and (b)(1), (7), and (8); 21.058; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.085; 22.087; and 57.491(g); Texas Government Code, §2001.058; and Texas Occupations Code, §§53.021(a), 53.022-53.025, 53.051, and 53.052.

TEC, §21.006(a)-(c), (f), and (g), require the superintendent or director to inform SBEC not later than the seventh day after the superintendent knows that an educator has a criminal history that the superintendent learned about other than through the standard criminal history background check, an educator's employment is terminated based on evidence that the educator committed certain misconduct, or an educator resigned and there is evidence that the educator may have engaged in misconduct. TEC, §21.006, also gives SBEC authority to make rules as necessary and to sanction an educator who fails to make a required report.

TEC, §21.007, requires the SBEC to place a public notice of alleged misconduct on an educator's certificate immediately when the educator is alleged to have committed misconduct that presents a risk to the health, safety, or welfare of a student or minor. TEC, §21.007, allows the Board to determine what types of misconduct would present such a risk.

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 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(a), authorizes the SBEC to adopt rules as necessary to implement its procedures. TEC, §21.041(b)(1), (7), and (8), give the SBEC rulemaking authority to regulate educators, provide for disciplinary proceedings against educators, and create and enforce an educator's code of ethics.

TEC, §21.058, requires SBEC to revoke an educator's certificate if the educator is convicted of certain felony offenses or offenses that require the defendant to register as a sex offender, and the victim of the offense was under 18 years old.

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), 21.160(c), and 21.210(c), give SBEC authority to sanction an educator who has a continuing, term, or probationary contract and who resigns without good cause.

TEC, §22.085, allows the SBEC to sanction educators who fail to hire or to refuse to hire an applicant when the educator knew or should have known from the background check that the employee had a criminal record reflecting certain offenses and requires a superintendent to certify to the commissioner of education that the school district is in compliance with this section.

TEC, §22.087, requires a superintendent to report to SBEC if the superintendent knows of information showing that an educator or an applicant for an educator certificate has criminal history that is not reflected in the criminal history information provided by the Texas Department of Public Safety in response to a background check.

TEC, §57.491(g), requires the SBEC to refuse to renew the certificate of any educator who is in default on student loan payments.

Texas Government Code, §2001.058, sets out the powers and duties of the State Office of Administrative Hearings and other state agencies with regard to contested case proceedings.

Texas Occupations Code, §§53.021(a), 53.022-53.025, 53.051, and 53.052, give the SBEC the authority to automatically suspend, revoke, or disqualify a person from receiving an educator certificate if the person has been convicted of certain offenses.

FUTURE ACTION EXPECTED: Texas Education Agency (TEA) staff plans to present the proposed amendments to 19 TAC §249.14 and §249.17 to the SBEC at the August 5, 2016 meeting for approval to be published as proposed in the *Texas Register*.

BACKGROUND INFORMATION AND JUSTIFICATION: The proposed amendment to 19 TAC §249.14(d) is intended to update the rule to match the statutory changes to the TEC, §21.006, resulting from HB 1783, 84th Texas Legislature, Regular Session, 2015. The changes are intended to prevent any discrepancy between the statute and the rule and to prevent confusion about when a superintendent or director must report to the SBEC.

The proposed amendment to 19 TAC §249.14(h) is intended to clarify the breadth of "soliciting or engaging in sexual conduct or a romantic relationship with a student or minor" by explicitly stating that inappropriate communication, inappropriate professional educator-student relationships, and boundaries are all included as "Priority 1" misconduct. Inappropriate professional educator-student relationships and boundaries and inappropriate communication with a student or minor are violations of the Educators' Code of Ethics, 19 TAC §247.2(3)(H) and (I). To ensure the health, safety, and welfare of students and minors, the SBEC must prioritize investigations and immediately place investigation notices on the certificates of all educators who are alleged to have engaged in any form of an inappropriate relationship between the educator and students or minors, including inappropriate communications and inappropriate educator-student boundaries.

The proposed amendment to 19 TAC §249.17(d)(2)(A) would increase the length of time in advance of the start of school that an educator would have to give written notice of resignation to the school district in order to have the advance notice count as a mitigating factor in a disciplinary action for contract abandonment. The increased notice period for mitigation acknowledges that two weeks is not sufficient time for a school district to find a replacement teacher before the start of the next school year and prevents an educator from getting a lesser penalty when the educator's contract abandonment leaves the school district without reasonable time to find a replacement.

The proposed amendment would add a new subsection (h) to 19 TAC §249.17 that would create a mandatory minimum sanction of a one-year suspension and required completion of a drug or alcohol treatment program for educators who are subject to sanction for testing positive for drugs or alcohol, or are in possession of drugs or alcohol, while on a school campus. This mandatory minimum is intended to give clear guidance to staff at TEA and administrative law judges at the State Office of Administrative Hearings regarding appropriate penalties in such cases and to ensure fairness and predictability in SBEC decisions regarding such cases.

The proposed amendment to relettered §249.17(i) would add intentional, knowing, or reckless abuse of a student or minor that is not justified under Texas Penal Code, §9.62, to the list of conduct for which permanent revocation is the mandatory penalty. This change is intended to reflect the extreme danger that such conduct presents to students and to ensure fairness and predictability in SBEC decisions regarding such cases.

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

Doug Phillips, Director
Educator Investigations

- Attachments:**
- I. Statutory Citations
 - II. Text of Proposed Amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, §249.14, Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition; and §249.17, Decision-Making Guidelines

ATTACHMENT I**Statutory Citations Relating to Proposed Amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, §249.14, Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition; and §249.17, Decision-Making Guidelines****Texas Education Code, §21.006, Requirement to Report Misconduct (excerpts):**

- (a) In this section, "abuse" has the meaning assigned by Section 261.001, Family Code, and includes any sexual conduct involving an educator and a student or minor.
- (b) In addition to the reporting requirement under Section 261.101, Family Code, the superintendent or director of a school district, open enrollment charter school, 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 district, school, service center, or shared services arrangement has a criminal record and the district, school, 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 441.0845, Government Code;
 - (2) an educator's employment at the district, school, service center, or shared services arrangement was terminated based on 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 district, 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 or open-enrollment charter school shall complete an investigation of an educator that is based on evidence that the educator may have engaged in misconduct described by Subsection (b)(2)(A) or (A-1), despite the educator's resignation from district or school employment before completion of the investigation.

- (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 day after the date the superintendent or director knew about an employee's criminal record under Subsection (b)(1) or a termination of employment or resignation following an alleged incident of misconduct described by Subsection (b). The report must be:
 - (1) in writing; and
 - (2) in a form prescribed by the board.
- (f) The State Board for Educator Certification shall determine whether to impose sanctions 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.

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, §21.031, 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 Authority; Administration by Agency:

- (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;
 - (7) provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Chapter 2001, Government Code;
 - (8) provide for the adoption, amendment, and enforcement of an educator's code of ethics;

Texas Education Code, §21.058, Revocation of Certificate and Termination of Employment Based on Conviction of 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 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:
 - (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:
 - (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 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, §21.060, 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, §22.085, 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.

- (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, §57.491, Loan Default Ground for Nonrenewal of Professional or Occupational License (excerpt):

- (g) A licensing agency shall not renew the license of a licensee who defaults on a repayment agreement unless the person presents to the agency a certificate issued by the corporation certifying that:
 - (1) the licensee has entered another repayment agreement on the defaulted loan; or
 - (2) the licensee is not in default on a loan guaranteed by the corporation or on a repayment agreement.

Texas Government Code, §2001.058, Hearing Conducted by 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 Occupations Code, §53.021, [2 Versions: Effective Until January 1, 2017] 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 Section 3g, Article 42.12, Code of Criminal Procedure; or
 - (4) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

Texas Occupations Code, §53.021, [2 Versions: Effective January 1, 2017] 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.

ATTACHMENT II
Text of Proposed Amendments to 19 TAC

Chapter 249. Disciplinary Proceedings, Sanctions, and Contested Cases

Subchapter B. Enforcement Actions and Guidelines

§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 the director of an open-enrollment charter school, private school, regional education service center, or shared services arrangement 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 calendar days of the date the person knew ~~[first obtains or has knowledge]~~ of those circumstances, and may be subject to sanctions for failure to do so, pursuant to §249.15(b)(4) of this title (relating to Disciplinary Action by State Board for Educator Certification):
- (1) that an applicant for or a holder of a certificate has a reported criminal history;
 - (2) that a certificate holder was terminated from employment based on evidence ~~[a determination]~~ 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) was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor;
 - (C) ~~[(B)]~~ possessed, transferred, sold, or distributed a controlled substance;
 - (D) ~~[(C)]~~ illegally transferred, appropriated, or expended school property or funds;
 - (E) ~~[(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;
 - (F) ~~[(E)]~~ committed a crime, any part of such crime having occurred on school property or at a school-sponsored event; or
 - (G) ~~[(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 would support a finding]~~ 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 Texas Education Code (TEC), §21.006.
- (e) Pursuant to the TEC, §21.006(c) and (h), a report filed under subsection (d) of this section must include the name or names of any student or minor who is the victim of abuse or unlawful conduct by an educator and shall, at a minimum, describe in detail the factual circumstances requiring the report and identify the subject of the report by providing the following available information: name and any aliases; certificate number, if any, or social security number; last known mailing address and home and daytime phone numbers; all available contact information for any alleged victim or victims; and name or names and any available contact information of any relevant witnesses to the circumstances requiring the report. 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. A person who is required to file a report under subsection (d) of this section but fails to do so timely is subject to sanctions under this chapter.
 - (f) 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.
 - (g) 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).
 - (h) 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 (i) 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, 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.
- (i) 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 (h)(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 (j)(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 (h)(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 (j)(2) of this section.
 - (j) The following procedures must be followed for placing an investigative notice on the educator's certification records.
 - (1) At the time of placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a student or minor, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.

- (A) Within ten calendar days of placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.91 of this title (relating to Procedures in General).
 - (B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide the certificate holder the opportunity to show cause within ten calendar days why the notice should be removed from the educator's certification records.
- (2) Prior to placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (h)(1) of this section, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.
- (A) At least ten calendar days before placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.91 of this title.
 - (B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide the certificate holder the opportunity to show cause within ten calendar days why the notice should not be placed on the educator's certification records.
- (3) The TEA staff shall determine whether or not to remove or place an investigative notice on the educator's certification records, taking into account the educator's response, if any, to the letter notifying the certificate holder of the investigation.
- (k) 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 matter related to the alleged act of misconduct that gives rise to the investigative notice. For purposes of this subsection, a criminal matter includes an arrest, an investigation, or a prosecution by a criminal law enforcement agency. Upon receiving notice that the criminal 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 a law enforcement agency where a criminal investigation is pending to determine whether the criminal investigation 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.
- (l) 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 (k) 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.

- (m) Only the TEA staff may file a petition seeking sanctions under §249.15 of this title. Prior to filing a petition, the TEA staff shall mail to the certificate holder affected by written notice of the facts or conduct alleged to warrant the intended action and shall provide the certificate holder an opportunity to show compliance with all requirements of law.

§249.17. Decision-Making Guidelines.

- (a) Purpose. The purpose of these guidelines is to achieve the following objectives:
- (1) to provide a framework of analysis for the Texas Education Agency (TEA) staff, the presiding administrative law judge (ALJ), and the State Board for Educator Certification (SBEC) in considering matters under this chapter;
 - (2) to promote consistency in the exercise of sound discretion by the TEA staff, the presiding ALJ, and the SBEC in seeking, proposing, and making decisions under this chapter; and
 - (3) to provide guidance for the informal resolution of potentially contested matters.
- (b) Construction and application. This section shall be construed and applied so as to preserve SBEC members' discretion in making final decisions under this chapter. This section shall be further construed and applied so as to be consistent with §249.5(b) of this title (relating to Purpose; Policy Governing Disciplinary Proceedings) and this chapter, the Texas Education Code (TEC), and other applicable law, including SBEC decisions and orders.
- (c) Consideration. The following factors may be considered in seeking, proposing, or making a decision under this chapter:
- (1) the seriousness of the violation;
 - (2) whether the misconduct was premeditated or intentional;
 - (3) attempted concealment of misconduct;
 - (4) prior misconduct and SBEC sanctions;
 - (5) the potential danger the conduct poses to the health and welfare of students;
 - (6) the effect of the prior conduct upon any victims of the conduct;
 - (7) whether sufficient time has passed and sufficient evidence is presented to demonstrate that the educator or applicant has been rehabilitated from the prior conduct;
 - (8) the effect of the conduct upon the educator's good moral character and ability to be a proper role model for students;
 - (9) whether the sanction will deter future violations; and
 - (10) any other relevant circumstances or facts.
- (d) Contract abandonment.
- (1) Good cause. The following factors may be considered good cause when an educator is reported to have abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c):
 - (A) serious illness or health condition of the educator or close family member of the educator;
 - (B) relocation to a new city as a result of change in employer of the educator's spouse or partner who resides with the educator; or
 - (C) significant change in the educator's family needs that requires the educator to relocate or to devote more time than allowed by current employment.
 - (2) Mitigating factors. The following factors may be considered in seeking, proposing, or making a decision under this chapter regarding an educator who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c):

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- (A) educator gave written notice to school district 30 days ~~[two weeks]~~ or more in advance of the first day of instruction for which the educator will not be present;
 - (B) educator assisted school district in finding a replacement educator to fill the position;
 - (C) educator continued to work until the school district hired a replacement educator;
 - (D) educator assisted in training the replacement educator;
 - (E) educator showed good faith in communications and negotiations with school district; or
 - (F) educator provided lesson plans for classes following educator's resignation.
- (3) Mandatory minimum sanction for contract abandonment. An educator subject to sanction, who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c) in a case where the factors listed in paragraph (1) or (2) of this subsection do not apply, may not receive a sanction of less than:
- (A) suspension for one year from the first day that, without district permission, the educator failed to appear for work under the contract, provided that the educator has not worked as an educator during that year and the case is resolved within that one year through an agreed final order; or
 - (B) suspension for one year from either the effective date of an agreed final order resolving the case or an agreed future date at the beginning of the following school year, if the educator has worked as an educator after abandoning the contract; or
 - (C) suspension for one year from the date that the SBEC adopts an order that becomes final following a contested case hearing at the State Office of Administrative Hearings (SOAH).
- (e) Mandatory minimum sanction for felony-level conduct. An educator subject to sanction, who is court-ordered to complete a period of deferred adjudication or community supervision for a felony-level criminal offense under state or federal law, may not receive a sanction of less than:
- (1) suspension for a period concurrent with the term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has not been employed as an educator during the period of deferred adjudication or community supervision; or
 - (2) suspension beginning on the effective date of an agreed final order for a period extending beyond the end of the educator's deferred adjudication or community supervision but may be less than the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has been employed as an educator during the period of deferred adjudication or community supervision; or
 - (3) suspension beginning on the effective date of an agreed final order for a period at least half as long as the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order after the educator has completed deferred adjudication or community supervision; or
 - (4) suspension for a period equal to the term of deferred adjudication or community supervision that the criminal court initially ordered but beginning from the date of the final board decision, if the case is resolved through a final board decision following a contested case hearing at the SOAH.
- (f) Mandatory minimum sanction for misdemeanor-level conduct. If an educator is subject to sanction, and a court has ordered the educator to complete a period of deferred adjudication, community supervision, or pretrial diversion for a misdemeanor-level criminal offense under state or federal law, the educator may not receive a sanction of less than an inscribed reprimand.
- (g) Mandatory minimum sanction for test security violation. An educator who intentionally manipulates the results or violates the security or confidential integrity of any test required by the TEC, Chapter 39,

Subchapter B, may not receive a sanction of less than suspension for one year from the effective date of an agreed final order or a final board decision following a contested case hearing at the SOAH.

- (h) Mandatory minimum sanction for drugs and alcohol on school campus. An educator who is subject to sanction because the educator has tested positive for drugs or alcohol while on school campus, was under the influence of drugs or alcohol on school campus, or was in possession of drugs or alcohol on school campus may not receive a sanction of less than a one-year suspension and required completion of a drug or alcohol treatment program.
- (i) ~~(h)~~ Mandatory permanent revocation or denial. Notwithstanding subsection (c) of this section, the SBEC shall permanently revoke the teaching certificate of any educator or permanently deny the application of any applicant if, after a contested case hearing, it is determined that the educator or applicant:
- (1) engaged in any sexual contact or romantic relationship with a student or minor;
 - (2) solicited any sexual contact or romantic relationship with a student or minor;
 - (3) possessed or distributed child pornography;
 - (4) was registered as a sex offender;
 - (5) committed criminal homicide;
 - (6) transferred, sold, distributed, or conspired to possess, transfer, sell, or distribute any controlled substance, the possession of which would be at least a Class A misdemeanor under the Texas Health and Safety Code, Chapter 481, on school property; ~~or~~
 - (7) intentionally, knowingly, or recklessly engaged in abuse of a student or minor that is not justified under the Texas Penal Code, §9.62; or
 - (8) ~~(7)~~ committed any offense described in the TEC, §21.058.
- (j) ~~(i)~~ Sanctioned misconduct in another state. The findings of fact contained in final orders from any other state jurisdiction may provide the factual basis for SBEC disciplinary action. If the underlying conduct for the administrative sanction of an educator's certificate or license issued in another state is a violation of SBEC rules, the SBEC may initiate a disciplinary action regarding the educator's Texas educator certificate and impose a sanction as provided under this chapter.