

## **Public Comment regarding July 19, 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 July 9, 2024, ATPE would like to provide feedback on the following:

1. Modification of solicitation/grooming rules (prohibiting “empathy” and transportation)
2. Modification of contract abandonment rules (requiring medical documentation, medical leave/FMLA, ALJ sanctioning discretion)

**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 their contractual obligations to their employing district. These attributes highlight ATPE’s commitment to fostering an educated membership that is well-informed of appropriate and inappropriate educator-student boundaries. And it also allows us to provide informed feedback to the SBEC based on the experiences of our members and staff. It is our honor and privilege to provide the following stakeholder comments.

**Modification of solicitation/grooming rules:** A discussion point from the July 9 stakeholder meeting was to name “grooming” and add “grooming behaviors” to the Chapter 249 definition of solicitation.

We understand the appeal of consolidating the existing solicitation definition with the new Child Grooming Law in the Texas Penal Code. And ATPE wholeheartedly believes there should be transparent rules in place to allow for fair investigations of educators accused of inappropriate solicitation/grooming behaviors. There should also be appropriate sanctions for those educators who are proven to cross the line. And the existing disciplinary rules defining solicitation do just that, prohibiting “any other acts tending to show that the educator solicited a romantic relationship with a student” among others.

However, ATPE is concerned about the suggested addition of “showing empathy to a child” to the definition of solicitation/grooming. Educators are encouraged to build rapport and trust in educator-student relationships to ensure success in academics and athletics. Educators are also expected to serve as role models and mentors to their students. ATPE would urge the SBEC to avoid implementing any rule where showing appropriate empathy toward a child could be used against the educator.

Likewise, adding “providing transportation” to the solicitation/grooming definition does not take into account circumstances where that might be necessary, and completely appropriate. What is a coach or team sponsor supposed to do when they return late from an event and the students’ parents or guardians are not available to pick them up? These unforeseen circumstances can arise regardless of whether the educator works in a small or large community. As such, ATPE would urge the SBEC to avoid further restricting an educator’s discretion to make appropriate choices in difficult circumstances.

**Modification of contract abandonment rules:** Also raised at the July 9 stakeholder meeting were suggested additions relating to contract abandonment rules including those that would require medical documentation, require educators to take medical leave/FMLA and attempt to remove sanctioning discretion from Administrative Law Judges. ATPE counsels many educators who contemplate resignation. When they contact us before resigning, we counsel them regarding the potential consequences and their

medical-leave options. We have found that every situation presents a unique set of circumstances and obtaining medical leave or medical documentation is not always feasible.

Unfortunately, it is common for educators to resign without being advised by campus administration or HR of their right to medical leave/FMLA. Even when they are, medical leave/FMLA are largely unpaid and many educators cannot afford to go months without compensation. An educator on FMLA also works to prohibit the district hiring a full-time replacement and can result in students being taught for months by a substitute teacher.

Given the above, we suggest that existing contract abandonment rules allowing ALJs the discretion to consider “any other relevant circumstances or facts” are sufficient to enforce the SBEC’s goals and objectives.

**Conclusion:** ATPE appreciates the opportunity to provide stakeholder feedback on the specific discussion items above. On a more general level, we ask whether adding more rules is beneficial to Texas public education. Especially when there are sufficient (and lengthy) rules in place to sanction solicitation/grooming and contract abandonment. Teachers should not be sanctioned for showing empathy, giving an emergency and/or parent-approved ride to a stranded student or resigning due to legitimate medical reasons simply because they could not afford to take unpaid leave for six months.

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.