



# ATPE Input to State Board for Educator Certification

September 20, 2024

**Public Comment regarding September 19-20, 2024, State Board for Educator Certification meeting**

**Respectfully submitted by:** Lance Cain, Managing Attorney, Association of Texas Professional Educators (ATPE). 305 E. Huntland Drive, Ste. 300, Austin, TX 78752, [lcain@atpe.org](mailto:lcain@atpe.org), 800-777-2873

**Agenda Item 14:** Discussion of Proposed Revisions to 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases

**Comment Summary:** In response to a Chapter 249 Stakeholder meeting held on Aug. 30, 2024, ATPE would like to provide feedback on the following:

1. Revisions to 19 TAC 249.3(51) – definition of solicitation of a romantic relationship (removal of “may” and adding specific “grooming behaviors”)
2. Revisions to 19 TAC 249.17(g) – mandatory minimum sanction for test security violation (removal of intent requirement)

**ATPE’s Stakeholder Role:** ATPE supports the state’s largest community of educators in an effort to elevate public education in Texas. We embody a diverse community of educators throughout the state giving us a unique perspective on public education issues. ATPE attorneys also give presentations around the state to future teachers in traditional college settings and educator preparation programs. We educate them on appropriate vs. inappropriate communications, thoroughly discuss solicitation/grooming rules, and

outline other important employment-related rights and obligations. These attributes highlight ATPE's commitment to fostering an educated membership that is well-informed of appropriate and inappropriate educator-student boundaries. They also allow us to provide informed feedback to SBEC based on the experiences of our members and staff. In light of that background, please accept the following stakeholder comments.

**Revisions to definition of solicitation of a romantic relationship:** A discussion point from the Aug. 30 stakeholder meeting was to add "grooming behaviors" to the Chapter 249 definition of solicitation. We understand SBEC staff's inclination to plug any perceived "holes" in the existing solicitation definition. But the existing rules sufficiently define inappropriate behavior and include a sufficient "catch-all" clause, prohibiting "any other acts tending to show that the educator solicited a romantic relationship with a student," among others.

ATPE is particularly concerned with the removal of "may" from the definition's preamble. ATPE objects to limiting a TEA investigator's discretion to determine whether a reported behavior is innocent or inappropriate. And, if approved, the new rules mandate the following behaviors be considered "prima facie evidence of the solicitation by an educator of a romantic relationship with a student":

- A teacher spending time tutoring a student after school (shows special attention)
- A coach buying a meal for a student who forgot money (gives the student money)
- An assistant principal who is required because of confidentiality to discuss student discipline with the door closed (meeting behind closed doors with the student without another adult present)

We urge SBEC not to remove the "may" from the solicitation definition to continue to allow for appropriate levels of discretion and common sense. Otherwise, innocent behaviors and behaviors with a

legitimate educational purpose will be considered “prima facie evidence of the solicitation by an educator of a romantic relationship with a student.”

ATPE is also concerned with some of the proposed grooming factors—specifically, factors listed under (K)(i) “shows the student special attention” and (K)(v) “meeting behind closed doors with the student without another adult present.” ATPE would urge SBEC to avoid implementing any rule where showing appropriate special attention toward a child is proof of romantic solicitation.

Likewise, there are countless times when it is appropriate and even required by law for an educator to meet with a student behind closed doors—for example, counselors meeting with students, administrators disciplining students, and students with a testing accommodation. It should not be considered “prima facie evidence” of solicitation if an educator engages in this behavior for a legitimate educational purpose.

For these reasons, ATPE recommends against the addition of 19 TAC 249.3(51)(K). In the alternative, ATPE requests the inclusion of language clarifying that such behaviors shall be considered evidence of solicitation only when there is not a legitimate educational purpose.

**Revisions to mandatory minimum sanction for test security violation:** Also raised at the Aug. 30 stakeholder meeting were suggested revisions removing the intent requirement from test security violations. ATPE counsels many educators involved in testing. We believe that an intent (or knowing) requirement is necessary so that accidental or unintentional violations are not judged equally to those of an educator who is intentionally trying to cheat or inflate testing scores. As such, we urge SBEC to retain the intent requirement in 19 TAC 249.17(g).

**Conclusion:** ATPE appreciates the opportunity to provide stakeholder feedback on the discussion items above. Once again, we ask whether adding rules benefits Texas public education, especially when there are sufficient (and lengthy) rules in place to sanction solicitation/grooming and protect Texas students.

At a time when approximately 30% of educators entering the profession are not certified, over-sanctioning is a very real concern that can leave students with less-qualified, uncertified teachers. The existing rules are designed to protect students and further public education, which ATPE supports. But the right balance must be struck to avoid unfair outcomes and unnecessary sanctions.

Thank you again, and please contact me if you have any questions.