

Item 9:

**Consider and Take Appropriate Action on Petition for
Adoption of Rule Change Concerning 19 TAC Chapter 230,
Professional Educator Preparation and Certification,
Subchapter B, General Certification Requirements, §230.11,
General Requirements**

DISCUSSION AND ACTION

SUMMARY: This item provides the State Board for Educator Certification (SBEC) an opportunity to consider a petition for rulemaking on 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter B, General Certification Requirements, §230.11, General Requirements, filed pursuant to Texas Government Code, §2001.021. The petitioner requests an amendment to 19 TAC §230.11(b)(5)(C), General Requirements, to replace current language with "verification of satisfactory scores on Test of English as a Foreign Language (TOEFL) of 22-30 on speaking portion or overall TOEFL score of 83." The SBEC must either deny the petition or direct the Texas Education Agency (TEA) staff to initiate rulemaking proceedings.

STATUTORY AUTHORITY: Texas Government Code, §2001.021, and Texas Education Code, §§21.003(a), 21.031, and 21.041(b)(2), (4), and (5).

EFFECTIVE DATE: None.

PREVIOUS BOARD ACTION: The SBEC approved a scaled score of 26 as the passing standard on the speaking portion of the TOEFL in May 2006. Section 230.11 was adopted effective August 12, 2012, and amended effective December 27, 2016.

BACKGROUND INFORMATION AND JUSTIFICATION: Under SBEC rule 19 TAC §230.11(b)(5), any applicant for a Texas educator certificate must "be able to communicate, listen, read, write, and comprehend the English language sufficiently to use it easily and readily in daily communication and teaching." For a candidate who earned his or her degree(s) outside of the United States at an institution of higher education where the primary language of instruction is not English, the candidate must achieve a satisfactory score on an English language proficiency examination approved by the SBEC to satisfy this requirement.

TEA staff received guidance from the SBEC on December 9, 2016, to begin work on gathering stakeholder feedback regarding English language proficiency requirements for certification candidates as currently specified in rule. Discussions included whether to set a minimum score for each section (i.e., Reading, Listening, Speaking, and Writing) of the examination or use a composite score for the examination, as well as whether to use alternate proficiency examinations.

A member of the public has submitted to the SBEC a petition, shown in Attachment III, requesting that the SBEC specify the TOEFL as the English language proficiency examination and set the minimum satisfactory score at 22 rather than the current score of 26 on the speaking portion of the TOEFL or require a minimum total score of 83 out of a maximum total score of 120. The petitioner states that the rule is unclear as to what score meets the "satisfactory" condition, that the proposed scores are comparable to the scores required by universities in Texas and approved by the Texas Higher Education Coordinating Board (THECB), that a Fair rating of 18-25 indicates a person can speak in English and be understood when conveying relevant information, and that an overall score of 83 out of 120 is 70%, which is a commonly accepted passing score.

In accordance with the Texas Government Code, §2001.021, the SBEC may deny the petition or direct the TEA staff to initiate rulemaking proceedings.

TEA staff recommends that the SBEC deny the petition for the following reasons:

- 1) The petitioner stated that the recommended scores are comparable to those approved by the THECB; however, the THECB does not approve TOEFL scores set by the universities.
- 2) The petitioner's methodology, defining a percentage of a scaled score (i.e., 83 out of 120 = 69%) or setting a minimum score of 22 on the Speaking section, does not adhere to the guidelines of the American Psychological Association, the American Educational Research Association, or the National Council on Measurement in Education for setting passing standards and is not recommended by the testing vendor of the TOEFL. A structured, principled process, known as standard setting, is the best method used to determine the English proficiency level needed for an educator to use English easily and readily in daily communication and instruction and to determine passing standards on all Texas certification tests. Scores set arbitrarily or based on graduate admission requirements could be too high or too low and would not address the particular English needs of classroom instruction and learning. Setting a passing score requirement based solely on one petitioner's recommendation does not reflect industry best practices for establishing minimum requirements.
- 3) The SBEC has already directed TEA staff to gather stakeholder feedback and to make recommendations on this rule. The petitioner has been invited to participate as a stakeholder.

FISCAL IMPACT: None.

PUBLIC AND STUDENT BENEFIT: None.

PROCEDURAL AND REPORTING IMPLICATIONS: None.

LOCALLY MAINTAINED PAPERWORK REQUIREMENTS: None.

PUBLIC COMMENTS: None.

ALTERNATIVES: None.

OTHER COMMENTS AND RELATED ISSUES: Under SBEC rule 19 TAC §250.20, Petition for Adoption of Rules or Rule Changes, shown in Attachment I, the TEA must respond to a rule petition within 60 days even if it is not possible for the SBEC to act upon it within 60 days, as was the case with this petition. As a result, TEA staff notified the petitioner that the petition would be considered at the March 3, 2017 meeting.

ASSOCIATE COMMISSIONER'S RECOMMENDATION: I recommend that the State Board for Educator Certification:

Deny the petition concerning the English language proficiency requirement in 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter B, General Certification Requirements, §230.11, General Requirements, because the State Board for Educator Certification has given direction to staff to convene a stakeholder group to make recommendations to the SBEC on the English language proficiency requirements specified in rule.

Staff Members Responsible: Marilyn Cook, Director
Educator Certification and Testing

Tim Miller, Director
Educator Preparation

Becky McCoy, Manager
Educator Certification and Testing

Jennifer Perez, Program Specialist
Educator Certification and Testing

- Attachments:**
- I. Statutory Citations
 - II. Text of 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter B, General Certification Requirements, §230.11, General Requirements
 - III. Petition to Amend 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter B, General Certification Requirements, §230.11, General Requirements

ATTACHMENT I**Statutory Citations Related to Consideration of Petition for Adoption of Rule Change
Concerning 19 TAC Chapter 230, Professional Educator Preparation and Certification,
Subchapter B, General Certification Requirements, §230.11, General Requirements****Texas Education Code, §21.003, Certification Required (excerpt):**

- (a) A person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by Subchapter B.

Texas Education Code, §21.031, Purpose:

- (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.
- (b) In proposing rules under this subchapter, the board shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state.

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

- (b) The board shall propose rules that:
 - (2) specify the classes of educator certificates to be issued, including emergency certificates;
 - (4) specify the requirements for the issuance and renewal of an educator certificate;
 - (5) provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to Section 21.052;

Texas Government Code, §2001.021, Petition for Adoption of Rules:

- (a) An interested person by petition to a state agency may request the adoption of a rule.
- (b) A state agency by rule shall prescribe the form for a petition under this section and the procedure for its submission, consideration, and disposition. If a state agency requires signatures for a petition under this section, at least 51 percent of the total number of signatures required must be of residents of this state.
- (c) Not later than the 60th day after the date of submission of a petition under this section, a state agency shall:
 - (1) deny the petition in writing, stating its reasons for the denial; or
 - (2) initiate a rulemaking proceeding under this subchapter.
- (d) For the purposes of this section, an interested person must be:

- (1) a resident of this state;
- (2) a business entity located in this state;
- (3) a governmental subdivision located in this state; or
- (4) a public or private organization located in this state that is not a state agency.

19 TAC §250.20, Petition for Adoption of Rules or Rule Changes.

- (a) Any interested person may petition for the adoption, amendment, or repeal of a rule of the State Board for Educator Certification (SBEC) by filing a petition on a form provided in this subsection. The petition shall be signed and submitted to the designated Texas Education Agency (TEA) office. The TEA staff shall evaluate the merits of the proposal to determine whether to recommend that rulemaking proceedings be initiated or that the petition be denied.

Figure: 19 TAC §250.20(a)

- (b) In accordance with the Texas Government Code, §2001.021, the TEA staff must respond to the petitioner within 60 calendar days of receipt of the petition.
- (1) Where possible, the recommendation concerning the petition shall be placed on the SBEC agenda, and the SBEC shall act on the petition within the 60-calendar-day time limit.
 - (2) Where the time required to review the petition or the scheduling of SBEC meetings will not permit the SBEC to act on the petition within the required 60 calendar days, the TEA staff shall respond to the petitioner within the required 60 calendar days, notifying the petitioner of the date of the SBEC meeting at which the recommendation will be presented to the SBEC for action.
- (c) The SBEC will review the petition and the recommendation and will either direct the TEA staff to begin the rulemaking process or deny the petition, giving reasons for the denial. The TEA staff will notify the petitioner of the SBEC's action related to the petition.
- (d) Without limitation to the reasons for denial in this subsection, the SBEC may deny a petition on the following grounds:
- (1) the SBEC does not have jurisdiction or authority to propose or to adopt the petitioned rule;
 - (2) the petitioned rule conflicts with a statute, court decision, another rule proposed or adopted by the SBEC, or other law;
 - (3) the SBEC determines that a different proceeding, procedure, or act more appropriately addresses the subject matter of the petition than initiating a rulemaking proceeding; or
 - (4) the petitioner is inappropriately using the opportunity to file a rulemaking petition under this section, as evidenced by filing a petition:
 - (A) before the fourth anniversary of the SBEC's having previously considered and rejected a similar rule on the same subject matter; or
 - (B) to amend a rule proposed or adopted by the SBEC that has not yet become effective.

- (e) If the SBEC initiates rulemaking procedures in response to a petition, the rule text which the SBEC proposes may differ from the rule text proposed by the petitioner.

ATTACHMENT II
Text of 19 TAC**Chapter 230. Professional Educator Preparation and Certification****Subchapter B. General Certification Requirements****§230.11. General Requirements.**

- (a) The only credits and degrees acceptable for certification of educators are those earned from and conferred by accredited institutions of higher education. All credit hour requirements for certification are semester credit hours or their equivalent.
- (b) An applicant for a Texas educator certificate must:
 - (1) be at least 18 years of age;
 - (2) submit to the criminal history review required by the Texas Education Code (TEC) §22.0831, not be disqualified by the TEC, §21.058, §21.060, or other Texas statute, and not be subject to administrative denial pursuant to §249.12 of this title (relating to Administrative Denial; Appeal) or a pending proceeding under Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases);
 - (3) not be disqualified by federal law;
 - (4) be willing to support and defend the constitutions of the United States and Texas;
 - (5) be able to communicate, listen, read, write, and comprehend the English language sufficiently to use it easily and readily in daily communication and teaching. English language proficiency shall be evidenced by one of the following:
 - (A) completion of an undergraduate or graduate degree at an accredited institution of higher education in the United States;
 - (B) if an undergraduate or graduate degree was earned at an institution of higher education outside of the United States, including territories of the United States, evidence must be provided under procedures approved by the Texas Education Agency (TEA) staff that the primary language of instruction was English; or
 - (C) verification of satisfactory scores on an English language proficiency examination(s) approved by the State Board for Educator Certification (SBEC);
 - (6) successfully complete appropriate examinations prescribed in §230.21 of this title (relating to Educator Assessment) for the educator certificate sought; and
 - (7) satisfy one or more of the following requirements:
 - (A) complete the requirements for certification specified in this chapter, Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates), Chapter 239 of this title (relating to Student Services Certificates), Chapter 241 of this title (relating to Principal Certificate), or Chapter 242 of this title (relating to Superintendent Certificate), and be recommended for certification by an approved educator preparation program;
 - (B) qualify under Subchapter H of this chapter (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States);
 - (C) qualify under §230.105 of this title (relating to Issuance of Additional Certificates Based on Examination);

- (D) qualify for a career and technical education certificate based on skill and experience specified in §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)); or
- (E) qualify under Chapter 245 of this title (relating to Certification of Educators from Other Countries).

Statutory Authority: *The provisions of this §230.11 issued under the Texas Education Code, §§21.041(b)(2) and (4), 21.044(a), 21.048, 21.050, and 22.082.*

Source: *The provisions of this §230.11 adopted to be effective August 12, 2012, 37 TexReg 5753; amended to be effective December 27, 2016, 41 TexReg 10309.*

ATTACHMENT III

Figure: 19 TAC §250.20(a)

STATE BOARD FOR EDUCATOR CERTIFICATION
Petition for Adoption of a Rule

The Texas Government Code, §2001.021, provides that any interested person may petition an agency requesting the adoption of a rule.

Petitions should be signed and submitted to:

Office of Educator Leadership and Quality
Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494

Name: **Sharon Fikes**

Affiliation/Organization (if applicable): **Education Career Alternatives Program, LTD.**

Address: **PO Box 162179, Ft. Worth, TX 7616**

Telephone: **817-284-7731** Date: **11/28/2016**

Proposed rule text (indicate words to be added or deleted from the current text):

19 TAC Chapter 230, Subchapter B, §230.11 General Requirements (b)(5)(C)

Remove (C) verification of satisfactory scores on an English language proficiency examination(s) approved by the State Board for Educator Certification (SBEC)

Add (C) verification of satisfactory scores on Test of English as a Foreign Language (TOEFL) of 22-30 on speaking portion or overall TOEFL score of 83

Statutory authority for the proposed rule action: Title 19; Part 7; Chapter 250; Subchapter B; Rule 250.20

Why is this rule action necessary or desirable?

Present rule reads “satisfactory score on an English language proficiency examination(s) approved by SBEC”. This rule is unclear as to the what score meets the “satisfactory” condition. Adding proposed text would place in rule a score requirement which would give specific information for EPPs for purposes of evaluating candidates as well as making clear the requirement for purposes of audit by SBEC.

The proposed scores are comparable to the scores required by universities in Texas and approved by the Texas Higher Education coordinating Board.

The TOEFL analysis of strengths in speaking are rated Good, Fair, Limited, and Weak. A Fair rating (18-25) indicates that the person can speak in English and be understood when conveying relevant information. A Perfect overall score is 120 so a score of 83 overall is 70% which is a commonly accepted passing score.