

Public Comment regarding Agenda Item 16 - Potential Amendments to Chapters 247 & 249

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, 800-777-2873

Comment Summary: In response to the potential amendments to 19 TAC Chapters 247 & 249 found in Agenda Item 16, ATPE would like to provide feedback on the following:

- **§249.51. Temporary Suspension Based on Continuing and Imminent Threat**
- **§249.52. Process For Temporary Suspension of a License or Permit**

ATPE's Stakeholder Role: ATPE supports the state's largest community of educators in an effort to elevate public education in Texas. Our connections with Texas educators give us a unique and varied perspective on public education issues. ATPE attorneys give presentations around the state to future teachers in traditional college settings and educator preparation programs. We educate them on appropriate communications, thoroughly discuss solicitation/grooming rules, and outline other important employment-related rights and ethical obligations. These attributes highlight ATPE's commitment to fostering an educated membership that is well-informed of educator-student boundaries, and 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.

§249.51. Temporary Suspension Based on Continuing and Imminent Threat (Agenda Item 16 board book, page 23)

The concern: Subsection (b) lists five factors to consider when determining whether an educator's conduct is a "continuing and imminent threat to public welfare." As a term of art, there is presently no common law, statutory or regulatory framework identifying what misconduct by an educator constitutes a "continuing and imminent threat to public welfare." However, it seems like the first two factors listed in the proposed rule should, at a minimum, always be present if an educator's certificate is subject to temporary suspension. Otherwise, any single factor, regardless of how minor, could be used as grounds to temporarily suspend an

educator's certificate. For example, should any inaction (factor 3) by an educator, including one occurring off school grounds (factor 4), that is not also a real, present, and non-speculative danger to a student or the public be worthy of a temporary suspension? We think not and therefore suggest creating a baseline definition of "continuing and imminent threat" by folding factors 1 and 2 into the main body of subsection (b) and then listing the remaining factors. This change provides more clarity to educators and gives them peace of mind that only conduct that falls under a reasonable definition will result in temporary suspension prior to the educator being granted due process.

Suggested Language:

(b) In determining under TEC §22A.202 whether a license or permit holder poses a continuing and imminent threat to the public welfare—defined as a real, present, and non-speculative danger of harm to a student or the public arising from the acts or omissions of the license or permit holder, which may include but are not limited to solicitation or engagement in a romantic relationship, neglect, or abuse — [under TEC §22A.202] the SBEC or SBEC committee will consider:

~~[(1) if there is a real danger to a student or to the public from the acts or omissions of the license or permit holder, including, but not limited to, solicitation or engagement in a romantic relationship, neglect, or abuse;]~~
~~[(2) whether the harm alleged is more than abstract, hypothetical or remote;]~~
(1)~~[(3)]~~ both actions and inactions by the license or permit holder;
(2)~~[(4)]~~ whether the conduct occurred on or off a school district campus; and
(3)~~[(5)]~~ whether there have been prior complaints, investigations, or discipline of the same or similar nature against the license or permit holder.

§249.52. Process For Temporary Suspension of a License or Permit (Agenda Item 16 board book, page 23)

The concern: Subsection (b) allows SBEC to provide email notice of a temporary suspension hearing. This is inconsistent with Texas Government Code (TGC) §2001.054(c), which governs the revocation, suspension, annulment, or withdrawal of a license, including a hearing following a summary suspension such as a

temporary suspension under TEC §22A.202 (TGC §2001.054(c-1). TGC §2001.054 requires notice by “personal service or by registered or certified mail” before the institution of a state agency proceeding, including a hearing following a temporary suspension (see Agenda Item 16 board book, page 5). This statutory requirement is correctly applied in 19 TAC 249.14(p), which requires notice “via certified or registered mail to the certificate holder” before institution of agency proceedings. The requirement makes sense given the possibility that an email could wind up in a junk/spam folder or that an educator could inadvertently delete it thinking it was unimportant. Email does not provide fair and sufficient notice for an action as drastic as temporary suspension. We agree with the requirement in Texas Government Code §2001.054(c) and its correct application in 19 TAC 249.14(p) that notice must be provided by registered or certified mail. Should SBEC wish to send notice via electronic mail in addition to the requirement to send it via registered or certified mail, we would certainly support that.

Suggested Language:

(b) A with-notice hearing may include activities such as presentation of evidence, deliberations, and announcement of the committee's decision. The committee has discretion over setting time limits and evidentiary determinations. Notice of the temporary suspension hearing shall be sent to the respondent no less than 10 days before the hearing via registered or certified mail. ~~[electronic mail. If the electronic notice is returned as undeliverable, the notice will be sent via certified mail.]~~

Conclusion: ATPE appreciates the opportunity to provide stakeholder input on the proposed amendments to 19 TAC Chapters 247 and 249. We support SBEC's goal of protecting student safety while also ensuring that disciplinary processes remain fair, clear, and legally sound for educators. Our recommended revisions are intended to strengthen due process, provide clearer standards for determining a continuing and imminent threat, and ensure that notice procedures comply with existing statutory requirements. We respectfully urge SBEC to adopt these changes to promote both student protection and educator fairness, and we welcome continued collaboration on policies that uphold high ethical standards while preserving the rights and professional dignity of Texas educators.