

## 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 411.0845, 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;
- (4) specify the requirements for the issuance and renewal of an educator certificate;
- (7) provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Chapter 2001, Government Code;
- (8) provide for the adoption, amendment, and enforcement of an educator's code of ethics;

**Texas Education Code, §21.058, 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:**

- (a) This section applies only to an administrative law judge employed by the State Office of Administrative Hearings.
- (b) An administrative law judge who conducts a contested case hearing shall consider applicable agency rules or policies in conducting the hearing, but the state agency deciding the case may not supervise the administrative law judge.
- (c) A state agency shall provide the administrative law judge with a written statement of applicable rules or policies.
- (d) A state agency may not attempt to influence the finding of facts or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument.
- (d-1) On making a finding that a party to a contested case has defaulted under the rules of the State Office of Administrative Hearings, the administrative law judge may dismiss the case from the docket of the State Office of Administrative Hearings and remand it to the referring agency for informal disposition under Section 2001.056. After the case is dismissed and remanded, the agency may informally dispose of the case by applying its own rules or the procedural rules of the

State Office of Administrative Hearings relating to default proceedings. This subsection does not apply to a contested case in which the administrative law judge is authorized to render a final decision.

- (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.

- (f) A state agency by rule may provide that, in a contested case before the agency that concerns licensing in relation to an occupational license and that is not disposed of by stipulation, agreed settlement, or consent order, the administrative law judge shall render the final decision in the contested case. If a state agency adopts such a rule, the following provisions apply to contested cases covered by the rule:
  - (1) the administrative law judge shall render the decision that may become final under Section 2001.144 not later than the 60th day after the latter of the date on which the hearing is finally closed or the date by which the judge has ordered all briefs, reply briefs, and other posthearing documents to be filed, and the 60-day period may be extended only with the consent of all parties, including the occupational licensing agency;
  - (2) the administrative law judge shall include in the findings of fact and conclusions of law a determination whether the license at issue is primarily a license to engage in an occupation;
  - (3) the State Office of Administrative Hearings is the state agency with which a motion for rehearing or a reply to a motion for rehearing is filed under Section 2001.146 and is the state agency that acts on the motion or extends a time period under Section 2001.146;
  - (4) the State Office of Administrative Hearings is the state agency responsible for sending a copy of the decision that may become final under Section 2001.144 or an order ruling on a motion for rehearing to the parties, including the occupational licensing agency, in accordance with Section 2001.142; and
  - (5) the occupational licensing agency and any other party to the contested case is entitled to obtain judicial review of the final decision in accordance with this chapter.

**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.