

ATTACHMENT II
Text of Proposed Amendments to 19 TAC

Chapter 249. Disciplinary Proceedings, Sanctions, and Contested Cases

Subchapter A. General Provisions

§249.3. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Abuse--Includes the following acts or omissions:
 - (A) mental or emotional injury to a student or minor that results in an observable and material impairment in the student's or minor's development, learning, or psychological functioning;
 - (B) causing or permitting a student or minor to be in a situation in which the student or minor sustains a mental or emotional injury that results in an observable and material impairment in the student's or minor's development, learning, or psychological functioning;
 - (C) physical injury that results in substantial harm to a student or minor, or the genuine threat of substantial harm from physical injury to the student or minor, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline; or
 - (D) sexual conduct harmful to a student's or minor's mental, emotional, or physical welfare.
- (2) Administrative denial--A decision or action by the Texas Education Agency staff, acting on behalf of the State Board for Educator Certification, to deny certification (including certification following revocation, cancellation, or surrender of a previously issued certificate), renewal of certification, or reinstatement of a previously suspended certificate based on the withholding or voiding of certification test scores; the invalidation of a certification test registration; evidence of a lack of good moral character; or evidence of improper conduct.
- (3) Administrative law judge--A person appointed by the chief judge of the State Office of Administrative Hearings under the Texas Government Code, Chapter 2003.
- (4) Answer--The responsive pleading filed in reply to factual and legal issues raised in a petition.
- (5) Applicant--A party seeking issuance, renewal, or reinstatement of a certificate from the Texas Education Agency staff or the State Board for Educator Certification.
- (6) Cancellation--The invalidation of an erroneously issued certificate.
- (7) Certificate--The whole or part of any educator credential, license, or permit issued under the Texas Education Code, Chapter 21, Subchapter B. The official certificate is the record of the certificate as maintained on the Texas Education Agency's website.
- (8) Certificate holder--A person who holds an educator certificate issued under the Texas Education Code, Chapter 21, Subchapter B.
- (9) Chair--The presiding officer of the State Board for Educator Certification, elected pursuant to the Texas Education Code, §21.036, or other person designated by the chair to act in his or her absence or inability to serve.
- (10) Chief judge--The chief administrative law judge of the State Office of Administrative Hearings.
- (11) Code of Ethics--The Educators' Code of Ethics codified in Chapter 247 of this title (relating to the Educators' Code of Ethics).

- (12) Complaint--A written statement submitted to the Texas Education Agency staff that contains essential facts alleging improper conduct by an educator, applicant, or examinee, the complainant's verifiable contact information, including full name, complete address, and phone number, which provides grounds for sanctions.
- (13) Contested case--A proceeding under this chapter in which the legal rights, duties, and privileges related to a party's educator certificate are to be determined by the State Board for Educator Certification and/or the State Office of Administrative Hearings commencing when a petition is properly served under this chapter.
- (14) Conviction--An adjudication of guilt for a criminal offense. The term does not include the imposition of deferred adjudication for which the judge has not proceeded to an adjudication of guilt.
- (15) Deferred adjudication--The resolution of a criminal charge, based on a defendant's plea to the offense of guilty or nolo contendere, which results in the suspension of adjudication of the defendant's guilt and the imposition of conditions such as community supervision or restitution, and, upon successful completion of those conditions, the dismissal of the criminal case. In a contested case under this chapter, the defendant's acceptance of deferred adjudication in a criminal case may be considered as provided by the Texas Occupations Code, §53.021.
- (16) Disciplinary proceedings--Any matter arising under this chapter or Chapter 247 of this title (relating to the Educators' Code of Ethics) that results in a final order or finding issued by the Texas Education Agency staff, the State Office of Administrative Hearings, or the State Board for Educator Certification relating to the legal rights, duties, privileges, and status of a party's educator certificate.
- (17) Educator--A person who is required to hold a certificate issued under the Texas Education Code, Chapter 21, Subchapter B.
- (18) Effective date--The date the decision or action taken by the State Board for Educator Certification or the Texas Education Agency staff becomes final under the appropriate legal authority.
- (19) Endanger--Exposure of a student or minor to unjustified risk of injury or to injury that jeopardizes the physical health or safety of the student or minor without regard to whether there has been an actual injury to the student or minor.
- (20) Examinee--A person who registers to take or who takes any examination required by the State Board for Educator Certification for admission to an educator preparation program or to obtain an educator certificate.
- (21) Expired--No longer valid because a specific period or term of validity of a certificate has ended; an expired certificate is not subject to renewal or revalidation and a new certificate must be issued.
- (22) Filing--Any written petition, answer, motion, response, other written instrument, or item appropriately filed under this chapter with the Texas Education Agency staff, the State Board for Educator Certification, or the State Office of Administrative Hearings.
- (23) Good moral character--The virtues of a person as evidenced by patterns of personal, academic, and occupational behaviors that, in the judgment of the State Board for Educator Certification, indicate honesty, accountability, trustworthiness, reliability, and integrity. Lack of good moral character may be evidenced by the commission of crimes relating directly to the duties and responsibilities of the education profession as described in §249.16(b) 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), or by the commission of acts involving moral turpitude, but conduct that evidences a lack of good moral character is not necessarily limited to such crimes or acts.
- (24) Inactive--Lacking current effectiveness. An inactive certificate does not currently entitle the certificate holder to work as a professional educator in Texas public schools. An inactive certificate is distinguished from a certificate that is void or expired by the fact that it can be reactivated by satisfying the condition or conditions that caused it to be placed in inactive status.

(failure to renew, failure to submit fingerprint information, or payment of fees), subject to any other certification requirements applicable to active certificates.

- (25) Inappropriate relationship--A violation of Texas Penal Code, §21.12(a); a sexual or romantic relationship with a student or minor; or solicitation of a sexual or romantic relationship with a student or minor.
- (26) Informal conference--An informal meeting between the Texas Education Agency staff and an educator, applicant, or examinee; such a meeting may be used to give the person an opportunity to show compliance with all requirements of law for the granting or retention of a certificate or test score pursuant to Texas Government Code, §2001.054(c).
- (27) Invalid--Rendered void; lacking legal or administrative efficacy.
- (28) Law--The United States and Texas Constitutions, state and federal statutes, regulations, rules, relevant case law, and decisions and orders of the State Board for Educator Certification and the commissioner of education.
- (29) Mail--Certified United States mail, return receipt requested, unless otherwise provided by this chapter.
- (30) Majority--A majority of the voting members of the State Board for Educator Certification who are present and voting on the issue at the time the vote is recorded.
- (31) Moral turpitude--Improper conduct, including, but not limited to, the following: dishonesty; fraud; deceit; theft; misrepresentation; deliberate violence; base, vile, or depraved acts that are intended to arouse or to gratify the sexual desire of the actor; drug or alcohol related offenses as described in §249.16(b) 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); or acts constituting abuse or neglect under the Texas Family Code, §261.001.
- (32) Neglect--The placing or leaving of a student or minor in a situation where the student or minor would be exposed to a substantial risk of physical or mental harm.
- (33) Party--Each person named or admitted to participate in a contested case under this chapter.
- (34) Permanent revocation--Revocation without the opportunity to reapply for a new certificate.
- (35) Person--Any individual, representative, corporation, or other entity, including the following: an educator, applicant, or examinee; the Texas Education Agency staff; or the State Board for Educator Certification, the State Office of Administrative Hearings, or any other agency or instrumentality of federal, state, or local government.
- (36) Petition--The written pleading served by the petitioner in a contested case under this chapter.
- (37) Petitioner--The party seeking relief, requesting a contested case hearing under this chapter, and having the burden of proof by a preponderance of the evidence in any contested case hearing or proceeding under this chapter.
- (38) Physical mistreatment--Any act of unreasonable or offensive touching that would be offensive to a reasonable person in a similar circumstance. It is an affirmative defense that any unreasonable or offensive touching was justified under the circumstances, using a reasonable person standard.
- (39) Presiding officer--The chair or acting chair of the State Board for Educator Certification.
- (40) Proposal for decision--A recommended decision issued by an administrative law judge in accordance with the Texas Government Code, §2001.062.
- (41) Quorum--A majority of the 14 members appointed to and serving on the State Board for Educator Certification (SBEC) pursuant to the Texas Education Code, §21.033; eight SBEC members, including both voting and non-voting members, as specified in the SBEC Operating Policies and Procedures.

- (42) Recklessly--An educator acts recklessly, or is reckless, with respect to circumstances surrounding his or her conduct or the results of his or her conduct when he or she is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or that the result will occur.
- (43) Reinstatement--The restoration of a suspended certificate to valid status by the State Board for Educator Certification.
- (44) Reported criminal history--Information concerning any formal criminal justice system charges and dispositions. The term includes, without limitation, arrests, detentions, indictments, criminal informations, convictions, deferred adjudications, and probations in any state or federal jurisdiction.
- (45) Representative--A person representing an educator, applicant, or examinee in matters arising under this chapter; in a contested case proceeding before the State Office of Administrative Hearings (SOAH), an attorney licensed to practice law in the State of Texas or other person authorized as a party representative under SOAH rules.
- (46) Reprimand--The State Board for Educator Certification's formal censuring of a certificate holder.
- (A) An "inscribed reprimand" is a formal, published censure appearing on the face of the educator's virtual certificate.
- (B) A "non-inscribed reprimand" is a formal, unpublished censure that does not appear on the face of the educator's virtual certificate.
- (47) Respondent--The party who contests factual or legal issues or both raised in a petition; the party filing an answer in response to a petition.
- (48) Restricted--The condition of an educator certificate that has had limitations or conditions on its use imposed by State Board for Educator Certification order.
- (49) Revocation--A sanction imposed by the State Board for Educator Certification invalidating an educator's certificate.
- (50) Sanction--A disciplinary action by the State Board for Educator Certification, including a restriction, reprimand, suspension, revocation of a certificate, or a surrender in lieu of disciplinary action.
- (51) Solicitation of a romantic relationship--Deliberate or repeated acts that can be reasonably interpreted as the solicitation by an educator of a relationship with a student that is romantic in nature. A romantic relationship is often characterized by a strong emotional or sexual attachment and/or by patterns of exclusivity [2] but does not include appropriate educator-student relationships that arise out of legitimate contexts such as familial connections or longtime acquaintance. The following acts, considered in context, may constitute prima facie evidence of the solicitation by an educator of a romantic relationship with a student:
- (A) behavior, gestures, expressions, or communications with a student that are unrelated to the educator's job duties and evidence a romantic intent or interest in the student, including statements of love, affection, or attraction. Factors that may be considered in determining the romantic intent of such communications or behavior, include, without limitation:
- (i) the nature of the communications;
 - (ii) the timing of the communications;
 - (iii) the extent of the communications;
 - (iv) whether the communications were made openly or secretly;
 - (v) the extent that the educator attempts to conceal the communications;

- (vi) if the educator claims to be counseling a student, the State Board for Educator Certification may consider whether the educator's job duties included counseling, whether the educator reported the subject of the counseling to the student's guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the educator reported the abuse or neglect to the appropriate authorities; and
- (vii) any other evidence tending to show the context of the communications between educator and student;
- (B) making inappropriate comments about a student's body, creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images;
- (C) making sexually demeaning comments to a student;
- (D) making comments about a student's potential sexual performance;
- (E) requesting details of a student's sexual history;
- (F) requesting a date, sexual contact, or any activity intended for the sexual gratification of the educator;
- (G) engaging in conversations regarding the sexual problems, preferences, or fantasies of either party;
- (H) inappropriate hugging, kissing, or excessive touching;
- (I) providing the student with drugs or alcohol;
- (J) violating written directives from school administrators regarding the educator's behavior toward a student;
- (K) [~~(J)~~ suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage; and
- (L) [~~(K)~~ any other acts tending to show that the educator solicited a romantic relationship with a student.
- (52) State assessment testing violation--Conduct that violates the security or confidential integrity of any test or assessment required by the Texas Education Code, Chapter 39, Subchapter B, or conduct that is a departure from the test administration procedures established by the commissioner of education in Chapter 101 of this title (relating to Assessment). The term does not include benchmark tests or other locally required assessments.
- (53) State Board for Educator Certification--The State Board for Educator Certification acting through its voting members in a decision-making capacity.
- (54) State Board for Educator Certification member(s)--One or more of the members of the State Board for Educator Certification, appointed and qualified under the Texas Education Code, §21.033.
- (55) Student--A person enrolled in a primary or secondary school, whether public, private, or charter, regardless of the person's age, or a person 18 years of age or younger who is eligible to be enrolled in a primary or secondary school, whether public, private, or charter.
- (56) Surrender--An educator's voluntary relinquishment of a particular certificate in lieu of disciplinary proceedings under this chapter resulting in an order of revocation of the certificate.
- (57) Suspension--A sanction imposed by the State Board for Educator Certification (SBEC) temporarily invalidating a particular certificate until reinstated by the SBEC.
- (58) Test administration rules or procedures--Rules and procedures governing professional examinations administered by the State Board for Educator Certification through the Texas Education Agency staff and a test contractor, including policies, regulations, and procedures set out in a test registration bulletin.

- (59) Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.
- (60) Unworthy to instruct or to supervise the youth of this state--Absence of those moral, mental, and psychological qualities that are required to enable an educator to render the service essential to the accomplishment of the goals and mission of the State Board for Educator Certification policy and Chapter 247 of this title (relating to Educators' Code of Ethics). Unworthy to instruct serves as a basis for sanctions under §249.15(b)(2) of this title (relating to Disciplinary Action by State Board for Educator Certification) and for administrative denial under §249.12(b) of this title (relating to Administrative Denial; Appeal). A determination that a person is unworthy to instruct does not require a criminal conviction. It is a rebuttable presumption that an educator who violates written directives from school administrators regarding the educator's behavior toward a student is unworthy to instruct or to supervise the youth of this state.
- (61) Virtual certificate--The official record of a person's certificate status as maintained on the Texas Education Agency's website.

§249.5. Purpose; Policy Governing Disciplinary Proceedings.

- (a) Purpose. The purpose of this chapter is:
 - (1) to protect the safety and welfare of Texas schoolchildren and school personnel;
 - (2) to ensure educators and applicants are morally fit and worthy to instruct or to supervise the youth of the state;
 - (3) to regulate and to enforce the standards of conduct of educators and applicants;
 - (4) to provide for disciplinary proceedings in conformity with the Texas Government Code, Chapter 2001, and the rules of practice and procedure of the State Office of Administrative Hearings;
 - (5) to enforce an educators' code of ethics;
 - (6) to fairly and efficiently resolve disciplinary proceedings at the least expense possible to the parties and the state;
 - (7) to promote the development of legal precedents through State Board for Educator Certification (SBEC) decisions to the end that disciplinary proceedings may be justly resolved; and
 - (8) to provide for regulation and general administration pursuant to the SBEC's enabling statutes.
- (b) Policy governing disciplinary proceedings.
 - (1) A certified educator holds a unique position of public trust with almost unparalleled access to the hearts and minds of impressionable students. The conduct of an educator must be held to the highest standard. Because SBEC sanctions are imposed for reasons of public policy, and are not penal in nature, criminal procedural and punishment standards are not appropriate to educator disciplinary proceedings.
 - (2) The following general principles shall apply.
 - (A) Because the SBEC's primary duty is to safeguard the interests of Texas students, educator certification must be considered a privilege and not a right.
 - (B) The SBEC may pursue disciplinary proceedings and sanctions based on convictions of felonies and misdemeanors as provided by the Texas Education Code (TEC), §21.060; the Texas Occupations Code, Chapter 53; and this chapter.
 - (C) The SBEC may also pursue disciplinary proceedings and sanctions based on educator conduct that is proved by a preponderance of the evidence, and such proceedings and sanctions do not require a criminal conviction, deferred adjudication, community supervision, an indictment, or an arrest.

- (D) An educator's good moral character, as defined in §249.3 of this title (relating to Definitions), constitutes the essence of the role model that the educator represents to students both inside and outside the classroom. Chapter 247 of this title (relating to Educators' Code of Ethics) and this chapter provide for educator disciplinary proceedings and provide a minimum standard for educator conduct. Conduct or conditions that may demonstrate that an educator or applicant lacks good moral character, is a negative role model to students, and does not possess the moral fitness necessary to be a certified educator include, but are not limited to:
- (i) active community supervision or criminal probation;
 - (ii) conduct that indicates dishonesty or untruthfulness;
 - (iii) habitual impairment through drugs or alcohol;
 - (iv) abuse or neglect of students and minors, including the educator's own children; and
 - (v) reckless endangerment of the safety of others.
- (E) "Unworthy to instruct or to supervise the youth of this state," defined in §249.3 of this title, which serves as a basis for sanctions under §249.15(b)(2) of this title (relating to Disciplinary Action by State Board for Educator Certification), is a broad concept that is not limited to the specific criminal convictions that are described in the TEC, §21.058 and §21.060. The moral fitness of a person to instruct the youth of this state must be determined from an examination of all relevant conduct, is not limited to conduct that occurs while performing the duties of a professional educator, and is not limited to conduct that constitutes a criminal violation or results in a criminal conviction or to conduct that constitutes a violation of Chapter 247 of this title. It is a rebuttable presumption that an educator who violates written directives from school administrators regarding the educator's behavior toward a student is unworthy to instruct or to supervise the youth of this state.
- (F) Educators have positions of authority, have extensive access to students when no other adults (or even other students, in some cases) are present, and have access to confidential information that could provide a unique opportunity to exploit student vulnerabilities. Educators must clearly understand the boundaries of the educator-student relationship that they are trusted not to cross. Any violation of that trust, such as soliciting or engaging in a romantic or sexual relationship with any student or minor, is considered conduct that may result in permanent revocation of an educator's certificate.
- (G) Administrators who hold Superintendent, Principal, or Mid-Management Administrator certificates issued by the SBEC have, as a result of their actual or potential positions of authority over both students and other educators, an even greater obligation to maintain good moral character than teachers and paraprofessionals. When an administrator's conduct demonstrates that the administrator lacks good moral character, is a negative role model to students, or does not possess the moral fitness necessary to be a certified educator as described in subparagraph (D) of this paragraph, the administrator may be subject to greater sanction than a teacher or paraprofessional would receive for the same conduct.
- (H) Evidence of rehabilitation with regard to educator conduct that could result in sanction, denial of a certification application, or denial of an application for reinstatement of a certificate shall be recognized and considered. In addition, the following shall also be considered:
- (i) the nature and seriousness of prior conduct;
 - (ii) the potential danger the conduct poses to the health and welfare of students;
 - (iii) the effect of the prior conduct upon any victims of the conduct;

- (iv) whether sufficient time has passed, and sufficient evidence is presented to demonstrate that the educator or applicant has been rehabilitated from the prior conduct; and
- (v) the effect of the conduct upon the educator's good moral character and ability to be a proper role model for students.

Subchapter B. Enforcement Actions and Guidelines

§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) [~~§249.14(h)(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) [(13)]~~ 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) [(14)] 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.