

## Chapter 249. Disciplinary Proceedings, Sanctions, and Contested Cases

### Subchapter B. Enforcement Actions and Guidelines

#### §249.11. Test Irregularities; Appeal; Sanctions.

- (a) Upon satisfactory evidence that the examinee has violated certification test administration rules or procedures, the State Board for Educator Certification may cancel the examinee's test scores or registration and bar the person from being admitted to future test administrations. The Texas Education Agency (TEA) staff shall provide written notice of this action and the factual and legal reasons for it to the examinee by personal service, registered or certified mail, or email to the most recent address provided to the TEA or its test contractor by the examinee. The examinee may attempt to show compliance with test administration rules or procedures 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.
- (b) The examinee may appeal and request a SOAH hearing of the administrative cancellation of test scores and/or test admission bar. The appeal of an administrative cancellation 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).
- (c) 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 examinee received or is deemed to have received written notice of the TEA staff's action. Unless otherwise proved by the examinee, 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 examinee. The TEA staff may dismiss an appeal not timely filed.
- (d) The TEA staff shall send an answer to the petition to the examinee and shall refer the petition and answer to the SOAH for a contested case hearing.

*Statutory Authority: The provisions of this §249.11 issued under the Texas Education Code, §§21.006(b-1) and (g); 21.007; 21.031(a); 21.035; 21.040(6) and (7); 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a); 21.058; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.087; and 57.491(g); Texas Government Code, §§411.087; 411.090, and 2001.058(f); Texas Family Code, §261.308(d) and (e) and §261.406(a) and (b); and Texas Occupations Code, §§53.021(a), 53.022-53.025, and 53.051.*

*Source: The provisions of this §249.11 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533.*

#### §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 registered or certified mail to the address the person has provided in the application or request that is being denied. The person may attempt to show compliance with legal requirements by written submission or by requesting an informal conference, and/or may appeal and request a State Office of Administrative Hearings (SOAH) hearing as hereafter provided. The 30-day deadline to appeal and request a hearing is not tolled during any attempts to show cause.
- (d) The appeal and request for a SOAH hearing of an administrative denial shall be in the form of a petition that complies in content and form with §249.26 of this title (relating to Petition) and 1 Texas Administrative Code, Part 7, §155.301 (relating to Required Form of Pleadings). In order to be referred to the SOAH for a contested case hearing, an appeal petition must be filed with the TEA staff within 30 calendar days after the person received or is deemed to have received written notice of the administrative denial. Unless otherwise proved by the person, the notice shall be deemed to have been received by the examinee no later than five calendar days after mailing to the most recent address provided by the person. The TEA staff may dismiss an appeal that is not timely filed without further action.
- (e) The TEA staff shall send an answer to the petition to the person appealing an administrative denial and shall refer the petition and answer to the SOAH for a contested case hearing.

*Statutory Authority: The provisions of this §249.12 issued under the Texas Education Code, §§21.006(b-1) and (g); 21.007; 21.031(a); 21.035; 21.040(6) and (7); 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a); 21.058; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.087; and 57.491(g); Texas Government Code, §§411.087; 411.090, and 2001.058(f); Texas Family Code, §261.308(d) and (e) and §261.406(a) and (b); and Texas Occupations Code, §§53.021(a), 53.022-53.025, 53.051, and 53.052.*

*Source: The provisions of this §249.12 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533; amended to be effective March 8, 2018, 43 TexReg 1273.*

### **§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 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.

*Statutory Authority: The provisions of this §249.13 issued under the Texas Education Code, §21.041(b)(1), (7), and (8).*

*Source: The provisions of this §249.13 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533; amended to be effective October 17, 2013, 38 TexReg 7113.*

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

- (a) The Texas Education Agency (TEA) staff may obtain and investigate information concerning alleged improper conduct by an educator, applicant, examinee, or other person subject to this chapter that would warrant the State Board for Educator Certification (SBEC) denying relief to or taking disciplinary action against the person or certificate.
- (b) Complaints against an educator, applicant, or examinee must be filed in writing.
- (c) The TEA staff may also obtain and act on other information providing grounds for investigation and possible action under this chapter.
- (d) A person who serves as the superintendent of a school district or district of innovation or the director of 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 business days of the date the person either receives a report from a principal under subsection (e) of this section or knew of those circumstances, and may be subject to sanctions for failure to do so, pursuant to §249.15(b)(4) of this title (relating to Disciplinary Action by State Board for Educator Certification):
  - (1) that an applicant for or a holder of a certificate has a reported criminal history, which the superintendent or director obtained information by a means other than the criminal history clearinghouse established under Texas Government Code, §411.0845;
  - (2) that a certificate holder was terminated from employment and there is evidence that he or she committed any of the following acts:
    - (A) sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor;
    - (B) possessed, transferred, sold, or distributed a controlled substance;
    - (C) illegally transferred, appropriated, or expended school property or funds;
    - (D) attempted by fraudulent or unauthorized means to obtain or to alter any certificate or permit that would entitle the individual to be employed in a position requiring such certificate or permit or to receive additional compensation associated with a position;
    - (E) committed a crime, any part of such crime having occurred on school property or at a school-sponsored event; or
    - (F) solicited or engaged in sexual conduct or a romantic relationship with a student or minor;

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

under the TCCP, §15.27(e), and the principal holds a certificate issued under the TEC, Chapter 21, Subchapter B, the governing body shall report the failure to the SBEC.

- (j) The TEA staff shall not pursue sanctions against an educator who is alleged to have abandoned his or her TEC, Chapter 21, contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), subject to the limitations imposed by the TEC, §21.4021(g), unless the board of trustees of the employing school district:
  - (1) submits a written complaint to the TEA staff within 30 calendar days after the effective date of the educator's separation from employment from the school district. For purposes of this section, unless the school district and the educator have a written agreement to the contrary, the effective date of separation from employment is the first day that, without district permission, the educator fails to appear for work under the contract;
  - (2) renders a finding that good cause did not exist under the TEC, §§21.105(c)(2), 21.160(c)(2), or 21.210(c)(2). This finding constitutes prima facie evidence of the educator's lack of good cause, but is not a conclusive determination; and
  - (3) submits the following required attachments to the written complaint:
    - (A) the educator's resignation letter, if any;
    - (B) the agreement with the educator regarding the effective date of separation from employment, if any;
    - (C) the educator's contract; and
    - (D) school board meeting minutes indicating a finding of "no good cause" (if the board does not meet within 30 calendar days of the educator's separation from employment, the minutes may be submitted within 10 calendar days after the next board meeting).
  
- (k) To efficiently administer and implement the SBEC's purpose under this chapter and the TEC, the TEA staff may set priorities for the investigation of complaints based on the severity and immediacy of the allegations and the likelihood of harm posed by the subject of the investigation. All cases accepted for investigation shall be assigned one of the following priorities.
  - (1) Priority 1: conduct that may result in the placement of an investigative notice pursuant to the TEC, §21.007, and subsection (l) of this section because it presents a risk to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague, including, but not limited to, the following:
    - (A) any conduct constituting a felony criminal offense;
    - (B) indecent exposure;
    - (C) public lewdness;
    - (D) child abuse and/or neglect;
    - (E) possession of a weapon on school property;
    - (F) drug offenses occurring on school property;
    - (G) sale to or making alcohol or other drugs available to a student or minor;
    - (H) sale, distribution, or display of harmful material to a student or minor;
    - (I) certificate fraud;
    - (J) state assessment testing violations;
    - (K) deadly conduct; and
    - (L) conduct that involves inappropriate communication with a student as described in §247.2(3)(I) of this title (relating to Code of Ethics and Standard Practices for Texas Educators), inappropriate professional educator-student relationships and boundaries, or

otherwise soliciting or engaging in sexual conduct or a romantic relationship with a student or minor.

- (2) Priority 2: any sanctionable conduct that is not Priority 1 conduct under paragraph (1) of this subsection. An investigative notice will not be placed on an educator's certification records on the basis of an allegation of Priority 2 conduct. The TEA staff may change a case's priority at any time based on information received. Priority 2 conduct includes, but is not limited to, the following:
- (A) any conduct constituting a misdemeanor criminal offense or testing violation that is not Priority 1 conduct;
  - (B) contract abandonment; and
  - (C) code of ethics violations that do not constitute Priority 1 conduct.
- (l) After accepting a case for investigation, if the alleged conduct indicates a risk to the health, safety, or welfare of a student or minor, as described in subsection (k)(1) of this section, the TEA staff shall immediately place an investigative notice on the certificate holder's certification records stating that the certificate holder is currently under investigation. The placement of such an investigative notice must follow the procedures set forth in subsection (m)(1) of this section. After accepting a case for investigation, if the alleged conduct indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (k)(1) of this section, the TEA staff may place an investigative notice on the certificate holder's certification records stating that the certificate holder is currently under investigation. The placement of an investigative notice must follow the procedures set forth in subsection (m)(2) of this section.
- (m) The following procedures must be followed for placing an investigative notice on the educator's certification records.
- (1) At the time of placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a student or minor, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.
    - (A) Within ten calendar days of placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.91 of this title (relating to Procedures in General).
    - (B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide the certificate holder the opportunity to show cause within ten calendar days why the notice should be removed from the educator's certification records.
  - (2) Prior to placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (k)(1) of this section, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.
    - (A) At least ten calendar days before placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.91 of this title.
    - (B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide the certificate holder the opportunity to show cause within ten calendar days why the notice should not be placed on the educator's certification records.

- (3) The TEA staff shall determine whether or not to remove or place an investigative notice on the educator's certification records, taking into account the educator's response, if any, to the letter notifying the certificate holder of the investigation.
- (n) An investigative notice is subject to the following time limits.
  - (1) An investigative notice may remain on the certification records of a certificate holder for a period not to exceed 240 calendar days.
  - (2) The TEA staff may toll this time limit if information is received indicating that there is a pending criminal or administrative matter related to the alleged act of misconduct that gives rise to the investigative notice. For purposes of this subsection, a criminal or administrative matter includes an audit by a state or federal agency, an arrest, an investigation, related litigation or other enforcement action brought by a state or federal administrative agency, or a prosecution by a criminal law enforcement agency. Upon receiving notice that the criminal or administrative matter has been resolved the tolling period shall end. As part of its procedure, the TEA staff will attempt to make bimonthly (once every two months) contact with the agency where a related matter is pending to determine whether the related matter has been closed or otherwise resolved.
  - (3) The TEA staff may toll this time limit if the matter is referred for a contested case hearing, upon agreement of the parties, or while the matter is pending action by the SBEC on a proposed agreed order.
- (o) The TEA staff shall remove an investigative notice from an educator's certification records:
  - (1) when a case's final disposition occurs within the time limits established in subsection (n) of this section; or
  - (2) when the time limits for an investigative notice have been exceeded, if:
    - (A) the certificate holder has made a written demand to the TEA staff that the investigative notice be removed because the time limits have been exceeded; and
    - (B) the TEA staff has failed to refer the matter to the State Office of Administrative Hearings for a contested case hearing within 30 calendar days from the date of receipt of the written demand to remove the investigative notice.
- (p) Only the TEA staff may file a petition seeking sanctions under §249.15 of this title. Prior to filing a petition, the TEA staff shall mail to the certificate holder affected by written notice of the facts or conduct alleged to warrant the intended action and shall provide the certificate holder an opportunity to show compliance with all requirements of law.

*Statutory Authority: The provisions of this §249.14 issued under the Texas Education Code, §§21.006(a)-(c), (f), and (g); 21.007; 21.031(a); 21.035; 21.041(a) and (b)(1), (4), (7), and (8); 21.058; 21.0581; 21.060; 21.104; 21.105(c); 21.160(c); 21.210(c); 22.085; and 22.087; Texas Government Code, §2001.058; and Texas Occupations Code, §§53.021(a), 53.022-53.025, 53.051, and 53.052.*

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

- (a) Pursuant to this chapter, the State Board for Educator Certification (SBEC) may take any of the following actions:
  - (1) place restrictions on the issuance, renewal, or holding of a certificate, either indefinitely or for a set term;
  - (2) issue an inscribed or non-inscribed reprimand;

- (3) suspend a certificate for a set term or issue a probated suspension for a set term;
  - (4) revoke or cancel, which includes accepting the surrender of, a certificate without opportunity for reapplication for a set term or permanently;
  - (5) impose any additional conditions or restrictions upon a certificate that the SBEC deems necessary to facilitate the rehabilitation and professional development of the educator or to protect students, parents of students, school personnel, or school officials; or
  - (6) impose an administrative penalty of \$500-\$10,000 on a superintendent or director who fails to file timely a report required under §249.14(d) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition) or on a principal who fails to timely notify a superintendent or director as required under §249.14(e) of this title under the circumstances and in the manner required by the Texas Education Code (TEC), §21.006.
- (b) The SBEC may take any of the actions listed in subsection (a) of this section based on satisfactory evidence that:
- (1) the person has conducted school or education activities in violation of law;
  - (2) the person is unworthy to instruct or to supervise the youth of this state;
  - (3) the person has violated a provision of the Educators' Code of Ethics;
  - (4) the person has failed to report or has hindered the reporting of child abuse pursuant to the Texas Family Code, §261.001, or has failed to notify the SBEC or the school superintendent or director under the circumstances and in the manner required by the TEC, §21.006, and §249.14(d)-(f) of this title;
  - (5) the person has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c);
  - (6) the person has failed to cooperate with the Texas Education Agency (TEA) in an investigation;
  - (7) the person has failed to provide information required to be provided by §229.3 of this title (relating to Required Submissions of Information, Surveys, and Other Data);
  - (8) the person has violated the security or integrity of any assessment required by the TEC, Chapter 39, Subchapter B, as described in subsection (g) of this section or has committed an act that is a departure from the test administration procedures established by the commissioner of education in Chapter 101 of this title (relating to Assessment);
  - (9) the person has committed an act described in §249.14(k)(1) of this title, which constitutes sanctionable Priority 1 conduct, as follows:
    - (A) any conduct constituting a felony criminal offense;
    - (B) indecent exposure;
    - (C) public lewdness;
    - (D) child abuse and/or neglect;
    - (E) possession of a weapon on school property;
    - (F) drug offenses occurring on school property;
    - (G) sale to or making alcohol or other drugs available to a student or minor;
    - (H) sale, distribution, or display of harmful material to a student or minor;
    - (I) certificate fraud;
    - (J) state assessment testing violations;
    - (K) deadly conduct; or
    - (L) conduct that involves soliciting or engaging in sexual conduct or a romantic relationship with a student or minor;



- (10) the person has committed an act that would constitute an offense (without regard to whether there has been a criminal conviction) that is considered to relate directly to the duties and responsibilities of the education profession, as described in §249.16(c) of this title (relating to Eligibility of Persons with Criminal History for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21). Such offenses indicate a threat to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague; interfere with the orderly, efficient, or safe operation of a school district, campus, or activity; or indicate impaired ability or misrepresentation of qualifications to perform the functions of an educator and include, but are not limited to:
    - (A) offenses involving moral turpitude;
    - (B) offenses involving any form of sexual or physical abuse or neglect of a student or minor or other illegal conduct with a student or minor;
    - (C) offenses involving any felony possession or conspiracy to possess, or any misdemeanor or felony transfer, sale, distribution, or conspiracy to transfer, sell, or distribute any controlled substance defined in the Texas Health and Safety Code, Chapter 481;
    - (D) offenses involving school property or funds;
    - (E) offenses involving any attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;
    - (F) offenses occurring wholly or in part on school property or at a school-sponsored activity; or
    - (G) felony offenses involving driving while intoxicated (DWI);
  - (11) the person has intentionally failed to comply with the reporting, notification, and confidentiality requirements specified in the Texas Code of Criminal Procedure, §15.27(a), relating to student arrests, detentions, and juvenile referrals for certain offenses;
  - (12) the person has failed to discharge an employee or to refuse to hire an applicant when the person knew that the employee or applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor in accordance with the TEC, §21.009(e), or knew or should have known through a criminal history record information review that the employee or applicant had been convicted of an offense in accordance with the TEC, §22.085;
  - (13) the person assisted another educator, school employee, contractor, or agent in obtaining a new job as an educator or in a school, apart from the routine transmission of administrative and personnel files, when the educator knew or had probable cause to believe that such person engaged in an inappropriate relationship with a minor or student;
  - (14) the person is a superintendent of a school district or the chief operating officer of an open-enrollment charter school who falsely or inaccurately certified to the commissioner of education that the district or charter school had complied with the TEC, §22.085; or
  - (15) the person has failed to comply with an order or decision of the SBEC.
- (c) The TEA staff may commence a contested case to take any of the actions listed in subsection (a) of this section by serving a petition to the certificate holder in accordance with this chapter describing the SBEC's intent to issue a sanction and specifying the legal and factual reasons for the sanction. The certificate holder shall have 30 calendar days to file an answer as provided in §249.27 of this title (relating to Answer).
  - (d) Upon the failure of the certificate holder to file a written answer as required by this chapter, the TEA staff may file a request for the issuance of a default judgment from the SBEC imposing the proposed sanction in accordance with §249.35 of this title (relating to Disposition Prior to Hearing; Default).
  - (e) If the certificate holder files a timely answer as provided in this section, the case will be referred to the State Office of Administrative Hearings (SOAH) for hearing in accordance with the SOAH rules; the Texas Government Code, Chapter 2001; and this chapter.

- (f) The provisions of this section are not exclusive and do not preclude consideration of other grounds or measures available by law to the SBEC or the TEA staff, including student loan default or child support arrears. The SBEC may request the Office of the Attorney General to pursue available civil, equitable, or other legal remedies to enforce an order or decision of the SBEC under this chapter.
- (g) The statewide assessment program as defined by the TEC, Chapter 39, Subchapter B, is a secure testing program.
  - (1) Procedures for maintaining security shall be specified in the appropriate test administration materials.
  - (2) Secure test materials must be accounted for before, during, and after each test administration. Only authorized personnel may have access to secure test materials.
  - (3) The contents of each test booklet and answer document are confidential in accordance with the Texas Government Code, Chapter 551, and the Family Educational Rights and Privacy Act of 1974. Individual student performance results are confidential as specified under the TEC, §39.030(b).
  - (4) Violation of security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, shall be prohibited. A person who engages in conduct prohibited by this section may be subject to sanction of credentials, including any of the sanctions provided by subsection (a) of this section.
  - (5) Charter school test administrators are not required to be certified; however, any irregularity in the administration of any test required by the TEC, Chapter 39, Subchapter B, would cause the charter itself to come under review by the commissioner of education for possible sanctions or revocation, as provided under the TEC, §12.115(a)(4).
  - (6) Conduct that violates the security and confidential integrity of a test is evidenced by any departure from the test administration procedures established by the commissioner of education. Conduct of this nature may include, but is not limited to, the following acts and omissions:
    - (A) viewing a test before, during, or after an assessment unless specifically authorized to do so;
    - (B) duplicating secure examination materials;
    - (C) disclosing the contents of any portion of a secure test;
    - (D) providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;
    - (E) changing or altering a response or answer of an examinee to a secure test item or prompt;
    - (F) aiding or assisting an examinee with a response or answer to a secure test item or prompt;
    - (G) fraudulently exempting or preventing a student from the administration of a required state assessment;
    - (H) encouraging or assisting an individual to engage in the conduct described in paragraphs (1)-(7) of this subsection; or
    - (I) failing to report to an appropriate authority that an individual has engaged in conduct outlined in paragraphs (1)-(8) of this subsection.
  - (7) Any irregularities in test security or confidential integrity may also result in the invalidation of student results.
  - (8) The superintendent and campus principal of each school district and chief administrative officer of each charter school and any private school administering the tests as allowed under the TEC, §39.033, shall develop procedures to ensure the security and confidential integrity of the tests specified in the TEC, Chapter 39, Subchapter B, and shall be responsible for notifying the TEA in writing of conduct that violates the security or confidential integrity of a test administered under

the TEC, Chapter 39, Subchapter B. A person who fails to report such conduct as required by this subsection may be subject to any of the sanctions provided by subsection (a) of this section.

*Statutory Authority: The provisions of this §249.15 issued under the Texas Education Code, §§21.006(c) and (g); 21.007; 21.009(e); 21.031(a); 21.035; 21.040(6) and (7); 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; and 57.491(g); the Texas Government Code, §§411.087; 411.090; and 2001.058(e); the Texas Family Code, §261.308(d) and (e) and §261.406(a) and (b); the Texas Occupations Code, §§53.021(a); 53.022-53.025; 53.051; and 53.052; and Every Student Succeeds Act, 20 United States Code, §7926.*

*Source: The provisions of this §249.15 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective June 21, 2009, 34 TexReg 3944; amended to be effective December 19, 2011, 36 TexReg 8533; amended to be effective October 17, 2013, 38 TexReg 7113; amended to be effective December 28, 2014, 39 TexReg 10010; amended to be effective October 8, 2015, 40 TexReg 6892; amended to be effective May 15, 2016, 41 TexReg 3310; amended to be effective March 8, 2018, 43 TexReg 1273; amended to be effective October 21, 2018, 43 TexReg 6841.*

**§249.16. Eligibility of Persons with Criminal History for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21.**

- (a) Pursuant to the Texas Occupations Code (TOC), Chapter 53, and the Texas Education Code (TEC), Chapter 21, Subchapter B, the State Board for Educator Certification (SBEC) may suspend or revoke an existing valid certificate, deny an applicant a certificate, bar a person from being assessed or examined for a certificate, or take other disciplinary action because of a person's conviction of a felony or misdemeanor or certain other criminal history.
- (b) Disciplinary action under the TOC, §53.021, does not apply to a person convicted only of an offense punishable as a Class C misdemeanor unless the person is an applicant for or the holder of a license that authorizes the person to possess a firearm and the person was convicted of the misdemeanor offense of domestic violence as defined by 18 United States Code, §921.
- (c) When statute or SBEC rule codified in the Texas Administrative Code, Title 19, Part 7, requires an offense to directly relate to the duties and responsibilities of the education profession, an offense is considered to directly relate if the offense indicates a threat to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague; interferes with the orderly, efficient, or safe operation of a school district, campus, or activity; or indicates impaired ability or misrepresentation of qualifications to perform the functions of an educator. Offenses considered to relate directly to the duties and responsibilities of the education profession include, but are not limited to:
  - (1) offenses involving moral turpitude;
  - (2) offenses involving any form of sexual or physical abuse or neglect of a student or minor or other illegal conduct with a student or minor;
  - (3) offenses involving any felony possession or conspiracy to possess, or any misdemeanor or felony transfer, sale, distribution, or conspiracy to transfer, sell, or distribute any controlled substance defined in the Texas Health and Safety Code, Chapter 481;
  - (4) offenses involving school property or funds;
  - (5) offenses involving any attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;
  - (6) offenses occurring wholly or in part on school property or at a school-sponsored activity; or
  - (7) felony offenses involving driving while intoxicated (DWI).
- (d) Except as provided in subsection (f) of this section, the Texas Education Agency (TEA) staff, pursuant to the TOC, Chapter 53, and the requirements of this chapter, shall notify the applicant or certificate holder in writing of the TEA staff's intent to seek disciplinary action, including denial or revocation, and the reasons for the proposed action. The applicant or certificate holder shall have the opportunity to be heard according to the procedures set forth in this chapter.

- (e) The grounds for revoking or suspending a certificate provided by this section and the TOC, Chapter 53, are cumulative of the other grounds and remedies provided by the TEC, §21.060, and this chapter.
- (f) The TEC, §21.058, shall control actions pursued under that section.

*Statutory Authority: The provisions of this §249.16 issued under the Texas Education Code, §§21.041(b)(1), (7), and (8), 21.058(a) and (b), and 21.060; and Texas Occupations Code, §53.021 and §53.025.*

*Source: The provisions of this §249.16 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective June 21, 2009, 34 TexReg 3944; amended to be effective May 18, 2014, 39 TexReg 3710 ; amended to be effective December 28, 2014, 39 TexReg 10010.*

**§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):
  - (A) educator gave written notice to school district 30 days or more in advance of the first day of instruction for which the educator will not be present;
  - (B) educator assisted school district in finding a replacement educator to fill the position;
  - (C) educator continued to work until the school district hired a replacement educator;
  - (D) educator assisted in training the replacement educator;
  - (E) educator showed good faith in communications and negotiations with school district; or
  - (F) educator provided lesson plans for classes following educator's resignation.
- (3) Mandatory minimum sanction for contract abandonment. An educator subject to sanction, who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c) in a case where the factors listed in paragraph (1) or (2) of this subsection do not apply, may not receive a sanction of less than:
  - (A) suspension for one year from the first day that, without district permission, the educator failed to appear for work under the contract, provided that the educator has not worked as an educator during that year and the case is resolved within that one year through an agreed final order; or
  - (B) suspension for one year from either the effective date of an agreed final order resolving the case or an agreed future date at the beginning of the following school year, if the educator has worked as an educator after abandoning the contract; or
  - (C) suspension for one year from the date that the SBEC adopts an order that becomes final following a default under §249.35 of this title (relating to Disposition Prior to Hearing; Default) or a contested case hearing at the State Office of Administrative Hearings (SOAH).
- (e) Mandatory minimum sanction for felony-level conduct. An educator subject to sanction, who is court-ordered to complete a period of deferred adjudication or community supervision for a felony-level criminal offense under state or federal law, may not receive a sanction of less than:
  - (1) suspension for a period concurrent with the term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has not been employed as an educator during the period of deferred adjudication or community supervision; or
  - (2) suspension beginning on the effective date of an agreed final order for a period extending beyond the end of the educator's deferred adjudication or community supervision but may be less than the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has been employed as an educator during the period of deferred adjudication or community supervision; or
  - (3) suspension beginning on the effective date of an agreed final order for a period at least half as long as the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order after the educator has completed deferred adjudication or community supervision; or
  - (4) suspension for a period equal to the term of deferred adjudication or community supervision that the criminal court initially ordered but beginning from the date of the final board decision, if the case is resolved through a final board decision following a contested case hearing at the SOAH or a default under §249.35 of this title.

- (f) Mandatory minimum sanction for misdemeanor-level conduct. If an educator is subject to sanction, and a court has ordered the educator to complete a period of deferred adjudication, community supervision, or pretrial diversion for a misdemeanor-level criminal offense under state or federal law, the educator may not receive a sanction of less than an inscribed reprimand.
- (g) Mandatory minimum sanction for test security violation. An educator who intentionally manipulates the results or violates the security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, may not receive a sanction of less than suspension for one year from the effective date of an agreed final order or a final board decision following a contested case hearing at the SOAH.
- (h) Mandatory minimum sanction for drugs and alcohol on school campus. An educator who is subject to sanction because the educator has tested positive for drugs or alcohol while on school campus, was under the influence of drugs or alcohol on school campus, or was in possession of drugs or alcohol on school campus may not receive a sanction of less than a one-year suspension and required completion of a drug or alcohol treatment program.
- (i) Mandatory permanent revocation or denial. Notwithstanding subsection (c) of this section, the SBEC shall permanently revoke the teaching certificate of any educator or permanently deny the application of any applicant if, after a contested case hearing or a default under §249.35 of this title, it is determined that the educator or applicant:
  - (1) engaged in any sexual contact or romantic relationship with a student or minor;
  - (2) solicited any sexual contact or romantic relationship with a student or minor;
  - (3) possessed or distributed child pornography;
  - (4) was registered as a sex offender;
  - (5) committed criminal homicide;
  - (6) transferred, sold, distributed, or conspired to possess, transfer, sell, or distribute any controlled substance, the possession of which would be at least a Class A misdemeanor under the Texas Health and Safety Code, Chapter 481, on school property;
  - (7) intentionally, knowingly, or recklessly causes bodily injury to a student or minor when the conduct of the educator or applicant is not immune from disciplinary proceedings by TEC, §22.0512; or
  - (8) committed any offense described in the TEC, §21.058.
- (j) Mandatory minimum for failure to report. An educator subject to sanction, who fails to report educator misconduct under the circumstances and in the manner required by the TEC, §21.006, and §249.14(d)-(f) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition), when the case is resolved through an agreed final order, may not receive a sanction of less than:
  - (1) an inscribed reprimand and a \$5,000 administrative penalty for a superintendent or director who fails to file timely a report to the SBEC; or
  - (2) an inscribed reprimand and a \$500 administrative penalty for a principal who fails to timely notify a superintendent or director.
- (k) Sanctioned misconduct in another state. The findings of fact contained in final orders from any other state jurisdiction may provide the factual basis for SBEC disciplinary action. If the underlying conduct for the administrative sanction of an educator's certificate or license issued in another state is a violation of SBEC rules, the SBEC may initiate a disciplinary action regarding the educator's Texas educator certificate and impose a sanction as provided under this chapter.

*Statutory Authority: The provisions of this §249.17 issued under the Texas Education Code, §§21.006(a)-(c), (f), and (g); 21.031(a); 21.035; 21.041(a) and (b)(1), (4), (7), and (8); 21.058; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.085; and 22.087; Texas Government Code, §2001.058; and Texas Occupations Code, §§53.021(a), 53.022-53.025, 53.051, and 53.052.*

*Source: The provisions of this §249.17 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective December 16, 2007, 32 TexReg 9112; amended to be effective December 19, 2011, 36 TexReg 8533; amended to be effective December 23, 2013, 38 TexReg 9362; amended to be effective October 27, 2014, 39 TexReg 8402; amended to be effective May 15, 2016, 41 TexReg 3310; amended to be effective December 27, 2016, 41 TexReg 10330; amended to be effective March 8, 2018, 43 TexReg 1273.*