



Input to SBEC Regarding Item 15: Proposed Amendments to 19 TAC Chapter 249

December 10, 2021

The **Association of Texas Professional Educators (ATPE)** offers the following input to the State Board for Educator Certification (SBEC) regarding the proposed amendments to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, and Subchapter E, Post-Hearing Matters.

ATPE appreciates and supports the proposed changes to SBEC rules relating to contract abandonment, including the criteria for “good cause” and mitigating factors. The proposed rules implement new statutory requirements established by House Bill (HB) 2519 of the 87th Legislature and are the result of input from ATPE and other diverse stakeholders since 2019. **ATPE recommends that SBEC approve the amendments to Chapter 249 without additional changes, as we respect the professionalism of educators and SBEC’s ability to apply appropriate statutory discretion in addressing contract abandonment cases.**

SBEC has been formally considering modifications to its contract abandonment rules since July 2019, discussing potential changes at multiple board meetings and convening education stakeholders and Texas Education Agency (TEA) staff to develop solutions. The currently proposed language was developed during an SBEC work session held July 22, 2021, during which board members heard from TEA attorneys and a panel of experts representing both school administrator and teacher perspectives. The 87th Texas Legislature also acted on concerns about fairness and due process in SBEC disciplinary proceedings, especially related to contract abandonment cases, as reflected in its enactment of HB 2519 that took effect Sept. 1, 2021. The SBEC rules up for final adoption today are the culmination of this extensive work by numerous stakeholders.

Contract abandonment occurs when an educator resigns without permission or “good cause” less than 45 days before the first instructional day of the upcoming school year. Because educators are often “called” to the teaching profession with a strong desire to positively impact student lives, only the direst situations lead educators to make the difficult decision to resign mid-year and face the consequences that follow. Unlike employees in other sectors, educators who resign mid-year face not only the loss of a paycheck or health insurance but may also receive a suspension of their certificate that affects their present and future ability to work. After a contract abandonment case is referred to SBEC by a school district, and if no good cause is found at this level, SBEC statutorily has broad power to determine the consequences and to consider “mitigating factors” in deciding whether to place a sanction on the educator’s certificate.

Good cause is the criteria educators must meet to resign within the contract abandonment period penalty-free. Under Section 249.17(d)(1)(D) of the proposed rules, educators would have good cause to be released from their contracts if they received written permission from district administrators, such as a campus principal. This language, which was agreed upon by both

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 approximately 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 the more than 5 million public schoolchildren of Texas.

teacher and administrator stakeholders, is a positive change that codifies a practice already used by many districts.

Without good cause, SBEC may apply mitigating factors to lessen or eliminate the consequences of an educator's resignation mid-contract. Previously, the board only considered mitigating factors that were specifically laid out in SBEC rules. However, under HB 2519, SBEC now "must consider any mitigating factors relevant to the teacher's conduct" and may apply these to reduce a sanction, even down to zero. Despite this broad mandate for the board to consider "any" mitigating factors, ATPE believes it is still helpful to educators, TEA staff, and the board to have a specific list of mitigating factors, informed by real-world scenarios, described in rule.

Proposed Rule 249.17(d)(2)(c)(G)-(J) adds four new mitigating factors that SBEC must consider when contemplating an educator's sanction for contract abandonment, paraphrased below:

- (G) a change in certificate class (e.g., a teacher who becomes a counselor) or an advancement to a higher level of authority within the principal class of certificate;
- (H) a reduction in the educator's base pay compared to the previous year in the same district;
- (I) a change in campus assignment that adversely impacts the educator's family needs or health condition; and
- (J) a resignation due to the educator's working conditions that reasonably pose an immediate threat of physical harm.

Mitigating factors are not a "get-out-of-jail-free card" for educators to abandon their contracts without consequence; they merely allow the board discretion in its decision-making process. Resignations prompted by the circumstances outlined in the four newly delineated mitigating factors are rare and risky for certified educators, often deemed a "last resort" by an educator facing serious financial, family, or health challenges that make it impossible to remain in their current position. The amendments to Rule 249.17(d)(2) do not create blanket exemptions or dramatic changes that would incentivize mid-year resignations or create widespread teacher shortages, nor do they inhibit a school district's ability to refer a contract abandonment case to SBEC. Rather, these amendments guide SBEC through the situations they must consider in contract abandonment cases where an educator has already been reported to SBEC and is facing possible sanctions.

ATPE urges SBEC to adopt the proposed rule language as it reflects a long-term collaboration among stakeholders and is an agreeable compromise that balances the needs of districts and educators alike. 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 for any additional information.