

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. “(No change)” indicates that existing rule text at this level will not be amended.

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER AA. COMMISSIONER'S RULES ON COLLEGE AND CAREER READINESS

19 TAC §74.1003

The Texas Education Agency (TEA) proposes an amendment to §74.1003, concerning college and career readiness. The proposed amendment would update the criteria used to identify the industry-based certifications to be used for public school accountability.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 74.1003 defines the industry-based certifications that are recognized for the purpose of accounting for students who earn industry certifications in the public school accountability system.

New subsection (a) would establish tiers for industry-based certifications for purposes of public school accountability.

Existing subsection (a), relating to the 2017-2018 and 2018-2019 school years, would be removed.

Existing subsection (b), which references the list of certifications provided in the annual accountability manual, would be removed.

Existing subsection (c), re-lettered as subsection (b), would be amended to specify that the list of industry-based certifications used for public school accountability will be reviewed and updated every five years beginning in 2028.

New subsection (c) would establish the criteria industry-based certifications must meet to be recognized for the purpose of public school accountability beginning in the 2025-2026 school year. To be included on the list, a credential must be a certification or license, industry recognized and valued, attainable by a high school student, portable, and offered as a capstone or at the end of a program.

Subsection (d) would be modified to clarify the subsection's applicability to the 2022-2023 through 2024-2025 school years.

New subsection (e) would specify the circumstances under which a credential will not be included on the list of industry-based certifications for public school accountability.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposal is in effect, there are no additional costs

to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by updating the criteria industry-based certifications must meet to be recognized for the purpose of public school accountability and including additional criteria to tier industry-based certifications.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide school districts with clarification regarding the criteria an industry-based certification must meet to be recognized for the purpose of academic accountability. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not

require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins January 10, 2025, and ends February 10, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 10, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §39.001, which requires the commissioner to adopt rules as necessary to administer TEC, Chapter 39; and TEC, §39.053, which requires the commissioner to adopt a set of indicators of the quality of learning and achievement, including improving student preparedness for success in entering the workforce, the military, or postsecondary education.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39.001 and §39.053.

§74.1003. *Industry-Based Certifications for Public School Accountability.*

(a) Industry-based certifications to be used in the public school accountability system shall be categorized as follows using U.S. Department of Labor and Texas Workforce Commission data with thresholds determined by the Texas Education Agency (TEA).

(1) A Tier 1 certification meets the criteria in subsection (c)(1)-(5) of this section and is in demand and directly aligned to one or more high-wage occupations.

(2) A Tier 2 certification meets the criteria in subsection (c)(1)-(5) of this section and is directly aligned to an occupation that is:

(A) in demand and high wage; or

(B) high skill.

(3) A Tier 3 certification meets criteria in subsection (c)(1)-(5) of this section and:

(A) does not meet indicators in paragraph (1) or (2) of this subsection; or

(B) requires curriculum (whether purchased as a package or to access the certification assessment), unless the curriculum is required by a Texas or federal government agency.

[(a) The list of certifications provided in this subsection will be recognized for the purpose of accounting for students who earn industry certifications in the public school accountability system for the 2017-2018 and 2018-2019 school years.]
[Figure: 19 TAC §74.1003(a)]

[(b) Beginning in the 2019-2020 school year, the list of certifications provided in the annual accountability manual adopted as a figure in §97.1001 of this title (relating to Accountability Rating System) will be recognized for the purpose of accounting for students who earn industry certifications in the public school accountability system.]

(b) [(e)] The list of industry-based certifications to be used in the public school accountability system shall be reviewed and updated every five [two] years beginning in 2028 [2021].

(c) Certifications recognized for the purpose of public school accountability in the 2025-2026 through the 2029-2030 school years shall meet the following criteria.

(1) Certification. A certification is defined as a validation or license that indicates an individual possesses certain industry-specific skills and that meets the following criteria:

(A) the certification is:

(i) related to the performance requirements of a specific occupation and measured against a set of industry-accepted standards; and

(ii) earned by successfully completing an assessment that is provided by or evaluated by an independent, third-party certifying entity and demonstrates an individual's proficiency of the prescribed standards; or

(B) the certification is issued by the State of Texas and requires students to demonstrate proficiency of the prescribed standards through courses within a TEA-approved statewide or regional program of study.

(2) Industry recognized and valued. A certification is industry recognized and valued if:

(A) the certification is a license awarded by the State of Texas, the federal government, or a national board;

(B) the certification is included on the Department of Labor's CareerOneStop Certifications List as being:

(i) third-party industry-endorsed; or

(ii) in demand;

(C) the certification is included on the Texas Workforce Commission's (TWC's) Eligible Training Provider List;

(D) the certification is referred to TEA by TWC as a result of determined correlation between certification attainment and job-related salary;

(E) a certifying entity provides evidence of industry recognition and value that is validated by TEA; or

(F) the certification is referred to TEA by TWC as part of the inventory of industry-recognized credentials approved by the industry-based certification advisory council authorized by Texas Labor Code, §312.002, and meets indicators in subparagraphs (A), (B), (C), (D), or (E) of this paragraph.

(3) Attainable by a high school student. A certification is attainable by a high school student if the certification:

(A) does not require a bachelor's degree;

(B) does not require over 1,500 hours of documented work, unless the certifying entity provides verifiable documented evidence that Texas high school students have earned the certification in one of the past two years;

(C) does not require a certification applicant to be 21 years of age or over; and

(D) coursework is not required after a student graduates from high school.

(4) Portable. The certification:

(A) can be transferred seamlessly to postsecondary work through acceptance for one or more core program courses at a

Southern Association of Colleges and Schools Commission on Colleges-accredited institution of higher education and verified through the institution of higher education's website;

(B) counts toward a minimum of 5% of the hours required in an aligned apprenticeship program and can be verified through the apprenticeship's website;

(C) is part of a prescribed coherent sequence of industry-recognized credentials to show progressive skills development such as I, II, and III or User, Associate, and Professional;

(D) is documented by TWC as supporting employment in more than one region of the state; or

(E) is a license awarded by the State of Texas, the federal government, or a national board.

(5) Capstone or end-of-program. A certification assessment is taken at the culmination of a single high school course or multiple related courses within a secondary program of study. There must be at least 50% alignment between the certification assessment standards and the identified occupation-specific student expectations within at least one level 3 or 4 course in a program of study.

(d) Certifications [Beginning in the 2022-2023 school year, certifications] recognized for the purpose of public school accountability in the 2022-2023 through the 2024-2025 school years shall meet the following criteria.

(1) Certification. A certification is defined as a validation or license that indicates an individual possesses certain industry-specific skills and that meets two or more of the following criteria:

(A) the certification is related to the performance requirements of a career or occupation, measured against a set of industry-accepted standards, and not dependent upon a particular curriculum or program;

(B) the certification is earned by successfully completing an assessment that demonstrates an individual's proficiency of the prescribed standards; or

(C) the certification is a time-limited credential that must be maintained through ongoing professional training and/or testing requirements.

(2) Industry recognized and valued.

(A) A certification is industry recognized and valued if the certification is:

(i) referred to TEA [the Texas Education Agency (TEA)] :

(I) by TWC [the Texas Workforce Commission (TWC)] as part of the inventory of industry-recognized credentials approved by the industry-based certification advisory council authorized by Texas Labor Code, §312.002; or

(II) directly using a process identified and implemented by TEA and published on the TEA website if the certification is not referred to TEA by TWC under subclause (I) of this clause; and

(ii) determined to be valued by a representative sample of employers, as demonstrated in at least one of the following ways:

(I) inclusion of the certification in job postings as required or highly recommended;

(II) use of the certification as a factor in selecting candidates for an interview or for hire; or

(III) offer of higher pay for individuals who possess the certification.

(B) If a determination of value under subparagraph (A)(ii) of this paragraph is not made prior to referral under subparagraph (A)(i)(I) of this paragraph, TEA may use a third-party organization with expertise in gathering information from employers related to the value of industry-based certifications to directly contact groups of employers and report to TEA regarding whether the standards under subparagraph (A)(ii) of this paragraph have been met.

(3) Attainable by a high school student. All eligibility requirements such as age and experience can be met and the certification awarded before or within the summer after a student's high school graduation.

(4) Portable. The certification can:

(A) be transferred seamlessly to postsecondary work through acceptance for credit or hours in core program courses at an institution of higher education;

(B) be counted toward hours in an aligned apprenticeship program;

(C) be part of a prescribed coherent sequence of industry-recognized credentials to show progressive skills development; or

(D) support employment in more than one region of the state.

(5) Certifying entity. The assessment of the knowledge and skills required to obtain the certification is provided by or determined by an independent, third-party certifying entity using predetermined standards for knowledge, skills, and competencies.

(6) Capstone or end-of-program. A certification assessment is taken at the culmination of a single high school course or multiple related courses within a secondary program of study. There must be at least 50% overlap between the certification assessment standards and:

(A) the essential knowledge and skills for a secondary course aligned to the career cluster associated with the certification assessment; or

(B) the applicable essential knowledge and skills for a set of courses within a program of study in a secondary career and technical education program.

(e) A credential shall not be included on the list of industry-based certifications for public school accountability if:

(1) the assessment for the credential is open book, open reference, or allows limitless retake opportunities without remediation or remuneration; or

(2) the credential is designed for high school students and not attainable by adults.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2024.

TRD-202406218



CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1001

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001 is not included in the print version of the Texas Register. The figure is available in the on-line version of the January 10, 2025, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §97.1001, concerning the accountability rating system. The proposed amendment would adopt in rule applicable excerpts of the *2025 Accountability Manual*. Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

BACKGROUND INFORMATION AND JUSTIFICATION: TEA has adopted its academic accountability manual in rule since 2000 under §97.1001. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree from those applied in the prior year.

The proposed amendment to §97.1001 would adopt excerpts of the *2025 Accountability Manual* into rule as a figure. The excerpts, Chapters 1-12 of the *2025 Accountability Manual*, specify the indicators, standards, and procedures used by the commissioner to determine accountability ratings for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine distinction designations on additional indicators for Texas public school campuses and districts. Chapter 12 describes the specific criteria and calculations that will be used to assign 2025 Results Driven Accountability (RDA) performance levels. Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.056 and §39.003.

Following is a chapter-by-chapter summary of the changes for this year's manual. In every chapter, dates and years for which data are considered would be updated to align with 2025 accountability and RDA. Edits for clarity regarding consistent language and terminology throughout each chapter are embedded within the proposed *2025 Accountability Manual*.

Chapter 1 gives an overview of the entire accountability system. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be added. Language would be adjusted to clarify the existing processes of the data validation system.

Chapter 2 describes the "Student Achievement" domain. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be added.

Chapter 3 describes the "School Progress" domain. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be added.

Chapter 4 describes the "Closing the Gaps" domain. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be added. The language for methodology for English language proficiency would be updated.

Chapter 5 describes how the overall ratings are calculated. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be added.

Chapter 6 describes distinction designations. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be added.

Chapter 7 describes the pairing process and the alternative education accountability (AEA) provisions. Dates and years for which data are considered would be updated.

Chapter 8 describes the process for appealing ratings. Dates and years for which data are considered would be removed. Edits for clarity regarding consistent language and terminology would be added.

Chapter 9 describes the responsibilities of TEA, the responsibilities of school districts and open-enrollment charter schools, and the consequences to school districts and open-enrollment charter schools related to accountability and interventions. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be added.

Chapter 10 provides information on the federally required identification of schools for improvement. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be added.

Chapter 11 describes the local accountability system. Edits for clarity regarding consistent language and terminology would be added.

Chapter 12 describes the RDA system. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be added. Detailed language regarding the change of report only to performance level assignment indicators for Bilingual Education/ English as a Second Language/ Emergent Bilingual (BE/ESL/EB) Indicator for TELPAS Composite Rating Levels, Special Education Indicator for Out of School Suspension and Expulsion, and Special Education Indicator for In-School Suspension would be added. Detailed language discontinuing the Hold Harmless element of certain Other Special Populations would be added. Detailed language for indicators that will no longer be reported through RDA would be added. Detailed language regarding the change from report only to No in performance level assignment indicators would be added. Indicator numbers and data note numbers would be updated.

FISCAL IMPACT: Iris Tian, deputy commissioner for analytics, assessment, and reporting, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation due to its effect on school accountability for 2025.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Tian has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to continue to inform the public of the existence of annual manuals specifying rating procedures for public schools by including this rule in the *Texas Administrative Code*.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins January 10, 2025, and ends February 10, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 3, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §7.021(b)(1), which authorizes the Texas Education Agency (TEA) to administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs; TEC, §7.028, which authorizes TEA to monitor as

necessary to ensure school district and charter school compliance with federal law and regulations, financial integrity, and data integrity and authorizes the agency to monitor school district and charter schools through its investigative process. TEC, §7.028(a), authorizes TEA to monitor special education programs for compliance with state and federal laws; TEC, §12.056, which requires that a campus or program for which a charter is granted under TEC, Chapter 12, Subchapter C, is subject to any prohibition relating to the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter C, as determined by the commissioner; high school graduation under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; and public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, and J, and Chapter 39A; TEC, §12.104, which states that a charter granted under TEC, Chapter 12, Subchapter D, is subject to a prohibition, restriction, or requirement, as applicable, imposed by TEC, Title 2, or a rule adopted under TEC, Title 2, relating to PEIMS to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter D, as determined by the commissioner; high school graduation requirements under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; discipline management practices or behavior management techniques under TEC, §37.0021; public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, G, and J, and Chapter 39A; and intensive programs of instruction under TEC, §28.0213; TEC, §29.001, which authorizes TEA to effectively monitor all local educational agencies (LEAs) to ensure that rules relating to the delivery of services to children with disabilities are applied in a consistent and uniform manner, to ensure that LEAs are complying with those rules, and to ensure that specific reports filed by LEAs are accurate and complete; TEC, §29.0011(b), which authorizes TEA to meet the requirements under (1) 20 U.S.C. §1418(d) and its implementing regulations to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and in the school districts and open-enrollment charter schools in the state with respect to the (a) identification of children as children with disabilities, including the identification of children as children with particular impairments; (b) placement of children with disabilities in particular educational settings; and (c) incidence, duration, and type of disciplinary actions taken against children with disabilities including suspensions or expulsions; or (2) 20 U.S.C. §1416(a)(3)(C) and its implementing regulations to address in the statewide plan the percentage of schools with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that results from inappropriate identification; TEC, §29.010(a), which authorizes TEA to adopt and implement a comprehensive system for monitoring LEA compliance with federal and state laws relating to special education, including ongoing analysis of LEA special education data; TEC, §29.062, which authorizes TEA to evaluate and monitor the effectiveness of LEA programs and apply sanctions concerning emergent bilingual students; TEC, §29.066, which authorizes PEIMS reporting requirements for school districts that are required to offer bilingual education or special language programs to include the following information in the district's PEIMS report: (1) demographic information, as determined by the commissioner, on students enrolled in district bilingual education or special language programs; (2) the number and percentage of students

enrolled in each instructional model of a bilingual education or special language program offered by the district; and (3) the number and percentage of emergent bilingual students who do not receive specialized instruction; TEC, §29.081(e), (e-1), and (e-2), which define criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; TEC, §29.201 and §29.202, which describe the Public Education Grant (PEG) program and eligibility requirements; TEC, §39.003 and §39.004, which authorize the commissioner to adopt procedures relating to special investigations. TEC, §39.003(d), allows the commissioner to take appropriate action under Chapter 39A, to lower the district's accreditation status or the district's or campus's accountability rating based on the results of the special investigation; TEC, §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which authorizes the commissioner to adopt a set of indicators of the quality of learning and achievement and requires the commissioner to periodically review the indicators for consideration of appropriate revisions; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §39.0541, which authorizes the commissioner to adopt indicators and standards under TEC, Chapter 39, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.0543, which describes acceptable and unacceptable performance as referenced in law; TEC, §39.0546, which requires the commissioner to assign a school district or campus a rating of "Not Rated" for the 2021-2022 school year, unless, after reviewing the district or campus under the methods and standards adopted under TEC, §39.054, the commissioner determines the district or campus should be assigned an overall performance rating of C or higher; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.056, which authorizes the commissioner to adopt procedures relating to monitoring reviews and special investigations; TEC, §39.151, which provides a process for a school district or an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011, which makes open-enrollment charter schools and campuses that earn an acceptable rating eligible for distinction designations; TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts; TEC, §39A.001, which authorizes the commissioner to take any of the actions authorized by TEC, Chapter 39, Subchapter A, to the extent the commissioner determines necessary if a school does not satisfy the academic performance standards under TEC, §39.053 or §39.054, or based upon a special investigation; TEC, §39A.002, which authorizes the commissioner to take certain actions if a school district becomes subject to commissioner action under TEC, §39A.001; TEC, §39A.004, which authorizes the commissioner to appoint a board of managers to exercise the powers and duties of a school district's board of trustees if the district is subject to commissioner action under

TEC, §39A.001, and has a current accreditation status of accredited-warned or accredited-probation; or fails to satisfy any standard under TEC, §39.054(e); or fails to satisfy any financial accountability standard; TEC, §39A.005, which authorizes the commissioner to revoke school accreditation if the district is subject to TEC, §39A.001, and for two consecutive school years has received an accreditation status of accredited-warned or accredited-probation, failed to satisfy any standard under TEC, §39.054(e), or failed to satisfy a financial performance standard; TEC, §39A.007, which authorizes the commissioner to impose a sanction designed to improve high school completion rates if the district has failed to satisfy any standard under TEC, §39.054(e), due to high school completion rates; TEC, §39A.051, which authorizes the commissioner to take action based on campus performance that is below any standard under TEC, §39.054(e); and TEC, §39A.063, which authorizes the commissioner to accept substantially similar intervention measures as required by federal accountability measures in compliance with TEC, Chapter 39A.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.021(b)(1); 7.028; 12.056; 12.104; 29.001; 29.0011(b); 29.010(a); 29.062; 29.066; 29.081(e), (e-1), and (e-2); 29.201; 29.202; 39.003; 39.004; 39.051; 39.052; 39.053; 39.054; 39.0541; 39.0543; 39.0546; 39.0548; 39.055; 39.056; 39.151; 39.201; 39.2011; 39.202; 39.203; 39A.001; 39A.002; 39A.004; 39A.005; 39A.007; 39A.051; and 39A.063.

§97.1001. Accountability Rating System.

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053 ; [§] 39.054 ; [§] 39.0541 ; [§] 39.0548 ; [§] 39.055 ; [§] 39.151 ; [§] 39.201 ; [§] 39.2011 ; [§] 39.202 ; [§] 39.203 ; [§] 29.081(e), (e-1), and (e-2) ; [§] and 12.104(b)(2)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

- (1) indicators, standards, and procedures used to determine district ratings;
- (2) indicators, standards, and procedures used to determine campus ratings;
- (3) indicators, standards, and procedures used to determine distinction designations; and
- (4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2025 [2024] are based upon specific criteria and calculations, which are described in excerpted sections of the 2025 [2024] *Accountability Manual* provided in this subsection.

Figure: 19 TAC §97.1001(b)

[Figure: 49 TAC §97.1001(b)]

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.003 [§39.057] .

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for

all purposes, including accountability, data standards, and audits, with respect to those school years.

(f) In accordance with TEC, §7.028(a), the purpose of the Results Driven Accountability (RDA) framework is to evaluate and report annually on the performance of school districts and charter schools for certain populations of students included in selected program areas. The performance of a school district or charter school is included in the RDA report through indicators of student performance and program effectiveness and corresponding performance levels established by the commissioner.

(g) The assignment of performance levels for school districts and charter schools in the 2025 [2024] RDA report is based on specific criteria and calculations, which are described in the 2025 [~~2024~~] *Accountability Manual* provided in subsection (b) of this section.

(h) The specific criteria and calculations used in the RDA framework are established annually by the commissioner and communicated to all school districts and charter schools.

(i) The specific criteria and calculations used in the annual RDA manual adopted for prior school years remain in effect for all purposes, including accountability and performance monitoring, data standards, and audits, with respect to those school years.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2024.

TRD-202406189

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 475-1497



19 TAC §97.1002

The Texas Education Agency (TEA) proposes new §97.1002, concerning accountability rating appeals process and timeline. The proposed new section would adopt in rule the accountability ratings appeals process and timeline that will supersede the timelines referenced in Chapter 8 of the *2023 Accountability Manual* and *2024 Accountability Manual* and apply to all accountability rating appeals from 2023 and beyond until otherwise updated.

BACKGROUND INFORMATION AND JUSTIFICATION: Proposed new §97.1002 would adopt in rule the figure *Accountability Ratings Appeals Process and Timeline*. The new figure would specify the process and timeline by which school districts and open-enrollment charter schools can challenge an agency decision relating to an academic rating that affects the district or school, including a determination of consecutive school years of unacceptable performance ratings in accordance with Texas Education Code, §39.151. The process and timeline would supersede the timelines referenced in Chapter 8 of the *2023 Accountability Manual* and *2024 Accountability Manual* and apply to all accountability rating appeals from 2023 and beyond until otherwise updated.

FISCAL IMPACT: Iris Tian, deputy commissioner for analytics, assessment, and reporting, has determined that for the first five-

year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation to establish the timeline for appealing accountability ratings.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Tian has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be establishing a timeline for appealing accountability ratings that would apply to all accountability rating appeals from 2023 and beyond until otherwise updated. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins January 10, 2025, and ends February 10, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 10, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code, §39.151, which provides a process for a

school district or an open-enrollment charter school to challenge an academic or financial accountability rating

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §39.151.

§97.1002. Accountability Rating Appeals Process and Timeline.

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053; 39.054; 39.0541; 39.0543; 39.0546; 39.0548; 39.055; 39.151; 39.201; 39.2011; 39.202; 39.203; 29.081(e), (e-1), and (e-2); 29.201; 29.202; and 12.104(b)(3)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

(1) indicators, standards, and procedures used to determine district ratings;

(2) indicators, standards, and procedures used to determine campus ratings;

(3) indicators, standards, and procedures used to determine distinction designations; and

(4) procedures for submitting a rating appeal.

(b) The process and timeline by which districts, campuses, and charter schools can appeal ratings are based upon the requirements described in the *Accountability Ratings Appeals Process and Timeline* adopted as a figure in this subsection. This figure supersedes the timelines referenced in Chapter 8 of the *2023 Accountability Manual* and *2024 Accountability Manual* and applies to all accountability rating appeals from 2023 and beyond until otherwise updated.

Figure: 19 TAC §97.1002(b)

(c) Ratings may be revised as a result of investigative activities by the commissioner of education as authorized under TEC, §39.003.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 20, 2024.

TRD-202406219

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 475-1497



PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 231. REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS SUBCHAPTER F. SPECIAL EDUCATION- RELATED SERVICES PERSONNEL ASSIGNMENTS

The State Board for Educator Certification (SBEC) proposes the repeal of §231.701, new §231.701 and §231.710, and amendment to §231.709, concerning special education-related services personnel assignments. The proposed revisions would provide requirements for school districts to make personnel assignment decisions based on the correlating certification and demonstration of content proficiency requirements. The proposed revisions would also expand the list of certificates appropriate for personnel serving in special education-related assignments and include a section dedicated to requirements for an assignment of Teachers of Students who are Deafblind.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 Texas Administrative Code (TAC) Chapter 231 establish the personnel assignments that correlate with appropriate certifications. The list of courses, organized by grade level and subject area, identify the corresponding certificates and requirements for placement of individuals into classroom and/or campus assignments. This information assists districts with hiring and personnel assignment decisions.

The proposed revisions to 19 TAC Chapter 231, Subchapter F, Special Education-Related Personnel Assignments, address requirements for placement into special education-related personnel assignments. These proposed revisions, as a part of the broader special education teacher certification redesign plan, aim to ensure that special education teachers are knowledgeable of the grade-level content in which they teach, while allowing flexibility in how this content knowledge is demonstrated.

Previous SBEC Discussion

A summary of previous SBEC discussion is outlined in the following table.

Figure: 19 TAC Chapter 231, Subchapter F - Preamble

Proposed Updates to Subchapter F, Special Education-Related Services Personnel Assignments:

The following is a description of the proposed revisions to 19 TAC Chapter 231, Subchapter F.

Proposed New 19 TAC §231.701. Special Education Teacher

The SBEC proposes the repeal of and new §231.701, Special Education Teacher, to clearly articulate requirements for placement into special education assignments at the elementary and secondary levels.

Proposed new 19 TAC §231.701(a) would specify the effective date of provisions in this revised section.

Proposed new 19 TAC §231.701(b) would specify the required SBEC-issued special education certificate needed to serve in an assignment of special education teacher.

Proposed new 19 TAC §231.701(c) would clarify that the certificates listed in subsection (a) are appropriate for Prekindergarten-Grade 12 unless additional requirements are noted elsewhere.

Proposed new 19 TAC §231.701(d) would specify content area competency requirements for teachers in an assignment of special educator serving as the teacher of record. These proposed rules would require special education teachers of record to hold a valid content area certificate that matches the subject and grade level of the assignment or meet all requirements as outlined in the Texas Content Area Competency Worksheet for Special Education Teachers of Record to be adopted in rule as Figure: 19 TAC §231.701(d).

Proposed new 19 TAC §231.701(e) would specify that the employing school district is responsible for ensuring educators are trained to meet the needs of their assignment.

Proposed Amendment to 19 TAC §231.709. Teacher of Students with Auditory Impairments

The SBEC proposes updating the section title to align with certificate naming conventions and more accurate terminology used in the field.

The proposed amendment to 19 TAC §231.709(a)-(c) would strike "Teacher of Students with Auditory Impairments" and replace with "Teacher of the Deaf and Hard of Hearing" to align with the new section title and more appropriate terminology used in the field.

Proposed New 19 TAC §231.710. Teacher of Students who are Deafblind

The SBEC proposes the addition of 19 TAC §231.710, Teachers of Students who are Deafblind, to specify the Deafblind Supplemental: Early Childhood-Grade 12 certificate as the appropriate credential for placement into this teaching assignment.

Proposed new 19 TAC §231.710(a) would specify the certification requirement for an assignment of Teachers of Students who are Deafblind.

Proposed new §231.710(b) would provide a list of additional certificates a teacher of students who are Deafblind might hold.

FISCAL IMPACT: Jessica McLoughlin, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years the rules will be in effect enforcing or administering the rules does not have foreseeable implications relating to cost or revenues of the state or local governments.

The proposal may result in an increase in fees paid to the Texas Education Agency (TEA) as the proposal would include new certification requirements for the assignment of Teachers of Students who are Deafblind. The Deafblind Supplemental: Early Childhood-Grade 12 is a new certificate for the field that could generate additional fees. While TEA collects \$11 per exam administered, TEA is unable to estimate revenue because this is an optional certification and the assignment of Teachers of Students who are Deafblind is not required for students who are Deafblind.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code (TGC), §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in TGC, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: While the proposal imposes a cost on regulated persons, it is not subject to TGC, §2001.0045, because the proposal is necessary to receive a source of funds or to comply with federal law. In addition, the proposal is necessary to ensure certified Texas educators are competent to educate Texas students and, therefore, necessary to protect the health, safety, and welfare of the residents of this state. The TEA staff has determined there are fiscal implications as a result of the proposal. Beginning in Fiscal Year (FY) 2025, both the Special Education Early Childhood-Grade 12 and Special Education Supplemental certificates will retire. Candidates seeking a similar certification to fulfill the requirements for an assignment of Special Education Teacher would need to pursue the Special Education Specialist Early Childhood-Grade 12 certificate. The exam aligned to the Special Education Specialist Early Childhood-Grade 12 certificate costs \$136 in comparison to \$116 for the Special Education Early Childhood-Grade 12 and Special Education Supplemental certificates, respectively. However, at this time, TEA staff cannot estimate the total anticipated costs since there are multiple options for satisfying the special education certification requirements for an assignment of Special Education Teacher, including the Core/Special Education with Science of Teaching Reading: Early Childhood-Grade 6.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under TGC, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would require an increase in fees paid to TEA by requiring teachers who pursue the Deafblind Supplemental: Early Childhood-Grade 12 certificate to take the new Deafblind EC-12 certification exam; would create new regulations by requiring the new Deafblind Supplemental: Early Childhood-Grade 12 certificate for teachers of students who are deafblind and establishing content competency requirements for special education teachers of record; would repeal an existing regulation by removing rules related to special education personnel assignments in order to provide an updated list of SBEC-approved special education certificates and clarity related to content competency requirements for special education teachers of record; would not expand or limit an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Jessica McLoughlin, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years the proposal is in effect, the public benefit anticipated would be updated requirements and clarity relating to the assignment of special educator in Texas public schools. There is an anticipated cost to persons who are required to comply with the proposal, but those costs would only be incurred if a teacher is seeking one of the following certificates to satisfy special education personnel assignment requirements as outlined in this proposal: Special Education Specialist Early Childhood-Grade 12, Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6, Deafblind Supplemental: Early

Childhood-Grade 12, or Bilingual Special Education Supplemental: Early Childhood-Grade 12. Beginning in FY 2025, both the Special Education Early Childhood-Grade 12 and Special Education Supplemental certificates will retire. Candidates seeking a similar certification to fulfill the requirements for an assignment of Special Education Teacher would need to pursue the Special Education Specialist Early Childhood-Grade 12 certificate. The exam aligned to the Special Education Specialist Early Childhood-Grade 12 certificate costs \$136 in comparison to \$116 for the Special Education Early Childhood-Grade 12 and Special Education Supplemental certificates, respectively. However, at this time, TEA staff cannot estimate the total anticipated costs since there are multiple options for satisfying the special education certification requirements for an assignment of Special Education Teacher, including the Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6.

The proposed rule that would carve out requirements for the specialized assignment of Teachers of Students who are Deafblind would also result in additional costs for teachers since this assignment requires the Deafblind Supplemental: Early Childhood-Grade 12 certificate in addition to holding a Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 or Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12 certificates. TEA staff estimates teachers seeking this certificate would pay between \$400-600 in exam fees depending on the certification route; however, since this is an optional new certificate field and Teachers of Students who are Deafblind are not required to serve students who are deafblind, staff cannot estimate total anticipated costs.

DATA AND REPORTING IMPACT: The proposal would have no additional data and reporting impact.

ENVIRONMENTAL IMPACT: The proposal does not require an environmental impact analysis because the proposal does not include major environmental rules under TGC, §2001.0225.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA staff has determined that the proposal would require a written report or other paperwork to be completed by a principal or classroom teacher. In proposed new 19 TAC §231.701(c), a principal or other school district administrator would have to complete a worksheet for a teacher to demonstrate content competency.

PUBLIC COMMENTS: The public comment period on the proposal begins January 10, 2025, and ends February 10, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_\(TAC\)/Proposed_State_Board_for_Educator_Certification_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will also take registered oral and written comments on the proposal during the February 14, 2025 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

19 TAC §231.701

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a),

which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective June 12, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §§21.003(a); 21.031(a); 21.041(b)(1) and (2); and 21.064.

§231.701. Special Education Teacher.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 30, 2024.

TRD-202406349

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 475-1497

19 TAC §§231.701, 231.709, 231.710

STATUTORY AUTHORITY. The new sections and amendment are proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.064, which requires the SBEC to stop the issuance and renewal of master teacher certificates effective June 12, 2019, to add a designation of "legacy" to each master teacher certificate issued, and to recognize these certificates until they expire.

CROSS REFERENCE TO STATUTE. The new sections and amendment implement Texas Education Code, §§21.003(a); 21.031(a); 21.041(b)(1) and (2); and 21.064.

§231.701. Special Education Teacher.

(a) The provisions of this section are effective September 1, 2025, unless otherwise specified in rule.

(b) Subject to the requirements in subsection (d) of this section, an assignment of Special Education Teacher is allowed with one of the following SBEC-issued certificates:

(1) Bilingual Special Education Supplemental: Early Childhood-Grade 12;

(2) Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6;

(3) Deafblind Supplemental: Early Childhood-Grade 12;

(4) Special Education Specialist: Early Childhood-Grade 12;

(5) Special Education Supplemental (valid at grade level and subject area of the base certificate);

(6) Special Education: Early Childhood-Grade 12;

(7) Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12;

(8) Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12; or

(9) any special education certificate issued before September 1, 2003, and deemed appropriate by the employing school district for placement into the assignment.

(c) The certificates specified in subsection (b) of this section are appropriate for a special education assignment in Prekindergarten-Grade 12 except where otherwise noted.

(d) If an individual in an assignment of special education teacher serves as the teacher of record and is responsible for evaluating student achievement and assigning grades, a valid certificate that matches the subject and grade level of the assignment is also required, or the individual must demonstrate content area competency through requirements as applicable in the figure provided in this subsection, the state's Texas Content Competency Worksheet for Special Education Teachers of Record (Grades EC-12).
Figure: 19 TAC §231.701(d)

(1) Individuals who previously demonstrated content competency through the state's 2010 and 2011 high objective uniform standard of evaluation for elementary and secondary special education teachers in an assignment of special education teacher of record before September 1, 2025, must hold a valid certificate that matches the subject and grade level of the assignment, or the individual must demonstrate content area competency as attested by the administrator in Sections A-B and F of Figure: 19 TAC §231.701(d).

(2) Individuals who did not previously demonstrate content competency through the state's 2010 and 2011 high objective uniform standard of evaluation for elementary and secondary special education teachers of record before September 1, 2025, must hold a valid certificate that matches the subject and grade level of the assignment, or the individual must demonstrate content area competency through requirements as applicable in Sections A and C-E and Section F of Figure: 19 TAC §231.701(d).

(e) The employing school district should make every effort to secure educators trained in the specialized skills and knowledge needed to serve the special needs of children. If a staff member does not have the skills and knowledge needed for the assignment, the school district is responsible for making provisions for the person to acquire the necessary skills and knowledge.

§231.709. Teacher of the Deaf and Hard of Hearing. [Teacher of Students with Auditory Impairments.]

(a) An assignment for Teacher of the Deaf and Hard of Hearing [Teacher of Students with Auditory Impairments] is allowed with one of the following certificates.

(1) Deaf and Severely Hard of Hearing.

(2) Hearing Impaired.

(3) Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12.

(b) A teacher in an assignment for Teacher of the Deaf and Hard of Hearing [Teacher of Students with Auditory Impairments] must be available to students with auditory impairments.

(c) A teacher in an assignment for Teacher of the Deaf and Hard of Hearing [Teacher of Students with Auditory Impairments] is not required to pass the Texas Assessment of Sign Communication (TASC) or the Texas Assessment of Sign Communication-American Sign Language (TASC-ASL) in order to be assigned to a classroom in which another communication method is used predominately. If this teacher completes certification requirements through a State Board for Educator Certification-approved educator preparation program in Texas, the program must have assessed proficiency in the communication method and verified it to be at an appropriate level.

§231.710. Teacher of Students who are Deafblind.

(a) An assignment for Teacher of Students who are Deafblind is allowed with the Deafblind Supplemental: Early Childhood-Grade 12 certificate.

(b) A teacher in an assignment for Teacher of Students who are Deafblind must also hold one or more of the following certificates.

(1) Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12.

(2) Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12.

(3) Teacher of Students who are Visually Impaired.

(4) Deficient Vision.

(5) Visually Handicapped.

(6) Deaf and Severely Hard of Hearing.

(7) Hearing Impaired.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 30, 2024.

TRD-202406350

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 475-1497



CHAPTER 235. CLASSROOM TEACHER CERTIFICATION STANDARDS

The State Board for Educator Certification (SBEC) proposes an amendment to §235.1, new §§235.2, 235.11, 235.21, and 235.61, and the repeal of §§235.11, 235.13, 235.21, 235.41, 235.61, and 235.63, concerning classroom teacher certification standards. The proposed revisions would repeal the current grade-banded classroom teacher pedagogy standards and replace them with the new Classroom Teacher Pedagogy standards.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 Texas Administrative Code (TAC) Chapter 235, Classroom Teacher Certification Standards, specify the standards for the classroom teacher class of certificates. SBEC is statutorily authorized to ensure that all candidates for certification or renewal demonstrate the knowledge and skills necessary to improve the performance of this state's student population. The classroom teacher certification standards are the basis for EPPs to effectively prepare classroom teachers and the foundation for the certification examinations.

Updated Classroom Teacher Pedagogy Standards

At the September 2023 SBEC meeting, the Board approved membership to the Educator Standards Advisory Committee (ESAC). The ESAC participated in sessions that informed their work and engaged in an iterative standards revision process from November 2023-March 2024.

At the April 2024 SBEC meeting, Board members reviewed and discussed a draft of the updated Classroom Teacher Pedagogy Standards. Both Board members and stakeholders indicated a need to more clearly include lesson design as an essential skill for teachers. TEA staff updated the standards to include lesson design and presented an updated draft to the Board at their July 2024 meeting. During the July and September 2024 SBEC meetings, Board members reviewed and discussed the updated drafts of the Classroom Teacher Pedagogy Standards reflective of additional stakeholder feedback. Since the September 2024 SBEC meeting, minor changes were made to the standards in response to Board and stakeholder feedback.

Proposed Revisions to 19 TAC Chapter 235, Subchapters A, B, C, and D:

The following is a description of the proposed revisions to 19 TAC Chapter 235, Subchapters A, B, C, and D. The proposed revisions reflect a reorganization of educator standard groups and include the new classroom teacher certification standards that would serve to implement House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023. The proposed revisions would also provide additional specification related to implementation of HB 159, 87th Texas Legislature, Regular Session, 2021, and Senate Bill (SB) 226, 87th Texas Legislature, Regular Session, 2021.

Subchapter A. General Provisions

Proposed Amendment to 19 TAC §235.1

The proposed amendment to 19 TAC §235.1(a) would update the cross reference to the SBEC's rules related to educator preparation curriculum and outline the required use of educator standards in educator preparation program (EPP) curriculum.

The proposed amendment to 19 TAC §235.1(b)(4) would strike through the term "grade-band" to better align with subsequent subchapters and sections and create a single set of standards across Early Childhood-Grade 12.

Proposed New 19 TAC §235.2. Definitions

The proposed new 19 TAC §235.2 would include definitions that provide clarity for the field and promote a common understanding of terms used within the updated Classroom Teacher Pedagogy Standards.

Subchapter B. Early Childhood Certificate Standards

The SBEC proposes the repeal of Subchapter B, Elementary School Certificate Standards, and proposes new Subchapter B, Early Childhood Certificate Standards, to remove the Pedagogy and Professional Responsibilities Standards for Prekindergarten-Grade 3 and Early Childhood-Grade 6 and align with the reorganization of subsequent subchapters. The SBEC has also updated the subchapter title to more accurately reflect the content standards for teachers of students in Prekindergarten-Grade 3.

Proposed New 19 TAC §235.11. Content Standards, Early Childhood: Prekindergarten-Grade 3

The proposed new 19 TAC §235.11 would outline the content standards for Prekindergarten-Grade 3.

Subchapter C. Classroom Teacher Pedagogy Standards, Early Childhood-Grade 12

The SBEC proposes the repeal and replacement of Subchapter C, Middle School Certificate Standards, to remove the Pedagogy and Professional Responsibilities Standards for Grades 4-8 and align with the reorganization of the proposed new subchapters. The SBEC has also updated the subchapter title to more accurately reflect the updated classroom teaching standards for Early Childhood-Grade 12.

Proposed New 19 TAC §235.21. Classroom Teacher Pedagogy Standards, Early Childhood-Grade 12

The proposed new 19 TAC §235.21 would outline teacher pedagogy and English language arts and reading (ELAR) and Mathematics content pedagogy standards for teachers of students in Early Childhood-Grade 12. These proposed updated standards would work to inform the preparation, appraisal, and professional development of Early Childhood-Grade 12 pre- and in-service teachers in Texas.

The proposed new §235.21(a) would provide an overview of the educator standards in proposed new Subchapter C, Classroom Teacher Pedagogy Standards, Early Childhood-Grade 12.

The proposed new §235.21(b) would outline the necessary knowledge and skills related to instructional preparation.

The proposed new §235.21(c) would outline the necessary knowledge and skills related to instructional delivery and assessment.

The proposed new §235.21(d) would outline the necessary knowledge and skills related to content pedagogy for all teachers and for teachers leading ELAR and mathematics classes.

The proposed new §235.21(e) would outline the necessary knowledge and skills related to learning environment.

The proposed new §235.21(f) would outline the necessary knowledge and skills related to professional practices and responsibilities.

Subchapter D. Trade and Industrial Workforce Training Certification Standards

The SBEC proposes the repeal and replacement of Subchapter D, Secondary School Certificate Standards, to remove the Ped-

agogy and Professional Responsibilities Standards for Grades 7-12 and align with the reorganization of the proposed new subchapters. The SBEC has also updated the subchapter title to more accurately reflect rules that are focused on the Trade and Industrial Workforce Training Certification Standards for Grades 6-12.

Proposed New 19 TAC §235.61. Pedagogy and Professional Responsibilities Standards, Grades 6-12, Trade and Industrial Workforce Training

The proposed new 19 TAC §235.61 would outline pedagogy and professional responsibilities standards for teachers of students in Grades 6-12 Trade and Industrial Workforce Training courses.

The following table provides a high-level overview of the reorganization of educator standards in Chapter 235, Subchapters B, C, and D.

Figure: 19 TAC Chapter 235 - Preamble

FISCAL IMPACT: Jessica McLoughlin, associate commissioner for educator preparation, certification and enforcement, has determined that for the first five years the rules will be in effect enforcing or administering the rules does not have foreseeable implications relating to cost or revenues of the state or local governments. There may be an additional fiscal impact on entities required to comply with the proposal. The proposal contains standards explicitly required by state mandates, including HB 1605, 88th Texas Legislature, Regular Session, 2023, and HB 159 and SB 226, 87th Texas Legislature, Regular Session, 2021.

Implementation of the revised teacher pedagogy standards may impose costs on EPPs to comply with the standards. Programs may incur new costs related to training faculty and revising curriculum in accordance with the revised standards. Costs incurred by programs vary depending on program size, course offerings, and the procedures by which a program updates curriculum. The anticipated costs range from \$3,000-\$6,000 and are an estimated average based on a sampling of traditional and alternative certification programs.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under TGC, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal will have an additional fiscal impact on entities required to comply with the proposal, including small businesses, microbusinesses, and EPPs in rural communities. Implementation of the revised teacher pedagogy standards will impose costs on small-sized EPPs to comply with the standards. Programs will incur new costs related to training faculty and revising curriculum in accordance with the revised standards. Accordingly, an economic impact statement and regulatory flexibility analysis have been prepared and included in the notice of this proposed rule.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to TGC, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under TGC, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking

would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Jessica McLoughlin, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years the proposal is in effect, the public benefit anticipated would include a set of clear and common expectations for all parties invested in the preparation of teachers. The updated standards align with current legislation and set a high bar for the quality of teachers in Texas. There is no anticipated cost to teacher candidates who will be required to meet the new standards.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

ENVIRONMENTAL IMPACT STATEMENT: The proposal does not require an environmental impact analysis because the proposal does not include major environmental rules under TGC, §2001.0225.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA staff has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins January 10, 2025, and ends February 10, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_\(TAC\)/Proposed_State_Board_for_Educator_Certification_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will also take registered oral and written comments on the proposal during the February 14, 2025 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §235.1, §235.2

STATUTORY AUTHORITY. The amendment and new section are proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules

that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

CROSS REFERENCE TO STATUTE. The amendment and new section implement Texas Education Code (TEC), §§21.003(a), 21.031, and 21.041(b)(1), (2), and (4).

§235.1. *General Requirements.*

(a) The knowledge and skills identified in this section must be used by an educator preparation program in the development of the curricula and coursework as prescribed in §228.57 [§228.30] of this title (relating to Educator Preparation Curriculum) and serve as the basis for developing the examinations as prescribed in §230.35 of this title (relating to Development, Approval, Implementation, and Evaluation of Teacher Certification Standards).

(b) Unless provided otherwise in this title, the content area and grade level of a certificate category as well as the standards underlying the certification examination for each shall include the following:

(1) the relevant Texas Essential Knowledge and Skills (TEKS) curriculum adopted by the State Board of Education, as prescribed in §74.1 of Part 2 [H] of this title (relating to Essential Knowledge and Skills);

(2) the English Language Proficiency Standards (ELPS) adopted by the State Board of Education, as prescribed in Chapter 120, Subchapter B, [§74.4] of Part 2 [H] of this title (relating to English Language Proficiency Standards);

(3) the relevant knowledge and application of developmentally appropriate, research- and evidence-based assessment and instructional practices to promote students' development of grade-level skills; and

(4) the relevant [grade-banded] Pedagogy and Professional Responsibilities Standards, specifically including how to effectively address the needs of all student populations.

(c) A person must satisfy all applicable requirements and conditions under this title and other law to be issued a certificate in a category. A person seeking an initial standard certification must pass the appropriate examination(s) as prescribed in §230.21 of this title (relating to Educator Assessment).

§235.2. *Definitions.*

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

(1) Academic language--The oral, written, auditory, and visual language specific to a discipline. It includes vocabulary, grammar, punctuation, syntax, discipline-specific terminology, and rhetorical conventions that allow students to acquire knowledge and academic skills.

(2) Accelerated instruction/Acceleration--Includes aligned research-driven strategies and supports within a multi-tiered instructional model that helps students make more than one year of growth in one year of time.

(3) Complex text--Texts that provide students opportunities to work with new language, knowledge, and ways of thinking. Text complexity is evaluated along quantitative dimensions such as word and sentence length, qualitative dimensions such as text structure, levels of meaning, and language conventions, and considerations, including the reader's background, motivation, and knowledge of the topic.

(4) Deliberate practice--Practice that is systematic, requires sustained attention, and is conducted with the specific goal of improving performance on targeted skills.

(5) Encoding--The process by which information is initially coded to be stored and retrieved. Encoding requires attention to key concepts and knowledge structures and is aided by reducing extraneous cognitive load or information in the learning environment.

(6) Engagement--A state in which students are cognitively and behaviorally connected to and involved in their learning experience, characterized by participation, curiosity, and perseverance.

(7) Evidence-based--A concept or strategy that has been evaluated as a whole and found to have positive effects when implemented with programmatic fidelity.

(8) Explanatory feedback--Feedback that provides the learner with an explanation of strengths and weaknesses related to the learning activity or assignment.

(9) Explicit instruction--Instruction in which the teacher's actions are clear, unambiguous, direct, and visible. Explicit instruction makes it clear what the students are to do and learn.

(10) Fixed personality traits--The misconception that personality traits become fixed at certain stages of an individual's development and do not change over time.

(11) Formative assessment--A deliberate low or no-stakes process used by teachers during instruction to elicit and use evidence of student learning to provide actionable feedback and improve students' attainment of learning targets.

(12) Hemispheric dominance--The misconception that each brain hemisphere is specialized to process information differently and that the dominant hemisphere determines a person's personality and way of thinking.

(13) High-quality instructional materials--Instructional materials that ensure full coverage of Texas Essential Knowledge and Skills; are aligned to evidence-based best practices in the relevant content areas; support all learners, including students with disabilities, emergent bilingual students, and students identified as gifted and talented; enable frequent progress monitoring through embedded and aligned assessments; include implementation supports for teachers; and provide teacher and student-facing lesson-level materials.

(14) Instructional preparation--Describes the process by which a teacher uses knowledge of students and student learning to prepare instructional delivery to a unique group of students. Instructional preparation may include activities such as lesson plan design, evaluation of instructional materials, and lesson internalization.

(15) Interleaving--An instructional technique that arranges practice of topics in such a way that consecutive problems cannot be solved by the same strategy.

(16) Just-in-time supports--A learning acceleration strategy that integrates small, timely supports to address gaps in the most critical prerequisite knowledge and skills that students will need to access grade or course level content in upcoming units.

(17) Learning styles--The disproven theory that identifies learners by type--visual, auditory, reading and writing, and kinesthetic--and adapts instruction to the individual's learning style.

(18) Lesson plan design--Describes the process by which a teacher creates the planned learning experiences and related instructional materials for a topic. Lesson plan design includes activities such as developing or selecting objectives, learning experiences, sequenc-

ing, scaffolds, resources, materials, tasks, assessments, and planned instructional practices.

(19) Lesson internalization--An aspect of instructional preparation specific to teaching a lesson or unit. It includes activities such as evaluating sequencing, learning goals, and expected outcomes, using assessment data to identify prior knowledge, studying lesson content, rehearsing lesson delivery, identifying possible misconceptions, as well as planning instructional strategies, materials, and pacing.

(20) Metacognition--The awareness of how one's mind learns and thinks and the use of that awareness to optimize the efficiency of learning and cognition.

(21) Multiple means of engagement--A range of options provided to engage and motivate students in learning.

(22) Multiple means of representation--A range of options provided in the ways that information is presented to students.

(23) Multiple means of action and expression--A range of options provided in the ways that students express or demonstrate their learning.

(24) Open education resource instructional materials--State-developed materials included on the list of approved instructional materials maintained by the State Board of Education under Texas Education Code (TEC), §31.022, where the underlying intellectual property is either owned by the state of Texas or it can be freely used and modified by the state in perpetuity.

(25) Patterns of student thinking--Common patterns in the ways in which students think about and develop understanding and skill in relation to particular topics and problems.

(26) Productive struggle--Expending effort to understand a challenging situation and determine a course of action when no obvious strategy is stated, and receiving support that encourages persistence without removing the challenge.

(27) Recall--Also referred to as "retrieval," the mental process of retrieving information that was previously encoded and stored in long-term memory.

(28) Remediation--Strategies that focus on the drilling of isolated skills that bear little resemblance to current curriculum. Activities connect to past standards and aim to master content from past years.

(29) Research-based--A concept or strategy with positive findings from studies effective in isolation or combination with other researched strategies or evidence-based programs.

(30) Retrieval practice--Also referred to as "testing effect" or "active recall," it is the finding that trying to remember previously learned material, including by responding to questions, tests, assessments, etc., leads to better retention than restudying or being retold the material for an equivalent amount of time.

(31) Science of learning--The summarized existing cognitive-science, cognitive psychology, educational psychology, and neuroscience research on how people learn, as it connects to practical implications for teaching.

(32) Second language acquisition--The process through which individuals leverage their primary language to learn a new language. A dynamic process of learning and acquiring proficiency in the English language, supported by exposure to comprehensible input, interaction, formal instruction, and access to resources and support in English and primary language.

(33) Spaced practice/Distributed practice--Spaced practice sequences learning in a way that students actively retrieve learned information from long-term memory through multiple opportunities over time with intervals in between--starting with shorter intervals initially (e.g., hours or days) and building up to longer intervals (e.g., weeks).

(34) State Board of Education-approved instructional materials--Materials included on the list of approved instructional materials maintained by the State Board of Education under Texas Education Code (TEC), §31.022.

(35) Summative assessment--Medium-to-high-stakes assessments, administered at the conclusion of an instructional period that are used to evaluate student learning, knowledge, proficiency, or mastery of a learning target.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 30, 2024.

TRD-202406351

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 475-1497



SUBCHAPTER B. ELEMENTARY SCHOOL CERTIFICATE STANDARDS

19 TAC §§235.11, 235.13, 235.21

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code (TEC), §§21.003(a), 21.031, and 21.041(b)(1), (2), and (4).

§235.11. *Pedagogy and Professional Responsibilities Standards, Early Childhood: Prekindergarten-Grade 3.*

§235.13. *Content Standards, Early Childhood: Prekindergarten-Grade 3.*

§235.21. *Pedagogy and Professional Responsibilities Standards, Early Childhood-Grade 6.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 30, 2024.

TRD-202406352

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 475-1497



SUBCHAPTER B. EARLY CHILDHOOD CERTIFICATE STANDARDS

19 TAC §235.11

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code (TEC), §§21.003(a), 21.031, and 21.041(b)(1), (2), and (4).

§235.11. *Content Standards, Early Childhood: Prekindergarten-Grade 3.*

(a) Early Childhood: Prekindergarten-Grade 3 Content Standards. The content standards identified in this section are targeted for classroom teachers of early learners (birth through age eight). The standards address the discipline that deals with the content knowledge required to teach early learners. The standards address content knowledge in Prekindergarten-Grade 5, with an emphasis on Prekindergarten-Grade 3, in order to meet the needs of all learners

and address vertical alignment. The standards align with the *Texas Prekindergarten Guidelines*, Chapter 110 of Part 2 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading), Chapter 111 of Part 2 of this title (relating to Texas Essential Knowledge and Skills for Mathematics), Chapter 112 of Part 2 of this title (relating to Texas Essential Knowledge and Skills for Science), Chapter 113 of Part 2 of this title (relating to Texas Essential Knowledge and Skills for Social Studies), Chapter 115 of Part 2 of this title (relating to Texas Essential Knowledge and Skills for Health Education), Chapter 116 of Part 2 of this title (relating to Texas Essential Knowledge and Skills for Physical Education), Chapter 117 of Part 2 of this title (relating to Texas Essential Knowledge and Skills for Fine Arts), and The National Association for the Education of Young Children Professional Preparation Standards.

(b) Child Development. The Early Childhood: Prekindergarten-Grade 3 classroom teachers use their understanding of young children's characteristics and needs, and of multiple interacting influences on children's development and learning, to create environments that are healthy, respectful, supportive, and challenging for each child. Early Childhood: Prekindergarten-Grade 3 classroom teachers must:

(1) know and understand young children's characteristics and needs, from birth through age eight;

(2) know and understand the multiple influences on early development and learning; and

(3) use developmental knowledge to create healthy, respectful, supportive, and challenging learning environments for young children.

(c) English Language Arts and Reading. The Early Childhood: Prekindergarten-Grade 3 classroom teachers demonstrate understanding of Kindergarten-Grade 5 English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS), with an emphasis on Kindergarten-Grade 3, and Emergent Early Literacy *Texas Prekindergarten Guidelines* and apply knowledge of developmentally appropriate, research- and evidence-based assessment and instructional practices to promote students' development of grade-level skills.

(d) Mathematics. The Early Childhood: Prekindergarten-Grade 3 classroom teachers demonstrate understanding of Kindergarten-Grade 5 Mathematics TEKS, with an emphasis on Kindergarten-Grade 3, and Mathematics *Texas Prekindergarten Guidelines* and apply knowledge of developmentally appropriate, research- and evidence-based assessment and instructional practices to promote students' development of grade-level skills.

(e) Science. The Early Childhood: Prekindergarten-Grade 3 classroom teachers demonstrate understanding of Kindergarten-Grade 5 Science TEKS, with an emphasis on Kindergarten-Grade 3, and Science *Texas Prekindergarten Guidelines* and apply knowledge of developmentally appropriate, research- and evidence-based assessment and instructional practices to promote students' development of grade-level skills.

(f) Social Studies. The Early Childhood: Prekindergarten-Grade 3 classroom teachers demonstrate understanding of Kindergarten-Grade 5 Social Studies TEKS, with an emphasis on Kindergarten-Grade 3, and Social Studies *Texas Prekindergarten Guidelines* and apply knowledge of developmentally appropriate, research- and evidence-based assessment and instructional practices to promote students' development of grade-level skills.

(g) Fine Arts, including Theatre, Art, and Music. The Early Childhood: Prekindergarten-Grade 3 classroom teachers demonstrate understanding of Kindergarten-Grade 5 Theatre, Art, and Music TEKS, with an emphasis on Kindergarten-Grade 3, and Fine Arts

Texas Prekindergarten Guidelines and apply knowledge of developmentally appropriate, research- and evidence-based assessment and instructional practices to promote students' development of grade-level skills.

(h) Health Education. The Early Childhood: Prekindergarten-Grade 3 classroom teachers demonstrate understanding of Kindergarten-Grade 5 Health Education TEKS, with an emphasis on Kindergarten-Grade 3, and Physical Development Texas Prekindergarten Guidelines and apply knowledge of developmentally appropriate, research- and evidence-based assessment and instructional practices to promote students' development of grade-level skills.

(i) Physical Education. The Early Childhood: Prekindergarten-Grade 3 classroom teachers demonstrate understanding of Kindergarten-Grade 5 Physical Education TEKS, with an emphasis on Kindergarten-Grade 3, and Physical Development Texas Prekindergarten Guidelines and apply knowledge of developmentally appropriate, research- and evidence-based assessment and instructional practices to promote students' development of grade-level skills.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 30, 2024.

TRD-202406353

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 475-1497



SUBCHAPTER C. CLASSROOM TEACHER PEDAGOGY STANDARDS, EARLY CHILDHOOD-GRADE 12

19 TAC §235.21

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code (TEC), §§21.003(a), 21.031, and 21.041(b)(1), (2), and (4).

§235.21. Classroom Teacher Pedagogy Standards, Early Childhood-Grade 12.

(a) The standards identified in this section are targeted for classroom teachers in Early Childhood-Grade 12. The standards emphasize the knowledge and skills required for teachers to select, evaluate, internalize, and implement high-quality instructional materials. They assume that practicing teachers are aware of the Open Education Resource Instructional Materials (OER), customize materials as directed by their district, and engage in initial lesson plan design when they are directed by their school district to do so. The standards describe the knowledge and skills required for teachers to prepare, deliver, and assess instruction that results in positive outcomes for all students; describe the knowledge and skills required for teachers to build positive relationships with and among students in a safe and productive learning environment; reflect research and evidenced-based practices that ensure all students are held to rigorous grade-level academic and nonacademic standards; and define a teacher's role as a professional, an ethical, and a reflective practitioner.

(b) Instructional Preparation. Teachers understand how students learn and prepare for instructional delivery by designing lessons, evaluating instructional materials, leveraging their knowledge of students, and engaging in a thorough process for lesson internalization.

(1) Teachers apply basic principles of lesson plan design from the learning sciences to prepare for instruction.

(A) Teachers understand learning as an active and social process of meaning-making that results in changes in student knowledge and behavior based on connections between past and new experiences.

(B) Teachers prepare instruction that uses research and evidence-based teaching strategies for eliciting and sustaining attention and motivation and supporting encoding such as use of multimedia learning principles, reduction of extraneous cognitive load, use of worked examples, interleaving, and deep integration of new experiences with prior knowledge.

(C) Teachers prepare instruction that uses research and evidence-based strategies for memory and recall such as interleaving, spacing, retrieval practice, and metacognition.

(D) Teachers recognize misconceptions about learning, the brain, and child and adolescent development, including myths such as learning styles, personality traits, and hemispheric dominance, and avoid unsupported instructional practices based on these misunderstandings.

(2) Teachers evaluate instructional materials and select or customize the highest quality district-approved option to prepare for instruction.

(A) Teachers identify the components of high-quality instructional materials such as a logical scope and sequence, clear learning objectives, grade or course level content, explicit instruction, student engagement, academic language, deliberate practice, and assessment, appropriate to the discipline.

(B) Teachers identify the benefits of using high-quality instructional materials.

(C) Teachers apply knowledge of the components of high-quality instructional materials to select or customize instructional materials when appropriate.

(D) Teachers analyze instructional materials and digital resources to ensure quality, rigor, and access to grade or course level content.

(E) Teachers use high-quality materials to plan instruction that connect students' prior understanding and real-world experiences to new content and contexts.

(3) Teachers understand initial lesson plan design and, when district-approved materials are not available and when directed by their district, engage in initial lesson plan design using science of learning concepts.

(A) Teachers design lessons based on the components of high-quality instructional materials such as a logical scope and sequence, clear learning objectives, application of explicit instruction, and grade or course level content.

(B) Teachers design lessons that effectively connect learning objectives with explicit instruction, student engagement, academic language, deliberate practice, and assessment.

(C) Teachers design lessons that connect students prior understanding and real-world experiences to new content and contexts.

(D) Teachers plan for the use of digital tools and resources to engage students in active deep learning.

(4) Teachers ensure lesson sequence and materials meet the needs of all learners and adapt methods when appropriate.

(A) Teachers plan for the use of multiple means to engage students, varied ways of representing information, and options for students to demonstrate their learning.

(B) Teachers leverage student data to prepare flexible student groups that facilitate learning for all students.

(C) Teachers differentiate instruction and align methods and techniques to diverse student needs, including acceleration, just-in-time supports, technology, intervention, linguistic supports, appropriate scaffolding, and implementation of Individualized Education Programs (IEPs).

(5) Teachers recognize students' backgrounds (familial, educational, linguistic, and developmental) as assets and apply knowledge of students to engage them in meaningful learning.

(A) Teachers plan to present information in a meaningful way that activates or provides prerequisite knowledge to maximize student learning.

(B) Teachers collaborate with other professionals, use resources, and plan research and evidence-based instructional strategies to anticipate and respond to the unique needs of students, including disabilities, giftedness, bilingualism and biliteracy.

(C) Teachers plan instructional practices and strategies that support language acquisition so that language is comprehensible, and instruction is fully accessible.

(D) Teachers apply knowledge of how each category of disability under the Individuals with Disabilities Education Act (IDEA) or Section 504 can affect student learning and development.

(6) Teachers engage in a thorough process of lesson internalization to prepare well-organized, sequential instruction that builds on students' prior knowledge.

(A) Teachers identify how the intentional sequencing of units, lessons, and learning tasks supports student knowledge and mastery throughout the year.

(B) Teachers identify how the learning goals of units and lessons are aligned to state standards.

(C) Teachers use assessment data to identify prior knowledge and plan for the learning needs of students.

(D) Teachers internalize lesson content by reading the texts, completing learning tasks and assessments, rehearsing lesson delivery, and identifying any personal gaps in understanding.

(E) Teachers plan for pacing, use of teacher resources, and transitions between activities.

(F) Teachers create or analyze and customize exemplar responses and anticipate potential barriers to learning.

(G) Teachers strategically plan instructional strategies, formative assessments, technology, scaffolds, and enrichment to make learning accessible to all students.

(c) Instructional Delivery and Assessment. Teachers intentionally apply their knowledge of students and the learning process to implement high-quality instruction and assessment practices that are research and evidence-based and informed by student work.

(1) Teachers deliver research and evidence-based instruction to meet the needs of all learners and adapt methods when appropriate.

(A) Teachers effectively communicate grade or course level expectations, objectives, and goals to help all students reach high levels of achievement.

(B) Teachers apply research and evidence-based teaching strategies for eliciting and sustaining attention and motivation and supporting memory encoding and recall such as interleaving, spacing, metacognition, and distributed practice.

(C) Teachers ensure a high degree of student engagement through explicit instruction, student discussion, feedback, and opportunities for deliberate practice.

(D) Teachers apply research and evidence-based teaching strategies that connect students' prior understanding and real-world experiences to new content and contexts and invite student perspectives.

(E) Teachers implement appropriate scaffolds in response to student needs.

(F) Teachers strategically implement tools, technology, and procedures that lead to increased participation from all students, elicit patterns of student thinking, and highlight varied responses.

(G) Teachers provide multiple means of engagement to encourage all students to remain persistent in the face of challenges.

(H) Teachers collaborate with other educational professionals, when appropriate, to deliver instruction that addresses students' academic and non-academic needs.

(2) Teachers scaffold instruction, from initial knowledge and skill development, through automaticity, toward complex, higher-order thinking, providing opportunities for deeper learning.

(A) Teachers set high expectations and facilitate rigorous grade or course level learning experiences for all students that encourage them to apply disciplinary and cross-disciplinary knowledge to real-world problems.

(B) Teachers apply instructional strategies to deliberately engage all students in critical thinking and problem solving.

(C) Teachers validate student responses utilizing them to advance learning for all students.

(D) Teachers respond to student errors and misconceptions with prompts or questions that build new understanding on prior knowledge.

(E) Teachers use strategic questioning to build and deepen student understanding.

(F) Teachers strategically incorporate technology that removes barriers and allows students to interact with the curriculum in more authentic, significant, and effective ways.

(3) Teachers consistently check for understanding, give feedback, and make lesson adjustments as necessary.

(A) Teachers use a variety of formative assessments during instruction to gauge and respond to student progress and address misconceptions.

(B) Teachers implement frequent or low- or no-stakes assessments to promote retrieval of learned information.

(C) Teachers continually monitor and assess students' progress to guide instructional outcomes and determine next steps to ensure student mastery of grade or course level content.

(D) Teachers build student capacity to self-monitor their progress.

(E) Teachers provide frequent, timely, and specific explanatory feedback that emphasizes effort, improvement, and acknowledges students' strengths and areas for growth.

(F) Teachers strategically implement instructional strategies, formative assessments, scaffolds, and enrichment to make learning accessible to all students.

(G) Teachers set goals for each student in response to previous outcomes from formative and summative assessments.

(H) Teachers involve all students in self-assessment, goal setting, and monitoring progress.

(4) Teachers implement formative and summative methods of measuring and monitoring student progress through the regular collection, review, and analysis of data.

(A) Teachers regularly review and analyze student work, individually and collaboratively, to understand students' thinking, identify strengths and progress toward mastery, and identify gaps in knowledge.

(B) Teachers combine results from different measures to develop a holistic picture of students' strengths and learning needs.

(C) Teachers apply multiple means of assessing learning, including the use of digital tools, to accommodate according to students' learning needs, linguistic differences, and/or varying levels of background knowledge.

(D) Teachers use assessment results to inform and adjust instruction and intervention.

(E) Teachers clearly communicate the results of assessments with students, including setting goals, identifying areas of strength, and opportunities for improvement.

(d) Content Pedagogy Knowledge and Skills. Teachers show a full understanding of their content and related pedagogy, and the appropriate grade-level Texas Essential Knowledge and Skills (TEKS).

(1) Teachers understand the major concepts, key themes, multiple perspectives, assumptions, processes of inquiry, structure, and real-world applications of their grade-level and subject-area content.

(A) Teachers demonstrate a thorough understanding of and competence in the use of open education resource instructional materials when available for the grade level and subject area.

(B) Teachers have expertise in how their content vertically and horizontally aligns with the grade-level/subject-area continuum, leading to an integrated curriculum across grade levels and content areas.

(C) Teachers identify gaps in students' knowledge of subject matter and communicate with their leaders and colleagues to ensure that these gaps are adequately addressed across grade levels and subject areas.

(D) Teachers deliberately and regularly share multiple different examples of student representations and resolutions.

(E) Teachers stay current with developments, new content, new approaches, and changing methods of instructional delivery within their discipline.

(2) Teachers demonstrate content-specific pedagogy that meets the needs of diverse learners, utilizing engaging instructional materials to connect prior content knowledge to new learning.

(A) Teachers teach both the key content knowledge and the key skills of the discipline and requisite linguistic skills making the information accessible to all learners by constructing it into usable knowledge.

(B) Teachers make appropriate and authentic connections across disciplines, subjects, and students' real-world experiences to build knowledge from year to year.

(C) Teachers provide multiple means of representation and engagement to promote literacy and ensure discipline-specific academic language is accessible for all students.

(D) Teachers explicitly teach, encourage, and reinforce the use of academic language, including vocabulary, use of symbols, and labeling.

(E) Teachers prepare for and apply scaffolds in the lesson to make content accessible to all students, including diverse learners such as emergent bilingual students, students with disabilities, and students working above and below grade level.

(F) Teachers engage students in productive struggle by allowing them time to work, asking questions to deepen their thinking, encouraging multiple approaches, praising effort on successful and unsuccessful attempts, and contrasting student attempts and correct solutions.

(3) Teachers demonstrate research and evidence-based best practices specific to planning, instruction, and assessment of mathematics.

(A) Teachers communicate, using multiple means of representation, the relationship between mathematical concepts and mathematical procedures.

(B) Teachers engage students in recursive lesson activities that reinforce automaticity in prerequisite knowledge and skills to mitigate the use of working memory when engaging those knowledge and skills as task complexity increases.

(C) Teachers use multiple means of representation to engage students in mathematical tasks that deepen students' un-

derstanding of conceptual understanding, procedural fluency, and mathematical reasoning.

(D) Teachers prepare and deliver instruction and questioning to deliberately solicit different explanations, representations, solutions, and reasoning from all students.

(E) Teachers prepare and deliver explicit instruction and modeling that links grade-level conceptual understanding with mathematical procedures and avoids shortcuts to problem solving.

(F) Teachers analyze instructional plans to ensure an appropriate balance between conceptual understanding and procedural fluency.

(G) Teachers facilitate discourse through regular opportunities for students to communicate the relationship between mathematical concepts and mathematical procedures.

(H) Teachers provide time for students to apply conceptual understanding and procedural fluency collaboratively and independently to problem-solving.

(I) Teachers communicate and model the connections between mathematics and other fields that utilize mathematics to problem solve, make decisions, and incorporate real-world applications in instruction.

(J) Teachers explicitly teach and model that math abilities are expandable and improvable.

(4) Teachers demonstrate research and evidence-based best practices specific to planning, instruction, and assessment of language arts and reading.

(A) Teachers analyze instructional materials in preparation for instruction to ensure they provide grade-level appropriate systematic and explicit practice in foundational literacy skills.

(B) Teachers analyze instructional materials in preparation for instruction to ensure that foundational literacy skills are reached at each grade or course level.

(C) Teachers implement clear and explicit reading instruction aligned to the Science of Teaching Reading (STR) competencies and engage students in deliberate practice to make meaning from text.

(D) Teachers identify and analyze grade or course level and complex texts for quality in preparation for instruction.

(E) Teachers prepare and deliver explicit reading instruction that uses grade-level and complex texts to build student knowledge.

(F) Teachers strategically plan and implement supports such as read-aloud and questioning at varied levels of complexity to support comprehension of high-quality complex texts.

(G) Teachers engage students in writing practice, including text-based writing, that builds comprehension and higher-order thinking skills.

(H) Teachers engage students in speaking practice that builds comprehension, language acquisition, and higher-order thinking skills.

(I) Teachers use high-quality assessments to monitor grade-level appropriate foundational skills development.

(J) Teachers implement and analyze a variety of high-quality literacy assessments to monitor grade-level appropriate comprehension and identify gaps.

(K) Teachers apply just-in-time supports and intervention on prerequisite skills and continually monitor to determine the need for additional learning support.

(e) Learning Environment. Teachers maintain a safe and supportive learning environment that is characterized by respectful interactions with students, consistent routines, high expectations, and the development of students' self-regulation skills.

(1) Teachers establish, implement, and communicate consistent routines for effective classroom management, including clear expectations for student behavior and positive interventions, that maintain a productive learning environment for all students.

(A) Teachers arrange their classrooms and virtual learning spaces in an organized way that is safe, flexible, and accessible to maximize learning that accommodates all students' learning and physical needs.

(B) Teachers implement consistent classroom and behavior management systems to maintain an environment where all students are engaged and can reach academic and nonacademic goals.

(C) Teachers model and provide explicit instruction on effective behavior regulation skills to build students' resilience and self-discipline.

(D) Teachers maintain a safe and positive culture of student ownership and group accountability that fosters engagement by all students in the classroom expectations, culture, and norms.

(2) Teachers lead and maintain classroom environments in which students are motivated and cognitively engaged in learning.

(A) Teachers maintain a classroom environment that is based on high expectations and student self-efficacy.

(B) Teachers strategically use instructional time, including transitions, to maximize learning.

(C) Teachers manage and facilitate strategic and flexible groupings to maximize student learning.

(f) Professional Practices and Responsibilities. Teachers are self-aware and consistently hold themselves to a high standard for individual development. They collaborate with other educational professionals, communicate regularly with stakeholders, maintain professional relationships, comply with federal, state, and local laws, and conduct themselves ethically and with integrity.

(1) Teachers model ethical and respectful behavior and demonstrate integrity in all settings and situations.

(A) Teachers understand and comply with applicable federal, state, and local laws pertaining to the professional behaviors and responsibilities of educators.

(B) Teachers adhere to the educators' code of ethics in §247.2 of this title (relating to Code of Ethics and Standard Practices for Texas Educators), including following policies and procedures at their specific school placement(s).

(C) Teachers demonstrate understanding of their role in strengthening American democracy and are willing to support and defend the constitutions of the United States and Texas.

(D) Teachers advocate for and apply knowledge of students' progress and learning plans through the maintenance of thorough and accurate records.

(E) Teachers model and promote for students the safe, ethical, and legal practices with digital tools and technology.

(2) Teachers actively self-reflect upon their practice and collaborate with other educational professionals to deepen knowledge, demonstrate leadership, and improve their instructional effectiveness.

(A) Teachers apply consistent reflective practices, analysis of student work, and video evidence of teaching, to identify and communicate professional learning needs.

(B) Teachers seek and apply job-embedded feedback from colleagues, including supervisors, mentors, coaches, and peers.

(C) Teachers establish and strive to achieve professional goals to strengthen their instructional effectiveness and better meet students' needs.

(D) Teachers engage in relevant professional learning opportunities that align with their growth goals and student learning needs.

(E) Teachers seek to lead other adults on campus through professional learning communities, grade- or subject-level team leadership, committee membership, or other opportunities.

(F) Teachers collaborate with educational professionals to ensure learning is accessible and enables all students reach their academic and non-academic goals.

(3) Teachers communicate consistently, clearly, and respectfully with all community stakeholders, including students, parents and families, colleagues, administrators, and staff.

(A) Teachers clearly communicate the mission, vision, and goals of the school to students, colleagues, parents and families, and other community members.

(B) Teachers communicate regularly, clearly, and appropriately with families about student progress, providing detailed and constructive feedback in a language that is accessible to families to support students' developmental and learning goals.

(C) Teachers build mutual understanding of expectations with students, parents, and families through clear, respectful, and consistent communication methods.

(D) Teachers communicate with students and families regularly about the importance of collecting data and monitoring progress of student outcomes, sharing timely and comprehensible feedback so they understand students' goals and progress.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 30, 2024.

TRD-202406354

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 475-1497



SUBCHAPTER C. MIDDLE SCHOOL CERTIFICATE STANDARDS

19 TAC §235.41

STATUTORY AUTHORITY. The repeal is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code (TEC), §§21.003(a), 21.031, and 21.041(b)(1), (2), and (4).

§235.41. *Pedagogy and Professional Responsibilities Standards, Grades 4-8.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 30, 2024.

TRD-202406355

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 475-1497



SUBCHAPTER D. SECONDARY SCHOOL CERTIFICATE STANDARDS

19 TAC §235.61, §235.63

STATUTORY AUTHORITY. The repeals are proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires

the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code (TEC), §§21.003(a), 21.031, and 21.041(b)(1), (2), and (4).

§235.61. *Pedagogy and Professional Responsibilities Standards, Grades 7-12.*

§235.63. *Pedagogy and Professional Responsibilities Standards, Grades 6-12, Trade and Industrial Workforce Training.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 30, 2024.

TRD-202406356

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 475-1497



SUBCHAPTER D. TRADE AND INDUSTRIAL WORKFORCE TRAINING CERTIFICATION STANDARDS

19 TAC §235.61

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code (TEC), §§21.003(a), and 21.031, 21.041(b)(1), (2), and (4).

§235.61. *Pedagogy and Professional Responsibilities Standards, Grades 6-12, Trade and Industrial Workforce Training.*

(a) Grades 6-12 Pedagogy and Professional Responsibilities (PPR) Standards. The PPR standards identified in this section are targeted for classroom teachers of students in Grades 6-12 Trade and Industrial Workforce Training courses. The standards address the discipline that deals with the theory and practice of teaching to inform skill-based training and development. The standards inform proper teaching techniques, strategies, teacher actions, teacher judgements, and decisions by taking into consideration theories of learning, understandings of students and their needs, and the backgrounds and interests of individual students. The standards are also aligned with the Commissioner's Teacher Standards in Chapter 149, Subchapter AA, of Part 2 of this title (relating to Commissioner's Rules Concerning Teacher Standards).

(b) Instructional Planning and Delivery. Trade and Industrial Workforce Training Grades 6-12 classroom teachers demonstrate understanding of instructional planning and delivery by providing standards-based, data-driven, differentiated instruction that engages students and makes learning relevant for today's learners. Trade and Industrial Workforce Training Grades 6-12 classroom teachers must:

(1) develop lessons that build coherently toward objectives based on course content, curriculum scope and sequence, and expected student outcomes;

(2) effectively communicate goals, expectations, and objectives to help all students reach high levels of achievement;

(3) connect students' prior understanding and real-world experiences to new content and contexts, maximizing learning opportunities;

(4) plan instruction that is developmentally appropriate, is standards driven, and motivates students to learn;

(5) use and adapt resources, technologies, and standards-aligned instructional materials to promote student success in meeting learning goals;

(6) plan student groupings, including pairings and individualized and small-group instruction, to facilitate student learning;

(7) ensure that the learning environment features a high degree of student engagement by facilitating discussion and student-centered activities as well as leading direct instruction;

(8) monitor and assess students' progress to ensure that their lessons meet students' needs; and

(9) provide immediate feedback to students in order to reinforce their learning and ensure that they understand key concepts.

(c) Knowledge of Student and Student Learning. Trade and Industrial Workforce Training Grades 6-12 classroom teachers work to ensure high levels of learning and achievement outcomes for all students, taking into consideration each student's educational and developmental backgrounds and focusing on each student's needs. Trade and Industrial Workforce Training Grades 6-12 classroom teachers must:

(1) connect learning, content, and expectations to students' prior knowledge, life experiences, and interests in meaningful contexts; and

(2) understand how learning occurs and how learners develop, construct meaning, and acquire knowledge and skills.

(d) Content Knowledge and Expertise. Trade and Industrial Workforce Training Grades 6-12 classroom teachers exhibit an understanding of content and related pedagogy as demonstrated through the quality of the design and execution of lessons and the ability to match objectives and activities to relevant state standards. Trade and Industrial Workforce Training Grades 6-12 classroom teachers must:

(1) organize curriculum to facilitate student understanding of the subject matter; and

(2) teach both the key content knowledge and the key skills of the discipline.

(e) Learning Environment. Trade and Industrial Workforce Training Grades 6-12 classroom teachers interact with students in respectful ways at all times, maintaining a physically and emotionally safe, supportive learning environment that is characterized by efficient and effective routines, clear expectations for student behavior, and organization that maximizes student learning. Trade and Industrial Workforce Training Grades 6-12 classroom teachers must:

(1) maintain and facilitate respectful, supportive, positive, and productive interactions with and among students;

(2) arrange the physical environment to maximize student learning and to ensure that all students have access to resources;

(3) implement behavior management systems to maintain an environment where all students can learn effectively;

(4) maintain a culture that is based on high expectations for student performance and encourages students to be self-motivated, taking responsibility for their own learning;

(5) maximize instructional time, including managing transitions; and

(6) manage and facilitate groupings in order to maximize student collaboration, participation, and achievement.

(f) Data-Driven Practices. Trade and Industrial Workforce Training Grades 6-12 classroom teachers use formal and informal methods to assess student growth aligned to instructional goals and course objectives and regularly review and analyze multiple sources of data to measure student progress and adjust instructional strategies and content delivery as needed. Trade and Industrial Workforce Training Grades 6-12 classroom teachers must:

(1) gauge student progress and ensure mastery of content knowledge and skills by providing assessments aligned to instructional objectives and outcomes that are accurate measures of student learning; and

(2) analyze and review data in a timely, thorough, accurate, and appropriate manner, both individually and with colleagues, to monitor student learning.

(g) Professional Practices and Responsibilities. Trade and Industrial Workforce Training Grades 6-12 classroom teachers consistently hold themselves to a high standard for individual development, collaborate with other educational professionals, communicate regularly with stakeholders, maintain professional relationships, comply with all campus and school district policies, and conduct themselves ethically and with integrity. Trade and Industrial Workforce Training Grades 6-12 classroom teachers must adhere to the educators' code of ethics in §247.2 of this title (relating to Code of Ethics and Standard Practices for Texas Educators), including following policies and procedures at their specific school placement(s).

(h) Implementation Date. The provisions of this section apply to an applicant who is admitted to an educator preparation program

for the Trade and Industrial Workforce Training: Grades 6-12 teacher certificate on or after September 1, 2019.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 30, 2024.

TRD-202406357

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 475-1497



CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES

The State Board for Educator Certification (SBEC) proposes amendments to §§249.3, 249.11 - 249.15, 249.17, 249.26, 249.27, and 249.37, concerning disciplinary proceedings, sanctions, and contested cases. The proposed amendments reflect the results of prior discussions on Chapter 249 by the SBEC, as well as multiple stakeholder engagement sessions, by amending the contract abandonment mitigating factors; amending the definition of solicitation to add grooming behaviors; updating the SBEC's mandatory minimum sanctions; updating the SBEC's mailing procedures to allow original petitions and default petitions to be sent via electronic mail; clarifying that all notices sent to comply with Texas Government Code, §2001.054, will be sent via certified or registered mail, removing the requirement that exceptions must be filed or an issue is waived; clarifying the erroneously issued certificate section to explicitly state that the cancellation of a certificate issued as the result of a Texas Education Agency (TEA) information technology (IT) error will not result in a contested case; and amending the SBEC's definition of abuse to mirror the definition of abuse found in Texas Family Code, Chapter 261, as well as additional technical edits.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, establish the sanction requirements and procedures for disciplinary actions against educators.

The SBEC engaged in discussions related to potential amendments during the April, July, and September 2024 SBEC meetings. At the April meeting, the Board had a preliminary discussion on potential amendments to Chapter 249. The recommendations discussed were informed by challenges and areas for improvement identified by staff in the application of Chapter 249 or issues previously raised by the SBEC at prior meetings.

TEA staff brought these potential changes to the Educator Preparation Stakeholder Group on June 21, 2024, and held a stakeholder engagement meeting with the general public on July 9, 2024. TEA staff presented the feedback from these stakeholder engagement meetings to the SBEC at the July meeting. TEA staff presented the preliminary draft to stakeholders at a stakeholder engagement meeting on August 30, 2024, and presented the feedback from this stakeholder engagement

meeting to the SBEC at the September meeting. TEA staff received feedback on the draft text presented at the September meeting, and the proposed amendments incorporate both SBEC input as well as input from stakeholders.

Subchapter A, General Provisions

§249.3, Definitions.

The proposed amendment to §249.3(1) would align the definition of *Abuse* with the definition of *Abuse* in Texas Family Code, §261.001(1), as well as the commissioner of education's definition of *Abuse* in 19 TAC §153.1201(b), Definitions.

The proposed amendment to §249.3(29) would update the definition of *Mail* to include first-class United States mail and electronic mail and remove the phrase, "unless otherwise provided by this chapter."

The proposed amendment to §249.3(51) would add new subparagraph (K) to the definition of *Solicitation of a romantic relationship* to add grooming behaviors in the totality of the circumstances, specifically showing a student special attention; giving the student individual gifts, money, or privileges; isolating the student; exposing the student to adult topics or conversation and/or media that is not age appropriate; or meeting behind closed doors with the student without another adult present; as well as removes the words "may" and "prima facie" related to what acts considered in context constitute evidence of solicitation. Subsequent subparagraphs would be relettered.

Technical edits would be made to §249.3(44) to correct a typographical error and to §249.3(52) to update a cross reference for clarity.

Subchapter B, Enforcement Actions and Guidelines

§249.11, Test Irregularities; Appeal, Sanctions.

The proposed amendment to §249.11(a) would modify the methods of service for written notice of alleged violations of certification test administration rules or procedures to allow for the notice to be sent via first-class United States mail or electronic notification only.

§249.12, Administrative Denial; Appeal.

The proposed amendment to §249.12(b) would add persons that are subject to placement on the Registry of Persons Not Eligible for Hire under TEC, §22.092, and conduct that demonstrates that a person violated 19 TAC Chapter 247, Educators' Code of Ethics, as reasons the TEA staff may administratively deny a certificate. Subsequent subparagraphs would be relettered.

§249.13, Cancellation of an Erroneously Issued Certificate.

Proposed new §249.13(f) would provide that this section does not apply to erroneously issued certificates as the result of a TEA systems error.

§249.14, Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition.

Proposed new §249.14(p) would add that before institution of agency proceedings, TEA staff shall send a letter via certified or registered mail to the certificate holder giving them notice of the facts or conduct alleged to warrant the intended action and an opportunity to show compliance with all requirements of law for the retention of the certificate. Subsequent subparagraphs would be relettered.

§249.15, Disciplinary Action by State Board for Educator Certification.

The proposed amendment to §249.15(a)(5) would add that the SBEC may impose classes and treatment programs that the SBEC deems necessary as a condition or restriction on a certificate.

§249.17, Decision-Making Guidelines.

The proposed amendment to §249.17(d)(1) would add the requirement that to establish the good cause factor of serious illness or health condition of the educator or close family member of the educator, the educator must provide documentation from a licensed medical provider. It would also add the requirement to provide documentation to establish the good cause factor of relocation to a new city as a result of change in employer of the educator's spouse or partner as a requirement.

The proposed amendment to §249.17(d)(2) would add that a reduction of one month in suspension time be applied for each mitigating factor established.

The proposed amendment to §249.17(e) would add that an educator who is required to complete pretrial diversion for a felony-level offense is subject to sanction.

The proposed amendment to §249.17(g) would add that an educator is subject to a one-year mandatory minimum sanction for intentional violations of the security or confidential integrity of a test required under TEC in a manner described by 19 TAC §101.3031(a)(3) and remove the mandatory minimum for manipulation of test results.

Proposed new §249.17(k) would add a mandatory minimum sanction of a one-year suspension for an educator who is court-ordered to complete a period of deferred adjudication, community supervision, or pretrial diversion for an offense under Texas Election Code, Chapter 255. The subsequent subsection would be relettered.

Subchapter C, Prehearing Matters

§249.26, Petition.

The proposed amendment to §249.26(c) would add that TEA staff may serve a petition by electronic mail to the respondent as well as send a copy of the petition to the respondent's attorney if notice of representation has been provided by electronic mail. It would remove the option for service of the petition on the respondent by United States certified mail, return receipt requested.

§249.27, Answer.

The proposed amendment to §249.27 would allow a respondent to serve an answer on TEA by electronic mail and remove the requirement that a respondent serve an answer by United States certified mail, return receipt requested.

Subchapter E, Post-Hearing Matters

§249.37, Exceptions and Replies.

The proposed amendment to §249.37 would remove the requirement that a disagreement with a factual finding or conclusion of law in the proposal for decision be contained in an exception to the proposal otherwise it is waived. Subsequent subparagraphs would be relettered.

FISCAL IMPACT: Jessica McLoughlin, associate commissioner for educator preparation, certification, and enforcement, has de-

terminated that for the first five years the rules will be in effect there is no additional fiscal impact on local governments

The proposed rule change allows TEA staff to send original petitions and default petitions via electronic mail. Under the current rule, TEA staff is required to send original petitions and default petitions via registered certified mail and U.S. first class mail. TEA staff sent 631 original petitions and default petitions via registered certified mail and U.S. first class mail in Fiscal Year 2024. In at least 50% of those cases, TEA staff sent the petition to an additional address. An average of 947 petitions mailed annually by TEA staff multiplied by the cost of mailing for certified mail and U.S. first class mail at \$9.64 is an annual savings of \$9,129.08 to the state. Additionally, the cost of mailing typically goes up annually so the cost savings will increase year after year. The rule does not have foreseeable implications relating to revenues of the state or to local governments.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under TGC, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in TGC, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to TGC, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under TGC, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Jessica McLoughlin, associate commissioner for educator preparation, certification, and enforcement, has determined that for the first five years the proposal is in effect, the public benefit anticipated would be clarification and transparency in the SBEC's sanctioning procedures. Overall, the proposal will help to ensure efficient and predictable outcomes for educators in SBEC disciplinary proceedings. There is no anticipated cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

ENVIRONMENTAL IMPACT STATEMENT: The proposal does not require an environmental impact analysis because the proposal does not include major environmental rules under TGC, §2001.0225.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA staff has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins January 10, 2025, and ends February 10, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_\(TAC\)/Proposed_State_Board_for_Educator_Certification_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBEC_Rules_(TAC)/Proposed_State_Board_for_Educator_Certification_Rules/). The SBEC will also take registered oral and written comments on the proposal during the February 14, 2025 meeting's public comment period in accordance with the SBEC board operating policies and procedures.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §249.3

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §§21.006(a)-(c-2), (f)-(g-1), and (i), which require the superintendent or director of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center or shared services arrangement to report to the SBEC within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct, unless the superintendent or director completes an investigation before the educator resigns or is terminated and determines that the educator did not commit the alleged misconduct. It also requires principals to report to superintendents within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct. It further authorizes the SBEC to impose sanctions on educators who fail to report as required by the statute, including authority to impose monetary administrative penalties, gives SBEC rulemaking authority as necessary to implement the statute, and requires the SBEC to create an internet portal to facilitate confidential and secure reporting; TEC, §21.0062, which requires the chief administrative officer of a private school to notify the SBEC within seven days when a private school educator resigns before the completion of an investigation or is terminated and there is evidence that the educator has engaged in certain misconduct and gives the SBEC rulemaking authority to implement the section; TEC, §21.007, which gives the SBEC authority to place a notice that an educator is under investigation for alleged misconduct on the educator's public certification records, requires the SBEC give the educator notice and an opportunity to show cause, requires that the SBEC limit the amount of time the notice can appear on the educator's certification, and gives the SBEC rulemaking authority as necessary to implement the provision; TEC, §21.009(e), which states that the SBEC may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a student or minor; TEC, §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.035, which states that TEA staff provides administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commissioner of education or to TEA staff the authority to settle or otherwise informally

dispose of contested cases involving educator certification; TEC, §21.041(a) and (b)(1), (4), (7), and (8), which authorize the SBEC to adopt rules as necessary for its own procedures, to regulate educators, specify the requirements for issuance or renewal of an educator certificate, provide for educator disciplinary proceedings and for enforcement of the educator's code of ethics; TEC, §21.044(a), which authorizes the SBEC to adopt rules establishing training requirements and academic qualifications required for a person to obtain an educator certificate; TEC, §21.058, which requires the SBEC to revoke the certification of an educator convicted or placed on deferred adjudication community supervision for certain offenses; TEC, §21.0581, which authorizes SBEC to take action against a person who assists another person obtain employment at a school despite knowing the other person engaged in sexual misconduct with a minor or student; TEC, §21.060, which sets out crimes that relate to the education profession and authorizes the SBEC to sanction or refuse to issue a certificate to any person who has been convicted of one of these offenses; TEC, §21.065, which sets requirements for the notice SBEC must send when it suspends an educator's certificate; TEC, §21.105(c), which allows the SBEC to impose sanctions against an educator who abandons a probationary contract; TEC, §21.160(c), which allows the SBEC to impose sanctions against an educator who abandons a continuing contract; TEC, §21.210(c), which allows the SBEC to impose sanctions against an educator who abandons a term contract; TEC, §22.082, which requires the SBEC to subscribe to the criminal history clearinghouse and allows the SBEC to obtain any criminal history from any closed case file; TEC, §22.0831, which requires the SBEC to review the criminal history of certified educators and applicants for certification; TEC, §22.085, which requires school districts, charter schools, and shared services arrangements to conduct fingerprint criminal background checks on employees and refuse to hire those that have certain criminal history; TEC, §22.087, which requires superintendents and directors of school districts, charter schools, private schools, regional education service centers, and shared services arrangements to notify the SBEC if an applicant for a certification has criminal history that is not in the criminal history clearinghouse; TEC, §22.092, which requires school districts, charter schools, districts of innovation, regional education service centers, and shared services arrangements to discharge or refuse to hire any person listed on the registry of persons not eligible for employment in Texas public schools; TEC, §22.093, requires superintendents or directors of school districts, districts of innovation, charter schools, regional education service centers, or shared services arrangements to notify the commissioner of education if an employee resigned or was terminated and there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor or was involved in a romantic relationship with a student or minor; Texas Government Code (TGC), §411.090, which allows the SBEC to get from the Texas Department of Public Safety all criminal history record information about any applicant for licensure as an educator; TGC, §2001.054(c), which requires the SBEC to give notice by personal service or by registered or certified mail to the license holder of the factors or conduct alleged to warrant suspension, revocation, annulment, or withdrawal of an educator's certificate and to give the certified educator an opportunity to show that the educator is in compliance with the relevant statutes and rules; TGC, §2001.058(e), which sets out the requirements for when the SBEC can make changes to a proposal for decision from an administrative law judge; TGC, §2001.142(a), which requires all Texas state licensing agencies

to notify parties to contested cases of orders or decisions of the agency by personal service, electronic means if the parties have agreed to it, first class, certified or registered mail, or by any method required under the agency's rules for a party to serve copies of pleadings in a contested case; Texas Family Code (TFC), §261.308(d) and (e), which require the Texas Department of Family and Protective Services to release information regarding a person alleged to have committed abuse or neglect to the SBEC; TFC, §261.406(a) and (b), which require the Texas Department of Family and Protective Services to send a copy of a completed investigation report involving allegations of abuse or neglect of a child in a public or private school to the TEA; Texas Occupations Code (TOC), §53.021(a), which allows the SBEC to suspend or revoke an educator's certificate or refuse to issue a certificate, if a person is convicted of certain offenses; TOC, §53.022, which sets out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education; TOC, §53.023, which sets out additional factors for the SBEC to consider when deciding whether to allow a person convicted of a crime to serve as an educator; TOC, §53.0231, which sets out information the SBEC must give an applicant when it denies a license and requires that the SBEC allow 30 days for the applicant to submit any relevant information to the SBEC; TOC, §53.0232, which precludes SBEC from considering arrests that did not result in convictions or placement on deferred adjudication community supervision in the determination of fitness to be licensed as an educator; TOC, §53.024, which states that proceedings to deny or sanction an educator's certification are covered by the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001; TOC, §53.025, which gives the SBEC rulemaking authority to issue guidelines to define which crimes relate to the profession of education; TOC, §53.051, which requires that the SBEC notify a license holder or applicant after denying, suspending, or revoking the certification; TOC, §53.052, which allows a person who has been denied an educator certification or had their educator certification revoked or suspended to file a petition for review in state district court after exhausting all administrative remedies; TOC, §56.003, which prohibits state agencies from taking disciplinary action against licensees for student loan non-payment or default; and the Every Student Succeeds Act (ESSA), 20 United States Code (U.S.C.) §7926, which requires state educational agencies to make rules forbidding educators from aiding other school employees, contractors, or agents in getting jobs when the educator knows the jobseeker has committed sexual misconduct with a student or minor in violation of the law.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.006(a), (b), (b-1), (b-2), (c), (c-1), (c-2), (f), (g), (g-1), and (i); 21.0062; 21.007; 21.009(e); 21.031(a); 21.035; 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a), 21.058; 21.0581; 21.060; 21.065; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.085; 22.087; 22.092; and 22.093; Texas Government Code (TGC), §§411.090, 2001.054(c), 2001.058(e), and 2001.142(a); Texas Family Code (TFC), §261.308(d) and (e) and §261.406(a) and (b); Texas Occupations Code (TOC), §§53.021(a), 53.022-53.025, 53.051, 53.052 and 56.003; and the Every Student Succeeds Act (ESSA), 20 United States Code (U.S.C.) §7926.

§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--This term has the meaning assigned by Texas Family Code, §261.001(1). [~~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, first-class United States mail, or electronic mail [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 unreason-

able 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 recklessly, 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 information [inforcements], 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 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) grooming behaviors, considered in context and on the totality of circumstances, including, but not limited to:

(i) showing the student special attention;

(ii) giving the student individual gifts, money, or privileges;

(iii) isolating the student;

(iv) exposing the student to adult topics or conversations and/or media that is not age appropriate; or

(v) meeting behind closed doors with the student without another adult present;

(L) [~~K~~] suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage; and

(M) [~~L~~] 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 Part 2 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.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 30, 2024.

TRD-202406358

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 475-1497



SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

19 TAC §§249.11 - 249.15, 249.17

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §§21.006(a)-(c-2), (f)-(g-1), and (i), which require the superintendent or director of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center or shared services arrangement to report to the SBEC within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct, unless the superintendent or director completes an investigation before the educator resigns or is terminated and determines that the educator did not commit the alleged misconduct. It also requires principals to report to superintendents within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct. It further authorizes the SBEC to impose sanctions on educators who fail to report as required by the statute, including authority to impose monetary administrative penalties, gives SBEC rulemaking authority as necessary to implement the statute, and requires the SBEC to create an internet portal to facilitate confidential and secure reporting; TEC, §21.0062, which requires the chief administrative officer of a private school to notify the SBEC within seven days when a private school educator resigns before the completion of an investigation or is terminated and there is evidence that the educator has engaged in certain misconduct and gives the SBEC rulemaking authority to implement the section; TEC, §21.007, which gives the SBEC authority to place a notice that an educator is under investigation for alleged misconduct on the educator's public certification records, requires the SBEC give the educator notice and an opportunity to show cause, requires that the SBEC limit the amount of time the notice can appear on the educator's certification, and gives the SBEC rulemaking authority as necessary to implement the provision; TEC, §21.009(e), which states that the SBEC may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a student or minor; TEC, §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.035, which states that TEA staff provides administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commissioner of education or to TEA staff the authority to settle or otherwise informally dispose of contested cases involving educator certification; TEC, §21.041(a) and (b)(1), (4), (7), and

(8), which authorize the SBEC to adopt rules as necessary for its own procedures, to regulate educators, specify the requirements for issuance or renewal of an educator certificate, provide for educator disciplinary proceedings and for enforcement of the educator's code of ethics; TEC, §21.044(a), which authorizes the SBEC to adopt rules establishing training requirements and academic qualifications required for a person to obtain an educator certificate; TEC, §21.058, which requires the SBEC to revoke the certification of an educator convicted or placed on deferred adjudication community supervision for certain offenses; TEC, §21.0581, which authorizes SBEC to take action against a person who assists another person obtain employment at a school despite knowing the other person engaged in sexual misconduct with a minor or student; TEC, §21.060, which sets out crimes that relate to the education profession and authorizes the SBEC to sanction or refuse to issue a certificate to any person who has been convicted of one of these offenses; TEC, §21.065, which sets requirements for the notice SBEC must send when it suspends an educator's certificate; TEC, §21.105(c), which allows the SBEC to impose sanctions against an educator who abandons a probationary contract; TEC, §21.160(c), which allows the SBEC to impose sanctions against an educator who abandons a continuing contract; TEC, §21.210(c), which allows the SBEC to impose sanctions against an educator who abandons a term contract; TEC, §22.082, which requires the SBEC to subscribe to the criminal history clearinghouse and allows the SBEC to obtain any criminal history from any closed case file; TEC, §22.0831, which requires the SBEC to review the criminal history of certified educators and applicants for certification; TEC, §22.085, which requires school districts, charter schools, and shared services arrangements to conduct fingerprint criminal background checks on employees and refuse to hire those that have certain criminal history; TEC, §22.087, which requires superintendents and directors of school districts, charter schools, private schools, regional education service centers, and shared services arrangements to notify the SBEC if an applicant for a certification has criminal history that is not in the criminal history clearinghouse; TEC, §22.092, which requires school districts, charter schools, districts of innovation, regional education service centers, and shared services arrangements to discharge or refuse to hire any person listed on the registry of persons not eligible for employment in Texas public schools; TEC, §22.093, requires superintendents or directors of school districts, districts of innovation, charter schools, regional education service centers, or shared services arrangements to notify the commissioner of education if an employee resigned or was terminated and there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor or was involved in a romantic relationship with a student or minor; Texas Government Code (TGC), §411.090, which allows the SBEC to get from the Texas Department of Public Safety all criminal history record information about any applicant for licensure as an educator; TGC, §2001.054(c), which requires the SBEC to give notice by personal service or by registered or certified mail to the license holder of the factors or conduct alleged to warrant suspension, revocation, annulment, or withdrawal of an educator's certificate and to give the certified educator an opportunity to show that the educator is in compliance with the relevant statutes and rules; TGC, §2001.058(e), which sets out the requirements for when the SBEC can make changes to a proposal for decision from an administrative law judge; TGC, §2001.142(a), which requires all Texas state licensing agencies to notify parties to contested cases of orders or decisions of the agency by personal service, electronic means if the parties have agreed to it, first class, certified or registered mail,

or by any method required under the agency's rules for a party to serve copies of pleadings in a contested case; Texas Family Code (TFC), §261.308(d) and (e), which require the Texas Department of Family and Protective Services to release information regarding a person alleged to have committed abuse or neglect to the SBEC; TFC, §261.406(a) and (b), which require the Texas Department of Family and Protective Services to send a copy of a completed investigation report involving allegations of abuse or neglect of a child in a public or private school to the TEA; Texas Occupations Code (TOC), §53.021(a), which allows the SBEC to suspend or revoke an educator's certificate or refuse to issue a certificate, if a person is convicted of certain offenses; TOC, §53.022, which sets out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education; TOC, §53.023, which sets out additional factors for the SBEC to consider when deciding whether to allow a person convicted of a crime to serve as an educator; TOC, §53.0231, which sets out information the SBEC must give an applicant when it denies a license and requires that the SBEC allow 30 days for the applicant to submit any relevant information to the SBEC; TOC, §53.0232, which precludes SBEC from considering arrests that did not result in convictions or placement on deferred adjudication community supervision in the determination of fitness to be licensed as an educator; TOC, §53.024, which states that proceedings to deny or sanction an educator's certification are covered by the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001; TOC, §53.025, which gives the SBEC rulemaking authority to issue guidelines to define which crimes relate to the profession of education; TOC, §53.051, which requires that the SBEC notify a license holder or applicant after denying, suspending, or revoking the certification; TOC, §53.052, which allows a person who has been denied an educator certification or had their educator certification revoked or suspended to file a petition for review in state district court after exhausting all administrative remedies; TOC, §56.003, which prohibits state agencies from taking disciplinary action against licensees for student loan non-payment or default; and the Every Student Succeeds Act (ESSA), 20 United States Code (U.S.C.) §7926, which requires state educational agencies to make rules forbidding educators from aiding other school employees, contractors, or agents in getting jobs when the educator knows the jobseeker has committed sexual misconduct with a student or minor in violation of the law.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.006(a), (b), (b-1), (b-2), (c), (c-1), (c-2), (f), (g), (g-1), and (i); 21.0062; 21.007; 21.009(e); 21.031(a); 21.035; 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a), 21.058; 21.0581; 21.060; 21.065; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.085; 22.087; 22.092; and 22.093; Texas Government Code (TGC), §§411.090, 2001.054(c), 2001.058(e), and 2001.142(a); Texas Family Code (TFC), §261.308(d) and (e) and §261.406(a) and (b); Texas Occupations Code (TOC), §§53.021(a), 53.022-53.025, 53.051, 53.052 and 56.003; and the Every Student Succeeds Act (ESSA), 20 United States Code (U.S.C.) §7926.

§249.11. Test Irregularities; Appeal; Sanctions.

(a) Upon satisfactory evidence that the examinee has violated certification test administration rules or procedures, the State Board for Educator Certification may cancel the examinee's test scores or registration and bar the person from being admitted to future test administrations. The Texas Education Agency (TEA) staff shall provide written notice of this action and the factual and legal reasons for it to the exami-

nee by first-class United States mail [personal service, registered or certified mail,] or electronic notification [email] to the most recent address provided to the TEA or its test contractor by the examinee. The examinee may attempt to show compliance with test administration rules or procedures by written submission or by requesting an informal conference, and/or may appeal and request a State Office of Administrative Hearings (SOAH) hearing as hereafter provided.

(b) The examinee may appeal and request a SOAH hearing of the administrative cancellation of test scores and/or test admission bar. The appeal of an administrative cancellation shall be in the form of a petition that complies in content and form with §249.26 of this title (relating to Petition) and 1 Texas Administrative Code, Part 7, §155.301 (relating to Required Form of Pleadings).

(c) In order to be referred to the SOAH for a contested case hearing, an appeal petition must be filed with the TEA staff within 30 calendar days after the examinee received or is deemed to have received written notice of the TEA staff's action. Unless otherwise proved by the examinee, the notice shall be deemed to have been received by the examinee no later than five calendar days after mailing to the most recent address provided by the examinee. The TEA staff may dismiss an appeal not timely filed.

(d) The TEA staff shall send an answer to the petition to the examinee and shall refer the petition and answer to the SOAH for a contested case hearing.

§249.12. Administrative Denial; Appeal.

(a) This section applies to administrative denials, as that term is defined in §249.3 of this title (relating to Definitions). This section does not apply to the denial of an application for a certificate that has been permanently revoked, and it does not apply to the failure to issue a certificate because specific certification requirements have not been met.

(b) The Texas Education Agency (TEA) staff may administratively deny any of the matters set out in subsection (a) of this section based on satisfactory evidence that:

(1) the person filed a fraudulent application;

(2) the person assisted another person in obtaining employment at a school district or open-enrollment charter school, other than by the routine transmission of administrative or personnel files when the person knew that the other person had previously engaged in an inappropriate relationship with a minor or student in violation of the law;

(3) the person has committed an act that would make them subject to required revocation under the Texas Education Code, §21.058, or placement on the Registry of Persons Not Eligible for Hire under Texas Education Code, §22.092, not due to State Board for Educator Certification (SBEC) action;

(4) the person has committed an act that would make them subject to mandatory permanent revocation or denial under §249.17(i) of this title (relating to Decision-Making Guidelines);

(5) the person has engaged in conduct or committed a crime or an offense that:

(A) demonstrates that the person lacks good moral character;

(B) demonstrates that the person violated the Educators' Code of Ethics under Chapter 247 of this title (relating to Educators' Code of Ethics);

(C) [~~B~~] demonstrates that the person is unworthy to instruct or to supervise the youth of this state; or

(D) [(C)] constitutes the elements of a crime or offense relating directly to the duties and responsibilities of the education profession; or

(6) the person failed to comply with the terms or conditions of an order issued by or on behalf of the SBEC [State Board for Educator Certification] or the TEA staff.

(c) The TEA staff shall provide written notice of the denial and the factual and legal reasons for it to the person whose application or request has been administratively denied. The notice shall be given by registered or certified mail to the address the person has provided in the application or request that is being denied. The person may attempt to show compliance with legal requirements by written submission or by requesting an informal conference, and/or may appeal and request a State Office of Administrative Hearings (SOAH) hearing as hereafter provided. The 30-day deadline to appeal and request a hearing is not tolled during any attempts to show cause.

(d) The appeal and request for a SOAH hearing of an administrative denial shall be in the form of a petition that complies in content and form with §249.26 of this title (relating to Petition) and 1 Texas Administrative Code, Part 7, §155.301 (relating to Required Form of Pleadings). In order to be referred to the SOAH for a contested case hearing, an appeal petition must be filed with the TEA staff within 30 calendar days after the person received or is deemed to have received written notice of the administrative denial. Unless otherwise proved by the person, the notice shall be deemed to have been received by the examinee no later than five calendar days after mailing to the most recent address provided by the person. The TEA staff may dismiss an appeal that is not timely filed without further action.

(e) The TEA staff shall send an answer to the petition to the person appealing an administrative denial and shall refer the petition and answer to the SOAH for a contested case hearing.

§249.13. *Cancellation of an Erroneously Issued Certificate.*

(a) When satisfactory evidence indicates that a certificate was issued in error and the person issued the certificate has not fulfilled all certification requirements, the Texas Education Agency (TEA) staff shall cancel the certificate. The effective date of cancellation is the date the person's virtual certificate is updated to reflect that the certificate is no longer valid.

(b) Before canceling the certificate, the TEA staff shall notify the person issued the certificate of the reasons for which the TEA intends to cancel the certificate and shall provide the person issued the certificate at least ten calendar days to respond and show cause why the certificate should not be canceled. Unless otherwise proved by the person, the show cause notice shall be deemed to have been received by the person no later than five calendar days after mailing to the most recent address the person is required to provide pursuant to §230.91 of this title (relating to Procedures in General).

(c) The TEA staff shall notify the person and the person's employing school district, if any, that the person was issued a certificate in error, what actions the TEA staff have taken to cancel the erroneously issued certificate, and how the person can be issued a valid certificate.

(d) The TEA staff will issue the person a valid certificate when it receives satisfactory evidence that all certification requirements have been fulfilled. The person will not be required to repeat any coursework, training, internship, or other certification requirements that an educator preparation program certifies that the person has completed.

(e) The person whose erroneously issued certificate has been canceled may request a contested case hearing before the State Office of Administrative Hearings (SOAH). For the purposes of notice, time

limits, appeal requirements, and determining the placement of the burden of proof at the SOAH contested case hearing, the person whose certificate has been canceled shall be deemed to have had his or her original application for the erroneously issued certificate administratively denied pursuant to §249.12 of this title (relating to Administrative Denial; Appeal) on the effective date of the cancellation.

(f) This section does not apply to a certificate erroneously issued as the result of a documented TEA systems error.

§249.14. *Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition.*

(a) The Texas Education Agency (TEA) staff may obtain and investigate information concerning alleged improper conduct by an educator, applicant, examinee, or other person subject to this chapter that would warrant the State Board for Educator Certification (SBEC) denying relief to or taking disciplinary action against the person or certificate.

(b) Complaints against an educator, applicant, or examinee must be filed in writing.

(c) The TEA staff may also obtain and act on other information providing grounds for investigation and possible action under this chapter.

(d) A person who serves as the superintendent of a school district or district of innovation, the director of a charter school, regional education service center, or shared services arrangement, or the chief administrative officer of a private school may notify the SBEC of any educator misconduct that the person believes in good faith may be subject to sanctions under this chapter and/or Chapter 247 of this title (relating to Educators' Code of Ethics). However, under any of the following circumstances, a person who serves in such a position shall promptly notify the SBEC in writing by filing a report with the TEA staff within seven business days of the date the person either receives a report from a principal under subsection (e) of this section or knew of any of the following circumstances, except if the person is a superintendent or director of a public school and has completed an investigation in accordance with Texas Education Code (TEC), §21.006(c-2), resulting in a determination that the educator did not engage in misconduct:

(1) that an applicant for or a holder of a certificate has a reported criminal history, which the superintendent or director obtained information by a means other than the criminal history clearinghouse established under Texas Government Code, §411.0845;

(2) that a certificate holder was terminated from employment and there is evidence that he or she committed any of the following acts:

(A) sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor;

(B) possessed, transferred, sold, or distributed a controlled substance;

(C) illegally transferred, appropriated, or expended school property or funds;

(D) attempted by fraudulent or unauthorized means to obtain or to alter any certificate or permit that would entitle the individual to be employed in a position requiring such certificate or permit or to receive additional compensation associated with a position;

(E) committed a crime, any part of such crime having occurred on school property or at a school-sponsored event; or

(F) solicited or engaged in sexual conduct or a romantic relationship with a student or minor;

(3) that a certificate holder has submitted a notice of resignation and that there exists evidence that he or she committed one of the acts specified in paragraph (2) of this subsection.

(A) Before accepting an employee's resignation that, under this paragraph, requires a person to notify the SBEC by filing a report with the TEA staff, the person shall inform the certificate holder in writing that such a report will be filed and that sanctions against his or her certificate may result as a consequence.

(B) A person required to comply with this paragraph shall notify the governing body of the employing school district before filing the report with the TEA staff.

(C) A superintendent or director of a school district shall complete an investigation of an educator if there is reasonable cause to believe the educator may have engaged in misconduct described in paragraph (2)(A) of this subsection despite the educator's resignation from district employment before completion of the investigation; or

(4) any other circumstances requiring a report under the TEC, §21.006.

(e) A person who serves as a principal in a school district, a district of innovation, or a charter school must notify the superintendent or director of the school district, district of innovation, or charter school and may be subject to sanctions for failure to do so no later than seven business days after:

(1) an educator's termination or resignation following an alleged incident of misconduct involving one of the acts described in subsection (d)(2) of this section; or

(2) the principal knew about an educator's reported criminal history.

(f) Pursuant to the TEC, §21.006(b-2), (c), (h), and (i), a report filed under subsections (d) and (e) of this section must include:

(1) the name or names of any student or minor who is the victim of abuse or unlawful conduct by an educator; and

(2) the factual circumstances requiring the report and the subject of the report by providing the following available information:

(A) name and any aliases; certificate number, if any, or social security number;

(B) last known mailing address and home and daytime phone numbers;

(C) all available contact information for any alleged victim or victims;

(D) name or names and any available contact information of any relevant witnesses to the circumstances requiring the report;

(E) current employment status of the subject, including any information about proposed termination, notice of resignation, or pending employment actions; and

(F) involvement by a law enforcement or other agency, including the name of the agency.

(g) Pursuant to the Family Educational Rights and Privacy Act (FERPA), 20 United States Code, §1232g(a)(4), and the federal regulations interpreting it at 34 Code of Federal Regulations, §99.3, education records that are protected by FERPA must be records that are directly related to a student, and the term "education records" does not include records that relate to a school employee in his or her capacity as a school employee.

(h) A person who is required to file a report under subsections (d) and (e) of this section but fails to do so timely is subject to sanctions under this chapter.

(i) If a school district board of trustees learns of a failure by the superintendent of the district or a district principal to provide a notice required under the Texas Code of Criminal Procedure (TCCP), §15.27(a), (a-1), or (b), the board of trustees shall report the failure to the SBEC. If the governing body of a private primary or secondary school learns of a failure by the principal of the school to provide a notice required under the TCCP, §15.27(e), and the principal holds a certificate issued under the TEC, Chapter 21, Subchapter B, the governing body shall report the failure to the SBEC.

(j) The TEA staff shall not pursue sanctions against an educator who is alleged to have abandoned his or her TEC, Chapter 21, contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), subject to the limitations imposed by the TEC, §21.4021(g), unless the board of trustees of the employing school district:

(1) submits a written complaint to the TEA staff within 30 calendar days after the effective date of the educator's separation from employment from the school district. For purposes of this section, unless the school district and the educator have a written agreement to the contrary, the effective date of separation from employment is the first day that, without district permission, the educator fails to appear for work under the contract;

(2) renders a finding that good cause did not exist under the TEC, §§21.105(c)(2), 21.160(c)(2), or 21.210(c)(2). This finding constitutes prima facie evidence of the educator's lack of good cause, but is not a conclusive determination; and

(3) submits the following required attachments to the written complaint:

(A) the educator's resignation letter, if any;

(B) the agreement with the educator regarding the effective date of separation from employment, if any;

(C) the educator's contract; and

(D) school board meeting minutes indicating a finding of "no good cause" (if the board does not meet within 30 calendar days of the educator's separation from employment, the minutes may be submitted within 10 calendar days after the next board meeting).

(k) To efficiently administer and implement the SBEC's purpose under this chapter and the TEC, the TEA staff may set priorities for the investigation of complaints based on the severity and immediacy of the allegations and the likelihood of harm posed by the subject of the investigation. All cases accepted for investigation shall be assigned one of the following priorities.

(1) Priority 1: conduct that may result in the placement of an investigative notice pursuant to the TEC, §21.007, and subsection (l) of this section because it presents a risk to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague, including, but not limited to, the following:

(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; and

(L) conduct that involves inappropriate communication with a student as described in §247.2(3)(I) of this title (relating to Code of Ethics and Standard Practices for Texas Educators), inappropriate professional educator-student relationships and boundaries, or otherwise soliciting or engaging in sexual conduct or a romantic relationship with a student or minor.

(2) Priority 2: any sanctionable conduct that is not Priority 1 conduct under paragraph (1) of this subsection. An investigative notice will not be placed on an educator's certification records on the basis of an allegation of Priority 2 conduct. The TEA staff may change a case's priority at any time based on information received. Priority 2 conduct includes, but is not limited to, the following:

(A) any conduct constituting a misdemeanor criminal offense or testing violation that is not Priority 1 conduct;

(B) contract abandonment; and

(C) code of ethics violations that do not constitute Priority 1 conduct.

(l) After accepting a case for investigation, if the alleged conduct indicates a risk to the health, safety, or welfare of a student or minor, as described in subsection (k)(1) of this section, the TEA staff shall immediately place an investigative notice on the certificate holder's certification records stating that the certificate holder is currently under investigation. The placement of such an investigative notice must follow the procedures set forth in subsection (m)(1) of this section. After accepting a case for investigation, if the alleged conduct indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (k)(1) of this section, the TEA staff may place an investigative notice on the certificate holder's certification records stating that the certificate holder is currently under investigation. The placement of an investigative notice must follow the procedures set forth in subsection (m)(2) of this section.

(m) The following procedures must be followed for placing an investigative notice on the educator's certification records.

(1) At the time of placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a student or minor, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.

(A) Within ten calendar days of placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.91 of this title (relating to Procedures in General).

(B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide the certificate holder the opportunity to show cause within ten calendar days why the notice should be removed from the educator's certification records.

(2) Prior to placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (k)(1) of this section, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.

(A) At least ten calendar days before placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.91 of this title.

(B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide the certificate holder the opportunity to show cause within ten calendar days why the notice should not be placed on the educator's certification records.

(3) The TEA staff shall determine whether or not to remove or place an investigative notice on the educator's certification records, taking into account the educator's response, if any, to the letter notifying the certificate holder of the investigation.

(n) An investigative notice is subject to the following time limits.

(1) An investigative notice may remain on the certification records of a certificate holder for a period not to exceed 240 calendar days.

(2) The TEA staff may toll this time limit if information is received indicating that there is a pending criminal or administrative matter related to the alleged act of misconduct that gives rise to the investigative notice. For purposes of this subsection, a criminal or administrative matter includes an audit by a state or federal agency, an arrest, an investigation, related litigation or other enforcement action brought by a state or federal administrative agency, or a prosecution by a criminal law enforcement agency. Upon receiving notice that the criminal or administrative matter has been resolved the tolling period shall end. As part of its procedure, the TEA staff will attempt to make bimonthly (once every two months) contact with the agency where a related matter is pending to determine whether the related matter has been closed or otherwise resolved.

(3) The TEA staff may toll this time limit if the matter is referred for a contested case hearing, upon agreement of the parties, or while the matter is pending action by the SBEC on a proposed agreed order.

(o) The TEA staff shall remove an investigative notice from an educator's certification records:

(1) when a case's final disposition occurs within the time limits established in subsection (n) of this section; or

(2) when the time limits for an investigative notice have been exceeded, if:

(A) the certificate holder has made a written demand to the TEA staff that the investigative notice be removed because the time limits have been exceeded; and

(B) the TEA staff has failed to refer the matter to the State Office of Administrative Hearings for a contested case hearing within 30 calendar days from the date of receipt of the written demand to remove the investigative notice.

(p) Before institution of agency proceedings, TEA staff shall send a letter via certified or registered mail to the certificate holder giving them notice of the facts or conduct alleged to warrant the intended

action and an opportunity to show compliance with all requirements of law for the retention of the certificate.

(q) [(p)] Only the TEA staff may file a petition seeking sanctions under §249.15 of this title (relating to Disciplinary Action by State Board for Educator Certification). Prior to filing a petition, the TEA staff shall mail to the certificate holder affected by written notice of the facts or conduct alleged to warrant the intended action and shall provide the certificate holder an opportunity to show compliance with all requirements of law.

§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 conditions or restrictions, including classes and treatment programs, 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, the commissioner of education, or the school superintendent or director under the circumstances and in the manner required by the TEC, §21.006, §21.0062, §22.093, 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 de-

scribed 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 Part 2 of this title (relating to Assessment);

(9) the person has committed an act described in §249.14(k)(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 inappropriate communication with a student as described in §247.2(3)(I) of this title (relating to Code of Ethics and Standard Practices for Texas Educators), inappropriate professional educator-student relationships and boundaries as described in §247.2(3)(H) of this title, or otherwise 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 employee or applicant was employed in a public school and on the registry of persons who are not eligible to be employed under TEC, §22.092, 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 when the person knew or should have known through a criminal history record information review that the employee or applicant had been placed on community supervision or 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) 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) 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 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.

§249.17. *Decision-Making Guidelines.*

(a) Purpose. The purpose of these guidelines is to achieve the following objectives:

(1) to provide a framework of analysis for the Texas Education Agency (TEA) staff, the presiding administrative law judge (ALJ),

and the State Board for Educator Certification (SBEC) in considering matters under this chapter;

(2) to promote consistency in the exercise of sound discretion by the TEA staff, the presiding ALJ, and the SBEC in seeking, proposing, and making decisions under this chapter; and

(3) to provide guidance for the informal resolution of potentially contested matters.

(b) Construction and application. This section shall be construed and applied so as to preserve SBEC members' discretion in making final decisions under this chapter. This section shall be further construed and applied so as to be consistent with §249.5(b) of this title (relating to Purpose; Policy Governing Disciplinary Proceedings) and this chapter, the Texas Education Code (TEC), and other applicable law, including SBEC decisions and orders.

(c) Consideration. The following factors may be considered in seeking, proposing, or making a decision under this chapter:

- (1) the seriousness of the violation;
- (2) whether the misconduct was premeditated or intentional;
- (3) attempted concealment of misconduct;
- (4) prior misconduct and SBEC sanctions;
- (5) the potential danger the conduct poses to the health and welfare of students;
- (6) the effect of the prior conduct upon any victims of the conduct;
- (7) whether sufficient time has passed and sufficient evidence is presented to demonstrate that the educator or applicant has been rehabilitated from the prior conduct;
- (8) the effect of the conduct upon the educator's good moral character and ability to be a proper role model for students;
- (9) whether the sanction will deter future violations; and
- (10) any other relevant circumstances or facts.

(d) Contract abandonment.

(1) Good cause. The following factors may be considered good cause when an educator is reported to have abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c):

(A) serious illness or health condition of the educator or close family member of the educator, as evidenced by documentation from a licensed medical provider;

(B) relocation to a new city as a result of change in employer of the educator's spouse or partner who resides with the educator as supported by documentation;

(C) significant change in the educator's family needs that requires the educator to relocate or to devote more time than allowed by current employment; or

(D) the educator's reasonable belief that the educator had written permission from the school district administration to resign.

(2) Mitigating factors. The following factors shall be considered in seeking, proposing, or making a decision under this chapter regarding an educator who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c). A reduction of one month in suspension time will be given for each factor established. The educator:

(A) gave written notice to the school district 30 days or more in advance of the first day of instruction for which the educator will not be present;

(B) assisted the school district in finding a replacement educator to fill the position;

(C) continued to work until the school district hired a replacement educator;

(D) assisted in training the replacement educator;

(E) showed good faith in communications and negotiations with the school district;

(F) provided lesson plans for classes following the educator's resignation;

(G) changed careers within the field of education:

(i) to a position that required a different class of educator certification as defined in §230.33(b) of this title (relating to Classes of Certificates);

(ii) to a position with a higher level of authority within the principal class of certificate; or

(iii) to a position in an open-enrollment charter school or a district of innovation that is equivalent to the positions described in clauses (i) and (ii) of this subparagraph;

(H) had a reduction in base pay, excluding stipends, as compared to the educator's base pay for the prior year at the same school district;

(I) resigned due to working conditions that reasonably posed an immediate threat of significant physical harm to the educator; or

(J) any other relevant circumstances or facts.

(3) Mandatory sanction for contract abandonment.

(A) An educator subject to sanction, who has abandoned a contract 44-30 days prior to the first day of instruction for the following school year in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), in a case where the factors listed in subsection (c) of this section or in paragraph (1) or (2)(B)-(J) of this subsection do not mitigate or apply, shall receive a sanction of an inscribed reprimand.

(B) An educator subject to sanction, who has abandoned a contract less than 30 days prior to the first day of instruction for the following school year or at any point during the school year in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), in a case where the factors listed in subsection (c) of this section or in paragraph (1) or (2) of this subsection do not mitigate or apply, may not receive a sanction of less than:

(i) suspension for one year from the first day that, without district permission, the educator failed to appear for work under the contract, provided that the educator has not worked as an educator during that year and the case is resolved within that one year through an agreed final order; or

(ii) suspension for one year from either the effective date of an agreed final order resolving the case or an agreed future date at the beginning of the following school year, if the educator has worked as an educator after abandoning the contract; or

(iii) suspension for one year from the date that the SBEC adopts an order that becomes final following a default under §249.35 of this title (relating to Disposition Prior to Hearing; Default)

or a contested case hearing at the State Office of Administrative Hearings (SOAH).

(C) The factors listed in subsection (c) of this section and in paragraphs (1) and (2) of this subsection may mitigate an educator's sanction so significantly that the SBEC takes no disciplinary action.

(e) Mandatory minimum sanction for felony-level conduct. An educator subject to sanction, who is court-ordered to complete a period of deferred adjudication, ~~or~~ community supervision, or pretrial diversion for a felony-level criminal offense under state or federal law, may not receive a sanction of less than:

(1) suspension for a period concurrent with the term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has not been employed as an educator during the period of deferred adjudication or community supervision; or

(2) suspension beginning on the effective date of an agreed final order for a period extending beyond the end of the educator's deferred adjudication or community supervision but may be less than the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has been employed as an educator during the period of deferred adjudication or community supervision; or

(3) suspension beginning on the effective date of an agreed final order for a period at least half as long as the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order after the educator has completed deferred adjudication or community supervision; or

(4) suspension for a period equal to the term of deferred adjudication or community supervision that the criminal court initially ordered but beginning from the date of the final board decision, if the case is resolved through a final board decision following a contested case hearing at the SOAH or a default under §249.35 of this title.

(f) Mandatory minimum sanction for misdemeanor-level conduct. If an educator is subject to sanction, and a court has ordered the educator to complete a period of deferred adjudication, community supervision, or pretrial diversion for a misdemeanor-level criminal offense under state or federal law, the educator may not receive a sanction of less than an inscribed reprimand.

(g) Mandatory minimum sanction for test security violation. An educator who intentionally, as defined in §247.1 of this title (relating to Purpose and Scope; Definitions), ~~manipulates the results or~~ violates the security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, in a manner described by §101.3031(a)(3) of Part 2 of this title (relating to Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments), may not receive a sanction of less than a ~~suspension for~~ one year suspension ~~from the effective date of an agreed final order or a final board decision following a contested case hearing at the SOAH~~.

(h) Mandatory minimum sanction for drugs and alcohol on school campus. An educator who is subject to sanction because the educator has tested positive for drugs or alcohol while on school campus, was under the influence of drugs or alcohol on school campus, or was in possession of drugs or alcohol on school campus may not receive a sanction of less than a one-year suspension and required completion of a drug or alcohol treatment program.

(i) Mandatory permanent revocation or denial. Notwithstanding subsection (c) of this section, the SBEC shall permanently revoke the teaching certificate of any educator or permanently deny the application of any applicant if, after a contested case hearing or a default under §249.35 of this title, it is determined that the educator or applicant:

(1) engaged in any sexual contact or romantic relationship with a student or minor;

(2) solicited any sexual contact or romantic relationship with a student or minor;

(3) possessed or distributed child pornography;

(4) was registered as a sex offender;

(5) committed criminal homicide;

(6) transferred, sold, distributed, or conspired to possess, transfer, sell, or distribute any controlled substance, the possession of which would be at least a Class A misdemeanor under the Texas Health and Safety Code, Chapter 481, on school property;

(7) intentionally, knowingly, or recklessly causes bodily injury to a student or minor when the conduct of the educator or applicant is not immune from disciplinary proceedings by TEC, §22.0512; or

(8) committed any offense described in the TEC, §21.058.

(j) Mandatory minimum for failure to report. An educator subject to sanction, who fails to report educator misconduct under the circumstances and in the manner required by the TEC, §21.006, and §249.14(d)-(f) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition), when the case is resolved through an agreed final order, may not receive a sanction of less than:

(1) an inscribed reprimand and a \$5,000 administrative penalty for a superintendent or director who fails to file timely a report to the SBEC; or

(2) an inscribed reprimand and a \$500 administrative penalty for a principal who fails to timely notify a superintendent or director.

(k) Mandatory minimum for electioneering. An educator subject to sanction, who is court-ordered to complete a period of deferred adjudication, community supervision, or pretrial diversion for an offense under Texas Election Code, Chapter 255, may not receive a sanction of less than a one-year suspension.

~~(j)~~ Sanctioned misconduct in another state. The findings of fact contained in final orders from any other state jurisdiction may provide the factual basis for SBEC disciplinary action. If the underlying conduct for the administrative sanction of an educator's certificate or license issued in another state is a violation of SBEC rules, the SBEC may initiate a disciplinary action regarding the educator's Texas educator certificate and impose a sanction as provided under this chapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 30, 2024.

TRD-202406359



SUBCHAPTER C. PREHEARING MATTERS

19 TAC §249.26, §249.27

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §§21.006(a)-(c-2), (f)-(g-1), and (i), which require the superintendent or director of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center or shared services arrangement to report to the SBEC within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct, unless the superintendent or director completes an investigation before the educator resigns or is terminated and determines that the educator did not commit the alleged misconduct. It also requires principals to report to superintendents within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct. It further authorizes the SBEC to impose sanctions on educators who fail to report as required by the statute, including authority to impose monetary administrative penalties, gives SBEC rulemaking authority as necessary to implement the statute, and requires the SBEC to create an internet portal to facilitate confidential and secure reporting; TEC, §21.0062, which requires the chief administrative officer of a private school to notify the SBEC within seven days when a private school educator resigns before the completion of an investigation or is terminated and there is evidence that the educator has engaged in certain misconduct and gives the SBEC rulemaking authority to implement the section; TEC, §21.007, which gives the SBEC authority to place a notice that an educator is under investigation for alleged misconduct on the educator's public certification records, requires the SBEC give the educator notice and an opportunity to show cause, requires that the SBEC limit the amount of time the notice can appear on the educator's certification, and gives the SBEC rulemaking authority as necessary to implement the provision; TEC, §21.009(e), which states that the SBEC may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a student or minor; TEC, §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.035, which states that TEA staff provides administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commissioner of education or to TEA staff the authority to settle or otherwise informally dispose of contested cases involving educator certification; TEC, §21.041(a) and (b)(1), (4), (7), and (8), which authorize the SBEC to adopt rules as necessary for its own procedures, to regulate educators, specify the requirements for issuance or renewal of an educator certificate, provide for educator disciplinary proceedings and for enforcement of the educator's code of ethics; TEC, §21.044(a), which authorizes the

SBEC to adopt rules establishing training requirements and academic qualifications required for a person to obtain an educator certificate; TEC, §21.058, which requires the SBEC to revoke the certification of an educator convicted or placed on deferred adjudication community supervision for certain offenses; TEC, §21.0581, which authorizes SBEC to take action against a person who assists another person obtain employment at a school despite knowing the other person engaged in sexual misconduct with a minor or student; TEC, §21.060, which sets out crimes that relate to the education profession and authorizes the SBEC to sanction or refuse to issue a certificate to any person who has been convicted of one of these offenses; TEC, §21.065, which sets requirements for the notice SBEC must send when it suspends an educator's certificate; TEC, §21.105(c), which allows the SBEC to impose sanctions against an educator who abandons a probationary contract; TEC, §21.160(c), which allows the SBEC to impose sanctions against an educator who abandons a continuing contract; TEC, §21.210(c), which allows the SBEC to impose sanctions against an educator who abandons a term contract; TEC, §22.082, which requires the SBEC to subscribe to the criminal history clearinghouse and allows the SBEC to obtain any criminal history from any closed case file; TEC, §22.0831, which requires the SBEC to review the criminal history of certified educators and applicants for certification; TEC, §22.085, which requires school districts, charter schools, and shared services arrangements to conduct fingerprint criminal background checks on employees and refuse to hire those that have certain criminal history; TEC, §22.087, which requires superintendents and directors of school districts, charter schools, private schools, regional education service centers, and shared services arrangements to notify the SBEC if an applicant for a certification has criminal history that is not in the criminal history clearinghouse; TEC, §22.092, which requires school districts, charter schools, districts of innovation, regional education service centers, and shared services arrangements to discharge or refuse to hire any person listed on the registry of persons not eligible for employment in Texas public schools; TEC, §22.093, requires superintendents or directors of school districts, districts of innovation, charter schools, regional education service centers, or shared services arrangements to notify the commissioner of education if an employee resigned or was terminated and there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor or was involved in a romantic relationship with a student or minor; Texas Government Code (TGC), §411.090, which allows the SBEC to get from the Texas Department of Public Safety all criminal history record information about any applicant for licensure as an educator; TGC, §2001.054(c), which requires the SBEC to give notice by personal service or by registered or certified mail to the license holder of the factors or conduct alleged to warrant suspension, revocation, annulment, or withdrawal of an educator's certificate and to give the certified educator an opportunity to show that the educator is in compliance with the relevant statutes and rules; TGC, §2001.058(e), which sets out the requirements for when the SBEC can make changes to a proposal for decision from an administrative law judge; TGC, §2001.142(a), which requires all Texas state licensing agencies to notify parties to contested cases of orders or decisions of the agency by personal service, electronic means if the parties have agreed to it, first class, certified or registered mail, or by any method required under the agency's rules for a party to serve copies of pleadings in a contested case; Texas Family Code (TFC), §261.308(d) and (e), which require the Texas Department of Family and Protective Services to release information regarding a person alleged to have committed abuse or

neglect to the SBEC; TFC, §261.406(a) and (b), which require the Texas Department of Family and Protective Services to send a copy of a completed investigation report involving allegations of abuse or neglect of a child in a public or private school to the TEA; Texas Occupations Code (TOC), §53.021(a), which allows the SBEC to suspend or revoke an educator's certificate or refuse to issue a certificate, if a person is convicted of certain offenses; TOC, §53.022, which sets out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education; TOC, §53.023, which sets out additional factors for the SBEC to consider when deciding whether to allow a person convicted of a crime to serve as an educator; TOC, §53.0231, which sets out information the SBEC must give an applicant when it denies a license and requires that the SBEC allow 30 days for the applicant to submit any relevant information to the SBEC; TOC, §53.0232, which precludes SBEC from considering arrests that did not result in convictions or placement on deferred adjudication community supervision in the determination of fitness to be licensed as an educator; TOC, §53.024, which states that proceedings to deny or sanction an educator's certification are covered by the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001; TOC, §53.025, which gives the SBEC rulemaking authority to issue guidelines to define which crimes relate to the profession of education; TOC, §53.051, which requires that the SBEC notify a license holder or applicant after denying, suspending, or revoking the certification; TOC, §53.052, which allows a person who has been denied an educator certification or had their educator certification revoked or suspended to file a petition for review in state district court after exhausting all administrative remedies; TOC, §56.003, which prohibits state agencies from taking disciplinary action against licensees for student loan non-payment or default; and the Every Student Succeeds Act (ESSA), 20 United States Code (U.S.C.) §7926, which requires state educational agencies to make rules forbidding educators from aiding other school employees, contractors, or agents in getting jobs when the educator knows the jobseeker has committed sexual misconduct with a student or minor in violation of the law.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.006(a), (b), (b-1), (b-2), (c), (c-1), (c-2), (f), (g), (g-1), and (i); 21.0062; 21.007; 21.009(e); 21.031(a); 21.035; 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a), 21.058; 21.0581; 21.060; 21.065; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.085; 22.087; 22.092; and 22.093; Texas Government Code (TGC), §§411.090, 2001.054(c), 2001.058(e), and 2001.142(a); Texas Family Code (TFC), §261.308(d) and (e) and §261.406(a) and (b); Texas Occupations Code (TOC), §§53.021(a), 53.022-53.025, 53.051, 53.052 and 56.003; and the Every Student Succeeds Act (ESSA), 20 United States Code (U.S.C.) §7926.

§249.26. Petition.

(a) The party seeking relief and requesting a contested case hearing under this chapter shall serve a petition as required under this chapter. The petitioner shall have the burden of proof by a preponderance of the evidence in all contested case proceedings brought under this chapter.

(b) The petition shall contain the following items:

(1) a statement of the legal authority and jurisdiction under which the disciplinary action is being sought and the hearing is to be held;

(2) a reference to the particular sections of the statutes and rules involved;

(3) a statement of the matters asserted;

(4) a statement regarding the failure of the parties to reach an agreed settlement of the matters asserted in the petition;

(5) the name, current mailing address, daytime telephone number, if any, and facsimile number, if any, of the petitioner and the petitioner's authorized representative; and

(6) if the petition seeks to impose sanctions against a certificate holder, a notification set forth as follows in at least 12-point boldface type: If you do not file a written answer to this petition with the Texas Education Agency (TEA) staff WITHIN 30 CALENDAR DAYS of being served with this petition, the State Board for Educator Certification may grant the relief requested in this petition, including revocation of your certificate by default. The matters asserted in the petition will be deemed admitted unless your written answer specifically denies each assertion pled and is filed within the prescribed time period. If you file a written answer but then fail to attend a scheduled hearing, the State Board for Educator Certification may grant any relief requested in this petition, up to and including REVOCATION OF YOUR CERTIFICATE.

(c) The petition shall be served on the respondent by electronic mail or [United States certified mail, return receipt requested, and] by regular first-class United States mail^[;] to the current mailing and email address a certified educator is required to provide pursuant to §230.91 of this title (relating to Procedures in General) and by electronic mail to the respondent's attorney if notice of representation has been provided to TEA staff, or as otherwise specified in this chapter. If an educator, applicant, or examinee is the petitioner, the address to which the petition shall be served is Texas Education Agency, Legal Certification Enforcement Division, 1701 North Congress Avenue, Austin, Texas 78701. A certificate evidencing service shall be included in the petition. For purposes of this section and §249.27 of this title (relating to Answer), it is a rebuttable presumption that a petition was served on the respondent no later than five calendar days after mailing.

§249.27. Answer.

(a) The party responding to a petition filed under this chapter shall file a written answer with the petitioner within 30 calendar days after being served with such petition. For purposes of this section and §249.26 of this title (relating to Petition), it is a rebuttable presumption that a petition was served on the respondent no later than five calendar days after mailing. The respondent shall serve the answer on the petitioner by electronic mail or [United States certified mail, return receipt requested, and] by regular first-class United States mail.

(b) The answer shall specifically admit or deny each allegation in the petition and shall plead all affirmative defenses.

(c) The answer shall contain the name, current mailing address, daytime telephone number, email address, and facsimile number, if any, of the respondent and the respondent's authorized representative.

(d) All well-pled factual allegations in the petition will be deemed admitted unless the respondent's answer, containing specific denials to each allegation, is filed within the time period prescribed in subsection (a) of this section. A general denial shall not be sufficient to controvert factual allegations contained in the petition.

(e) An answer that does not comply with the requirements of this section and 1 Texas Administrative Code, Part 7, §155.301 (relating to Required Form of Pleadings) may provide grounds for default judgment in favor of the petitioner, as provided in this chapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 30, 2024.

TRD-202406360

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 475-1497



SUBCHAPTER E. POST-HEARING MATTERS

19 TAC §249.37

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §§21.006(a)-(c-2), (f)-(g-1), and (i), which require the superintendent or director of a school district, district of innovation, open-enrollment charter school, other charter entity, regional education service center or shared services arrangement to report to the SBEC within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct, unless the superintendent or director completes an investigation before the educator resigns or is terminated and determines that the educator did not commit the alleged misconduct. It also requires principals to report to superintendents within seven business days of when the superintendent knew or received a report from a principal that an educator has resigned or is terminated and there is evidence that the educator has engaged in certain misconduct. It further authorizes the SBEC to impose sanctions on educators who fail to report as required by the statute, including authority to impose monetary administrative penalties, gives SBEC rulemaking authority as necessary to implement the statute, and requires the SBEC to create an internet portal to facilitate confidential and secure reporting; TEC, §21.0062, which requires the chief administrative officer of a private school to notify the SBEC within seven days when a private school educator resigns before the completion of an investigation or is terminated and there is evidence that the educator has engaged in certain misconduct and gives the SBEC rulemaking authority to implement the section; TEC, §21.007, which gives the SBEC authority to place a notice that an educator is under investigation for alleged misconduct on the educator's public certification records, requires the SBEC give the educator notice and an opportunity to show cause, requires that the SBEC limit the amount of time the notice can appear on the educator's certification, and gives the SBEC rulemaking authority as necessary to implement the provision; TEC, §21.009(e), which states that the SBEC may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a student or minor; TEC, §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.035, which states that TEA staff provides administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commissioner of education or to TEA staff the authority to settle or otherwise informally dispose of contested cases involving educator certification; TEC, §21.041(a) and (b)(1), (4), (7), and (8), which authorize

the SBEC to adopt rules as necessary for its own procedures, to regulate educators, specify the requirements for issuance or renewal of an educator certificate, provide for educator disciplinary proceedings and for enforcement of the educator's code of ethics; TEC, §21.044(a), which authorizes the SBEC to adopt rules establishing training requirements and academic qualifications required for a person to obtain an educator certificate; TEC, §21.058, which requires the SBEC to revoke the certification of an educator convicted or placed on deferred adjudication community supervision for certain offenses; TEC, §21.0581, which authorizes SBEC to take action against a person who assists another person obtain employment at a school despite knowing the other person engaged in sexual misconduct with a minor or student; TEC, §21.060, which sets out crimes that relate to the education profession and authorizes the SBEC to sanction or refuse to issue a certificate to any person who has been convicted of one of these offenses; TEC, §21.065, which sets requirements for the notice SBEC must send when it suspends an educator's certificate; TEC, §21.105(c), which allows the SBEC to impose sanctions against an educator who abandons a probationary contract; TEC, §21.160(c), which allows the SBEC to impose sanctions against an educator who abandons a continuing contract; TEC, §21.210(c), which allows the SBEC to impose sanctions against an educator who abandons a term contract; TEC, §22.082, which requires the SBEC to subscribe to the criminal history clearinghouse and allows the SBEC to obtain any criminal history from any closed case file; TEC, §22.0831, which requires the SBEC to review the criminal history of certified educators and applicants for certification; TEC, §22.085, which requires school districts, charter schools, and shared services arrangements to conduct fingerprint criminal background checks on employees and refuse to hire those that have certain criminal history; TEC, §22.087, which requires superintendents and directors of school districts, charter schools, private schools, regional education service centers, and shared services arrangements to notify the SBEC if an applicant for a certification has criminal history that is not in the criminal history clearinghouse; TEC, §22.092, which requires school districts, charter schools, districts of innovation, regional education service centers, and shared services arrangements to discharge or refuse to hire any person listed on the registry of persons not eligible for employment in Texas public schools; TEC, §22.093, requires superintendents or directors of school districts, districts of innovation, charter schools, regional education service centers, or shared services arrangements to notify the commissioner of education if an employee resigned or was terminated and there is evidence that the employee abused or otherwise committed an unlawful act with a student or minor or was involved in a romantic relationship with a student or minor; Texas Government Code (TGC), §411.090, which allows the SBEC to get from the Texas Department of Public Safety all criminal history record information about any applicant for licensure as an educator; TGC, §2001.054(c), which requires the SBEC to give notice by personal service or by registered or certified mail to the license holder of the factors or conduct alleged to warrant suspension, revocation, annulment, or withdrawal of an educator's certificate and to give the certified educator an opportunity to show that the educator is in compliance with the relevant statutes and rules; TGC, §2001.058(e), which sets out the requirements for when the SBEC can make changes to a proposal for decision from an administrative law judge; TGC, §2001.142(a), which requires all Texas state licensing agencies to notify parties to contested cases of orders or decisions of the agency by personal service, electronic means if the parties have

agreed to it, first class, certified or registered mail, or by any method required under the agency's rules for a party to serve copies of pleadings in a contested case; Texas Family Code (TFC), §261.308(d) and (e), which require the Texas Department of Family and Protective Services to release information regarding a person alleged to have committed abuse or neglect to the SBEC; TFC, §261.406(a) and (b), which require the Texas Department of Family and Protective Services to send a copy of a completed investigation report involving allegations of abuse or neglect of a child in a public or private school to the TEA; Texas Occupations Code (TOC), §53.021(a), which allows the SBEC to suspend or revoke an educator's certificate or refuse to issue a certificate, if a person is convicted of certain offenses; TOC, §53.022, which sets out factors for the SBEC to determine whether a particular criminal offense relates to the occupation of education; TOC, §53.023, which sets out additional factors for the SBEC to consider when deciding whether to allow a person convicted of a crime to serve as an educator; TOC, §53.0231, which sets out information the SBEC must give an applicant when it denies a license and requires that the SBEC allow 30 days for the applicant to submit any relevant information to the SBEC; TOC, §53.0232, which precludes SBEC from considering arrests that did not result in convictions or placement on deferred adjudication community supervision in the determination of fitness to be licensed as an educator; TOC, §53.024, which states that proceedings to deny or sanction an educator's certification are covered by the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001; TOC, §53.025, which gives the SBEC rulemaking authority to issue guidelines to define which crimes relate to the profession of education; TOC, §53.051, which requires that the SBEC notify a license holder or applicant after denying, suspending, or revoking the certification; TOC, §53.052, which allows a person who has been denied an educator certification or had their educator certification revoked or suspended to file a petition for review in state district court after exhausting all administrative remedies; TOC, §56.003, which prohibits state agencies from taking disciplinary action against licensees for student loan non-payment or default; and the Every Student Succeeds Act (ESSA), 20 United States Code (U.S.C.) §7926, which requires state educational agencies to make rules forbidding educators from aiding other school employees, contractors, or agents in getting jobs when the educator knows the jobseeker has committed sexual misconduct with a student or minor in violation of the law.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.006(a), (b), (b-1), (b-2), (c), (c-1), (c-2), (f), (g), (g-1), and (i); 21.0062; 21.007; 21.009(e); 21.031(a); 21.035; 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a), 21.058; 21.0581; 21.060; 21.065; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.085; 22.087; 22.092; and 22.093; Texas Government Code (TGC), §§411.090, 2001.054(c), 2001.058(e), and 2001.142(a); Texas Family Code (TFC), §261.308(d) and (e) and §261.406(a) and (b); Texas Occupations Code (TOC), §§53.021(a), 53.022-53.025, 53.051, 53.052 and 56.003; and the Every Student Succeeds Act (ESSA), 20 United States Code (U.S.C.) §7926.

§249.37. Exceptions and Replies.

(a) A party may file any exceptions to the proposal for decision within 15 calendar days of the date of the proposal for decision. Any replies to the exceptions shall be filed by other parties within 15 calendar days of the filing of exceptions. These time limits may be

extended by agreement of the parties and the administrative law judge (ALJ). Exceptions and replies shall be:

(1) served upon the other party by mail, hand-delivery, facsimile, any method allowed by the State Office of Administrative Hearings rules, or any electronic transmission agreed to by the parties; and

(2) filed with the ALJ in accordance with 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedure).

~~[(b) Any disagreement with a factual finding or conclusion of law in the proposal for decision not contained in an exception to the proposal shall be waived.]~~

(b) [(e)] Each exception or reply to a finding of fact or conclusion of law shall be concisely stated and shall summarize the evidence in support of each exception.

(1) Any evidence or arguments relied upon shall be grouped under the exceptions to which they relate.

(2) In summarizing evidence, the parties shall include a specific citation to the hearing record where such evidence appears or shall attach the relevant excerpts from the hearing record.

(3) Arguments shall be logical and coherent and citations to authorities shall be complete.

(c) ~~[(d)]~~ Exceptions to the proposal for decision may be based on the following:

- (1) the ALJ has made an incorrect conclusion of law;
- (2) the ALJ has failed to make an essential fact finding;
- (3) the ALJ applied the incorrect burden or standard of proof;
- (4) the findings of fact do not support the conclusions of law; or
- (5) the ALJ has made a finding of fact that is not supported by the preponderance of the evidence.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 30, 2024.

TRD-202406361

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 475-1497

◆ ◆ ◆
TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 341. GENERAL STANDARDS FOR JUVENILE PROBATION DEPARTMENTS

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC §341.100, Definitions. TJJD also proposes

new 37 TAC §341.308, Notification to Office of Independent Ombudsman.

SUMMARY OF CHANGES

The amended §341.100 will add a definition for *Non-Juvenile Justice Contract Facility*.

The new §341.308 will explain that: 1) the chief administrative officer or designee must notify the Office of Independent Ombudsman via email when a juvenile is placed in a non-juvenile justice contract facility; and 2) the notification must be made no later than 10 days after the juvenile's placement.

The new §341.308 will also explain that: 1) the chief administrative officer or designee must notify the Office of Independent Ombudsman via email when a juvenile who was placed in a non-juvenile justice contract facility has been removed from the facility for any reason; and 2) the notification must be made no later than 10 days after the juvenile's removal.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new and amended sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the new and amended sections are in effect, the public benefit anticipated as a result of administering the sections will be to bring TJJD into compliance with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new and amended sections as proposed. No private real property rights are affected by adoption of the sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new and amended sections are in effect, the sections will have the following impacts.

- (1) The proposed sections do not create or eliminate a government program.
- (2) The proposed sections do not require the creation or elimination of employee positions at TJJD.
- (3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed sections do not impact fees paid to TJJD.
- (5) The proposed sections do not create a new regulation.
- (6) The proposed sections do not expand, limit, or repeal an existing regulation.
- (7) The proposed sections do not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed sections will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

SUBCHAPTER A. DEFINITIONS AND GENERAL PROVISIONS

37 TAC §341.100

STATUTORY AUTHORITY

The amended section is proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§341.100. Definitions.

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

(1) **Alternative Referral Plan**--A procedure that deviates from the requirements of **Family Code** [Texas Family Code] §53.01(d) regarding referral of cases to the prosecutor.

(2) **Approved Personal Restraint Technique** ("personal restraint")--A professionally trained, curriculum-based, and competency-based restraint technique that uses a person's physical exertion to completely or partially constrain another person's body movement without the use of mechanical restraints.

(3) **Approved Mechanical Restraint Devices** ("mechanical restraint")--A professionally manufactured and commercially available mechanical device designed to aid in the restriction of a person's bodily movement. The only mechanical restraint devices approved for use are the following:

(A) **Ankle Cuffs**--Metal band designed to be fastened around the ankle to restrain free movement of the legs.

(B) **Handcuffs**--Metal devices designed to be fastened around the wrist to restrain free movement of the hands and arms.

(C) **Plastic Cuffs**--Plastic devices designed to be fastened around the wrists or legs to restrain free movement of hands, arms, or legs. Plastic cuffs must be designed specifically for use in human restraint.

(D) **Soft Restraints**--Non-metallic wristlets and anklets used as stand-alone restraint devices. These devices are designed to reduce the incidence of skin, nerve, and muscle damage to the subject's extremities.

(E) **Waist Belt**--A cloth, leather, or metal band designed to be fastened around the waist and used to secure the arms to the sides or front of the body.

(4) **Case Management System**--A computer-based tracking system that provides a systematic method to track and manage juvenile offender caseloads.

(5) **Chief Administrative Officer**--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department, including the juvenile probation department of a multi-county judicial district.

(6) **Comprehensive Folder Edit**--A report generated in the Caseworker or Juvenile Case Management System (JCMS) application that performs an extensive edit of the case file information. This report

identifies incorrectly entered data and questionable data that impact the accuracy of the reports and programs.

(7) Criminogenic Needs--Issues, risk factors, characteristics, and/or problems that relate to a person's risk of reoffending.

(8) Data Coordinator--A person employed by a juvenile probation department who is designated to serve and function as the primary contact with TJJD on all matters relating to data collection and reporting.

(9) Department--A juvenile probation department.

(10) Draw--To unholster a weapon in preparation for use against a perceived threat.

(11) EDI Specifications--A document developed by TJJD outlining the data fields and file structures that each juvenile probation department is required to follow in submitting the TJJD EDI extract.

(12) Empty-Hand Defense--Defensive tactics through the use of pressure points, releases from holds, and blocking and striking techniques using natural body weapons such as an open hand, fist, forearm, knee, or leg.

(13) Field Supervision--Supervision ordered by a juvenile court in accordance with Family Code [Texas Family Code] §54.04(d)(1)(A) where the child is placed on probation in the child's home or in the custody of a relative or another fit person.

(14) Formal Referral--An event that occurs only when all three of the following conditions exist:

(A) a juvenile has allegedly committed delinquent conduct, conduct indicating a need for supervision, or a violation of probation;

(B) the juvenile probation department has jurisdiction and venue; and

(C) the office or official designated by the juvenile board has:

(i) made face-to-face contact with the juvenile and the alleged offense has been presented as the reason for this contact; or

(ii) given written or verbal authorization to detain the juvenile.

(15) Initial Disposition--The disposition of probation issued by a juvenile court after a child is:

(A) formally referred to a juvenile probation department for the first time; or

(B) formally referred to a juvenile probation department after any and all previous periods of supervision by the department have ended.

(16) Inter-County Transfer--As described in Family Code [Texas Family Code] §51.072, a transfer of supervision from one juvenile probation department in Texas to another juvenile probation department in Texas for a juvenile who moves or intends to move to another county and intends to remain in that county for at least 60 days.

(17) Intermediate Weapons--Weapons designed to neutralize or temporarily incapacitate an assailant, such as electronic restraint devices, irritants, and impact weapons. This level of self-defense employs the use of tools to neutralize aggressive behavior when deadly force is not justified but when empty-hand defense is not sufficient.

(18) Intern--An individual who performs services for a juvenile justice program or facility through a formal internship program

that is sponsored by a juvenile justice agency or is part of an approved course of study through an accredited college or university.

(19) Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program.

(20) Juvenile Board--A governing board created under Chapter 152, [of the Texas] Human Resources Code.

(21) Juvenile Justice Program--A program or department that:

(A) serves juveniles under juvenile court or juvenile board jurisdiction; and

(B) is operated solely or partly by the governing board, juvenile board, or by a private vendor under a contract with the governing board or juvenile board. The term includes:

(i) juvenile justice alternative education programs;

(ii) non-residential programs that serve juvenile offenders under the jurisdiction of the juvenile court or the juvenile board; and

(iii) juvenile probation departments.

(22) Non-Juvenile Justice Contract Facility--A facility in which a juvenile is placed pursuant to a contract with a department, program, facility, or juvenile board, other than a facility registered with TJJD.

(23) [(22)] Professional--A [a] person who meets the definition of professional in §344.100 of this title.

(24) [(23)] Resident--A juvenile or other individual who has been lawfully admitted into a pre-adjudication secure juvenile detention facility, post-adjudication secure juvenile correctional facility, or a non-secure juvenile correctional facility.

(25) [(24)] Residential Placement--Supervision ordered by a juvenile court in which the child is placed on probation outside the child's home in a foster home or a public or private institution or agency.

(26) [(25)] Restraints--Personal or mechanical restraint.

(27) [(26)] Responsivity Factors--Factors that are not necessarily related to criminal activity but are relevant to the way in which the juvenile reacts to different types of interventions (e.g., learning styles and abilities, self-esteem, motivation for treatment, resistance to change, etc.)

(28) [(27)] SRSXEdit--An audit program developed by TJJD to assist juvenile probation departments not using the Caseworker or JCMS application with verifying their data prior to submission to TJJD.

(29) [(28)] Supervision--The case management of a juvenile by the assigned juvenile probation officer or designee through contacts (e.g., face-to-face, telephone, office, home, or collateral contacts) with the juvenile, the juvenile's family, and/or other persons or entities involved with the juvenile.

(30) [(29)] TCOLE--Texas Commission on Law Enforcement.

(31) [(30)] Title IV-E Approved Facility--A facility licensed and/or approved by the Texas Department of Family and Protective Services for Title IV-E participation.

(32) [(31)] TJJD--Texas Juvenile Justice Department.

(33) [(32)] TJJJ Electronic Data Interchange (EDI) Extract--An automated process to extract and submit modified case records from the department's case management system to TJJJ. The extract must be completed in accordance with this chapter.

(34) [(33)] TJJJ Mental Health Screening Instrument--An instrument selected by TJJJ to assist in identifying juveniles who may have mental health needs.

(35) [(34)] Volunteer--An individual who performs services for the juvenile probation department without compensation from the department who has:

(A) any unsupervised contact with juveniles in a juvenile justice program or facility; or

(B) regular or periodic supervised contact with juveniles in a juvenile justice program or facility.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2024.

TRD-202406317

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



SUBCHAPTER C. CHIEF ADMINISTRATIVE OFFICER RESPONSIBILITIES

37 TAC §341.308

STATUTORY AUTHORITY

The new section is proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§341.308. Notification to Office of Independent Ombudsman.

(a) The chief administrative officer or designee must notify the Office of Independent Ombudsman when a juvenile is placed in a non-juvenile justice contract facility. The notification must be made no later than 10 days after the juvenile's placement and must be made via email to the Office of Independent Ombudsman.

(b) The chief administrative officer or designee must notify the Office of Independent Ombudsman when a juvenile who was placed in a non-juvenile justice contract facility has been removed from the facility for any reason. The notification must be made no later than 10 days after the juvenile's removal and must be made via email to the Office of Independent Ombudsman.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2024.

TRD-202406318

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



CHAPTER 343. SECURE JUVENILE PRE-ADJUDICATION DETENTION AND POSTADJUDICATION CORRECTIONAL FACILITIES

SUBCHAPTER B. PRE-ADJUDICATION AND POST-ADJUDICATION SECURE FACILITY STANDARDS

37 TAC §343.261

The Texas Juvenile Justice Department (TJJJ) proposes new 37 TAC §343.261, Resident Supervision.

SUMMARY OF CHANGES

New §343.261 will require juvenile probation departments to enact policies to prohibit the view through windows used to observe residents from being blocked and to instruct staff of what actions to take if the view through an observation window is blocked.

New §343.261 will also explain that refusing to remove an item obstructing the viewing window is considered a serious threat to safety and/or security.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of administering the section will be increased safety of youth in juvenile facilities.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJJ has determined that, during the first five years the new section is in effect, the section will have the following impacts.

(1) The proposed section does not create or eliminate a government program.

(2) The proposed section does not require the creation or elimination of employee positions at TJJJ.

(3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJJ.

- (4) The proposed section does not impact fees paid to TJJD.
- (5) The proposed section does not create a new regulation.
- (6) The proposed section does not expand, limit, or repeal an existing regulation.
- (7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The new section is proposed under §221.002, Human Resources Code, requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§343.261. Resident Supervision.

(a) Facility policy must prohibit the blocking of viewing windows that are used to observe residents. The policy must instruct staff of the actions to take if a viewing window is blocked.

(b) The refusal to remove an item obstructing the viewing window is considered a serious threat to facility safety and/or security.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2024.

TRD-202406319

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



CHAPTER 345. JUVENILE JUSTICE PROFESSIONAL CODE OF ETHICS FOR CERTIFIED OFFICERS

The Texas Juvenile Justice Department (TJJD) proposes to amend 37 TAC §345.100, Definitions; §345.200, Policy and Procedure; §345.300, Adherence and Reporting Violations; and §345.310, Code of Ethics.

SUMMARY OF CHANGES

The amended §345.100 will: 1) clarify the definitions for *juvenile*, *juvenile justice facility*, and *juvenile justice professional*; and 2) add a definition for *Non-Juvenile Justice Contract Facility*.

The amended §345.200 will clarify that departments, programs, and facilities must adopt and implement policies and procedures

to ensure that all code of ethics violations are reported to the administration of the department, program, or facility and to TJJD.

The amended §345.300 will clarify that juvenile justice professionals must report any unethical behavior or violations of the code of ethics to TJJD and to the administration of the department, program, facility, or non-juvenile justice contract facility where the juvenile justice professional is an employee, volunteer, or contractor.

The amended §345.310 will clarify that: 1) juvenile justice professionals must not engage in conduct constituting abuse, neglect, or exploitation as provided by Chapter 358, Administrative Code, and Chapter 261, Family Code; and 2) juvenile justice professionals must not interfere with or hinder *any investigation* (rather than *any abuse, neglect, or exploitation investigation*).

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of administering the sections will be to bring TJJD into compliance with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the amended sections as proposed. No private real property rights are affected by adoption of the sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the amended sections are in effect, the sections will have the following impacts.

- (1) The proposed sections do not create or eliminate a government program.
- (2) The proposed sections do not require the creation or elimination of employee positions at TJJD.
- (3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed sections do not impact fees paid to TJJD.
- (5) The proposed sections do not create a new regulation.
- (6) The proposed sections do not expand, limit, or repeal an existing regulation.
- (7) The proposed sections do not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed sections will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

SUBCHAPTER A. DEFINITIONS AND APPLICABILITY

37 TAC §345.100

STATUTORY AUTHORITY

The amended section is proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§345.100. Definitions.

The following terms, as used in this chapter, have the following meanings unless otherwise expressly defined within the chapter.

(1) Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, or participating in a juvenile justice program, including a prevention and intervention program, regardless of age.

(2) Juvenile Justice Facility ("facility")--a facility that is registered by TJJD pursuant to Sections 51.12, 51.125, or 51.126, Family Code.

{(A) A facility, including the facility's premises and all affiliated sites whether contiguous or detached, that:}

{(i) serves juveniles under juvenile court jurisdiction; and}

{(ii) is operated:}

{(i) wholly or partly by or under the authority of the governing board or juvenile board; or}

{(ii) by a private vendor under a contract with the governing board, juvenile board, or governmental unit.}

{(B) The term includes, but is not limited to:}

{(i) public or private juvenile pre-adjudication secure detention facilities, as defined in §344.100 of this title, including short-term detention facilities (i.e., holdovers) as defined in §351.1 of this title;}

{(ii) public or private juvenile post-adjudication secure correctional facilities as defined in §344.100 of this title; and}

{(iii) public or private non-secure correctional facilities as defined in §355.100 of this title.}

(3) Juvenile Justice Professional--A person who is:

(A) certified by TJJD as a juvenile probation officer, community activities officer [youth activities supervisor], or juvenile supervision officer; or

(B) employed by, contracting with, or volunteering with a department, program, or facility or a non-juvenile justice contract facility [a juvenile probation department, juvenile justice program, or a juvenile justice facility as a juvenile probation officer, youth activities supervisor, or juvenile supervision officer].

(4) Juvenile Justice Program ("program")--Has the meaning assigned by §344.100 of this title.

(5) Juvenile Probation Department ("department")--Has the meaning assigned by §344.100 of this title.

(6) Non-Juvenile Justice Contract Facility--A facility in which a juvenile is placed pursuant to a contract with a department,

program, facility, or juvenile board, other than a facility registered with TJJD.

(7) [(6)] TJJD--The Texas Juvenile Justice Department.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2024.

TRD-202406320

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



SUBCHAPTER B. POLICY AND PROCEDURE

37 TAC §345.200

STATUTORY AUTHORITY

The amended section is proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§345.200. Policy and Procedure.

Department, programs, and facilities [Juvenile probation departments, juvenile justice programs, and juvenile justice facilities] must adopt and implement written policies and procedures to ensure that all code of ethics violations are reported to:

(1) the administration of the department, program, or facility [juvenile probation department, juvenile justice program, or juvenile justice facility]; and

(2) TJJD.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2024.

TRD-202406321

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



SUBCHAPTER C. CODE OF ETHICS

37 TAC §345.300, §345.310

STATUTORY AUTHORITY

The amended sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to gov-

ern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§345.300. *Adherence and Reporting Violations.*

(a) To ensure the safety, protection, and welfare of the juveniles and families served by the juvenile justice system, juvenile justice professionals must adhere to the code of ethics set forth in this chapter.

(b) Juvenile justice professionals must report ~~[to the appropriate authorities and/or entities]~~ any unethical behavior or violations of the code of ethics to TJJJ and the administration of the department, program, facility, or non-juvenile justice contract facility where the juvenile justice professional is an employee, volunteer, or contractor.

§345.310. *Code of Ethics.*

(a) The people of Texas expect juvenile justice professionals to exhibit honesty and respect for the dignity and individuality of human beings and display a commitment to professional and compassionate service.

(b) ~~In accordance with Chapter 349 of this title [As described by §344.810 and §349.307 of this title], TJJJ may take disciplinary action against a [the] certification of or deny a certification to [of] a juvenile justice professional who is found by TJJJ to have violated the code of ethics.~~

(c) Juvenile justice professionals must adhere to the following code of ethics principles:

(1) Juvenile justice professionals must:

(A) abide by all federal laws, federal guidelines and rules, state laws, and TJJJ administrative rules;

(B) respect the authority and follow the directives of the juvenile court and governing juvenile board;

(C) respect and protect the legal rights of all juveniles and their parents and/or guardians;

(D) serve each child with concern for the child's welfare and with no expectation of personal gain;

(E) respect the significance of all elements of the justice and human services systems and cultivate professional cooperation with each segment;

(F) respect and consider the right of the public to be safeguarded from the effects of juvenile delinquency;

(G) be diligent in their responsibility to record and make available for review any and all information that could contribute to sound decisions affecting a child or public safety;

(H) report without reservation any corrupt or unethical behavior that could affect a juvenile or the integrity of the juvenile justice system;

(I) maintain the integrity and confidentiality of juvenile information, not seek more information than needed to perform their duties, and not reveal information to any person who does not have authorized access to the information for a proper, professional use; and

(J) treat all juveniles and their families with courtesy, consideration, and dignity.

(2) Juvenile justice professionals must not:

(A) use their official position to secure privileges or advantages;

(B) permit personal interest to impair the impartial and objective exercise of professional responsibilities;

(C) accept gifts, favors, or other advantages that could give the appearance of impropriety or impair the impartial and objective exercise of professional responsibilities;

(D) maintain or give the appearance of maintaining an inappropriate relationship with a juvenile, including, but not limited to, bribery or solicitation or acceptance of gifts, favors, or services from juveniles or their families;

(E) discriminate against any employee, juvenile, parent, or guardian on the basis of race, ethnicity, gender, disability, national origin, religion, sexual orientation, political belief, or socioeconomic status;

(F) misuse government property or resources or use personal property or funds belonging to a juvenile;

(G) engage in conduct constituting abuse, neglect, or exploitation as provided by Chapter 358 of this title and Chapter 261, Family Code [be designated as a perpetrator in an abuse, exploitation, and neglect investigation conducted by TJJJ under Chapter 350 of this title and Texas Family Code Chapter 261];

(H) ~~interfere with or hinder any [abuse, exploitation, and neglect] investigation, including a criminal investigation conducted by law enforcement or an investigation conducted under Chapter 350 and Chapter 358 of this title or [Texas Family Code] Chapter 261, Family Code;~~

(I) deliver into or remove from the grounds of a juvenile facility, program, or department any item of contraband or possess or control any item of contraband beyond the time period required to immediately report and deliver the item to the proper authority within the facility, program, or department;

(J) use violence or unnecessary force and must use only the amount and type of force reasonably necessary and appropriate when justified to ensure the security of juveniles or of the facility, program, or department; or

(K) falsify or make material omissions to governmental records.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2024.

TRD-202406322

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



CHAPTER 349. GENERAL ADMINISTRATIVE STANDARDS

The Texas Juvenile Justice Department (TJJJ) proposes to repeal 37 TAC §§349.100, 349.200, 349.300, 349.305, 349.307, 349.308, 349.310, 349.311, 349.315, 349.320, 349.325, 349.330, 349.335, 349.340, 349.345, 349.355, 349.360,

349.365, 349.370, 349.375, 349.380, 349.385, 349.400, 349.410, 349.500, 349.510, 349.520, 349.530, 349.540, 349.550, 349.560, 349.570, 349.600, 349.650, 349.700, relating to General Administrative Standards.

SUMMARY OF REPEAL

The repeal of §§349.100, Definitions; 349.200, Waiver or Variance; 349.300, Requests for Disciplinary Action; 349.305, Commission Initiated Disciplinary Action; 349.307, Disciplinary Sanctions; 349.308, Disciplinary Guidelines; 349.310, Effect of Request for Disciplinary Action; 349.311, Disciplinary Sanctions; 349.315, Computation of Time; 349.320, Notice and Service; 349.325, Representation; 349.330, Preliminary Notice to Certified Officer in Disciplinary Matters; 349.335, Commencement of Disciplinary Proceedings; 349.340, Certified Officer's Answer and Consequence of Failure to File an Answer to Formal Charges (Default); 349.345, Discovery; 349.355, Subpoenas; 349.360, Informal Proceedings; 349.365, Agreed Dispositions; 349.370, Formal Disciplinary Proceedings; 349.375, Decision of the Board; 349.380, Judicial Review; 349.385, Mandatory Suspension for Failure to Pay Child Support; 349.400, Complaint Process; 349.410, Administrative Review of Investigation Findings; 349.500, Purpose; 349.510, Definitions; 349.520, Access to Confidential Information; 349.530, Redaction of Records Prior to Release; 349.540, Procedures for Requesting Access to Confidential Information; 349.550, Public Information; 349.560, Videotapes, Audiotapes, and Photographs; 349.570, Charges for Copies of Records; 349.600, Purpose; 349.650, Removal of Members; and 349.700, Access to Data Collected, will allow the content to be revised and republished as new §§349.100, 349.110, 349.120, 349.200, 349.210, 349.220, 349.230, 349.240, 349.250, 349.260, 349.270, 349.300, 349.302, 349.304, 349.310, 349.320, 349.330, 349.340, 349.350, 349.360, 349.370, 349.380, 349.390, 349.400, 349.410, 349.420, 349.430, 349.440, 349.450, 349.460, 349.500, 349.550, and 349.600.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the repeals are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the repeals.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be to bring TJJD into compliance with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed. No private real property rights are affected by adoption of the repeals.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repeals are in effect, the repeals will have the following impacts.

(1) The proposed repeals do not create or eliminate a government program.

(2) The proposed repeals do not require the creation or elimination of employee positions at TJJD.

(3) The proposed repeals do not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed repeals do not impact fees paid to TJJD.

(5) The proposed repeals do not create a new regulation.

(6) The proposed repeals do not expand, limit, or repeal an existing regulation.

(7) The proposed repeals do not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed repeals will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

SUBCHAPTER A. DEFINITIONS

37 TAC §349.100

STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.100. Definitions.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 28, 2024.

TRD-202406331

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



SUBCHAPTER B. WAIVER

37 TAC §349.200

STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.200. Waiver or Variance.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 28, 2024.

TRD-202406332

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130

◆ ◆ ◆

SUBCHAPTER C. DISCIPLINARY ACTIONS AND HEARINGS

37 TAC §§349.300, 349.305, 349.307, 349.308, 349.310, 349.311, 349.315, 349.320, 349.325, 349.330, 349.335, 349.340, 349.345, 349.355, 349.360, 349.365, 349.370, 349.375, 349.380, 349.385

STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

- §349.300. *Requests for Disciplinary Action.*
- §349.305. *Commission Initiated Disciplinary Action.*
- §349.307. *Disciplinary Sanctions.*
- §349.308. *Disciplinary Guidelines.*
- §349.310. *Effect of Request for Disciplinary Action.*
- §349.311. *Disciplinary Sanctions.*
- §349.315. *Computation of Time.*
- §349.320. *Notice and Service.*
- §349.325. *Representation.*
- §349.330. *Preliminary Notice to Certified Officer in Disciplinary Matters.*
- §349.335. *Commencement of Disciplinary Proceedings.*
- §349.340. *Certified Officer's Answer and Consequence of Failure to File an Answer to Formal Charges (Default).*
- §349.345. *Discovery.*
- §349.355. *Subpoenas.*
- §349.360. *Informal Proceedings.*
- §349.365. *Agreed Dispositions.*
- §349.370. *Formal Disciplinary Proceedings.*
- §349.375. *Decision of the Board.*
- §349.380. *Judicial Review.*
- §349.385. *Mandatory Suspension for Failure to Pay Child Support.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 28, 2024.

TRD-202406333

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130

◆ ◆ ◆

SUBCHAPTER D. COMPLAINTS AGAINST JUVENILE BOARDS

37 TAC §349.400, §349.410

STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.400. *Complaint Process.*

§349.410. *Administrative Review of Investigation Findings.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 28, 2024.

TRD-202406334

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130

◆ ◆ ◆

SUBCHAPTER E. CONFIDENTIALITY AND RELEASE OF ABUSE, EXPLOITATION AND NEGLECT INVESTIGATION RECORDS

37 TAC §§349.500, 349.510, 349.520, 349.530, 349.540, 349.550, 349.560, 349.570

STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.500. *Purpose.*

§349.510. *Definitions.*

§349.520. *Access to Confidential Information.*

§349.530. *Redaction of Records Prior to Release.*

§349.540. *Procedures for Requesting Access to Confidential Information.*

§349.550. *Public Information.*

§349.560. *Videotapes, Audiotapes, and Photographs.*

§349.570. *Charges for Copies of Records.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 28, 2024.

TRD-202406335

Jana Jones
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: February 9, 2025
For further information, please call: (512) 490-7130

◆ ◆ ◆
SUBCHAPTER F. ADVISORY COUNCIL ON
JUVENILE SERVICES

37 TAC §349.600, §349.650

STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.600. *Purpose.*

§349.650. *Removal of Members.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 28, 2024.

TRD-202406336

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130

◆ ◆ ◆
SUBCHAPTER G. DATA

37 TAC §349.700

STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.700. *Access to Data Collected.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 28, 2024.

TRD-202406337

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130

◆ ◆ ◆
CHAPTER 349. GENERAL ADMINISTRATIVE
STANDARDS

The Texas Juvenile Justice Department (TJJD) proposes new 37 TAC §§349.100, 349.110, 349.120, 349.200, 349.210, 349.220, 349.230, 349.240, 349.250, 349.260, 349.270, 349.300, 349.302, 349.304, 349.310, 349.320, 349.330, 349.340, 349.350, 349.360, 349.370, 349.380, 349.390, 349.400, 349.410, 349.420, 349.430, 349.440, 349.450, 349.460, 349.500, 349.550, and 349.600, relating to General Administrative Standards.

SUMMARY

New §349.100, Definitions, will provide definitions for terms used in the chapter. Key additions and/or revisions will include: 1) removing terms *alleged perpetrator*, *designated perpetrator*, and *sustained perpetrator* and replacing them with the term *suspect*; 2) defining *abuse*, *neglect*, and *exploitation* by reference to 37 TAC Chapter 358; 3) adding definitions of *administrator* and *administrative designee* that are consistent with definitions in Chapter 358; 4) expanding the definition of *certification action* to include ineligibility for certification; 5) expanding the definition of *certified officer* to include a person with a provisional certification; 6) adding a definition of *non-juvenile justice contract facility*; 7) adding a definition of *de novo review*; 8) adding a definition of *juvenile* and expanding it to include juveniles at a non-juvenile justice contract facility; 9) expanding the definition of *juvenile facility* to refer to statutes; 10) replacing terms *juvenile probation officer* and *juvenile supervision officer* with the term *respondent*; and 11) adding a definition of *victim*.

New §349.110, Interpretation, will provide general guidelines for interpreting the chapter. Key additions and/or revisions will include adding: 1) standard interpretation language regarding headings; 2) the term *including*; and 3) calculations of time.

New §349.120, Authorized Delegation, will explain that the executive director may designate in writing another TJJD employee to perform the executive director's duties under this chapter. Key additions and/or revisions will include specifying that the executive director may designate another TJJD employee to perform the executive director's duties under the chapter and that such designation must be in writing.

New §349.200, Waivers and Variances, will provide information on waivers and variances as they apply to the requirements of this chapter. Key additions and/or revisions will include: 1) defining the distinct purposes of waivers and variances; 2) specifying the applicability of waivers and variances and that they may be conditional; 3) specifying how waivers and variances are to be requested and what information must be provided; 4) providing that either a waiver or variance may be granted by the executive director for up to 180 days and that the TJJD Board must approve any time frame longer than 180 days; 5) providing that, if executive director denies a waiver or variance, the requestor may ask the TJJD Board to review the denial; 6) providing that the department or facility requesting the waiver or variance is responsible for appearing at the Board meeting to explain the request and answer questions from the Board; and 7) providing that, when appropriate, TJJD staff will make a recommendation to the Board on whether or not to grant a waiver or variance.

New §349.210, Code of Ethics Violations, will provide guidelines related to the reporting of, notifications related to, and timelines

regarding code of ethics violations. Key additions and/or revisions will include: 1) providing that every person with a TJJJ certification is obligated to report to TJJJ when the person has reason to believe another certified officer has violated the Code of Ethics; 2) clarifying that a failure to report a code of ethics violation may result in disciplinary action; and 3) requiring that confirmed code of ethics violations must be reported to TJJJ Office of General Counsel except when conduct is subject of TJJJ investigation.

New §349.220, Complaints, will provide information about complaints regarding juvenile boards, certified officers, or employees of departments, facilities, or non-juvenile justice contract facilities. Key additions and/or revisions will include addressed how various complaints received by TJJJ are processed.

New §349.230, Violation by Juvenile Board, will provide instruction for times when TJJJ determines a juvenile board, including the department or facility under the juvenile board's jurisdiction, has violated rules, standards, or the terms of the State Financial Assistance Contract. Key additions and/or revisions will include adding the possibility of extending the deadline for compliance when there is a violation of standards or the state financial assistance contract.

New §349.240, Mandatory Suspension for Failure to Pay Child Support, will explain the process for suspending the certification of a certified officer when that officer fails to pay child support.

New §349.250, Administrative Review of Investigation Findings, will explain the process for an administrative review when a person is confirmed by TJJJ to have engaged in conduct meeting the definition of abuse neglect, or exploitation in an investigation conducted under Chapter 358 of this title. Key additions and/or revisions will include: 1) updating language due to removal of *designated perpetrator* term; 2) changing the timeline to request an administrative review from 20 days to 10 days; 3) allowing administrators to request administrative review on behalf of staff; 4) specifying that the attorney who does the administrative review is not the same attorney who advised or otherwise worked on the investigation; 5) specifying that the administrative review is a de novo review; 6) providing that an attorney may interview witnesses and gather additional evidence at the attorney's discretion and may request the assistance of TJJJ's Office of the Inspector General in doing so; 7) specifying that an attorney prepares a written report explaining the decision to confirm or revise the original findings; 8) providing a requirement to notify the suspect or administrative designee and provide estimated completion date if there is a need to extend 45-day completion date; and 9) specifying that administrative review does not apply to investigations conducted of TJJJ employees.

New §349.260, Representation, will explain that the subject of an investigation may elect to appear with legal representation during the administrative review process.

New §349.270, Temporary Suspension Order, will explain that TJJJ may temporarily suspend the certification of a certified office during the administrative review process.

New §349.300, Disciplinary Action, will explain that TJJJ may impose disciplinary action on a certified officer who has committed a code of ethics violation or engaged in abuse, neglect, or exploitation involving a juvenile.

New §349.302, Ineligibility for Certification, will outline TJJJ's authority to make a person ineligible for certification under certain circumstances. Key additions and/or revisions will include

adding the statutory authority to make a person ineligible for certification.

New §349.304, Guidelines, will provide parameters for those seeking, proposing, or making a decision under the standards given in this chapter.

New §349.310, Mandatory Revocation, will explain the circumstances under which a person's certification will be revoked or denied. Key additions and/or revisions will include: 1) clarifying that TJJJ staff shall seek revocation for certain conduct; 2) adding engaging in sexually-related or otherwise inappropriate relationship with a juvenile, whether or not sexual conduct occurred; and 3) adding the statutory provisions from Chapter 53 Occupations Code that mandate revocation.

New §349.320, Notice and Service, will explain the process by which a person is informed of a pending certification action against that person. Key additions and/or revisions will include: 1) adding a mechanism to provide service at an address other than the one on file with TJJJ, in the event the person has moved; 2) adding a provision that allows for notice by publication or any other legal means if necessary; and 3) updating the language that must be included in the notice to provide general content instead of specific terminology.

New §349.330, Answer, will explain the process by which a person may respond to a certification action.

New §349.340, Default, will explain the consequences for a person failing to respond to a certification action.

New §349.350, Agreed Orders, will explain the circumstances surrounding the resolution of certification matters through voluntary settlement processes.

New §349.360, State Office of Administrative Hearings, will explain, that under certain conditions, the matter of a certification action will be schedule for hearing at the State Office of Administrative Hearings. Key additions and/or revisions will include: 1) deleting process requirements for SOAH; and 2) referring to statutes and administrative rules that control.

New §349.370, Decision of the Board, will provide information concerning the various statutes related to TJJJ Board decisions and orders. Key additions and/or revisions will include: 1) deleting specific requirements for Board decisions; and 2) referring to statutes that control those decisions.

New §349.380, Representation, will explain that the respondent to a certification action may elect to appear with legal representation during the certification action process. Key additions and/or revisions will include clarifying that TJJJ is represented by an attorney from the agency's Office of General Counsel.

New §349.390, Costs, will explain that a party who appeals a final decision in a contested case is responsible for the costs related to preparing a copy of the agency proceeding and for any requested transcription.

New §349.400, Purpose, will explain that the purpose of subchapter D of this chapter is to clarify to whom and under what circumstances TJJJ may disclose confidential information related to investigations of abuse, neglect, and exploitation.

New §349.410, Definitions, will provide definitions for terms used in subchapter D.

New §349.420, Confidentiality of and Access to Information, will explain the extent to which records related to abuse, neglect, and exploitation investigations are confidential and accessible. Key

additions and/or revisions will include adding the ability to share information regarding investigation pursuant to a memorandum of understanding adopted under §810.009, Human Resources Code, related to the multiagency search engine for reportable conduct.

New §349.430, Redaction of Records Prior to Release, will explain the extent which TJJD will redact investigation records before their release.

New §349.440, Procedures for Requesting Access to Confidential Information, will provide information pertaining to the extent to which confidential information may be requested and provided.

New §349.450, Public Information, will explain that TJJD will compile statewide statistics on the incidence of abuse, neglect, and exploitation and provide those statistics to the public upon written request.

New §349.460, Video, Audio Recordings, and Photographs, will explain who has access to video, audio recordings, and photographs that are part of the records of investigations.

New §349.500, Purpose, will explain the purpose of the Advisory Council on Juvenile Services and describe various aspects of the council.

New §349.550, Removal of Members, will explain the grounds for removing a member of the Advisory Council.

New §349.600, Access to Data Collected, will explain that, for the purposes of planning and research, all juvenile probation departments participating in the state's regionalization plan are authorized to access data that any other participating departments have submitted through the case management system.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be to bring TJJD into compliance with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed. No private real property rights are affected by adoption of the sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new sections are in effect, the sections will have the following impacts.

- (1) The proposed sections do not create or eliminate a government program.
- (2) The proposed sections do not require the creation or elimination of employee positions at TJJD.
- (3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed sections do not impact fees paid to TJJD.

(5) The proposed sections do not create a new regulation.

(6) The proposed sections do not expand, limit, or repeal an existing regulation.

(7) The proposed sections do not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed sections will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

SUBCHAPTER A. DEFINITIONS AND GENERAL REQUIREMENTS

37 TAC §§349.100, 349.110, 349.120

STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.100. Definitions.

The words and terms used in this chapter shall have the following definitions unless the context clearly indicates otherwise.

(1) Abuse, Neglect, and Exploitation--These terms have the definitions provided in Chapter 358 of this title.

(2) Administrator--Regardless of title, the chief administrative officer of a juvenile probation department, juvenile justice program, juvenile justice facility, or non-juvenile justice contract facility.

(3) Administrative Designee--The role assigned to the administrator when a preponderance of evidence determines that the proximate cause of the abuse, neglect, or exploitation was based on policies and procedures under the direct control of the administrator.

(4) Attorney of Record--A person licensed to practice law in Texas who has provided TJJD with written notice of representation.

(5) Authorized Representative--An attorney authorized to practice law in the State of Texas or, if authorized by applicable law, a person designated by a party to represent the party.

(6) Board--The Texas Juvenile Justice Board, the governing board of TJJD.

(7) Certification Action--An action taken by TJJD with regard to a certification as a juvenile probation, supervision, or community activities officer, to include disciplinary action, designation of ineligibility, and temporary suspension.

(8) Certified Officer--An individual who holds a certification as a juvenile probation, supervision, or community activities officer from TJJD, including a provisional certification.

(9) Chief Administrative Officer--Regardless of title, the person hired by a juvenile board who is responsible for oversight of the day-to-day operations of a juvenile probation department, including a juvenile probation department with multi-county jurisdiction.

(10) Code of Ethics--The Certified Officer Code of Ethics contained in Chapter 345 of this title.

(11) De Novo Review--A review that decides an issue without deference to a conclusion or assumption made by a prior review, finding, or holding; a review that decides the issue as though the decision is being made for the first time.

(12) Department--A juvenile probation department.

(13) Executive Director--The executive director of TJJD.

(14) Facility Administrator--An individual designated by the chief administrative officer or governing board of a juvenile justice facility as the on-site program director or superintendent of a secure facility.

(15) Juvenile--A person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, housed in a non-juvenile justice contract facility pursuant to an order of the juvenile court, or participating in a juvenile justice program, including a prevention and intervention program, regardless of age.

(16) Juvenile Justice Facility ("facility")--A facility that is registered by TJJD pursuant to Sections 51.12, 51.125, or 51.126, Family Code.

(17) Juvenile Justice Program ("program")--A program or department that:

(A) serves juveniles under juvenile court or juvenile board jurisdiction; or

(B) is operated wholly or partly by the juvenile board or by a private vendor under a contract with the juvenile board. The term includes:

(i) a juvenile justice alternative education program;

(ii) a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court or juvenile board; and

(iii) a juvenile probation department.

(18) Non-Juvenile Justice Contract Facility--A facility in which a juvenile is placed pursuant to a contract with a department, program, facility, or juvenile board, other than a facility registered with TJJD.

(19) Respondent--A person who is the subject of a certification action under this chapter.

(20) SOAH--State Office of Administrative Hearings.

(21) Subject--A person alleged or found to be responsible for the abuse, neglect, or exploitation of a juvenile through the person's actions or failure to act.

(22) TJJD--The Texas Juvenile Justice Department.

(23) Victim--A juvenile who is alleged or found to be a victim of abuse, neglect, or exploitation.

§349.110. Interpretation.

(a) Headings. The headings in this chapter are for convenience only and are not intended as a guide to the interpretation of the standards in this chapter.

(b) Including. Unless the context clearly indicates otherwise, the words "include," "includes," and "including," when following a general statement or term, are to be understood as introducing a non-exhaustive list.

(c) Time. Any period of days set forth in this chapter is computed as set forth in Section 311.014, Government Code. Unless otherwise specified, a period of "days" means "calendar days." When this chapter requires or allows an act by any party other than TJJD to be done at or within a specified time period, the executive director or Board may, for good cause shown, order the period extended or permit the act to be done after the expiration of the specified period.

§349.120. Authorized Delegation.

(a) The executive director may designate another TJJD employee to perform the executive director's duties under this chapter.

(b) The designation must be in writing.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 28, 2024.

TRD-202406338

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

37 TAC §§349.200, 349.210, 349.220, 349.230, 349.240, 349.250, 349.260, 349.270

STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.200. Waivers and Variances.

(a) Purpose.

(1) The purpose of a waiver is to excuse a department or facility from the requirement to comply with a particular TJJD standard for a defined period of time when compliance with the standard is not possible due to an event outside of the department's or facility's control.

(2) The purpose of a variance is to provide a mechanism for a department or facility to comply with the intent of a TJJD standard in a different manner than is set out in the standard when compliance with the standard is not possible.

(b) Applicability.

(1) A waiver or variance may be granted for any standard, following this process, unless:

(A) another administrative rule prohibits or provides a different means for a waiver or variance; or

(B) the standard is required by state or federal law and the corresponding law does not expressly permit a waiver or variance.

(2) A waiver or variance may be conditioned on continued compliance with certain terms, as determined by TJJD or the Board, as applicable.

(c) Request.

(1) The juvenile board, chief administrative officer, or facility administrator may submit a request for waiver or variance to TJJD. If the chief administrator or facility administrator submits the request, approval from the juvenile board chair or designee must be included.

(2) A request for a waiver must be submitted on a form provided by TJJD, must state the length of time for which the waiver is requested, and must explain:

(A) why compliance with the standard(s) cannot be achieved;

(B) what undue hardship would be experienced by the department or facility if the waiver is not granted;

(C) what impact the waiver would have on compliance with other standards;

(D) how the health and safety of juveniles will be maintained during the duration of the waiver; and

(E) how issuing the waiver would not put TJJD or the juvenile board, department, or facility in violation of any state or federal law.

(3) A request for a variance must be submitted on a form provided by TJJD, must state the length of time for which the variance is requested, and must explain:

(A) why compliance with the standard(s) cannot be achieved;

(B) what undue hardship would be experienced by the department or facility if the variance is not granted;

(C) what impact the variance would have on compliance with other standards;

(D) how substantial compliance with the intent and purpose of the standard for which a variance is requested would be achieved through alternative methods or means;

(E) how the health and safety of juveniles will be maintained if the variance is granted; and

(F) how issuing the variance would not put TJJD or the juvenile board, department, or facility in violation of any state or federal law.

(d) Incomplete Requests.

(1) At the sole discretion of TJJD, any request for waiver or variance that does not include all required information will be deemed incomplete and returned to the requestor for completion.

(2) No timelines for response begin until the request is complete. An incomplete request will not be presented to the executive director or the Board.

(3) TJJD will inform the requestor regarding which parts of the request are incomplete and provide a minimum of 20 days for the requestor to complete the request. If the request is not completed by the date specified by TJJD, the request will be deemed withdrawn.

(4) TJJD will maintain records of incomplete and withdrawn requests.

(e) Executive Director Authority to Grant a Waiver or Variance.

(1) The executive director may grant a waiver for a period of up to 180 days, but only if the executive director makes the following affirmative findings:

(A) circumstances outside of the department's or facility's control make it impossible to comply with the standard without undue hardship on the requesting department or facility;

(B) the health and safety of juveniles will be maintained if the waiver is granted; and

(C) the waiver will not put TJJD or the juvenile board, department, or facility in violation of any state or federal law.

(2) The executive director may grant a variance for a period of up to 180 days, but only if the executive director makes the following affirmative findings:

(A) the standard cannot be complied with without undue hardship on the requesting department or facility;

(B) the requesting department or facility will comply with the intent and purpose through alternative methods;

(C) the health and safety of juveniles will be maintained if the variance is granted; and

(D) the variance will not put TJJD or the juvenile board, department, or facility in violation of any state or federal law.

(f) Process.

(1) The executive director will respond to a completed request for waiver or variance within 30 days. If unable to do so, TJJD will inform the requestor of the reasons for the delay.

(2) If the request for waiver or variance indicates that it is needed for more than 180 days and the executive director grants the request for any period up to 180 days, the requested waiver or variance will also be presented to the Board for review in accordance with subsection (g) of this section.

(3) If the request for waiver or variance, or extension thereof, is denied, the juvenile board, chief administrative officer, or facility administrator may request a review by the Board, in accordance with subsection (g) of this section.

(g) Board Review of Request for Waiver or Variance.

(1) Except as provided by paragraph (7) of this subsection, only the Board may grant a waiver or variance for a period in excess of 180 days. When appropriate, the Board may grant a permanent variance, with or without conditions. No permanent waivers will be granted.

(2) If the executive director has granted a waiver or variance for which the request indicated it was needed for more than 180 days, the request will be presented to the Board for review at the next Board meeting where waivers and variances will be considered, provided there is adequate time to place the item on the agenda.

(3) If the executive director denies a request for waiver or variance, the juvenile board, chief administrative officer, or facility administrator may request a review on a form provided by TJJD. If the chief administrative officer or facility administrator submits the request for review, approval from the juvenile board chair or designee must be included. If the approval is from the designee, that designation must be in writing and included with the request for review. The review will occur at the next Board meeting where waivers or variances will be

considered, provided there is adequate time to place the item on the agenda.

(4) The department or facility requesting the waiver or variance is responsible for appearing at the Board meeting to explain the request and answer any questions from the Board.

(5) When appropriate, TJJD staff will make a recommendation to the Board regarding whether or not to grant the waiver or variance.

(6) The Board may grant a waiver or variance only if it makes an affirmative finding that the criteria in subsection (c) exist.

(7) If the executive director grants a waiver or variance that will expire prior to the Board meeting at which the waiver or variance will be considered, the executive director may extend the existing waiver or variance until the Board meeting.

§349.210. Code of Ethics Violations.

(a) Duty to Report. Every person with a certification from TJJD is obligated to report to TJJD when the person has reason to believe that another certified officer has engaged in a violation of the Code of Ethics. Failure to report may result in disciplinary action against the certification.

(b) Notification to TJJD. The chief administrative officer, facility administrator, or juvenile board shall notify TJJD's Office of General Counsel when a Code of Ethics violation has been committed by a certified officer, except when the conduct is the subject of a TJJD investigation into an allegation of abuse, neglect, or exploitation.

(c) Timelines. If the investigation is conducted pursuant to a request by TJJD, the investigation must be provided to TJJD in accordance with the timelines in Section 349.220 of this chapter. Otherwise, the chief administrative officer, facility administrator, or juvenile board shall provide TJJD with a copy of the internal investigation into the Code of Ethics violation no later than 10 days after the investigation is completed. The chief administrative officer or facility administrator must also provide a copy of the internal investigation to the juvenile board.

§349.220. Complaints.

(a) When TJJD receives a complaint about a juvenile board, certified officer, or employee of a department, facility, or non-juvenile justice contract facility, TJJD staff shall review the circumstances surrounding the complaint to determine the most appropriate course of action.

(b) If the complaint involves an allegation of abuse, neglect, or exploitation of a juvenile, the complaint will be addressed in accordance with Chapter 358 of this title.

(c) Except as provided by subsection (d) of this section, if the complaint involves an allegation of conduct that, if true, would constitute a violation of the Code of Ethics, the complaint will be referred to the chief administrative officer or facility administrator, as appropriate, who must ensure that an investigation is completed and a report of the investigation provided to TJJD within 90 days of the referral.

(d) If the complaint involves conduct of the chief administrative officer that, if true, would constitute a violation of the Code of Ethics, the complaint will be referred to the juvenile board chair, who must ensure that an investigation is completed and a report of the investigation provided to TJJD within 90 days of the referral.

(e) If the complaint is about juvenile services within the discretion of the juvenile board and not otherwise addressed by this section, TJJD will forward the complaint to the juvenile board chair and

chief administrative officer or facility administrator, as appropriate. The complainant will be notified in writing of this referral.

(f) If the complaint involves an allegation that a juvenile board has violated TJJD rules or standards or the terms of a grant or contract with TJJD, TJJD staff shall investigate the matter and take appropriate action depending on the outcome of the investigation.

(g) If the complaint involves an individual with a license or certification from an entity other than TJJD, the complaint will be forwarded to the licensing entity. If TJJD conducts an investigation related to the complaint, the results of the investigation will be provided to the licensing entity.

§349.230. Violation by Juvenile Board.

(a) If TJJD determines the juvenile board, including the department or facility under the juvenile board's jurisdiction, has violated TJJD rules or standards or the terms of the State Financial Assistance Contract, TJJD shall notify the juvenile board in writing of the violation.

(b) Upon written notice of the violation, the juvenile board shall be given 90 days to achieve compliance or to propose a plan to achieve compliance that is acceptable to TJJD. TJJD may agree to extend this timeline.

(c) If TJJD and the juvenile board cannot reach an agreement, TJJD shall give the juvenile board written notice of its intent to refuse, reduce, or suspend state aid under §223.005, Human Resources Code. Upon receipt of the above notice, the juvenile board shall have 15 days to:

(1) provide written notice to the executive director of the juvenile board's compliance;

(2) propose in writing an alternate solution; or

(3) provide a written appeal of TJJD's action(s) to the executive director.

(d) The juvenile board's appeal must state specifically any difference of opinion with the TJJD staff concerning the facts in dispute and the solution necessary under the standards or rules of TJJD. The appeal shall state whether the juvenile board requests a hearing before the Board.

(e) TJJD will set the appeal on the agenda for its next regularly scheduled meeting, provided there is sufficient time to place the item on the agenda. The juvenile board and TJJD staff may appear and make oral presentations concerning the appeal.

(f) The complainant shall be notified in writing upon receipt of the complaint and upon resolution.

§349.240. Mandatory Suspension for Failure to Pay Child Support.

(a) Suspension. Upon receipt of an order suspending certification for failure to pay child support issued under §232.008 or §232.009, Family Code, TJJD shall suspend the certified officer's certification.

(b) Notice of Suspension.

(1) TJJD shall notify the individual subject to a suspension order received under subsection (a) of this section that the agency has formally suspended the individual's certification.

(2) The notice shall also instruct that the individual may not perform the duties of a certified officer while the suspension order is in effect.

(3) TJJD shall also notify the chief administrative officer or facility administrator and the juvenile board of the employing department, facility, or program of the suspension.

(c) Length of Suspension. A certification suspension under this section shall remain in effect until TJJD receives an order issued under §232.013, Family Code, that either vacates or stays the suspension.

(d) Employment. An individual subject to a suspension order issued under subsection (a) of this section may not be employed in a position requiring certification, granted certification, or have the certification renewed while the suspension order remains in effect.

(e) Appeal. An order under this section is not subject to appeal.

(f) Waiver or Variance. This provision is not subject to a waiver or variance.

§349.250. Administrative Review of Investigation Findings.

(a) Any person confirmed by TJJD to have engaged in conduct meeting the definition of abuse, neglect, or exploitation in an investigation conducted under Chapter 358 of this title, including a person named as an administrative designee as a result of an investigation, may request an administrative review of the investigation findings. An administrator may make the request on behalf of the individual.

(b) The request must be made in writing no later than the 10th day after receiving TJJD's written notice of the investigation findings.

(c) If civil or criminal proceedings related to an allegation that TJJD has investigated are pending when the administrative review is requested, or if such proceedings are initiated before TJJD begins the review, TJJD may postpone the review until the proceedings are completed.

(d) If, as part of the administrative review, TJJD chooses to interview a subject or administrative designee who does not speak English or is hearing impaired, TJJD will provide a certified translator or interpreter unless the subject or administrative designee chooses to provide one, in which case the subject or administrative designee is responsible for all translation or interpretation costs incurred in connection with the review.

(e) The administrative review is conducted by an attorney in the TJJD Office of General Counsel. The attorney may not have advised or otherwise worked on the investigation that is the subject of the administrative review.

(1) The administrative review is a de novo review. The purpose of the review is to determine if there is a preponderance of evidence to establish that the subject or administrative designee engaged in conduct meeting the definition of abuse, neglect, or exploitation, as set out in Chapter 358 of this title.

(2) The attorney may interview witnesses and gather additional evidence at the attorney's discretion. The attorney may request the assistance of the TJJD Office of Inspector General in doing so.

(3) The attorney confirms or revises TJJD's original investigation findings based on TJJD's administrative rules and policies and prepares a written report explaining the decision.

(4) Within 45 days after receiving the request for review, TJJD notifies the subject or administrative designee of the outcome of the review. If necessary, the time period may be extended. If there is an extension, TJJD will notify the subject or administrative designee and provide an estimated completion date.

(f) If the administrative review results in changes to the original findings, TJJD will:

(1) enter the revised findings into the investigation record; and

(2) notify each person who was notified of the original findings that the findings have been revised.

(g) This section does not apply to an investigation conducted under Section 380.9333 of this title.

§349.260. Representation.

(a) A subject or administrative designee may choose to appear with or without an attorney or other authorized representative throughout the administrative review process. The subject or administrative designee is responsible for the costs of representation.

(b) A party's attorney of record shall remain the attorney of record unless the attorney submits a formal request to withdraw to the TJJD attorney involved in the matter except that, if SOAH has acquired jurisdiction, the attorney must comply with SOAH's rules to withdraw.

§349.270. Temporary Suspension Order.

(a) TJJD may issue an order temporarily suspending the certification, including a provisional certification, of a certified officer or temporarily making a former TJJD employee ineligible for certification in accordance with Sections 222.053 and 222.054, Human Resources Code.

(b) Section 2001.054, Government Code, applies to a suspension under this provision.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 28, 2024.

TRD-202406339

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



SUBCHAPTER C. CERTIFICATION ACTIONS AND HEARINGS

37 TAC §§349.300, 349.302, 349.304, 349.310, 349.320, 349.330, 349.340, 349.350, 349.360, 349.370, 349.380, 349.390

STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.300. Disciplinary Action.

(a) TJJD may impose disciplinary action when a certified officer has committed a violation of the Code of Ethics or has engaged in conduct that meets the definition of abuse, neglect, or exploitation involving a juvenile in a department, program, facility, or non-juvenile justice contract facility.

(b) TJJD may impose any of the following disciplinary actions, including a combination of disciplinary actions:

- (1) written reprimand;
- (2) revocation of certification;
- (3) suspension of certification; or
- (4) probated suspension of certification.

(c) A certified officer is entitled to a hearing before SOAH if revocation, suspension, or probated suspension of the certification is the disciplinary action sought.

(d) A majority vote of the Board is required to impose revocation, suspension, or probated suspension as disciplinary action on the certification.

(e) Subject to Board approval, a certified officer may voluntarily surrender the certification in lieu of the imposition of disciplinary action. The acceptance may include a condition that the person is ineligible for future certification.

§349.302. Ineligibility for Certification.

(a) TJJJ may make a person who is a former or current employee, volunteer, or contractor with TJJJ ineligible for certification if the person engaged in conduct meeting the definition of abuse, neglect, or exploitation or that is a violation of the Code of Ethics in TJJJ's personnel policy (PRS.02.03).

(b) TJJJ may make a person who is a former or current employee, volunteer, or contractor with a department, program, facility, or non-juvenile justice contract facility ineligible for certification if the person engaged in conduct meeting the definition of abuse, neglect, or exploitation or that is a violation of the Code of the Ethics in Chapter 345 of this title.

(c) Except as provided by Section 349.270 of this chapter, an individual is entitled to a hearing before SOAH before the person may be deemed ineligible for certification.

(d) A majority vote of the Board is required to make a person ineligible for certification.

§349.304. Guidelines.

(a) The purpose of these guidelines is to:

(1) provide a framework for analysis by staff members, administrative law judges, and the Board in making decisions regarding certification and disciplinary matters;

(2) promote consistency in the exercise of sound discretion in certification and disciplinary matters; and

(3) provide guidance in the resolution of potentially contested matters.

(b) The following factors may be considered in seeking, proposing, or making a decision under this chapter:

(1) the seriousness of the violation, which may include:

(A) whether the conduct was in violation of a law;

(B) the nature and extent of the harm caused; and/or

(C) the frequency of and time period covered by the violation(s);

(2) the nature of the violation, which may include:

(A) the relationship between the respondent and the person harmed;

(B) the vulnerability of the person harmed;

(C) the degree to which the actions showed lack of good judgment; and/or

(D) the culpability of the respondent, such as whether the violation:

(i) was intentional or premeditated;

(ii) was due to blatant disregard or gross neglect;

(iii) resulted from simple error or negligence; and/or

(iv) evidences lack of integrity, trustworthiness, or honesty;

(3) the degree of personal accountability taken by the respondent, which may include:

(A) admission of wrongdoing and acceptance of responsibility;

(B) showing appropriate remorse or concern;

(C) making efforts to ameliorate the harm or make restitution;

(D) cooperation with an investigation or request for information; and

(E) attempts to deny or conceal the misconduct or falsify documents; and

(4) any other relevant factors, which may include:

(A) the respondent's record of training, length of service, position, job responsibilities, and performance history;

(B) the presence or absence of prior or subsequent violations;

(C) any other relevant circumstances, including aggravating or mitigating factors, such as environmental factors that may have contributed to the respondent's actions;

(D) disciplinary action taken in similar incidents; and

(E) disciplinary action taken by the employer and the employer's recommendation to TJJJ regarding certification action.

§349.310. Mandatory Revocation.

(a) TJJJ staff shall seek to revoke or to deny the certification of any person who:

(1) engaged in or solicited any sexual conduct with a juvenile;

(2) engaged in a sexually related or otherwise inappropriate relationship with a juvenile, whether or not sexual conduct occurred;

(3) possessed or distributed child pornography; or

(4) was convicted of or placed on deferred adjudication for any offense requiring revocation under Chapter 53, Occupations Code.

(b) Subsection (a) of this section does not limit the Board's authority to revoke or deny certification in accordance with this chapter.

§349.320. Notice and Service.

(a) Notice and service in a contested case must comply with §2001.052, Government Code, and any relevant administrative rules adopted by SOAH.

(b) Preliminary notice of a certification action must be in writing and personally delivered to the respondent or sent via certified mail, return receipt requested, and regular mail to the respondent at the most recent address on file with TJJJ.

(c) A document sent by regular or certified mail is presumed received no later than three days after mailing. Service is presumed effected if the wrapper containing the document is not returned to TJJJ.

(d) If notice is not effected at the address on record with TJJD, TJJD may use any reasonable resources to locate an accurate address and may effectuate service there, following this section.

(e) Service may be made by publication or any other alternate legal means, if necessary.

(f) If TJJD seeks to take any certification action, other than written reprimand for a certified officer, TJJD shall provide the respondent with written notice that includes:

(1) the name of the respondent;
(2) the certification number if the respondent is a certified officer;

(3) a short, plain statement of the facts or conduct alleged to warrant certification action;

(4) a statement of the legal authority and jurisdiction under which the action is to be taken;

(5) a reference to the particular sections of statute, administrative rule, or policy that the respondent officer is alleged to have violated;

(6) a description of the certification action TJJD is recommending be imposed; and

(7) an invitation for the respondent to show compliance with all requirements of the law for retention of the certification or eligibility for the certification.

(g) The notice shall also include language in 12-point, bold-face type that provides the respondent with notice that:

(1) failure to file a written answer to this notification within 20 days may result in the Texas Juvenile Justice Board taking a default order;

(2) the written answer must include an admission or denial of each and every allegation included in the petition and must include any other matter, whether of law or fact, upon which respondent intends to rely for defense;

(3) a failure to admit or deny each allegation will result in the allegation being deemed true and may result in a default order;

(4) a default order means the Board will find the allegations in the attached petition to be true and will grant the action requested in the attached petition.

§349.330. Answer.

(a) The respondent in a certification action matter has until 20 days after the service of the notice in §349.320 of this chapter to file a written response to TJJD and send it to the address provided in the notice.

(b) The answer must admit or deny each of the allegations in the notice. If the respondent intends to deny only a part of an allegation, the certified officer must specify the portion that is not being challenged and deny only the remainder. Failure to deny an allegation will result in the allegation being deemed true.

(c) If the answer fails to admit or deny each of the allegations and instead only challenges the recommended action, the allegations will be deemed true and the action pursued. The answer must also include any other matter, whether of law or fact, upon which the respondent intends to rely for defense.

§349.340. Default.

(a) If the respondent fails to file a response to the notice or the response fails to comply with the requirements in §349.330, the matter will be considered as a default case.

(b) In a case of default, the respondent will be deemed to have:

(1) admitted the factual allegations in the notice that respondent did not deny;

(2) waived the opportunity to show compliance with the law;

(3) waived the opportunity for a hearing on the matter; and

(4) waived objection to the certification action recommended in the notice.

(c) The executive director may recommend that the Board enter a default order based upon the allegations set out in the notice provided in §349.320 of this chapter and impose the certification action recommended in that notice.

(d) Upon consideration of the case, the Board may:

(1) enter a default order and impose the recommended certification action;

(2) enter a default order and impose a certification action that is less than what was recommended;

(3) refuse to enter a default order and instruct staff to reissue the notice with different allegations and/or different recommended certification action;

(4) instruct staff to dismiss the matter and close the file with no certification action; or

(5) order the matter set for hearing before SOAH.

(e) A motion for rehearing that requests the Board vacate its default order under this section shall be granted if the respondent proves by a preponderance of the evidence that the failure to answer the formal charges was not intentional or the result of conscious indifference but instead was due to accident or mistake, provided that the respondent has a meritorious defense to the factual allegations contained in the formal charges and the granting thereof will not cause delay or otherwise create a hardship for the Board.

§349.350. Agreed Orders.

(a) The Board's policy is to encourage the resolution of certification matters through voluntary settlement processes. Any matter within the Board's jurisdiction may be resolved informally by agreed order after the respondent has provided a response in accordance with §349.330.

(b) Communication during the settlement process may be conducted in any manner, including in-person, electronic, telephonic, video, or written communication.

(c) Participation by the respondent and TJJD in any settlement process is voluntary and may be terminated by either party without prejudicing the right to proceed with a contested case.

(d) An agreed order may contain such terms as the executive director deems reasonable and necessary.

(e) An agreed order may be made at any time, even after formal proceedings have been initiated.

(f) An agreed order is not final until the Board approves it in a Board meeting in compliance with Texas Open Meeting laws.

(g) If the respondent fails to comply with the terms of an agreed order, formal disciplinary proceedings may be initiated or resumed.

§349.360. State Office of Administrative Hearings.

(a) If a respondent provides a written response as required in §349.330 of this chapter and no agreed order is entered as provided in §349.350 of this chapter, the matter will be set for hearing at SOAH.

(b) Chapter 2001, Government Code, and SOAH administrative rules and procedures, as relevant, apply to all parts of the proceeding.

§349.370. Decision of the Board.

(a) The Board issues orders in compliance with relevant statutes, including Sections 2001.058 and 2001.141, Government Code.

(b) TJJD shall provide notice of the Board's decision in accordance with Section 2001.142, Government Code.

(c) Board orders become final in accordance with timelines established in Section 2001.144, Government Code.

(d) A summary of final board orders in which certification action is taken, including the name of the individual, certification number(s), if any, and action taken, are maintained by TJJD and are public.

(e) Motions for rehearing and appeals of final orders are governed by Chapter 2001, Government Code.

§349.380. Representation.

(a) A respondent may choose to appear with or without an attorney or other authorized representative throughout the certification action process. Respondent is responsible for the costs of representation.

(b) A respondent's attorney of record shall remain the attorney of record unless the attorney submits a formal request to withdraw to the TJJD attorney involved in the matter except that, if SOAH has acquired jurisdiction, the attorney must comply with SOAH's rules to withdraw.

(c) TJJD is represented by an attorney from the Office of General Counsel throughout the certification action process.

§349.390. Costs.

(a) A party who appeals a final decision in a contested case shall pay all of the cost of preparing an original or certified copy of the agency proceeding that is required to be sent to the reviewing court. A charge imposed under this provision is a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

(b) A party who requests that any part of the proceedings be transcribed is responsible for paying the cost of the transcription.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 28, 2024.

TRD-202406340

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



SUBCHAPTER D. CONFIDENTIALITY AND RELEASE OF ABUSE, EXPLOITATION, AND NEGLECT INVESTIGATION RECORDS

37 TAC §§349.400, 349.410, 349.420, 349.430, 349.440, 349.450, 349.460

STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.400. Purpose.

The purpose of this subchapter is to clarify to whom and under what circumstances TJJD may disclose information made confidential under §261.201, Family Code.

§349.410. Definitions.

The words and terms used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) Investigation Records--That portion of the records described in §261.201, Family Code, which were generated by TJJD or submitted to TJJD during the course of an abuse, neglect, or exploitation investigation.

(2) Parent--Biological or adoptive parent, possessory conservator, temporary or permanent managing conservator, legal guardian, or other legal representative of the juvenile, provided that the requestor's parental or other legal relationship to the juvenile has not been terminated at the time the request for information is made.

(3) Report--Formal notification to TJJD of an alleged incident of abuse, neglect, or exploitation of a juvenile in a juvenile justice program and/or under the jurisdiction of the juvenile court.

(4) Reporter--An individual who makes a report to TJJD alleging the abuse, neglect, or exploitation of a juvenile. If more than one individual makes a report alleging abuse, neglect, or exploitation of the same juvenile, all such individuals shall have the designation of reporter.

§349.420. Confidentiality of and Access to Information.

(a) A report of subjected abuse, neglect, or exploitation and the files, reports, records, communications, audio recordings, videos, and working papers used or developed in an investigation or in providing services as a result of an investigation are confidential and may be disclosed only for purposes consistent with Chapter 261, Family Code, applicable federal or state law, and in accordance with this chapter.

(b) The identity of the person making the report of alleged abuse, neglect, or exploitation is confidential and may be disclosed only:

(1) if waived in writing by the person making the report;

(2) to a law enforcement officer for the purposes of conducting a criminal investigation of the report; or

(3) in accordance with Section 261.201, Family Code.

(c) The identity of all juveniles in the investigation report is confidential and will not be released except as authorized by law.

(d) A copy of the investigation report, appropriately redacted in accordance with law and Section 349.430 of this chapter, may be provided to the following upon request:

(1) juvenile board, chief administrative officer, and facility administrator;

(2) the subject in the report;

(3) the juvenile victim and/or the juvenile's parents;

(4) law enforcement officials for the purpose of investigating allegations of abuse, neglect, or exploitation or criminal activity;

(5) a physician who suspects a juvenile may be the victim of abuse, neglect, or exploitation and requires this information for diagnosis, prognosis, or treatment of the juvenile;

(6) a government official when specifically required by law;

(7) a grand jury;

(8) an attorney, attorney ad litem, guardian ad litem, or court-appointed special advocate of a victim;

(9) a court in a criminal or civil case arising in connection with an investigation of abuse, neglect, or exploitation;

(10) SOAH in a case seeking to impose discipline on a certification or make an individual ineligible for certification;

(11) the attorney general of the state, or a county or district attorney, when such attorney represents the state in a proceeding in connection with an investigation;

(12) a member of the state legislature when necessary to carry out that member's official duties;

(13) pursuant to a Memorandum of Understanding adopted under Section 810.009, Health and Safety Code; and

(14) any other person or entity, including other licensing agencies, other government agencies, and law enforcement and prosecutors, when, in the discretion of TJJD, such information is necessary to aid in the protection of juveniles.

(e) An individual not otherwise entitled to have access to records under this section, but who participated in, cooperated with, or otherwise contributed to an investigation, may have access only to that portion of the investigation records obtained directly from or pertaining directly to that individual.

(f) TJJD shall withhold the release of any investigation records obtained from another source if the release of those records to the requestor is specifically prohibited under state or federal law. Information that may be withheld under this section includes:

(1) all medical records subject to the Medical Practices Act, Chapter 159, Occupations Code, unless release to the requestor is authorized under that Act;

(2) HIV information unless release to the requestor is authorized under Chapter 81, Health and Safety Code;

(3) offense reports, criminal history information, and/or arrest records obtained from a law enforcement entity, unless their release to the requestor is specifically authorized under state or federal law; and

(4) adult or juvenile probation records, as well as records related to the taking into custody of a juvenile, unless release to the requestor is specifically authorized under state or federal law.

(g) Notwithstanding any other provision in this chapter, TJJD may withhold any information in the investigation records if TJJD determines the release of that information would endanger the life or safety of any individual, including the juvenile, the reporter, and any other person who participates in the investigation. TJJD will keep a

record of any information so withheld and will document the specific factual basis for its belief that the release of the information would be likely to endanger the life or safety of an individual.

(h) Information withheld from a requestor under this subsection, as well as the documented basis for withholding information under subsection (g) of this section, may be released only upon a court order.

§349.430. Redaction of Records Prior to Release.

(a) Unless otherwise permitted by law, prior to the release of investigation records, TJJD shall redact the name, address, and any other information in the record that tends to reveal the identity of the reporter.

(b) In the event the reporter also provided a witness statement or other evidence, the reporter's identity as a witness and the information provided in the role of witness will be released. Any information that might identify the individual as the reporter shall be redacted from the record prior to its release.

(c) TJJD may, in its discretion, redact personally identifiable information about any person other than the reporter who is referenced in a report. Identifying information includes names, social security numbers, home and work addresses, telephone numbers, and driver's license numbers.

§349.440. Procedures for Requesting Access to Confidential Information.

(a) Subject to the exception in §349.460 of this chapter, upon written request for copies of records and a determination that the requestor is entitled to have access to those records pursuant to either these rules or a court order issued in accordance with the provisions in §261.201, Family Code, the TJJD will provide copies of the requested records.

(b) Notwithstanding any other provision in this chapter, TJJD may not disclose any information that, if released to the requestor, would interfere with a criminal investigation or prosecution.

(c) Records will not be released until the investigation of an allegation of abuse, neglect, and exploitation is complete unless TJJD determines that release prior to completion of the investigation is necessary to aid in the protection of juveniles.

(d) Notwithstanding any other provision in this chapter, if TJJD has been sued and determines that the release of the requested records might interfere with the defense of that litigation, TJJD may require that a requestor seek access to records under the appropriate rules of civil procedure rather than under this chapter.

§349.450. Public Information.

TJJD shall compile statewide statistics on the incidence of abuse, neglect, and exploitation as required by §261.402, Family Code.

(1) The following statistical data, which contains no case-specific identifiers, is available to the public upon written request:

(A) the number of reported allegations of abuse, neglect, and exploitation;

(B) the classifications assigned to reported allegations of abuse, neglect, and exploitation; and

(C) the dispositions assigned to investigations of reported allegations of abuse, neglect, and exploitation.

(2) Upon written request and when necessary to cross-reference statistical data with individual allegations of abuse, neglect, and exploitation reported from an individual county, or for purposes of compliance with §§51.12, 51.125, or 51.126, Family Code, the department, facility, or juvenile board may be entitled to specific case

numbers assigned to allegations of abuse, neglect, and exploitation that were reported by the county requesting the data. A county may only request specific case numbers related to allegations of abuse, neglect, and exploitation pertaining to juvenile justice programs and facilities in its own county.

(3) No exceptions to disclosure under the Public Information Act, Chapter 552, Government Code, are waived by the exchange, disclosure, or dissemination of juvenile justice information under this rule.

§349.460. Video, Audio Recordings, and Photographs.

(a) Individuals authorized under §349.420 of this chapter to have access to investigation records may review, in accordance with this section, any video, audio recordings, or photographs that are a part of those records.

(1) Access will be permitted only in areas designated by TJJD and at a time mutually convenient to the requestor and TJJD.

(2) When viewing or listening to these records, the requestor may not be accompanied by any individual who would not otherwise be entitled to have access to these records, unless the participation of this individual is deemed by TJJD to be appropriate under the circumstances surrounding the request.

(b) Copies of video, audio recordings, and photographs may be provided to the individuals or entities identified in §349.420 of this chapter only if TJJD determines that the provision of a copy is essential to the investigation, prosecution, or resolution of a case.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 28, 2024.

TRD-202406341

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



SUBCHAPTER E. ADVISORY COUNCIL ON JUVENILE SERVICES

37 TAC §349.500, §349.550

STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.500. Purpose.

(a) The purpose of the Advisory Council on Juvenile Services is to advise the Texas Juvenile Justice Board and Texas Juvenile Justice Department on:

(1) the needs and problems of juvenile boards and juvenile probation departments;

(2) long-range strategic planning;

(3) reviews and proposed revisions to standards affecting juvenile probation programs, services, and facilities;

(4) the potential cost impact on juvenile probation departments of new standards proposed by the Texas Juvenile Justice Board;

(5) recommendations to improve information sharing between agencies that serve children, including agencies serving children involved in both the juvenile justice and child welfare systems; and

(6) any other matter at the request of the Texas Juvenile Justice Board.

(b) The goal of the advisory council is to provide actionable, direct, and inclusive feedback from the local perspective to the Texas Juvenile Justice Board and Texas Juvenile Justice Department so the unified juvenile justice system can collectively develop and improve the state's comprehensive continuum of care for youth; prioritize evidence-based rehabilitative services; and ensure safety for youth, staff, and the public.

(c) The advisory council is composed of 15 members, as specified in Chapter 203, Human Resources Code. Members, excluding ex officio members, serve staggered two-year terms. Texas Juvenile Justice Board-appointed members shall receive training on the advisory council's purpose, role, and procedures within 30 days of their appointment.

(d) If a vacancy occurs on the council during a member's term, the Texas Juvenile Justice Board must appoint a replacement who meets the qualifications of the vacant position to serve for the remainder of the term.

(e) A majority of advisory council members, excluding ex officio members as defined in Chapter 203, Human Resources Code, constitutes a quorum. A quorum must be present to vote on action items that will be submitted to the Texas Juvenile Justice Board for consideration.

(f) Ex officio members have the same rights and privileges as other members, including the right to vote. These members are not counted when determining the number of members who represent a quorum or in determining whether a quorum is present.

(g) An advisory council member shall avoid the appearance of a conflict of interest by not voting or participating in a decision by the council that solely benefits, solely penalizes, or otherwise solely impacts the county or juvenile probation department over which the member has authority.

(h) The advisory council's presiding officer or designee shall periodically update the board on the council's activities, progress on board directives, and issues impacting juvenile probation programs, services, and facilities.

(i) The advisory council is subject to Chapter 552, Government Code, as the act applies to bodies that are solely advisory in nature.

(j) The advisory council is not subject to Chapter 2110, Government Code. The department shall evaluate the continuing need for and recommendations to improve the council during the rule review process established under Chapter 2001, Government Code.

§349.550. Removal of Members.

It is a ground for removal from the council if a member is absent from more than half of the regularly scheduled meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the council.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 28, 2024.

TRD-202406342

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



SUBCHAPTER F. DATA

37 TAC §349.600

STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§349.600. Access to Data Collected.

For planning and research purposes, all juvenile probation departments participating in the implementation of the state's regionalization plan developed under Chapter 203, Human Resources Code, are authorized to access data that any participating departments have submitted through the juvenile case management system.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 28, 2024.

TRD-202406343

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



CHAPTER 350. INVESTIGATING ABUSE, NEGLECT, EXPLOITATION, DEATH AND SERIOUS INCIDENTS

37 TAC §§350.100, 350.110, 350.120, 350.200, 350.210, 350.300, 350.400, 350.500, 350.600, 350.610, 350.620, 350.700, 350.800, 350.900 - 350.904

The Texas Juvenile Justice Department (TJJD) proposes to repeal 37 TAC Chapter 350, Investigating Abuse, Neglect, Exploitation, Death and Serious Incidents, and all of its sections, including §§350.100, Definitions; 350.110, Interpretation; 350.120, Applicability; 350.200, Assessment; 350.210, Prioritization, Activation and Initiation; 350.300, Investigations; 350.400, Notification and Referral; 350.500, Requests for Dis-

ciplinary Action; 350.600, Retention, Release and Redaction of Commission Records; 350.610, Release of Confidential Information; 350.620, Redaction of Records; 350.700, Call Line; 350.800, Serious Incidents; 350.900, Training and Quality Assurance; 350.901, Pre-Service Training; 350.902, Competency Testing; 350.903, Continuing Education; and 350.904 Quality Assurance.

SUMMARY OF CHANGES

Chapter 350 and its sections are proposed for repeal so that their content can be revised and included in a revision of 37 TAC Chapter 358.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the repealed sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the repeals.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the repealed sections are in effect, the public benefit anticipated as a result of administering the repeals will be to bring TJJD into compliance with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the repealed sections as proposed. No private real property rights are affected by the repeal of the sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repeals are in effect, the repeals will have the following impacts.

- (1) The proposed repeals do not create or eliminate a government program.
- (2) The proposed repeals do not require the creation or elimination of employee positions at TJJD.
- (3) The proposed repeals do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed repeals do not impact fees paid to TJJD.
- (5) The proposed repeals do not create a new regulation.
- (6) The proposed repeals do not expand, limit, or repeal an existing regulation.
- (7) The proposed repeals do not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed repeals will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile

boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

- §350.100. *Definitions.*
- §350.110. *Interpretation.*
- §350.120. *Applicability.*
- §350.200. *Assessment.*
- §350.210. *Prioritization, Activation and Initiation.*
- §350.300. *Investigations.*
- §350.400. *Notification and Referral.*
- §350.500. *Requests for Disciplinary Action.*
- §350.600. *Retention, Release and Redaction of Commission Records.*
- §350.610. *Release of Confidential Information.*
- §350.620. *Redaction of Records.*
- §350.700. *Call Line.*
- §350.800. *Serious Incidents.*
- §350.900. *Training and Quality Assurance.*
- §350.901. *Pre-Service Training.*
- §350.902. *Competency Testing.*
- §350.903. *Continuing Education.*
- §350.904. *Quality Assurance.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2024.

TRD-202406325

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



CHAPTER 358. IDENTIFYING, REPORTING, AND INVESTIGATING ABUSE, NEGLECT, EXPLOITATION, DEATH, AND SERIOUS INCIDENTS

37 TAC §§358.100, 358.120, 358.140, 358.200, 358.220, 358.240, 358.300, 358.320, 358.340, 358.360, 358.400, 358.420, 358.440, 358.460, 358.500, 358.520, 358.540, 358.600, 358.620

The Texas Juvenile Justice Department (TJJD) proposes to repeal 37 TAC §§358.100, 358.120, 358.140, 358.200, 358.220, 358.240, 358.300, 358.320, 358.340, 358.360, 358.400, 358.420, 358.440, 358.460, 358.500, 358.520, 358.540, 358.600, and 358.620, relating to Identifying, Reporting, and Investigating Abuse, Neglect, Exploitation, Death, and Serious Incidents.

SUMMARY OF REPEAL

The repeal of §§358.100, Definitions; 358.120, Interpretation; 358.140, Applicability; 358.200, Policy and Procedure; 358.220,

Data Reconciliation; 358.240, Signage; 358.300, Identifying and Reporting Abuse, Neglect, Exploitation, and Death; 358.320, Parental Notification; 358.340, Reporting of Allegations by Juveniles; 358.360, Allegations Occurring Outside the Juvenile Justice System; 358.400, Internal Investigation; 358.420, Reassignment or Administrative Leave During the Internal Investigation; 358.440, Cooperation with TJJD Investigation; 358.460, Corrective Measures; 358.500, Internal Investigation Report; 358.520, Required Components of an Internal Investigation Report; 358.540, Submission of Internal Investigation Report; 358.600, Serious Incidents; and 358.620, Medical Documentation for Serious Incidents will allow the content to be revised and republished as new §§358.100, 358.110, 358.120, 358.130, 358.200, 358.210, 358.220, 358.230, 358.240, 358.250, 358.260, 358.270, 358.280, 358.290, 358.300, 358.310, 358.320, 358.330, 358.340, 358.400, 358.410, 358.420, 358.430, 358.440, 358.450, and 358.460, .

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the repeals are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the repeals.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of administering the repeals will be to bring TJJD into compliance with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed. No private real property rights are affected by adoption of the repeals.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repeals are in effect, the repeals will have the following impacts.

- (1) The proposed repeals do not create or eliminate a government program.
- (2) The proposed repeals do not require the creation or elimination of employee positions at TJJD.
- (3) The proposed repeals do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed repeals do not impact fees paid to TJJD.
- (5) The proposed repeals do not create a new regulation.
- (6) The proposed repeals do not expand, limit, or repeal an existing regulation.
- (7) The proposed repeals do not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed repeals will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjtd.texas.gov.

STATUTORY AUTHORITY

The repeals are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

- §358.100. *Definitions.*
- §358.120. *Interpretation.*
- §358.140. *Applicability.*
- §358.200. *Policy and Procedure.*
- §358.220. *Data Reconciliation.*
- §358.240. *Signage.*
- §358.300. *Identifying and Reporting Abuse, Neglect, Exploitation, and Death.*
- §358.320. *Parental Notification.*
- §358.340. *Reporting of Allegations by Juveniles.*
- §358.360. *Allegations Occurring Outside the Juvenile Justice System.*
- §358.400. *Internal Investigation.*
- §358.420. *Reassignment or Administrative Leave During the Internal Investigation.*
- §358.440. *Cooperation with TJJD Investigation.*
- §358.460. *Corrective Measures.*
- §358.500. *Internal Investigation Report.*
- §358.520. *Required Components of an Internal Investigation Report.*
- §358.540. *Submission of Internal Investigation Report.*
- §358.600. *Serious Incidents.*
- §358.620. *Medical Documentation for Serious Incidents.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2024.

TRD-202406326

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



CHAPTER 358. IDENTIFYING, REPORTING, AND INVESTIGATING ABUSE, NEGLECT, EXPLOITATION, DEATH, AND SERIOUS INCIDENTS

The Texas Juvenile Justice Department (TJJD) proposes new 37 TAC §§358.100, 358.110, 358.120, 358.130, 358.200, 358.210, 358.220, 358.230, 358.240, 358.250, 358.260, 358.270, 358.280, 358.290, 358.300, 358.310, 358.320, 358.330, 358.340, 358.400, 358.410, 358.420, 358.430, 358.440, 358.450, 358.460, relating to Identifying, Reporting, and Investigating Abuse, Neglect, Exploitation, Death, and Serious Incidents.

SUMMARY

New §358.100, Definitions, will provide definitions for terms used in the chapter. Key additions and/or revisions will include: 1) removing terms *alleged perpetrator*, *designated perpetrator*, and

sustained perpetrator and replacing them with the term *suspect*; 2) adding the term *non-juvenile justice contract facility*; 3) adding *abscond from nonsecure facility* to *serious incident*; 4) ensuring definitions related to sexual abuse are consistent with PREA, particularly related to juvenile contact with other juveniles; 5) adding definitions of *reasonable cause to believe* and *preponderance of the evidence*; 6) modifying definitions of *abuse*, *neglect*, and *exploitation* to remove reference to changed statute; and 7) adding definition of *emotional harm* and *physical injury*.

New §358.110, Interpretation, will provide general guidelines for interpreting the chapter. Key additions and/or revisions will include adding the calculation of time and a reference to applicable statute.

New §358.120, Applicability, will explain the circumstances to which this chapter will apply. Key additions and/or revisions will include expanding applicability to include abuse, neglect, exploitation, serious incidents, and death that involve juvenile at non-juvenile justice contract facilities.

New §358.130, Toll-Free Call Center, will explain that TJJD operates a call center for the specific purpose of reporting alleged abuse, neglect, exploitation, death, and serious incidents.

New §358.200, Policy and Procedure, will describe the types of policies and procedures required of departments, programs, and facilities. Key additions and/or revisions will include: 1) clarifying that all contracts with non-juvenile justice contract facilities will require the placement to report abuse, neglect, exploitation, death, or serious incident to the juvenile probation department, program, or facility and to TJJD; to conduct an internal investigation in accordance with this chapter or allow the department, program, or facility to do so; and to cooperate with all assessments and investigations; and 2) modifying the reporting requirement to be when there is *reasonable cause* to believe abuse, neglect, or exploitation has occurred.

New §358.210, Information on Reporting, will explain how and when youth and parents are made aware of the process for reporting alleged abuse, neglect, exploitation, death, and serious incidents. Key additions and/or revisions will include adding that facilities or programs provide a youth's parents with information on reporting suspected abuse, neglect, or exploitation to TJJD and the TJJD toll-free number as soon as practicable after child is taken into custody or placed in the facility.

New §358.220, Data Reconciliation, will explain the information TJJD requires for all allegations of abuse, neglect, exploitation, death, and serious incidents.

New §358.230, Reporting Abuse, Neglect, and Exploitation, will explain a person's duty to report abuse, neglect, and exploitation and will present timeframes and methods of reporting. Key additions and/or revisions will include: 1) expanding duty to report to include non-juvenile justice contract facility and changing duty to be when there is reasonable cause to believe; and 2) modifying reporting methods to remove *fax* as an option.

New §358.240, Reporting Serious Incidents, will explain a person's duty to report serious incidents and will present timeframes and methods of reporting. Key additions and/or revisions will include: 1) expanding duty to report to include non-juvenile justice contract facility; and 2) modifying reporting methods to remove *fax* as an option.

New §358.250, Reporting Deaths, will explain a person's duty to report a death and will present timeframes and methods of

reporting. Key additions and/or revisions will include expanding duty to report to include non-juvenile justice contract facility.

New §358.260, Parental Notification, will explain the requirements regarding notifying parents or guardians when a youth has died or is the alleged victim of abuse, neglect, exploitation, or serious incident. Key additions and/or revisions will include adding a requirement to report to a parent that their child was involved in a serious incident using the same timeframes as the requirements to report abuse, neglect, and exploitation.

New §358.270, Reporting of Allegations by Juveniles, will specify a youth's right to report allegations of abuse, neglect, exploitation, and death. Key additions and/or revisions will include adding a requirement to report to a parent that their child was involved in a serious incident using the same timeframes as the requirements to report abuse, neglect, exploitation, and death.

New §358.280, Internal Investigation, will explain the specifics for the mandatory investigations that must be undertaken in every case when a youth has died or is the victim of alleged abuse, neglect, or exploitation. Key additions and/or revisions will include: 1) clarifying that a delay in starting an internal investigation in order to protect the integrity of potential evidence occurs only after consultation with local law enforcement or TJJJ's Office of Inspector General; 2) clarifying that policies and procedures related to internal investigations must be provided to TJJJ upon request; and 3) providing that the burden of proof in an internal investigation is a preponderance of the evidence and that the burden of proof cannot be lowered or raised.

New §358.290, Corrective Measures, will explain the scope of the corrective measures that may be taken at the conclusion of an internal investigation. Key additions and/or revisions will include clarifying that corrective measures that must be taken, if warranted, also apply to persons found to have engaged in misconduct not classified as abuse, neglect, or exploitation.

New §358.300, Internal Investigative Report, will explain that a report must be completed at the conclusion of every internal investigation and will provide the items that must be included in the report. Key additions and/or revisions will include adding a requirement to notify TJJJ within five calendar days if disciplinary action is imposed after the submission of the internal investigation report.

New §358.310, Submission of Internal Investigative Report, will explain what TJJJ requires to be submitted as part of the internal investigative report.

New §358.320, Reassignment or Administrative Leave during the Internal Investigation, will explain the options for addressing the work status of personnel alleged to have abuse, neglected, or exploited a youth

New §358.330, Cooperation with TJJJ Investigation, will explain that all persons must cooperate fully with a TJJJ investigation into allegations of abuse, neglect, exploitation, death, and serious incidents. Key additions and/or revisions will include adding serious incident to the types of investigations all persons are required to fully cooperate with.

New §358.340, Cooperation with Other Agencies, will explain that all persons must also cooperate with other agencies that have the authority to investigate allegations of abuse, neglect, exploitation, death, and serious incidents. Key additions and/or revisions will include adding a requirement to fully cooperate with other state agencies or licensing entities with authority to inves-

tigate, such as an agency that holds the occupational license of a person who is the subject of an investigation.

New §358.400, TJJJ Assessment and Referral, will explain that TJJJ will complete assessments on all reports of alleged abuse, neglect, exploitation, death, and serious incidents to determine the authority under which the alleged conduct falls. Key additions and/or revisions will include: 1) adding serious incidents to the things TJJJ can assess to determine if an investigation is warranted or if a referral to another TJJJ division, the juvenile probation department or facility, or another state agency is appropriate; 2) clarifying that TJJJ may conduct an assessment when there is a reasonable cause to believe one is warranted; 3) clarifying that the purpose of an assessment is to determine if the conduct falls under TJJJ's investigative or other regulatory authority and if action or investigation is warranted; and 4) providing that TJJJ may request information as part of the assessment and the requested information must be provided.

New §358.410, TJJJ Investigations, will provide the parameters for how investigations will be conducted. Key additions and/or revisions will include: 1) clarifying that an investigation may be conducted based on a report or may be initiated by TJJJ when there is reasonable cause to believe that an incident may require investigation, regardless of how TJJJ was made aware of the matter; 2) removing detailed procedures of how investigations are conducted from administrative rule as they are more appropriately addressed in policies and procedures; 3) adding that a person who obtains employment in another jurisdiction while an investigation is pending may not be in a position having contact with juveniles until the investigation is finalized by TJJJ or TJJJ approves.

New §358.420, Findings in Abuse, Neglect, and Exploitation Investigations, will explain the burden of proof required in findings of abuse, neglect, exploitation, death, and serious incidents and will provide specific definitions for certain behaviors. Key additions and/or revisions will include: 1) clarifying that a finding of abuse, neglect, or exploitation requires a preponderance of evidence to establish the person engaged in conduct meeting the definition, including having done so with the required mental state; 2) defining *intentionally*, *knowingly*, and *recklessly* according to definitions in the Penal Code; 3) defining *negligence* using the definition in civil law negligence cases; and 4) defining the required findings for abuse, neglect, and exploitation allegations.

New §358.430, Abuse, Neglect, and Exploitation Investigative Report, will explain that an investigative report must include certain elements and may include others. Key additions and/or revisions will include: 1) providing that the investigator in an abuse, neglect, and exploitation report will summarize and analyze the evidence and make a recommendation regarding whether the evidence is sufficient to establish ANE occurred; 2) providing that a TJJJ attorney will review the investigation for legal sufficiency and make findings as to whether the evidence establishes that abuse, neglect, or exploitation occurred; and 3) adding that the attorney may request additional information or investigation by TJJJ's Office of Inspector General if necessary.

New §358.440, Notification of Findings, will explain who is notified of the findings of an investigation. Key additions and/or revisions will include providing who will be notified of the findings and the notice for administrative review.

New §358.450, Other Actions by TJJJ, will provide other courses of action that TJJJ might take as a result of an investigation.

New §358.460, Maintenance of Records and Data, will explain the process for maintaining records and data related to investigations into abuse, neglect, exploitation, death, and serious incidents.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new sections are in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be to bring TJJD into compliance with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed. No private real property rights are affected by adoption of the sections.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new sections are in effect, the sections will have the following impacts.

- (1) The proposed sections do not create or eliminate a government program.
- (2) The proposed sections do not require the creation or elimination of employee positions at TJJD.
- (3) The proposed sections do not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed sections do not impact fees paid to TJJD.
- (5) The proposed sections do not create a new regulation.
- (6) The proposed sections do not expand, limit, or repeal an existing regulation.
- (7) The proposed sections do not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed sections will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

SUBCHAPTER A. DEFINITIONS, APPLICABILITY, AND GENERAL REQUIREMENTS

37 TAC §§358.100, 358.110, 358.120, 358.130

STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§358.100. Definitions.

Terms used in this chapter have the following meanings unless otherwise expressly defined within the chapter.

(1) Abuse--an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a juvenile served by the juvenile justice facility or program. Abuse also includes the definition in Section 261.001, Family Code.

(2) Administrator--the chief administrative officer of a juvenile probation department, juvenile justice program, juvenile justice facility, or non-juvenile justice contract facility.

(3) Administrative Designee--the role assigned to the administrator when a preponderance of evidence determines that the proximate cause of the abuse, neglect, or exploitation was based on policies and procedures under the direct control of the administrator.

(4) Department--a juvenile probation department.

(5) Emotional harm--an impairment in the juvenile's growth, development, or psychological functioning that normally requires evaluation or treatment by a trained mental health or health care professional, regardless of whether evaluation or treatment is actually received. Sexual conduct between employees, volunteers, or contractors and juveniles is presumed to cause substantial emotional harm.

(6) Exploitation--the illegal or improper use of a juvenile or the resources of a juvenile for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program.

(7) Incident Report Form--the form used to report to TJJD allegations of abuse, neglect, or exploitation, the death of a juvenile, and serious incidents.

(8) Internal Investigation--a formalized and systematic inquiry conducted in response to an allegation of abuse, neglect, or exploitation or the death of a juvenile.

(9) Internal Investigative Report--the written report submitted to TJJD that summarizes the steps taken and the evidence collected during an internal investigation of alleged abuse, neglect, or exploitation or the death of a juvenile.

(10) Investigative Report--the written report prepared by TJJD detailing its investigation and findings.

(11) Juvenile--a person who is under the jurisdiction of the juvenile court, confined in a juvenile justice facility, housed in a non-juvenile justice contract facility pursuant to an order of the juvenile court, or participating in a juvenile justice program, including a prevention and intervention program, regardless of age.

(12) Juvenile Justice Facility ("facility")--a facility that is registered by TJJD pursuant to Sections 51.12, 51.125, or 51.126, Family Code.

(13) Juvenile Justice Program ("program")--a program or department that:

(A) serves juveniles under juvenile court or juvenile board jurisdiction; or

(B) is operated wholly or partly by the juvenile board or by a private vendor under a contract with the juvenile board. The term includes:

- (i) a juvenile justice alternative education program;
- (ii) a non-residential program that serves juvenile offenders under the jurisdiction of the juvenile court or juvenile board; and
- (iii) a juvenile probation department.

(14) Medical Treatment--medical care, processes, and procedures that are performed by a physician, physician assistant, licensed nurse practitioner, emergency medical technician (EMT), paramedic, or dentist. Diagnostic procedures are excluded from this definition unless intervention beyond basic first aid is required.

(15) Neglect--a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a juvenile served by the facility or program. Neglect also includes the definition in Section 261.001, Family Code.

(16) Non-Juvenile Justice Contract Facility--a facility in which a juvenile is placed pursuant to a contract with a department, program, facility, or juvenile board, other than a facility registered with TJJD.

(17) Physical Injury--an injury that normally requires examination or treatment by a trained health care professional, regardless of whether examination or treatment is actually received.

(18) Preponderance of the Evidence--a standard of proof meaning the credible and reliable evidence establishes that it is more likely than not that conduct meeting the definition of abuse, neglect, or exploitation occurred.

(19) Reasonable Cause to Believe--a reasonable ground to suspect that a juvenile has been or may be abused, neglected, or exploited or that a juvenile's physical or mental health or welfare has been adversely affected by abuse or neglect.

(20) Report--formal notification to TJJD of alleged abuse, neglect, or exploitation, the death of a juvenile, or a serious incident.

(21) Serious Incident--an incident that meets one of the following definitions:

(A) escape--the unauthorized departure of a juvenile who is in custody or the failure of a juvenile to return to custody following an authorized temporary leave for a specific purpose or specific, limited time period;

(B) attempted escape--committing an act that amounts to more than mere planning but that fails to effect an escape;

(C) abscond from a nonsecure facility--the unauthorized departure of a juvenile who has been placed in a nonsecure facility by the juvenile court or the failure of a juvenile to return to a nonsecure facility following an authorized temporary leave for a specific purpose or specific, limited time period;

(D) attempted suicide--any voluntary and intentional action that could likely result in taking one's own life;

(E) reportable injury--any physical injury sustained by a juvenile accidentally, intentionally, recklessly, or otherwise that:

(i) does not result from a personal, mechanical, or chemical restraint and requires medical treatment; or

(ii) results from a personal, mechanical, or chemical restraint and is a substantial injury.

(F) juvenile sexual conduct--conduct between two or more juveniles, regardless of age, that is conduct described in paragraphs (25) and (28) of this section, regardless of whether the juveniles consented to the conduct; or

(G) juvenile-on-juvenile physical assault--a physical altercation involving two or more juveniles that results in any of the involved parties sustaining an injury that requires medical treatment.

(22) Serious Physical Abuse--bodily harm or a condition that:

(A) resulted directly or indirectly from the conduct that formed the basis of an allegation of abuse, neglect, or exploitation; and

(B) requires medical treatment.

(23) Sexual Abuse--includes sexual abuse (by contact or by non-contact) of a juvenile by an employee, contractor, or volunteer or by another juvenile.

(24) Sexual Abuse by Contact (employee, volunteer, or contractor)--any physical contact between an employee, contractor, or volunteer and a juvenile, with or without the consent of the juvenile that includes:

(A) contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) contact between the mouth and the penis, vulva, or anus;

(C) contact between the mouth and any body part where the employee, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(D) penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the employee, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(E) any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the actor has the intent to abuse, arouse, or gratify sexual desire; and

(F) any attempt by an employee, contractor, or volunteer to engage in the activities described in subparagraphs (a) - (e) of this paragraph.

(25) Sexual Abuse by Contact (by another juvenile)--any of the following acts between juveniles, if the victim does not consent, is coerced into the act by overt or implied threats of violence, or is unable to consent or refuse, either actually or legally:

(A) contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) contact between the mouth and the penis, vulva, or anus;

(C) penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and

(D) any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

(26) Sexual Abuse by Non-Contact (by employee, volunteer, or contractor)--any sexual behavior, conduct, harassment, or actions by an employee, contractor, or volunteer, which are exhibited,

performed, or simulated in the presence of a juvenile or with reckless disregard for the presence of a juvenile but do not meet the definition of sexual abuse by contact, including but not limited to:

(A) any threat or request for a juvenile to engage in the activities described in paragraph (24) of this section;

(B) any display of uncovered genitalia, buttocks, or breasts in the presence of a juvenile;

(C) voyeurism, which means an invasion of privacy of a juvenile for reasons unrelated to official duties, such as peering at a juvenile who is using a toilet to perform bodily functions; requiring a juvenile to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a juvenile's naked body or of a juvenile performing bodily functions; and

(D) sexual harassment.

(27) Sexual Harassment (by employee, contractor, or volunteer)--repeated verbal comments or gestures of a sexual nature to a juvenile, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

(28) Sexual Harassment (by another juvenile)--any of the following directed by one juvenile to another juvenile: repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one juvenile directed toward another.

(29) Substantial Injury--an injury that is significant in size, degree, or severity.

(30) Subject--a person alleged or found to be responsible for the abuse, neglect, or exploitation of a juvenile through the person's actions or failure to act.

(31) TJJJ OIG--TJJJ Office of Inspector General.

(32) Victim--a juvenile who is alleged or found to be a victim of abuse, neglect, or exploitation.

§358.110. Interpretation.

(a) Headings. The headings in this chapter are for convenience only and are not intended as a guide to the interpretation of the standards in this chapter.

(b) Including. Unless the context clearly indicates otherwise, the words "include," "includes," and "including," when following a general statement or term, are to be understood as introducing a non-exhaustive list.

(c) Time. Any period of days set forth in this chapter is computed as set forth in Section 311.014, Government Code. Unless otherwise specified, a period of "days" means "calendar days." When this chapter requires or allows an act by any party other than TJJJ to be done at or within a specified time period, the executive director or Board may, for good cause shown, order the period extended or permit the act to be done after the expiration of the specified period.

§358.120. Applicability.

(a) Unless otherwise expressly stated, this chapter applies to:

(1) allegations of abuse, neglect, or exploitation involving a juvenile and an employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility, regardless of the physical location of the alleged abuse, neglect, or exploitation;

(2) serious incidents involving a juvenile that:

(A) occur on the premises of a program, facility, or non-juvenile justice contract facility; or

(B) regardless of the physical location, occur while in the presence of an employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility; and

(3) a death of a juvenile that:

(A) occurs on the premises of a program, facility, or non-juvenile justice contract facility;

(B) results from an illness, incident, or injury that occurred, was discovered, or was reported on the premises of a program, facility, or non-juvenile justice contract facility; or

(C) regardless of the physical location, occurs while in the presence of an employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility.

(b) For purposes of this chapter, "working under the auspices of a facility, program, or non-juvenile justice contract facility" includes providing a service to juveniles when that service is authorized by the juvenile board or pursuant to a contract for placement.

§358.130. Toll-Free Call Center.

TJJJ maintains a staffed incident reporting center with a toll-free number to facilitate the reporting of alleged abuse, neglect, exploitation, death, and serious incidents. Additionally, TJJJ maintains alternative forms of contact for the continuity of operations, including email and secondary phone numbers.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 28, 2024.

TRD-202406344

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



SUBCHAPTER B. RESPONSIBILITIES OF DEPARTMENTS, PROGRAMS, AND FACILITIES

37 TAC §§358.200, 358.210, 358.220, 358.230, 358.240, 358.250, 358.260, 358.270, 358.280, 358.290, 358.300, 358.310, 358.320, 358.330, 358.340

STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§358.200. Policy and Procedure.

(a) Departments, programs, and facilities shall have written policies and procedures that require, in accordance with this chapter:

(1) reporting allegations of abuse, neglect, or exploitation of a juvenile to local law enforcement, TJJD, and other appropriate governmental units when there is reasonable cause to believe that abuse, neglect, or exploitation has occurred;

(2) reporting death of a juvenile to local law enforcement and TJJD; and

(3) reporting serious incidents to TJJD.

(b) Departments, programs, and facilities shall include the following in all contracts with non-juvenile justice contract facility:

(1) a requirement for the non-juvenile justice contract facility to report allegations of abuse, neglect, exploitation, the death of a juvenile, or a serious incident to the department, program, or facility and to TJJD in accordance with this chapter;

(2) a requirement for the non-juvenile justice contract facility to conduct an internal investigation or allow the department, program, or facility to do so and to cooperate with such investigation; and

(3) a requirement to cooperate with TJJD with any assessment or investigation.

§358.210. Information on Reporting.

(a) As soon as practicable after a child is taken into custody or placed in a facility or program, the facility or program shall provide the child's parents with:

(1) information regarding the reporting of suspected abuse, neglect, or exploitation of a juvenile in a facility or program to TJJD; and

(2) the TJJD toll-free number for this reporting.

(b) Departments, programs, and facilities must prominently display signage provided by TJJD regarding a zero-tolerance policy concerning abuse of juveniles. The signage must be in English and Spanish and be displayed in each of the following places:

(1) lobby or visitation areas of the department, program, or facility to which the public has access;

(2) juvenile housing and common areas;

(3) common medical treatment areas;

(4) common educational areas; and

(5) other common areas.

§358.220. Data Reconciliation.

(a) For all allegations of abuse, neglect, or exploitation, the death of a juvenile, and serious incidents occurring within the reporting period, the department or facility must provide the data listed in subsection (b) to TJJD in the electronic format requested or supplied by TJJD.

(b) The data must include:

(1) name and Personal Identification Number (PID) of each alleged victim;

(2) name and date of birth of each subject of investigation;

(3) date and time of alleged incident;

(4) date the alleged incident was reported to TJJD;

(5) type of alleged incident (i.e., abuse, neglect, exploitation, death, or serious incident);

(6) type of injury, if applicable;

(7) whether the alleged incident was restraint-related and, if so, what type of restraint was involved (i.e., personal, mechanical, or chemical);

(8) disposition of internal investigation (i.e., founded, unfounded, or inconclusive); and

(9) county-generated case identification number.

(c) The data must be supplied at least annually or more frequently if required by TJJD. The data must include any additional information not listed in this section if specifically requested by TJJD.

§358.230. Reporting Abuse, Neglect, and Exploitation.

(a) Duty to Report. An employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility must report an allegation of abuse, neglect, or exploitation to TJJD and local law enforcement if the person has reasonable cause to believe a juvenile has been or may be abused, neglected, or exploited or that a juvenile's physical or mental health or welfare has been adversely affected by abuse or neglect.

(b) Non-Delegation of Duty to Report. In accordance with Chapter 261, Family Code, the duty to report cannot be delegated to another person.

(c) Other than Sexual Abuse or Serious Physical Abuse.

(1) Time Frames for Reporting. A report of alleged abuse, neglect, or exploitation other than allegations involving sexual abuse or serious physical abuse must be made no later than 24 hours after the time the person gains knowledge of or has reasonable cause to believe that abuse, neglect, or exploitation has occurred.

(2) Methods for Reporting.

(A) The report to TJJD may be made by phone or by emailing a completed Incident Report Form.

(B) If the report to TJJD is made by phone, a completed Incident Report Form must be submitted by email within 24 hours after the phone report.

(C) The report to law enforcement must be made by phone.

(d) Sexual Abuse or Serious Physical Abuse.

(1) Time Frames for Reporting.

(A) A report of alleged sexual abuse or serious physical abuse must be made to local law enforcement immediately, but no later than one hour after the time a person gains knowledge of or has a reasonable belief that alleged sexual abuse or serious physical abuse has occurred.

(B) A report of alleged sexual abuse or serious physical abuse must be made to TJJD immediately, but no later than four hours, after the time a person gains knowledge of or has a reasonable belief that alleged sexual abuse or serious physical abuse has occurred.

(2) Methods for Reporting.

(A) The initial report to TJJD must be made by phone using the toll-free number as designated by TJJD.

(B) Within 24 hours after the initial phone report to TJJD, the completed Incident Report Form must be submitted to TJJD by email.

(C) The initial report to law enforcement must be made by phone.

§358.240. Reporting Serious Incidents.

(a) Duty to Report. An employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility must report a serious incident to TJJD if the person:

(1) witnesses, learns of, or receives an oral or written statement from a juvenile or other person with knowledge of a serious incident; or

(2) has reasonable cause to believe that a serious incident has occurred.

(b) Time Frame for Reporting. A report of a serious incident must be made within 24 hours from the time a person gains knowledge of or has reasonable cause to believe that a serious incident occurred.

(c) Methods for Reporting Serious Incidents.

(1) The report may be made by phone or by emailing a completed Incident Report Form to TJJD.

(2) If the report is made by phone, a completed Incident Report Form must be submitted to TJJD by email within 24 hours after the phone report.

(d) Medical Documentation. A treatment discharge form or other medical documentation that contains evidence of medical treatment pertinent to the reported incident must be submitted to TJJD within 24 hours after receipt by the department, program, facility, or non-juvenile justice contract facility.

§358.250. Reporting Deaths.

(a) Duty to Report. An employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility must report to local law enforcement and to TJJD OIG if the person has reasonable cause to believe a juvenile has died and the death:

(1) occurred on the premises of a program, facility, or non-juvenile justice contract facility;

(2) resulted from an illness, incident, or injury that occurred, was discovered, or was reported on the premises of a program, facility, or non-juvenile justice contract facility; or

(3) occurred while in the presence of an employee, volunteer, or other individual working under the auspices of a facility, program, or non-juvenile justice contract facility, regardless of where the death occurred.

(b) Time Frames for Reporting.

(1) A report of a death must be made to local law enforcement immediately upon, and no later than one hour after, the discovery or notification of the death.

(2) A report of a death must be made to TJJD OIG immediately upon, and no later than four hours after, the discovery or notification of the death.

(3) A written report of the cause of death must be submitted to the Office of the Attorney General no later than 30 days after the juvenile's death if required by Article 49.18, Code of Criminal Procedure.

(4) A copy of the death investigative report must be submitted to TJJD no later than 10 days after completion.

(c) Methods for Reporting.

(1) The initial report to TJJD must be made by phone using the toll-free number as designated by TJJD.

(2) Within 24 hours after the phone report to TJJD, the completed Incident Report Form must be submitted to TJJD OIG by email.

(3) The initial report to law enforcement must be made by phone.

§358.260. Parental Notification.

(a) Requirement to Notify. Notification, or diligent efforts to notify, must be made to the parent(s), guardian(s), and custodian(s) of a juvenile who has died or who is the alleged victim of abuse, neglect, or exploitation or was involved in a serious incident.

(b) Time of Notification. The notice or efforts to notify required by subsection (a) of this section must be made as soon as possible, but no later than 24 hours, from the time a person gains knowledge of or has a reasonable belief that the allegation of abuse, neglect, or exploitation or the death of a juvenile occurred or that a serious incident has occurred.

(c) Method of Notification. The notice or efforts to notify required by subsection (a) of this section may be made by phone, in writing, or in person.

(d) Documentation of Notification. The notice or efforts to notify required by subsection (a) of this section must be documented on TJJD's Incident Report Form and in the internal investigative report.

§358.270. Reporting of Allegations by Juveniles.

(a) Right to Report. Juveniles have the right to report to TJJD allegations of abuse, neglect, or exploitation and the death of a juvenile. During orientation to a facility or program, juveniles must be advised in writing of:

(1) their right to report allegations under this subsection; and

(2) TJJD's toll-free number available for reporting allegations under this subsection.

(b) Policy and Procedure. Departments, programs, and facilities must have written policies and procedures that provide a juvenile with reasonable, free, and confidential access to telephones for reporting allegations to TJJD.

(c) Access to TJJD. Upon the request of a juvenile, staff must facilitate the juvenile's reasonable, free, and confidential access to a telephone for reporting allegations to TJJD.

§358.280. Internal Investigation.

(a) Investigation Requirement. In every case in which a report of the death of a juvenile or of an allegation of abuse, neglect, or exploitation has occurred, an internal investigation must be conducted. The investigation must be conducted by a person qualified by experience or training to conduct a comprehensive investigation.

(b) Initiation of Investigation. The internal investigation must be initiated immediately upon the chief administrative officer or the private facility administrator or their respective designees gaining knowledge of the death of a juvenile or the allegation of abuse, neglect, or exploitation. However, the initiation of the internal investigation will be postponed if:

(1) directed by local law enforcement;

(2) requested by TJJD OIG; or

(3) after consultation with local law enforcement or TJJD OIG, it is determined that the integrity of potential evidence could be compromised.

(c) Burden of Proof. The burden of proof in an internal investigation is preponderance of the evidence. A higher or lower burden of proof may not be implemented.

(d) Policy and Procedure. Departments, programs, and facilities must have written policies and procedures for conducting internal investigations under this chapter. The internal investigation must be conducted in accordance with the policies and procedures of the department, program, or facility. The policies and procedures must be provided to TJJD upon request.

(e) Juvenile Board Responsibilities. If the chief administrative officer or the private facility administrator is the person alleged to have abused, neglected, or exploited a juvenile, the juvenile board chair must:

(1) conduct the internal investigation; or

(2) appoint an individual to conduct the internal investigation who is not one of the following:

(A) the person alleged to have abused, neglected, or exploited the juvenile(s);

(B) a subordinate of the person alleged to have abused, neglected, or exploited the juvenile(s); or

(C) a law enforcement officer currently acting in the capacity as a criminal investigator for the alleged abuse, neglect, or exploitation of the juvenile(s).

(f) Time Frame for Internal Investigation. The internal investigation must be completed within 30 business days after the initial report to TJJD. TJJD may extend this time frame upon request. TJJD may require submission of all information compiled to date or a statement of the status of the investigation when determining whether or not to grant an extension or after granting an extension.

(g) Written and Electronically Recorded Statements. During the internal investigation, diligent efforts must be made to obtain written or electronically recorded oral statements from all persons with direct knowledge of the alleged incident.

§358.290. Corrective Measures.

Corrective measures must be taken at the conclusion of the internal investigation, if warranted, that may include:

(1) a review of the policies and procedures pertinent to the alleged incident;

(2) revision of any policies or procedures as needed;

(3) administrative disciplinary action or appropriate personnel actions against all persons found to have abused, neglected, or exploited a juvenile or to have otherwise engaged in misconduct; and

(4) the provision of additional training for all appropriate persons to ensure the safety of the juveniles, employees, and others.

§358.300. Internal Investigative Report.

(a) An internal investigative report must be completed at the conclusion of each internal investigation resulting from an allegation of abuse, neglect, or exploitation or the death of a juvenile.

(b) The internal investigative report must include:

(1) the date the internal investigation was initiated;

(2) the date the internal investigation was completed;

(3) the date the alleged victim's parent, guardian, or custodian was notified of the allegation, or documentation that diligent efforts to provide the notification were made;

(4) a summary of the original allegation;

(5) relevant policies and procedures related to the incident;

(6) a summary or listing of the steps taken during the internal investigation;

(7) a written summary of the content of all oral interviews conducted;

(8) a listing of all evidence collected during the internal investigation, including all audio and/or video recordings and polygraph examinations;

(9) relevant findings of the investigation that support the disposition;

(10) one of the following dispositions:

(A) founded, which means the evidence indicates that it is more likely than not that the conduct that formed the basis of an allegation of abuse, neglect, or exploitation occurred or that other conduct constituting abuse, neglect, or exploitation occurred;

(B) unfounded, which means the evidence indicates the conduct that formed the basis of an allegation of abuse, neglect, or exploitation did not occur and no other conduct constituting abuse, neglect, or exploitation occurred; or

(C) inconclusive, which means the evidence does not clearly indicate whether or not the conduct that formed the basis of an allegation of abuse, neglect, or exploitation occurred or other conduct constituting abuse, neglect, or exploitation occurred.

(11) the date the internal investigative report was completed;

(12) the names of all persons who participated in conducting the internal investigation;

(13) the name and signature of the person who submitted the internal investigative report; and

(14) the administrative action, disciplinary action, or corrective measures taken to date, if applicable (e.g., terminated, suspended, retrained, returned to duty, or none).

(c) If disciplinary action is imposed after the submission of the internal investigative report, the administrator or designee must notify TJJD of the disciplinary action no later than five calendar days after the disciplinary action is imposed.

§358.310. Submission of Internal Investigative Report.

(a) A copy of the internal investigative report must be submitted to TJJD no later than five calendar days following its completion.

(b) The following documentation collected during the internal investigation must be submitted to TJJD with the internal investigative report:

(1) written statements;

(2) relevant medical documentation;

(3) training records, if applicable; and

(4) any other documentation used to reach the disposition of the internal investigation.

§358.320. Reassignment or Administrative Leave during the Internal Investigation.

(a) Upon gaining knowledge of an allegation of abuse, neglect, or exploitation, and until the finding of the internal investigation is determined, the person alleged to have abused, neglected, or exploited a

juvenile must be placed on administrative leave or reassigned to a position having no contact with the alleged victim, relatives of the alleged victim, or other juveniles.

(b) If the chief administrative officer or the private facility administrator is the person alleged to have abused, neglected, or exploited a juvenile, the juvenile board chair must immediately place the chief administrative officer or private facility administrator on administrative leave or reassign that person to a position having no contact with the alleged victim, relatives of the alleged victim, or other juveniles.

(c) If, during the internal investigation, the subject of the investigation resigns or is terminated from employment, the department or facility must notify TJJD no later than the second business day after the resignation or termination.

(d) If a subject of investigation obtains employment in another jurisdiction before the disposition of the internal investigation has been finalized, the person may not be placed in a position having any contact with any juveniles until the disposition of the internal investigation is finalized in the county of previous employment.

§358.330. Cooperation with TJJD Investigation.

(a) All persons must fully cooperate with any investigation of an allegation of abuse, neglect, or exploitation, the death of a juvenile, or a serious incident. A failure to do so may result in an action involving the person's certification or provisional certification pursuant to Chapter 349 of this title.

(b) A diligent effort must be made to identify and make available for questioning all persons with knowledge of an allegation of abuse, neglect, or exploitation, serious incident, or the death of a juvenile that is the subject of a TJJD investigation.

(c) Upon request by TJJD, all evidence must be provided to TJJD in the format requested.

§358.340. Cooperation with Other Agencies.

All persons must fully cooperate with any investigation of alleged abuse, neglect, or exploitation, serious incident, or death of a juvenile by another state agency or licensing entity with authority to investigate, such as an agency that holds the occupational license of a person who is the subject of the investigation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 28, 2024.

TRD-202406345

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



SUBCHAPTER C. TJJD ASSESSMENT AND INVESTIGATION

37 TAC §§358.400, 358.410, 358.420, 358.430, 358.440, 358.450, 358.460

STATUTORY AUTHORITY

The new sections are proposed under §221.002, Human Resources Code, which requires the board to adopt rules to govern juvenile boards, probation departments, probation officers, programs, and facilities.

No other statute, code, or article is affected by this proposal.

§358.400. TJJD Assessment and Referral.

(a) TJJD OIG will complete an assessment on all reports of alleged abuse, neglect, or exploitation of a juvenile, the death of a juvenile, or serious incidents. TJJD may conduct an assessment when there is reasonable cause to believe that one is warranted.

(b) The purpose of an assessment is to determine if conduct or alleged conduct falls under:

(1) TJJD's investigative authority and, if so, if an investigation is necessary; or

(2) TJJD's other regulatory authority and, if so, if other action is warranted.

(c) TJJD may request information from the juvenile probation department or facility making the report or where the alleged incident occurred, which may include requests for records, digital media, video, audio, and other related information or items. The entity to which the request is made must provide the requested information or, if it does not exist, an explanation that it does not exist, no later than two business days after the request is made unless a later time is agreed upon between TJJD and the entity.

(d) After assessment, TJJD OIG will conduct an investigation if it determines the matter is within TJJD OIG's jurisdiction to investigate or will refer the matter as appropriate to another TJJD division, the appropriate juvenile probation department or facility, or another governmental entity.

§358.410. TJJD Investigations.

(a) Investigations may be conducted based on a report to TJJD or may be initiated by TJJD when there is reasonable cause to believe that an incident may require investigation, regardless of how TJJD is made aware of the matter.

(b) Investigations will be conducted by TJJD in accordance with TJJD policies and procedures for investigations.

(c) Investigations must be prompt, thorough, and directed at resolving all relevant issues.

(d) The primary objective of each investigation under this chapter is to ensure the health, safety, and well-being of the alleged victim(s) and other juveniles.

(e) Only a person qualified by experience and training may be assigned to conduct an investigation.

(f) If a subject of a TJJD abuse, neglect, and exploitation investigation obtains employment in another jurisdiction before the disposition of the investigation has been finalized, the person may not be placed in a position having any contact with any juveniles until the disposition of the investigation is finalized by TJJD or TJJD otherwise approves.

§358.420. Findings in Abuse, Neglect, and Exploitation Investigations.

(a) In order to find that a person engaged in abuse, neglect, or exploitation, there must be a preponderance of evidence to establish the person engaged in conduct that meets the definition of abuse, neglect, or exploitation, including having done so with the required mental state.

(b) A person acts intentionally, or with intent, with respect to the nature of the person's conduct or the result of the conduct when it

is the person's conscious objective or desire to engage in the conduct or to cause the result.

(c) A person acts knowingly, or with knowledge, with respect to the nature of the person's conduct or the result of the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.

(d) A person acts recklessly, or is reckless, with respect to circumstances surrounding the person's conduct or the result of the conduct when the person is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(e) A person acts with negligence when the person does something that an ordinarily prudent person exercising ordinary care would not have done under the same circumstances or fails to do something that an ordinarily prudent person in the exercise of ordinary care would have done.

(f) An investigation of potential abuse requires a finding of whether the subject intentionally, knowingly, or recklessly acted or failed to act and, if so, whether the act caused emotional harm or physical injury to the juvenile or posed a significant and foreseeable risk of emotional harm or physical injury.

(g) An investigation of potential neglect requires a finding of whether the subject engaged in a negligent act or omission and, if so, whether the action or failure to act was a substantial factor in bringing about a substantial emotional harm or physical injury to the juvenile or posed a significant and foreseeable risk of emotional harm or physical injury.

(h) An investigation of potential exploitation requires a finding of whether a juvenile or the resources of a juvenile were used for monetary or personal benefit, profit, or gain of the subject and, if so, whether the use was illegal or improper.

(i) In determining if a person's conduct is the cause of any emotional harm or physical injury, there must be a finding of whether the resulting emotional harm or physical injury would not have occurred but for the person's conduct, either alone or concurrently with another cause.

(j) Investigations may include findings of misconduct other than abuse, neglect, or exploitation if the misconduct is established by the evidence. However, the absence of such findings should not be regarded as exoneration of the subject or others as to violations of the code of ethics indicated by the evidence.

§358.430. Abuse, Neglect, and Exploitation Investigative Report.

(a) Each investigation requires a written investigative report with the investigator's recommendations regarding whether the evidence is sufficient to establish that abuse, neglect, or exploitation occurred. The report must include a summary and analysis of the evidence relied upon in reaching the recommendations. Anything considered in the investigation, including, but not limited to, copies of relevant documents and photographs, must be attached to the investigative report.

(b) Investigations may include recommendations that findings of a violation of the Code of Ethics other than abuse, neglect, or exploitation be made if the conduct is established by the evidence. However, the absence of such findings should not be regarded as exonera-

tion of the subject or other individuals as to violations indicated by the evidence.

(c) An attorney in TJJJ's Office of General Counsel shall review the recommendations of each investigative report for legal sufficiency and, based on the evidence, shall make findings as to whether or not abuse, neglect, or exploitation occurred. The attorney may request additional information or investigation by TJJJ OIG if necessary to make a finding. The findings must be made before the results of the investigative report are finalized.

§358.440. Notification of Findings.

(a) The following persons are notified of the findings of an investigation:

- (1) the juvenile victim and the juvenile's parents or guardian;
- (2) the subject; and
- (3) the administrator.

(b) If the investigation results in a finding that abuse, neglect, or exploitation occurred, the subject will be provided notice of the opportunity for an administrative review as provided in Chapter 349 of this title.

§358.450. Other Actions by TJJJ.

(a) TJJJ may provide notification of an investigation to the local prosecutor if warranted.

(b) TJJJ may issue a non-compliance citation report (NCCR) for any violation of standards discovered as a result of an investigation.

(c) TJJJ may issue a notice of technical assistance (NTA) for any violation of standards discovered as a result of an investigation.

§358.460. Maintenance of Records and Data.

(a) TJJJ prepares and keeps on file a complete written report of each investigation conducted by the agency. The report is retained in accordance with the TJJJ records retention schedule.

(b) TJJJ compiles, maintains, and makes available statistics on the incidence of abuse, neglect, and exploitation investigated by the agency.

(c) TJJJ maintains an electronic database containing information regarding all reports of alleged abuse, neglect, exploitation, death, and serious incidents.

(d) Investigation files are confidential and releasable only as provided in Chapter 349 of this title.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 28, 2024.

TRD-202406346

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER B. TREATMENT
DIVISION 1. PROGRAM PLANNING

37 TAC §380.8701

The Texas Juvenile Justice Department (TJJD) proposes amendments to §380.8701, Case Planning.

SUMMARY OF CHANGES

Amendments to the section will include: (1) adding a definition for integrated treatment plan; (2) adding that an integrated treatment plan may serve as the youth's case plan; (3) adding that references throughout TJJD's rules to case plans may be understood to mean integrated treatment plans for agency departments using integrated treatment plans; (4) removing statements specifying which staff members develop and update the case plan; (5) adding that case plan objectives are reviewed and progress is documented monthly, rather than at least once every 30 days; (6) adding that objectives in the case plan help the youth to develop *skillful behaviors*, rather than develop *skills to reduce individual risk factors and increase individual protective factors*; (7) replacing a reference to *the orientation and assessment unit with an orientation and assessment program*; and (8) consolidating some redundant statements.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be the adoption of an integrated treatment plan that addresses a youth's individualized risk factors, treatment and rehabilitative needs, and plan for community reentry.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the section is in effect, the section will have the following impacts.

- (1) The proposed section does not create or eliminate a government program.
- (2) The proposed section does not require the creation or elimination of employee positions at TJJD.
- (3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed section does not impact fees paid to TJJD.
- (5) The proposed section does not create a new regulation.
- (6) The proposed section does not expand, limit, or repeal an existing regulation.
- (7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs. The amended section is also proposed under §244.001, Human Resources Code, which requires the board to establish rules for the periodic review and reevaluation of a child's written treatment plan.

No other statute, code, or article is affected by this proposal.

§380.8701. *Case Planning.*

(a) Purpose. The purpose of this rule is to ensure the case management of each youth is individualized and flexible and is based on the youth's risk and protective factors, abilities, and need for services.

(b) Applicability. This rule applies to youth committed to the Texas Juvenile Justice Department.

(c) Definitions.

(1) Except as noted below, definitions [Definitions] for terms used in this rule are in §380.8501 of this chapter [title].

(2) Integrated Treatment Plan--a collaborative case plan addressing a youth's individualized risk factors, treatment and rehabilitative needs, and plan for community reentry.

(d) General Provisions.

(1) An individualized case plan is developed for each youth. [An Individual Case Plan (ICP) is developed with and for each youth by the case manager in consultation with the multi-disciplinary team. The ICP is individualized for each youth and identifies objectives with specific strategies to address development of skills to reduce individual risk factors and increase individual protective factors.]

(2) The case plan [ICP] is developed in accordance with an [the] assessment of the youth's risk and protective factors, abilities, and progress in the rehabilitation program and includes objectives with specific strategies to address development of skillful behaviors.

(3) The case plan [ICP] specifies measurable objectives, expected outcomes, and a means to evaluate progress.

(4) Objectives in the case plan [ICP objectives] are reviewed and progress is documented monthly [at least once every 30 days].

(5) At least once every 90 days, the youth's case plan is updated [a multi-disciplinary team updates each youth's ICP] following an integrated and comprehensive assessment of the youth's progress in the rehabilitation program. This assessment includes:

(A) re-assessment of the youth's risk and protective factors;

(B) development of objectives and treatment recommendations that reflect the youth's specialized needs and individual abilities; and

(C) when appropriate, development of a plan for transitioning the youth to the community.

~~[(6) The ICP is developed with individualized strategies to facilitate youth progress through the rehabilitation program.]~~

~~(6) [(7)] An assessment and treatment summary, which forms the basis of the case plan [ICP], is developed during the youth's time in an [while the youth is at the] orientation and assessment program [unit].~~

~~(7) [(8)] The case plan [ICP development includes a review of youth progress and objectives and] is developed with the youth and the youth's parent/guardian when possible.~~

~~(8) An integrated treatment plan may serve as the case plan. For agency departments using an integrated treatment plan, references in this chapter to the case plan or individual case plan mean the integrated treatment plan.~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2024.

TRD-202406313

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



SUBCHAPTER D. YOUTH RIGHTS AND REMEDIES

37 TAC §380.9333

The Texas Juvenile Justice Department (TJJD) proposes to repeal 37 TAC §380.9333, relating to Investigation of Alleged Abuse, Neglect, and Exploitation.

SUMMARY OF REPEAL

The repeal of §380.9333 will allow the content to be revised and republished as new §380.9333.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the repeal is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the repeal.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of administering the repeal will be to bring TJJD into compliance with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. No private real property rights are affected by adoption of the repeal.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the repeal is in effect, the repeal will have the following impacts.

(1) The proposed repeal does not create or eliminate a government program.

(2) The proposed repeal does not require the creation or elimination of employee positions at TJJD.

(3) The proposed repeal does not require an increase or decrease in future legislative appropriations to TJJD.

(4) The proposed repeal does not impact fees paid to TJJD.

(5) The proposed repeal does not create a new regulation.

(6) The proposed repeal does not expand, limit, or repeal an existing regulation.

(7) The proposed repeal does not increase or decrease the number of individuals subject to the section's applicability.

(8) The proposed repeal will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The repeal is proposed under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

§380.9333. Investigation of Alleged Abuse, Neglect, and Exploitation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2024.

TRD-202406314

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



37 TAC §380.9333

The Texas Juvenile Justice Department (TJJD) proposes new 37 TAC §380.9333, relating to Investigation of Alleged Abuse, Neglect, and Exploitation.

SUMMARY OF CHANGES

New §380.9333 modifies and republishes information currently contained in the former §380.9333, which is simultaneously proposed for repeal. Key additions and revisions will include: 1) clarifying that an investigation may be conducted based on a report or may be initiated by TJJD when there is reasonable cause

to believe that an incident may require investigation, regardless of how TJJD was made aware of the matter; 2) removing detailed procedures of how investigations are conducted from administrative rule as they are more appropriately addressed in policies and procedures; 3) detailing that a finding of abuse, neglect, or exploitation requires a preponderance of evidence to establish the person engaged in conduct meeting the definition, including having done so with the required mental state; 4) defining *intentionally, knowingly, and recklessly* using the Penal Code definitions; 5) defining negligence using definition in civil law negligence cases; 6) defining the required findings for abuse, neglect, and exploitation allegations; 7) providing that the investigator in an abuse, neglect, or exploitation report will summarize and analyze the evidence and make a recommendation regarding whether the evidence is sufficient to establish abuse, neglect, or exploitation occurred; 8) providing that a TJJD attorney will review the investigation for legal sufficiency and make findings as to whether the evidence establishes that abuse, neglect, or exploitation occurred; and 9) clarifying that the attorney may request additional information or investigation by TJJD's Office of Inspector General if necessary.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the new section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of administering the section will be to bring TJJD into compliance with statutory requirements.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the new section as proposed. No private real property rights are affected by adoption of the section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the new section is in effect, the section will have the following impacts.

- (1) The proposed section does not create or eliminate a government program.
- (2) The proposed section does not require the creation or elimination of employee positions at TJJD.
- (3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed section does not impact fees paid to TJJD.
- (5) The proposed section does not create a new regulation.
- (6) The proposed section does not expand, limit, or repeal an existing regulation.
- (7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The new section is proposed under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

§380.9333. Investigation of Alleged Abuse, Neglect, and Exploitation.

(a) Purpose. This rule provides for the administrative investigation of allegations of abuse, neglect, or exploitation in programs and facilities operated by Texas Juvenile Justice Department (TJJD) or in which TJJD youth are placed. This rule also provides standards for investigations and for the compilation and sharing of investigation information. The purpose of all provisions in this rule is the protection of youth.

(b) Applicability.

(1) This rule applies to administrative investigations involving abuse, neglect, or exploitation allegedly committed by employees, volunteers, or other individuals working in TJJD programs or facilities, including institutions, halfway houses, and parole services, and in facilities and programs with which TJJD contracts for the provision of services to youth.

(2) Except as specifically noted, this rule does not apply to criminal investigations conducted by the TJJD Office of Inspector General under §242.102, Human Resources Code.

(c) Definitions. As used in this rule, the following terms have the following meanings, unless the context clearly indicates otherwise.

(1) Abuse--an intentional, knowing, or reckless act or omission that causes or may cause emotional harm or physical injury to, or the death of, a youth committed to TJJD. Abuse also includes the definition in §261.001, Family Code.

(2) Board--the Texas Juvenile Justice Board, the governing board of TJJD.

(3) Chief local administrator--the person employed in a TJJD facility or district office who is responsible for overseeing the operations of a facility, contract program, or parole services.

(4) Emotional harm--an impairment in the youth's growth, development, or psychological functioning that normally requires evaluation or treatment by a trained mental health or health care professional, regardless of whether evaluation or treatment is actually received. Sexual conduct involving individuals included in subsection (b)(1) of this section and youth is presumed to cause substantial emotional harm.

(5) Exploitation--the illegal or improper use of a youth or the resources of a youth committed to TJJD for monetary or personal benefit, profit, or gain.

(6) Neglect--a negligent act or omission, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a youth committed to TJJD. Neglect also includes the definition in §261.001, Family Code.

(7) Physical injury--an injury that normally requires examination or treatment by a trained health care professional, regardless of whether examination or treatment is actually received.

(8) Preponderance of the evidence--a standard of proof meaning the credible and reliable evidence establishes that it is more likely than not that conduct meeting the definition of abuse, neglect, or exploitation occurred.

(9) Report--notification that alleged or suspected abuse, neglect, or exploitation of a child has occurred or may occur.

(10) Sexual conduct--includes sexual-related conduct that is harmful to a child's mental, emotional, or physical welfare, including, but not limited to, conduct that constitutes the offense of continuous sexual abuse of a child or children under §21.02, Penal Code; indecency with a child under §21.11, Penal Code; sexual assault under §22.011, Penal Code; aggravated sexual assault under §22.021, Penal Code; improper sexual activity with person in custody or under supervision under §39.04, Penal Code; indecent exposure under §21.08, Penal Code; sexual performance by a child under §43.25, Penal Code; and trafficking of persons under §20A.02, Penal Code.

(d) Reporting Requirements.

(1) Under state law, any person having cause to believe that a youth has been or may be adversely affected by abuse, neglect, or exploitation must report the matter to a law enforcement agency or to the Department of Family and Protective Services. The TJJD Office of Inspector General is an appropriate law enforcement agency for reports of suspected abuse, neglect, or exploitation of youth subject to the jurisdiction of TJJD. Any TJJD employee, volunteer, or contractor working in a program or facility operated by or under contract with TJJD who has reasonable cause to believe a youth committed to TJJD has been or may have been the victim of abuse, neglect, or exploitation or receives such a report must immediately report the matter to law enforcement in accordance with the TJJD's reporting policies and procedures.

(2) The person making a report must provide as much detailed information as possible, including the identity of the persons involved, the location and time of relevant events, and the identity of others who may provide further information.

(3) The requirement to report under this section applies without exception to a person whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, or a mental health professional.

(4) Except for investigation purposes, the identity of a person making a report is confidential.

(e) Actions Taken upon Receipt of the Report. Upon receipt of a report of alleged abuse, neglect, or exploitation, TJJD:

(1) in coordination with the appropriate law enforcement entity, immediately takes any action necessary to protect the youth and to preserve evidence that may be pertinent to an investigation of the matter;

(2) notifies the following people of the report:

(A) the youth's parents or guardian;

(B) the youth, if the report was not made by the youth;

and

(C) the chief juvenile probation officer for the committing court;

(3) determines whether the person accused of wrongdoing must be suspended, temporarily reassigned, or temporarily barred from

assignment to TJJD facilities pending the outcome of the investigation; and

(4) takes any action necessary to ensure that the investigation or review is conducted with the full cooperation of staff and youth, that adequate resources are provided, and that the youth and witnesses are protected from retaliation or improper influence.

(f) Assignment for Investigation.

(1) The TJJD Office of the Inspector General (OIG) promptly reviews each report of alleged abuse, neglect, or exploitation. Each report is entered into a centralized database and assigned for investigation if the report alleges conduct that, if true, appears to meet the definition of abuse, neglect, or exploitation. The report may also be assigned for criminal investigation.

(2) Whether to assign a report for criminal investigation by a peace officer from the Office of Inspector General or appropriate law enforcement is determined on a case-by-case basis considering all relevant factors, including the severity and immediacy of potential harm.

(3) An OIG investigator must provide an initial response within 24 hours after OIG receives the report if the report presents an immediate risk of physical or sexual abuse of a youth that could result in death or serious harm to the youth.

(4) If deemed to be warranted by the chief inspector general or the executive director, a report of abuse, neglect, or exploitation may be referred to appropriate outside law enforcement for investigation.

(g) Standards for Investigations.

(1) Investigations may be conducted based on a report to the OIG or may be initiated by the OIG when there is reasonable cause to believe that an incident may require investigation, regardless of how OIG is made aware of the matter.

(2) The investigation must be prompt, thorough, and directed at resolving all the relevant issues raised by the report. The primary objective of each investigation under this section is to ensure the health, safety, and well-being of the alleged victim(s) and other juveniles.

(3) Only a person qualified by experience and training may be assigned to conduct an investigation under this section.

(4) All evidence that is relevant and reasonably available must be gathered and preserved, including documents, physical evidence, witness interviews and statements, photographs, and security videos.

(5) For any report of alleged abuse, neglect, or exploitation, a preliminary investigation may be conducted to determine whether there is any evidence to corroborate the report or to provide cause to believe that any abuse, neglect, or exploitation has occurred.

(h) Abuse, Neglect, or Exploitation Findings.

(1) In order to find that a person engaged in abuse, neglect, or exploitation, there must be a preponderance of evidence to establish the person engaged in conduct that meets the definition of abuse, neglect, or exploitation, including having done so with the required mental state.

(2) A person acts intentionally, or with intent, with respect to the nature of the person's conduct or the result of the conduct when it is the person's conscious objective or desire to engage in the conduct or to cause the result.

(3) A person acts knowingly, or with knowledge, with respect to the nature of the person's conduct or the result of the conduct

when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with the respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.

(4) A person acts recklessly, or is reckless, with respect to circumstances surrounding the person's conduct or the result of the conduct when the person is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(5) A person acts with negligence when the person does something that an ordinarily prudent person exercising ordinary care would not have done under the same circumstances or fails to do something that an ordinarily prudent person in the exercise of ordinary care would have done.

(6) An investigation of potential abuse requires a finding of whether the subject intentionally, knowingly, or recklessly acted or failed to act; and, if so, whether the act caused emotional harm or physical injury to the youth or posed a significant and foreseeable risk of emotional harm or physical injury.

(7) An investigation of potential neglect requires a finding of whether the subject engaged in a negligent act or omission and, if so, whether the action or failure to act was a substantial factor in bringing about substantial emotional harm or physical injury to the youth or posed a significant and foreseeable risk of emotional harm or physical injury.

(8) An investigation of potential exploitation requires a finding of whether a youth or the resources of a youth were used for monetary or personal benefit, profit, or gain of the suspect and, if so, whether the use was illegal or improper.

(i) Investigative Report.

(1) Each investigation requires a written investigative report with the investigator's recommendations regarding whether the evidence is sufficient to establish that abuse, neglect, or exploitation occurred. The report must include a summary and analysis of the evidence relied upon in reaching the recommendations. Anything considered in the investigation, including, but not limited to, copies of relevant documents and photographs, must be attached to the investigative report.

(2) Investigations may include recommendations that findings of misconduct other than abuse, neglect, or exploitation be made if the misconduct is established by the evidence. However, the absence of such findings should not be regarded as exoneration of the subject or other employees as to policy violations or other misconduct indicated by the evidence.

(3) An attorney in the Office of General Counsel shall review the recommendations of each investigative report for legal sufficiency and, based on the evidence, shall make findings as to whether or not abuse, neglect, or exploitation occurred. The Office of General Counsel may request additional information or investigation by OIG if necessary to make a finding. The findings must be made before the results of the investigative report are finalized.

(j) Actions in Response to a Closed Investigative Report.

(1) Upon receipt of a closed investigative report, the chief local administrator must review the investigative report and:

(A) notify the youth, the youth's parents or guardian, and the person accused of wrongdoing of the results of the investigation; and

(B) notify the youth and the youth's parents of the right to appeal the investigation findings or to file a complaint regarding the conduct of the investigation under §380.9353 of this chapter.

(2) If the chief local administrator disagrees with the findings, the chief local administrator may appeal in accordance with PRS.35.11.

(3) If the investigative finding confirms abuse, neglect, exploitation, or other wrongdoing occurred, the chief local administrator must take whatever actions are necessary and appropriate to rectify the wrong and prevent future harm under the same or similar circumstances, which may include disciplinary action.

(4) If the investigative findings indicate wrongdoing by a person no longer employed by TJJD, the chief local administrator must contact HR to determine if the person's rehire eligibility status should be changed.

(k) Standards for Compiling Investigation Information.

(1) The Office of Inspector General compiles information related to the number and nature of reports filed, case closure dispositions, the dates and locations of reported incidents, the average length of time required for investigations, and any significant trends. This information must be compiled at least twice each year and be available for public inspection.

(2) Additional information, including a summary of the findings and corrective actions taken with regard to all confirmed reports, is prepared for periodic review and analysis by the TJJD executive staff and the Board.

(3) Periodic summaries of complaints and appeals regarding investigations conducted under this rule and the final decisions regarding the complaints or appeals are provided to the Board for review. The TJJD executive director or Board will take whatever action is determined to be appropriate with regard to the complaint to ensure the investigations are conducted properly.

(l) Confidentiality of Reports and Investigation Information.

(1) A report of suspected abuse, neglect, or exploitation and the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation or in providing services as a result of an investigation are confidential and may be disclosed only for purposes consistent with Chapter 261, Family Code, applicable federal or state law, and in accordance with this section.

(2) To the extent required by state or federal law, TJJD will release to the public, upon request, a report of alleged or suspected abuse, neglect, or exploitation if:

(A) the report relates to a report of abuse, neglect, or exploitation involving a child committed to TJJD during the period that the child is committed to TJJD; and

(B) TJJD is not prohibited by Chapter 552, Government Code, or other law from disclosing the report.

(3) Any information concerning a report of alleged or suspected abuse, neglect, or exploitation that is disclosed will be edited to protect the identity of:

(A) a child who is the subject of the report of alleged or suspected mistreatment;

(B) any other youth committed to TJJD who is named in the report;

(C) the person who made the report; and

(D) any other person whose life or safety may be endangered by the disclosure.

(4) Notwithstanding any other provision permitting the release of information, TJJD will not disclose any record or information that, if released to the requestor, would interfere with an ongoing criminal investigation or prosecution.

(5) An investigative report regarding an investigation of an allegation of abuse, neglect, or exploitation will be provided to:

(A) a law enforcement agency or other criminal justice agency for purposes of investigation and prosecution, upon request; and

(B) a parent, guardian, managing conservator, or attorney representing a youth, upon request. The information contained in the report will be redacted to protect the identity of the person making the report, other youth, and any other person who may be harmed by the disclosure.

(6) An investigative report and evidence gathered in the course of an investigation may be provided to appropriate TJJD staff for the determination of corrective actions, to the State Office of Administrative Hearings for the purpose of a certification action pursuant to Chapter 349 of this title, and pursuant to a Memorandum of Understanding adopted under §810.009, Health and Safety Code.

(7) An investigative report and evidence gathered in the course of an investigation may be provided to or made available to the subject of the investigation for use in an appeal of the investigation findings or to defend against a disciplinary action or other action arising from the investigation findings, including a certification action under Chapter 349 of this title.

(A) Investigative reports are confidential under Chapter 261, Family Code, and may be used by the subject of the investigation only for the appeal of investigation findings or to defend against a disciplinary action or certification action arising from an investigation.

(B) Names of individuals contained in the investigative report or related evidence will be redacted if the names are not necessary for the fair resolution of contested facts. Any information that is confidential by law will be redacted prior to delivery to the subject of the investigation.

(8) Copies of videotapes, audiotapes, and photographs may be provided to individuals or entities identified in paragraphs (5)-(7) of this subsection only if TJJD determines that the provision of a copy is essential to the investigation, prosecution, or resolution of a case. Otherwise, the individual will be provided access to review videotapes, audiotapes, and photographs only in areas designated by TJJD and at a time mutually convenient to TJJD and the requestor. When viewing or listening to these records, the requestor may not be accompanied by any individual who would not otherwise be entitled to have access to these records unless the participation of this individual is deemed by TJJD to be appropriate under the circumstances surrounding the request.

(9) TJJD shall withhold the release of any investigation records obtained from another source if the release of those records to the requestor is specifically prohibited under state or federal law. Information that may be withheld under this section includes, but is not limited to:

(A) all medical records subject to the Medical Practices Act, Chapter 159, Occupations Code, unless release to the requestor is authorized under that Act;

(B) HIV information unless release to the requestor is authorized under Chapter 81, Health and Safety Code;

(C) offense reports, criminal history information, and/or arrest records obtained from a law enforcement entity, unless their release to the requestor is specifically authorized under state or federal law; and

(D) adult or juvenile probation records, as well as records related to the taking into custody of a juvenile, unless release to the requestor is specifically authorized under state or federal law.

(m) Complaints. All complaints relating to investigations under this section shall be referred to the Board, as required by §261.403, Family Code.

(n) Periodic Audit of Investigations. Pursuant to Family Code §261.403, the Board ensures there is a periodic internal audit of procedures related to administrative investigations of alleged abuse, neglect, and exploitation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2024.

TRD-202406315

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130



SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE

DIVISION 1. BEHAVIOR MANAGEMENT

37 TAC §380.9503

The Texas Juvenile Justice Department (TJJD) proposes amendments to §380.9503, Rules and Consequences for Residential Facilities.

SUMMARY OF CHANGES

Amendments to the section will include revising the due process procedure that is required to prove an allegation in cases where a Level II hearing is not required. Specifically, the changes will include: (1) assigning the name *rule-violation review* to this level of due process; (2) adding that the standard of proof is a preponderance of evidence; (3) adding that a rule-violation review may be held even if no disciplinary consequence is sought; (4) adding that the youth will be notified, rather than told, about which rule was allegedly violated and which consequence staff is considering, if any; (5) removing the statement that required staff to describe the information staff has that establishes the youth committed the alleged violation; (6) adding that the youth must be given the opportunity to review relevant evidence considered by staff and to present the youth's own evidence; and (7) adding that the results of a rule-violation review are not grievable through the

youth grievance system, but they may be appealed to the facility administrator or designee on various grounds.

Amendments in other areas of the rule will include: (1) removing the statement that allowed a rule violation to be proven only via a Level I or Level II due process hearing and that limited a youth's disciplinary record to consist only of allegations proven in these types of hearings; (2) clarifying that, in addition to an incident report, any other document that describes conduct is also something that cannot be appealed or grieved; (3) adding that the *results* of hearings or rule-violation reviews, and not just disciplinary consequences, can be appealed; and (4) clarifying that the statement requiring appropriate due process before imposing consequences applies to *disciplinary* consequences.

FISCAL NOTE

Emily Anderson, Deputy Executive Director: Support Operations and Finance, has determined that, for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state government or local governments as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Cameron Taylor, Senior Manager, Policy Division, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be updated and streamlined procedures for addressing youth behaviors that constitute violations of the rules of conduct for residential facilities.

Ms. Anderson has also determined that there will be no effect on small businesses, micro-businesses, or rural communities. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

GOVERNMENT GROWTH IMPACT

TJJD has determined that, during the first five years the section is in effect, the section will have the following impacts.

- (1) The proposed section does not create or eliminate a government program.
- (2) The proposed section does not require the creation or elimination of employee positions at TJJD.
- (3) The proposed section does not require an increase or decrease in future legislative appropriations to TJJD.
- (4) The proposed section does not impact fees paid to TJJD.
- (5) The proposed section does not create a new regulation.
- (6) The proposed section does not expand, limit, or repeal an existing regulation.
- (7) The proposed section does not increase or decrease the number of individuals subject to the section's applicability.
- (8) The proposed section will not positively or adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Texas Juvenile Justice Department, Policy and Standards Section, P.O. Box 12757, Austin, Texas 78711, or via email to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to the proper accomplishment of TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

No other statute, code, or article is affected by this proposal.

§380.9503. *Rules and Consequences for Residential Facilities.*

(a) Purpose. This rule establishes the actions that constitute violations of the rules of conduct for residential facilities. Violations of the rules may result in disciplinary consequences that are proportional to the severity and extent of the violation. Appropriate due process, including a consideration of extenuating circumstances, shall be followed before imposing disciplinary consequences.

(b) Applicability. This rule applies to youth assigned to residential facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) Definitions. The following terms, as used in this rule, have the following meanings unless the context clearly indicates otherwise.

(1) Attempt to Commit--a youth, with specific intent to commit a rule violation, engages in conduct that amounts to more than mere planning that tends but fails to effect the commission of the intended rule violation.

(2) Bodily Injury--physical pain, illness, or impairment of physical condition. Fleeting pain or minor discomfort does not constitute bodily injury.

(3) Direct Someone to Commit--occurs when:

- (A) a youth communicates with another youth;
- (B) the communication is intended to cause the other youth to commit a rule violation; and
- (C) the other youth commits or attempts to commit a rule violation.

(4) Possession--actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(d) General Provisions.

(1) Formal incident reports are completed for alleged rule violations as required by internal operational procedures.

(2) A formal incident report is not proof that a youth committed an alleged rule violation. An [Only rule violations that are proven through a Level I or Level II due process hearing in accordance with §380.9551 or §380.9555 of this chapter, respectively, are considered proven and are considered a part of a youth's disciplinary record. A formal] incident report or other document describing conduct is not something that can be appealed or grieved [appealable or grievable]; only the results of a hearing or rule-violation review [disciplinary consequences] may be appealed [or grieved], as provided below.

(3) When a youth is found to be in possession of prohibited money as defined in this rule, a Level II hearing is required to seize the money. Seized money shall be placed in the student benefit fund in accordance with §380.9555 of this chapter.

(4) This paragraph applies only to youth not on parole status who are alleged to have engaged in conduct classified as a first- or second-degree felony while in a residential facility operated by or under contract with TJJD. A Level II hearing shall be requested on these youth unless it is determined that, given all circumstances, a Level II hearing is not appropriate. Such decision shall be documented. If a requested Level II hearing is held and the allegation is proved, the youth

shall be reviewed for the most restrictive setting appropriate, including the intervention program described by §380.9510 of this chapter.

(e) Disciplinary Consequences.

(1) Disciplinary consequences shall be established in writing in TJJJ's procedural manuals. Appropriate disciplinary consequences may be imposed only if the consequences are established in writing in TJJJ's procedural manuals prior to the occurrence of the conduct for which the consequence is issued.

(2) Disciplinary consequences may include, but are not limited to, the following:

(A) suspension of privileges;

(B) restriction from planned activities;

(C) trust-fund restriction; and

(D) disciplinary transfer to a high-restriction facility (available only for youth on institutional status in a medium-restriction facility).

(3) The following are prohibited as disciplinary consequences:

(A) corporal or unusual punishment;

(B) subjecting a youth to humiliation, harassment, or physical or mental abuse;

(C) subjecting a youth to personal injury;

(D) subjecting a youth to property damage or disease;

(E) punitive interference with the daily functions of living, such as eating or sleeping;

(F) purposeless or degrading work, including group exercise as a consequence;

(G) placement in the intervention program under §380.9510 of this chapter;

(H) disciplinary isolation; and

(I) extending a youth's stay in a TJJJ facility.

(4) A Level II hearing is required before imposing a disciplinary consequence that materially alters a youth's living conditions, including disciplinary transfer from a medium-restriction facility to a high-restriction facility. TJJJ's procedural manuals will specify which disciplinary consequences require a Level II hearing. Disciplinary consequences requiring a Level II hearing are considered major consequences.

(5) This paragraph applies only to youth in high-restriction facilities. To impose a disciplinary consequence that does not require a Level II hearing, a rule-violation review is required. A rule-violation review is a process by which staff review evidence to determine whether a rule violation occurred. A rule-violation review results in a finding that the alleged violation is proven, the alleged violation is not proven, or a different rule was violated than the one alleged. A rule violation is proven if a preponderance of the evidence proves behavior meeting the definition of a rule violation occurred. The following steps are to be taken for every rule-violation review, regardless of whether a consequence is sought: [If a Level II hearing is not required, the following must occur before imposing disciplinary consequences for a youth in a high-restriction facility:]

(A) a written description of the incident must be prepared;

(B) staff must notify [tell] the youth which rule violation the youth allegedly committed [and describe the information staff has that establishes the youth committed it];

(C) staff must notify [tell] the youth which [what] disciplinary consequence(s) staff is considering imposing, if any; [and]

(D) the youth must be given the opportunity to review the relevant evidence considered by staff and to present the youth's own relevant evidence; and

(E) ~~[(D)]~~ the youth must be given the opportunity to address the allegation, including providing any extenuating circumstances and information on the appropriateness of the intended consequence(s).

(6) If a Level II hearing is not required, a Level III hearing must occur before imposing disciplinary consequences for a youth in a medium-restriction facility, in accordance with §380.9557 of this chapter.

(f) Review and Appeal of Consequences.

(1) All disciplinary consequences shall be reviewed for policy compliance by the facility administrator or designee within three calendar days after issuance. The reviewing staff shall not be the staff who issued the discipline.

(2) The reviewing staff may remove or reduce any disciplinary consequence determined to be excessive or not validly related to the nature or seriousness of the conduct.

(3) Youth may appeal disciplinary consequences issued through a Level II hearing by filing an appeal in accordance with §380.9555 of this chapter.

(4) Youth in medium-restriction facilities may appeal disciplinary consequences issued through a Level III hearing by filing an appeal in accordance with §380.9557 of this chapter.

(5) The findings and disposition from a rule-violation review are not grievable, but they may be appealed to the facility administrator or designee on the grounds that the youth did not commit the rule violation found proven during the review, that the consequence is not appropriate, or that the youth was not provided with the requisite notice or opportunity to be heard. If the result of a rule-violation review is overturned, that fact shall be documented appropriately.

~~[(5) Youth in high-restriction facilities may grieve disciplinary consequences issued without a Level II hearing by filing a grievance in accordance with §380.9331 of this chapter.]~~

(g) Major Rule Violations. It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) Assault of Another Youth (No Injury)--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to another youth but the conduct does not result in bodily injury.

(2) Assault of Staff (No Injury)--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to a staff member, contract employee, or volunteer with the intent to cause injury but the conduct does not result in bodily injury.

(3) Assault Causing Bodily Injury to Another Youth--intentionally, knowingly, or recklessly engaging in conduct that causes another youth to suffer bodily injury.

(4) Assault Causing Bodily Injury to Staff--intentionally, knowingly, or recklessly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury.

(5) Attempted Escape--committing an act with specific intent to escape that amounts to more than mere planning that tends but fails to effect an escape.

(6) Chunking Bodily Fluids--causing a person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, and/or feces of another with the intent to harass, alarm, or annoy another person.

(7) Distribution of Prohibited Substances--distributing or selling any prohibited substances or items.

(8) Escape--leaving a high-restriction residential placement without permission or failing to return from an authorized leave.

(9) Extortion or Blackmail--demanding or receiving favors, money, actions, or anything of value from another in return for protection against others, to avoid bodily harm, or in exchange for not reporting a violation.

(10) Failure to Comply with Electronic Monitoring Program Conditions (for Youth in Medium-Restriction Residential Placement)--failing to comply with one of the following conditions required by the youth's electronic monitoring program conditions:

(A) remain at the address listed at all designated times;

(B) follow curfew restriction as stated in the youth's conditions of placement or conditions of parole;

(C) remain at the approved placement while on electronic monitoring, going only to school, approved activities, religious functions, and medical/psychological appointments and then return to the approved placement, in accordance with the schedule identified in the conditions of placement or conditions of parole;

(D) wear the electronic monitoring device 24 hours a day;

(E) allow a TJJJD staff member to enter the youth's residence to install, maintain, and inspect the device if required;

(F) notify the electronic monitoring officer as soon as possible within 24 hours if the youth experiences any problems with the electronic monitoring system; and

(G) charge the device daily for a minimum of one hour continuously in the morning and one hour continuously in the evening.

(11) Fighting Not Resulting in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that does not result in bodily injury.

(12) Fighting That Results in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that results in bodily injury.

(13) Fleeing Apprehension--running from or refusing to come to staff when called and such act results in disruption of facility operations.

(14) Misuse of Medication--using medication provided to the youth by authorized personnel in a manner inconsistent with specific instructions for use, including removing the medication from the dispensing area.

(15) Participating in a Major Disruption of Facility Operations--intentionally engaging in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs.

(16) Possessing, Selling, or Attempting to Purchase Ammunition--possessing, selling, or attempting to purchase ammunition.

(17) Possession of Prohibited Items--possessing the following prohibited items:

(A) cellular telephone;

(B) matches or lighters;

(C) jewelry, unless allowed by facility rules;

(D) money in excess of the amount or in a form not permitted by facility rules (see §380.9555 of this chapter for procedures concerning seizure of such money);

(E) pornography;

(F) items which have been fashioned to produce tattoos or body piercing;

(G) cleaning products when the youth is not using them for a legitimate purpose; or

(H) other items that are being used inappropriately in a way that poses a danger to persons or property or threatens facility security.

(18) Possessing, Selling, or Attempting to Purchase a Weapon--possessing, selling, or attempting to purchase a weapon or an item that has been made or adapted for use as a weapon.

(19) Possession or Use of Prohibited Substances and Paraphernalia--possessing or using any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol, tobacco products, or related paraphernalia such as that used to deliver or make any prohibited substance.

(20) Refusing a Drug Screen--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen. (Note: If the youth says he/she cannot provide a sample, the youth shall be given water to drink and two hours to provide the sample.)

(21) Refusing a Search--refusing to submit to an authorized search of person or area.

(22) Repeated Non-Compliance with a Written, Reasonable Request of Staff (for Youth in Medium-Restriction Residential Placement)--failing on two or more occasions to comply with a specific written, reasonable request of staff. If the request requires the youth to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something monthly, the two failures to comply must be within a 60-day period.

(23) Sexual Misconduct--intentionally or knowingly engaging in any of the following:

(A) causing contact, including penetration (however slight), between the penis and the vagina or anus; between the mouth and penis, vagina or anus; or penetration (however slight) of the anal or genital opening of another person by hand, finger, or other object;

(B) touching or fondling, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person;

(C) kissing for sexual stimulation;

(D) exposing the anus, buttocks, breasts, or genitals to another or exposing oneself knowing the act is likely to be observed by another person; or

(E) masturbating in an open and obvious way, whether or not the genitals are exposed.

(24) Stealing--intentionally taking property with an estimated value of \$100 or more from another without permission.

(25) Tampering with Monitoring Equipment--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(26) Tampering with Safety Equipment--intentionally tampering with, damaging, or blocking any device used for safety or security of the facility. This includes, but is not limited to, any locking device or item that provides security access or clearance, any fire alarm or fire suppression system or device, video camera, radio, telephone (when the tampering prevents it from being used as necessary for safety and/or security), handcuffs, or shackles.

(27) Tattooing/Body Piercing--engaging in tattooing or body piercing of self or others. Tattooing is defined as making a mark on the body by inserting pigment into the skin.

(28) Threatening Another with a Weapon--intentionally and knowingly threatening another with a weapon. A weapon is something that is capable of inflicting bodily injury in the manner in which it is being used.

(29) Unauthorized Absence--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(30) Vandalism--intentionally causing \$100 or more in damage to state property or personal property of another.

(31) Violation of Any Law--violating a Texas or federal law that is not already defined as a major or minor rule violation.

(h) Minor Rule Violations. It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) Breaching Group Confidentiality--disclosing or discussing information provided in a group session to another person not present in that group session.

(2) Disruption of Program--engaging in behavior that requires intervention to the extent that the current program of the youth and/or others is disrupted. This includes, but is not limited to:

(A) disrupting a scheduled activity;

(B) being loud or disruptive without staff permission;

(C) using profanity or engaging in disrespectful behavior toward staff or peers; or

(D) refusing to participate in a scheduled activity or abide by program rules.

(3) Failure to Abide by Dress Code--failing to follow the rules of dress and appearance as provided by facility rules.

(4) Failure to do Proper Housekeeping--failing to complete the daily chores of cleaning the living environment to the expected standard.

(5) Gang Activity--participating in an activity or behavior that promotes the interests of a gang or possessing or exhibiting anything related to or signifying a gang, such as, but not limited to, gang-related literature, symbols, or signs.

(6) Gambling or Possession of Gambling Paraphernalia--engaging in a bet or wager with another person or possessing paraphernalia that may be used for gambling.

(7) Horseplay--engaging in wrestling, roughhousing, or playful interaction with another person or persons that does not rise to the level of an assault. Horseplay does not result in any party getting upset or causing injury to another.

(8) Improper Use of Telephone/Mail/Computer--using the mail, a computer, or the telephone system for communication that is prohibited by facility rules, at a time prohibited by facility rules, or to inappropriately access information.

(9) Lending/Borrowing/Trading Items--lending or giving to another youth, borrowing from another youth, or trading with another youth possessions, including food items, without permission from staff.

(10) Lying/Falsifying Documentation/Cheating--lying or withholding information from staff, falsifying a document, and/or cheating on an assignment or test.

(11) Possession of an Unauthorized Item--possessing an item the youth is not authorized to have (possession of which is not a major rule violation), including items not listed on the youth's personal property inventory. This does not include personal letters or photographs.

(12) Refusal to Follow Staff Verbal Instructions--deliberately failing to comply with a specific reasonable verbal instruction made by a staff member.

(13) Stealing--intentionally taking property with an estimated value under \$100 from another without permission.

(14) Threatening Others--making verbal or physical threats toward another person or persons.

(15) Unauthorized Physical Contact with Another Youth (No Injury)--intentionally making unauthorized physical contact with another youth without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, or grabbing.

(16) Unauthorized Physical Contact with Staff (No Injury)--intentionally making unauthorized physical contact with a staff member, contract employee, or volunteer without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, and grabbing.

(17) Undesignated Area--being in any area without the appropriate permission to be in that area.

(18) Vandalism--intentionally causing less than \$100 in damage to state or personal property.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 27, 2024.

TRD-202406316

Jana Jones

General Counsel

Texas Juvenile Justice Department

Earliest possible date of adoption: February 9, 2025

For further information, please call: (512) 490-7130

