



# Public Comments on Proposed Sunset Recommendations for the Texas Education Agency and the State Board for Educator Certification

July 14, 2014

**The Association of Texas Professional Educators (ATPE) offers the following formal comments regarding The Sunset Commission Review of the Texas Education Agency (TEA) and the State Board for Educator Certification (SBEC)**

Thank you for allowing ATPE to have an opportunity to provide feedback on the pending Sunset review of TEA and SBEC. We appreciate your staff's thorough review of the issues and consideration of stakeholder input. Below is our response to the recommendations of the October 2012 Sunset Advisory Commission Staff Report on TEA and SBEC. Our responses have been modified, where appropriate, to reflect legislative and agency action since that point.

**Generally:** While ATPE supports in concept many of the individual recommendations of the Sunset review of TEA and supports the continuation of the agency, we do not support addressing an overhaul of the agency or the education code through a traditional sunset bill at this time.

## **Issue 1**

ATPE supports recommendations 1.1 and 1.2. We believe stakeholder participation and transparency are critical.

## **Issue 4**

ATPE opposes recommendation 4.1. We believe this recommendation affords too much latitude for a single appointed commissioner to determine academic quality indicators which are better outlined in statute. While we agree that these indicators may need periodic adjustment to ensure alignment with the state's evolving accountability system, such adjustment can be made more democratically and transparently through the legislative process. Transparency and the opportunity for stakeholder participation are essential in the development of any elements of the state's high-stakes accountability system, and we are concerned that assigning greater authority to the commissioner in this area would not afford the same level of public involvement.

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*The Association of Texas Professional Educators (ATPE) has been a strong voice for Texas educators since 1980. It is the leading educators' association in Texas with more than 100,000 members statewide. With its strong collaborative philosophy, ATPE speaks for classroom teachers, administrators, future, retired and para-educators and works to create better opportunities for 5 million public schoolchildren. ATPE is the ally and the voice of Texas public school educators. For additional information, contact [government@atpe.org](mailto:government@atpe.org).*

ATPE supports recommendation 4.4 insofar as it would promote greater transparency and make important data, such as class-size ratios and costs, more easily accessible for parents.

On recommendation 4.5, ATPE offers a concurring opinion that the Legislature should consider revising the law calling for periodic evaluations of open-enrollment charter schools not for the purpose of giving the agency more flexibility but rather to foster the creation of meaningful reports that will provide real guidance and insight to lawmakers and policymakers. This is consistent with a goal of improving state oversight of charter schools. Necessary elements of the charter evaluation should be delineated in statute rather than determined by the commissioner, with the ability for the independent entity conducting the evaluation to provide additional information it believes to be relevant. We would prefer to see a report provided every two years so that every legislature has the benefit of more timely information under a robust statute.

ATPE supports recommendation 4.6 as finally proposed with the modifications recommended by TEA, so long as the new rules retain the provisions now included in TEC 21.254 (d) which provide that parties when acting together have the right to reject a hearing officer for any reason or when acting alone have the right to reject a hearing officer for cause.

ATPE opposes recommendation 4.11 to eliminate the requirement for districts to report the terms of severance agreements with superintendents and a corresponding reduction in the district's allotment. This provision was added to the law in response to the frequency of very large severance agreements being entered into by superintendents and boards of trustees. The statute recognized that large severance agreements paid with taxpayer funds did not always serve the best interests of the public education system, and the provision was intended as an incentive for boards to make fiscally sound choices in these matters. The staff report notes that 10 to 20 severance agreements are reviewed annually with an average amount of \$11,600 recouped by TEA. The reference to the amount of severance pay recouped is as much an indication of the law's success at achieving its purpose of limiting severance payments as it is an indication of small financial returns. Though the staff report provides no statistics on the staff time required for each review, we assume the burden is minimal considering that TEA staff is required only to "do the math." Thus, even if the total amount recouped is small in comparison to the total budget for public education, we believe this is a valuable, efficient tool that should be retained as a matter of good public policy.

## **Issue 5**

ATPE supports the staff recommendations for this issue in order to eliminate redundancies and make the agency's financial oversight processes for school districts and charter schools more efficient.

## **Issue 7**

While ATPE did not necessarily support all of the changes made by SB 2, we find it unlikely that those changes are likely to be reversed during the upcoming session. ATPE is generally supportive of the staff's recommendations for improving the operation and oversight of the state's charter holders. However, considering the breadth and depth of the changes in the law in the area of charter schools ATPE does not support further modification to this body of law at this time.

## Issue 8

ATPE's position on staff recommendation 8.1 is that we oppose efforts to eliminate SBEC as a governing board. Our member-adopted Legislative Program states as follows: "ATPE supports the maintenance of a separate, independent state board that allows educators to govern their own profession and enforce the Educator Code of Ethics. ATPE recommends that a majority of the board's voting members be public educators elected by the profession." We obviously would prefer to see a restructuring of SBEC to create a truly independent board whose composition reflects the actual makeup of the certified education profession, which is dominated by teachers. The absence of such a board does a disservice to the education profession in Texas by sending a message to current and future educators that the Legislature does not trust them to make decisions about the governance of their own profession.

With regard to SBEC's disciplinary and accreditation roles, although there might be slightly more consistency in decisions if this particular authority were transferred to the commissioner, the board's important role in the rulemaking process makes us disinclined to agree with the staff recommendation. We therefore oppose handing over such decision-making power to a single, appointed commissioner who may or may not have experience in the public education profession. SBEC's current rulemaking authority ensures a transparent process, with its board meetings offering a convenient public forum for stakeholder input. We fear that the public's knowledge of and ability to participate in the rulemaking process would be substantially limited by giving the board's current rulemaking authority in the areas of educator preparation and certification to the appointed commissioner. The fact that such a change would also necessitate a lengthy, complicated overhaul of numerous chapters of the Texas Administrative Code should not be overlooked at a time when state resources are scarce. We fail to see the necessity of such a dramatic change, especially in light of the fact that the board's abolition would generate only the miniscule savings of approximately \$11,000 to the state while dealing another blow to educator morale.

ATPE opposes staff recommendation 8.2 concerning SBOE review of educator preparation and certification rules. We have steadfastly maintained that the current SBOE oversight function establishes accountability in the SBEC rule adoption process, in light of the fact that the entire SBEC board is appointed by the governor. In the event that the Legislature decides to transfer authority for educator preparation and certification rulemaking from SBEC to the appointed commissioner, the board's oversight becomes even more important.

ATPE supports recommendation 8.3 with qualification. The mandatory creation of an advisory committee made up of educators would be absolutely essential in the event that SBEC is eliminated and all regulatory authority is transferred to the commissioner. Furthermore, such an enabling statute should not merely permit the committee to report to the commissioner but should require regular interaction. We agree that a committee should select its own presiding officer and should comply with the Government Code. We agree that such a committee might mitigate the need for other committees like the Educator Certification and Standards Advisory Committee. However, our overarching recommendation is that rulemaking for governance of the education profession must rest with an independent board that is selected by and truly reflective of the profession. Educators,

including mostly teachers, should make up the majority of the board and be elected by their peers, as is the case with other professional governing boards.

### **Issue 9**

ATPE supports recommendation 9.1 and agrees that there is a need for clarification of the requirements for reporting educator misconduct. We note, however, that modifying a superintendent's investigation standard from "reasonable cause" to "reasonable suspicion" is a semantic change that is unlikely to make much difference in application. "Suspicion" is as subjective a standard as "cause."

On recommendation 9.2, ATPE would not oppose giving administrative subpoena power to the commissioner as long as the commissioner cannot issue a subpoena to compel the appearance of a witness and provided that any information released to the agency must also be released to the certified educator who is being investigated. Otherwise, the educator does not have a fair opportunity to defend himself by addressing evidence, such as witness accounts. In our experience, TEA has been reticent in sharing information with accused educators unless required to do so and in some cases ordered by the Attorney General to release the information. We agree that a state licensing agency must have access to the information needed for it to carry out its regulatory mission, but due process must also be respected.

With respect to recommendation 9.4, ATPE agrees that it is important for agencies to regularly review their fee structures to ensure equity and an adequate level of support; we are reluctant to support a requirement that lifetime certificate holders, whose numbers are dwindling, be retroactively forced into more recent certificate renewal requirements.

ATPE supports recommendation 9.5 as long as the fees charged for this optional service are sufficient to cover the additional burden placed on the agency. Potential applicants for certification would appreciate the availability of a more comprehensive criminal history evaluation prior to expending the time and money to attempt to become certified.

ATPE supports recommendation 9.6 and would like to see more transparency in this area. Enforcement data, including statistics and trends, should be readily available to public stakeholders.

ATPE supports recommendation 9.7 but is uncertain how much positive impact it would have. Mediation can be a very effective tool for dispute resolution, but it is unknown how much deference SBEC board members or TEA staff would give an independent mediator.

### **Issue 10**

ATPE supports all five of the staff recommendations for the regulation of educator preparation programs. There is a definite need for more consistency in the renewal process, better information-sharing with the public and more effective means of monitoring and sanctioning programs under a robust accountability system.

**Issue 11**

ATPE supports all five recommendations under this issue to improve TEA's contracting policies.

**Issue 13**

ATPE supports continuation of the Texas Education Agency.

In general, ATPE opposes recommendation 13.2, although there may be some instances in which the articulated authorities of the commissioner or TEA should be tweaked in statute. We do not necessarily agree that a reference to commissioner or TEA duties should be removed from a statute solely because those duties are listed in another statute. While it may seem redundant, there is often a practical benefit to listing such duties in more than one section of the Texas Education Code. We disagree with the recommendation to eliminate TEC Section 7.021 (b)(2); the mere fact that the legislature has failed to sufficiently fund the agency does not negate the importance of having a state education agency that is responsible for "research, analysis, and reporting to improve teaching and learning." Similarly, we disagree with the staff recommendation to eliminate TEC Section 7.021(b)(3) as "unnecessary." Despite the fact that other provisions of the Education Code govern the typical hearings related to a school district's violation of school law or stemming from the termination or nonrenewal of an educator's contract, there could be some other type of hearing that TEA might need to conduct. Retaining this authority in statute gives the agency more flexibility to deal with unexpected situations that might arise in the future. Related to this issue of commissioner duties, we also believe there are some areas of the law relating to student assessment and accountability in which the state should explore the possibility of assigning additional oversight to the State Board of Education.

ATPE supports recommendation 13.3 and agrees on the benefit of succession planning within the agency.

In conclusion, we appreciate the opportunity to provide this input on behalf of our membership and look forward to participating in the upcoming public hearings on these important issues.