



## SBEC Testimony on Agenda Item 15: Discussion of Proposed Amendments to 19 TAC Chapter 249

October 9, 2020

The **Association of Texas Professional Educators (ATPE)** offers the following comments to the State Board for Educator Certification (SBEC) regarding the discussion of proposed amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases.

The Texas Education Agency (TEA) staff has proposed language for SBEC to consider in 19 TAC 249 that would change the mode by which educators are notified for purposes of disciplinary proceedings. Specifically, the agency has proposed language to allow for email service of communications, including the notice that an educator's virtual certificate will be "flagged" as pending investigation; a conference has been scheduled to allow the educator to show compliance; or a formal Petition for sanctions, all of which have deadlines for educators to respond or waive the right to defend themselves. ATPE believes it is inappropriate to rely on email correspondence to convey information of such importance to an educator regarding their certification and ability to practice their profession.

Administrative procedures, including disciplinary actions taken by SBEC against a certified educator, are subject to the Texas Government Code. Section 2001.054(c) requires that initial notice of an adverse licensure action be sent by certified or registered mail or through in-person service. It is essential that the proposed rule change meets the requirements of this section of the Government Code, which states as follows:

- "(c) A revocation, suspension, annulment, or withdrawal of a license is not effective unless, before institution of state agency proceedings:
- (1) the agency gives notice by personal service or by registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action; and
  - (2) the license holder is given an opportunity to show compliance with all requirements of law for the retention of the license."

In addition to this specific statutory requirement, proposals to allow such important communications to be delivered via email alone have been and remain controversial in the legal community because of the inherent questions about whether email communications can be trusted to provide actual notice to the recipient that an action is pending.

TEA representatives state that a change to allow email communications regarding disciplinary proceedings would modernize TEA procedures, save the agency money, and align with practices currently used by the State Office of Administrative Hearings (SOAH) and Texas Rules and Civil Procedures (TRCP) protocols. However, the TRCP does not apply to SBEC proceedings, and there is no mandate to comport with SOAH practice. SOAH actions are practically very different than the agency-level proceedings, such as SBEC disciplinary investigations, that occur prior to SOAH's involvement in a case. Once a disciplinary matter advances to a SOAH proceeding, the accused educator is already well aware of the pending

---

*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 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.*

action and has, by SBEC rule, already filed a formal Answer to the complaint. The same cannot be said of an SBEC investigation that is in its infancy, of which the accused educator may have no notice whatsoever until receiving the initial communication from TEA.

Although email is widely used and accessible, it is not typically used for high-importance communications. Many individuals do not check their personal email often, especially with the plethora of other communication platforms being used and the volume of such messages they may receive. Communicating such critical information only through email puts educators' ability to defend themselves and their licenses at great risk, as these discipline-related communications carry grave consequences.

Should the agency switch to email communications for disciplinary issues, educators may miss important notices through no fault of their own. For instance, features in their email inbox may divert emails automatically to a "junk" email folder or delete them altogether without delivering them. Educators may not trust the communication enough to open an attachment, as they are keenly aware of phishing and electronic scamming efforts. The proposed language states that an email is presumed to be served on the day the email is sent, regardless of whether the email is received and/or opened by the recipient. Without a read-receipt option on emails sent, TEA loses an important advantage of certified and registered mail – the mailing receipt.

Lastly, TEA has reported to stakeholders that it spends \$28,000 per year on mailings. Relative to other discretionary costs that the agency has undertaken, spending \$28,000 annually on high-importance communications that have real, potentially lifelong consequences for an educator's career is necessary and appropriate.

If TEA is concerned with reaching educators in a timely and reliable manner, the use of both email *and* certified or registered mail may be a solution. If the agency is concerned with saving money, this proposed change is not likely to produce the desired result. Email-only communications will create significant new legal issues that will have to be litigated, which will eliminate any potential cost saving. Most importantly, though, some things are more important than saving every possible penny. One of those is ensuring educators have at least the ability to know that an investigation or complaint is pending against them so that they can choose to defend themselves and their careers.

ATPE recommends SBEC reject the proposed rule change. TEA should not be allowed to use email in lieu of certified or registered mail regarding discipline-related communications and should look elsewhere to save money. ATPE appreciates the opportunity to provide feedback during this process and invites board members and TEA staff to contact ATPE Governmental Relations at (800) 777-2873 or [government@atpe.org](mailto:government@atpe.org) for any additional information.