



HOUSE BILL 2519 IMPLEMENTATION

The Texas State Teachers Association offers the following comments to the State Board of Education, Committee on School Initiatives, regarding agenda item #8: Review of 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

The Texas State Teachers Association (TSTA) is in full support of the State Board for Educator Certification (SBEC) rule actions that would implement House Bill (HB) 2519, 87th Texas Legislature, Regular Session, 2021 by amending 19 TAC Chapter 249 related to contract abandonment. The proposed amendments reflect the spirit of the legislation and are the product of both the SBEC July work session and extensive stakeholder input. TSTA supports the rules as the result of a collaborative effort that at once maintains SBEC flexibility, honors educator protections and professionalism, and centers the needs of students.

In particular, TSTA supports:

- the **expanded definition of good cause for contract abandonment** to include the educator's reasonable belief that the educator had written permission to resign
- the **enumeration of specific mitigating factors** that the board must consider in contract abandonment cases
- the **catchall provision that states that the Board *must* consider relevant facts and circumstances**, a provision central to the intent of the enabling legislation

TSTA supports proposed §249.17(d)(1)(D), which expands the definition of good cause for contract abandonment to include “the educator’s reasonable belief that the educator had written permission from the school district administration to resign.”

TSTA supports the new §249.17(d)(1)(D), expanding the definition of “good cause” to include written permission from school district administration, because it is a fundamentally fair and objective way to determine a specific condition in which an educator should be able to resign without penalty. Under the Texas Education Code (TEC), an educator may resign outside of the resignation period if he or she has the “consent” of the board of trustees or the board’s designee.¹ An educator must have some form of consent from the school district to be released from a contract, and with the proposed good cause factor the question would rightfully become whether an educator’s reliance of *written* permission is sufficient. In a case where an educator has a *reasonable* belief of *written* permission from the school

¹ Texas Education Code §§21.105(b); 21.160(b); 21.210(b)

district administration to resign, it can be assumed that some fact of the case is worthy of examination for good cause.

Under the TEC, the State Board for Educator Certification (SBEC) may impose sanctions if an educator resigns outside of the designated period and fails to provide resignation to the board of trustees or its designee *without good cause*. Throughout the consideration of these rules, SBEC and stakeholders alike have commented on the necessity to have some degree of predictability throughout the process of ending an educator's contract. An educator, under statute, may leave a contract if their resignation is accepted by the school district. If an individual employed by the school district represents themselves as capable of accepting the resignation, absent an explanation as to why relying on this representation is unreasonable, an educator should not be unjustly punished. Instead, the issue of why that representation was made should be addressed and resolved.

Proposed §249.17(d)(1)(D) allows for the fair consideration of the unique circumstances that may cause an educator to believe that a resignation was lawfully accepted by asking:

- a) Does the educator believe that they had written permission to resign?*
- b) Is there tangible evidence to support the educator's belief that they had received written permission to resign?*
- c) Can the reporting district provide clarification as to the lack of reliability or invalidity of the document that the educator relied upon when resigning?*

Issues have arisen in the past when educators have been given specific and explicit representations that they were released from their contracts only to later find out that the individuals making the representations were acting under apparent authority and not actual authority. TSTA believes that sanctioning those who are acting in good faith is an impediment to recruiting and retaining our talented and hard-working educators, which not only harms the educators themselves, but also deprives students of the best education possible.

TSTA supports Proposed rule 19 Texas Administrative Code §249.17(d)(2)(G), (H), (I) and (J) which enumerates specific mitigating factors for SBEC to consider in contract abandonment cases because they clearly outline situations in which a party to the contract may suffer harm that warrants termination of the contract for both parties.

The proposed rule changes to TAC §249.17(d)(2)(G),(H), (I), and (J) rightfully recognize that the purpose of the policies governing disciplinary proceedings is to protect the safety and welfare of *both* Texas schoolchildren *and* school personnel.² These additions recognize educators, one of two of the contracting parties, and situations in which current rules may result in a penalty for a breach or abandonment of a contract that is more egregious or detrimental to one breaching party than to another. The proposed rules, as written, recognize that if an educator has an opportunity to advance in their career, or is suffering immediate physical or economic harm by staying in the contract, that they

² 19 TAC §249.5(a)(1)

should not be obligated to remain in the contract. The current proposal is fair, as it does not automatically eliminate the possibility of a penalty altogether but mitigates the proposed penalty.

TSTA supports expanding local practices of granting release for promotions to the statewide SBEC.

Currently, while many districts acknowledge and extend professional courtesy to educators who have an opportunity to advance in their career, that decision is made at a local level and is not accounted for in the rules. This creates discrepancies across the state. TSTA supports the proposed addition to make this a statewide standard as it helps educators make calculated and reasonable decisions regarding professional development and career advancement. It also encourages lifelong commitment to the field of education, which greatly benefits Texas students. Oftentimes, applying for administrator positions is very competitive and availability and timing is not always ideal. By stating that SBEC must consider whether the circumstances warrant a reduction in penalty for career advancement to a position with a different class of certificate or one with a higher level of authority, we are honoring educators who wish to remain in the profession.

By enumerating four specific mitigating factors and including specific cross-references to 19 TAC §249.17(c), the proposed rules are encompassing the spirit of its enabling legislation, House Bill 2519 by Representative Drew Darby.

HB 2519 amended TEC §§21.105(e), 21.160(e), and 21.210(e) to require that the SBEC consider “any mitigating factors relevant to the teacher’s conduct” prior to imposing a sanction for contract abandonment. Under 19 TAC §249.5(a)(8), a stated purpose of policies governing disciplinary proceedings is to “provide for regulation and general administration” of statute. Representative Drew Darby, the author of the enabling legislation, has clearly stated his legislative intent in both his presentation of the bill during the legislative session and during discussions with stakeholders and board members. In his explanations, he repeatedly stated that the goal of HB 2519 was to amend SBEC rules to ensure that contract abandonment cases are fairer to educators and ensure that the SBEC considers the totality of the circumstances before imposing harsh sanctions that may drive an educator away from the profession.

TSTA believes that the changes made clearly reflect the legislative intent of the statute by both enumerating specific factors that the board *must* consider and providing a catchall provision that states that the Board must consider relevant facts and circumstances.

The proposed changes to “mitigating factors” do not absolve an educator of accountability in a case of contract abandonment, but simply require the SBEC to consider scenarios that may mitigate the penalty an educator receives when circumstances change unexpectedly.

Currently, bargaining power with educator contracts lies heavily with school districts and the proposed changes do not strip school districts of their ability to make administrative decisions. Instead, these proposed changes mitigate the penalty an educator receives for moving onto a different contract should administrative decisions change the feasibility or attractiveness of the agreement. These factors are fundamentally fair considerations for the Board to ensure to consider along with any other relevant circumstances and facts that *could* mitigate the consideration to the point of no sanction. During a

teacher shortage, the state must do all that it can to ensure that we are not driving educators out of the profession that are valuable assets to our schools and our students.

TSTA supports the proposed changes to 19 TAC §249.15, 249.17, and 249.42 inasmuch as they allow for SBEC to consider all relevant circumstances in contract abandonment cases and recognize the unique scenarios that may arise for an individual educator.