

State Board for Educator Certification
DISCUSSION AND ACTION SESSION AGENDA
Minutes
January 11, 2008

The Board will meet in open session and after determining the presence of a quorum, deliberate and possibly take formal action, including emergency action, on the following agenda items:

1. Call to Order

The State Board for Educator Certification convened its meeting at 9:00 a.m. on Friday, January 11, 2008 in Room 1-104 of the Travis Building, 1701 N. Congress Avenue in Austin, Texas.

Present: Dr. Cain, Dr. Glynn, Ms. Baszile, Ms. Pogue, Ms. Johnson, Dr. Gerlach, Mr. Barbic, Ms. Abbott, Mr. Trevino, Dr. Hetzler and Ms. Druessedow

Absent: Ms. Zinsser

2. Public Testimony

There was no public testimony on non-agenda items. All testimony will be heard prior to the item.

3. Certification Update

a) Department Updates

- Educator Standards

Dr. Loonam introduced Carla Valadez as the new Director of Educator Standards. Staff has begun conducting program visits for 2007-2008 which will continue through May. In addition, they have been working on the development of the new EC-6 Generalist TExES exam. The EC-6 Test Development committee met to review standards and test frameworks for the EC-6 Generalist and EC-6 Pedagogy and Professional Responsibilities exams. A summary of the process is included in the agenda. Staff is also working on a completing Continuing Professional Education (CPE) update. Rules related to educator preparation programs will be presented in March as discussion only. Stakeholder and Advisory Committee meetings will be held this month. ASEP training is scheduled next week for programs. The number of computer administered certification exams have increased each month compared to paper and pencil tests.

- Credentialing Services

Mr. Echazarreta advised that Credentialing will be presenting rule revisions in today's agenda. Credentialing has been busy with phone calls and website updates. They are scheduling stakeholder meetings on the continuing rule revisions that are planned for this year.

- Certification Enforcement Unit

Mr. Jones advised the Board that staff has been busy over the last few months. SBOE took no action on the rule revision packet regarding Chapter 249 and they became effective in December 2007. They are revising their forms to comply with the new rules and start the new process. They are still current on their Sex Abuse docket and Physical abuse docket. In addition, they will begin working on TAKs violations. They will receive investigative

support from the Office of the Inspector General's Office at TEA. Mr. Jones clarified the data included on the Opened and Closed cases per FY. The graphs should show read FY05-06, FY06-07 and FY07-08.

- Investigations/Fingerprinting

Dr. Cain shared comments from the field about the great job Doug Phillips is doing. Mr. Phillips advised that the fingerprinting process for certified educators under Senate Bill 9 began this week with Austin Independent School District (AISD). Staff is working on the process for uncertified employees. He will hire two more investigators and one more program specialist which will bring staff from nine to 30 people.

b) Committee Updates

- **Code of Ethics Review Committee**

No update.

- **Legislative Committee**

Ms. Pogue advised the Board that there will be a committee meeting on Thursday, March 6 to start developing goals for the next Legislative session. Ms. Pogue asked that staff update the entire board prior to the meeting on the legislative issues that were priorities from TEA. She asked which ones were passed and which ones did not so they can start developing their goals. She also asked staff to refresh the Board of the goals set at the July Retreat to make sure they are going in the right direction. Cindy will send email on pertinent information for the meeting. Ms. Pogue advised the board of committee members.

c) Associate Commissioner Update

No update.

CONSENT AGENDA

4. Approval of November 2, 2007 Board Meeting Minutes

Motion and Vote:

Motion was made by Ms. Baszile to approve minutes as recorded from November 2, 2007 Board meeting. Second was made by Ms. Druesedow and the Board voted unanimously in favor of the motion.

INFORMATION ONLY

5. 2007-2010 Rule Review Plan for State Board for Educator Certification Rules

Dr. Glynn advised the Board that this is an information item on the continuing rule review cycle.

DISCUSSION ONLY

6. Discussion of 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases, Subchapter B, Enforcement Actions and Guidelines, §249.17, Decision-Making Guidelines, and Subchapter E, Posthearing Matters, §249.44, Reapplication Following Denial, Surrender, or Revocation

Public Testimony was provided by the following people on Item .6:

1. Portia Bosse, Texas State Teachers Association (TSTA)
2. Jennifer Canaday, Association of Texas Professional Educators (ATPE)
3. Julie Leahy, Texas Classroom Teachers Association (TCTA)
4. Ted Melina-Raab, Texas-AFT
5. M.A. Khalili

Dr. Glynn advised the Board that this item was put on the agenda at the request of the State Board of Education (SBOE) Committee on School Initiatives. The SBOE did not take action on these rules as currently written and they became effective in December. At the Committee meeting several of the associations provided testimony to the Committee similar to what was presented today.

There was a motion by one of the SBEC board members to change language from “shall” to “may” but that motion failed to receive a second. The item was then sent to the SBOE and they took no action therefore the rules became effective. At the request of the Committee, Dr. Glynn agreed to bring the item back to the SBEC Board as a discussion item for review of §249.17 and §249.44.

One of the difficulties with using “may” instead of “shall” is that it is very permissive. Staff decided to propose stronger language because there have been difficulties at State Office of Administrative Hearings (SOAH) with inconsistencies of the decisions of the judges. The SBEC Board has had to deal with some of those inconsistencies. Staff tried to tighten rules to make them less open to interpretation and make the rules much clearer.

Also, presented for consideration is §249.44 pertaining to the five-year reapplication period. Mr. Jones advised the Board that staff feels that it is important to keep the five-year reapplication period to allow educators to show rehabilitation. A period of one year is not considered long enough. It is very easy to go for a year without re-offending or getting caught. It is much more difficult for someone to make it five years if they are not truly rehabilitated. Mr. Jones advised the Board that people have the opportunity to withdraw their application before it is denied.

After discussion by the Board, SBEC counsel, Nichol Bunker-Henderson, advised this is the rule in effect right now and this item is discussion only so no action can be taken today. The Board can choose to have staff bring this back with alternative text or have stakeholder meetings.

Each board member indicated whether this item should go back to staff or whether the rules should be left alone. Baszille, Abbott, Shirley, Hetzler, Druessedow indicated they would like to have this item returned to staff. The majority Pogue, Johnson, Gerlach, Barbic, Trevino and Cain indicated they want it left alone.

DISCUSSION AND ACTION

7. Approval of Changes to 2007-2010 Rule Review Plan for State Board for Educator Certification Rules

Dr. Glynn advised that staff would like to accelerate the review of rules relating to educator preparation programs and to balance the remaining rule review workload. The State Auditor’s Office is currently reviewing educator preparation programs, particularly Alternative Certification Programs. Their recommendations should be presented to us in March.

Modifications to the plan would include changing rules relating to educator preparation program rules and educator preparation student rules from January 2009 to March 2008. Rules relating to Principal and Superintendent certificates and certification of educators from other countries would be shifted to January 2009. After the SBEC Board workshop in August 2007, the Board indicated a change in priority for the review of rules relating educator preparation programs.

Motion and Vote:

Motion was made by Ms. Abbott to approve proposed changes to the 2007-2010 Rule Review plan for the State Board for Educator Certification Rules as presented. Second was made by Mr. Shirley and the Board voted unanimously in favor of the motion.

8. Proposed Revisions to Board Operating Policies and Procedures (BOPP)

Dr. Glynn advised the Board of changes that were made to the Board Operating Policies and Procedures as requested by the Board.

The following changes were recommended by Board members:

Page 3 - #9 Change "on an annual basis during the first meeting of the year" to "annually."

Page 6 - Section III. Officers of the Board, #2 and #3 Change "from February 2 through February 1" to "from February 2 through the first board meeting after February 1"

Page 7 – Section C Change "Pursuant to that section, A board member must ~~not~~ adhere to the following" and add the word "Not" before the first word in 1-5.

Page 12 – (2) Add "oral and written" before "testimony will be accepted..."

Page 13 – B 1. Correct this sentence for syntax.

Board members had a discussion about public communication of board members pertaining to the Board. Mr. Shirley advised that The Memorandum of Agreement between TEA and SBEC expired in August 2007. Ms. Bunker-Henderson advised that this should be reviewed.

Dr. Glynn suggested that staff make the recommended revisions and bring back to the Board in March for approval.

Motion and Vote:

No action was taken on this item.

9. **Adoption of the Review of and Proposed Revisions to 19 TAC Chapter 232, General Certification Provisions**

Public testimony was provided by the following people on Item 9:

1. Jennifer Canaday, Association of Texas Professional Educators (ATPE)
2. Ted Melina-Raab, Texas-AFT
3. Holly Eaton, Texas Classroom Teachers Association (TCTA)
4. Paul Henley, Texas State Teachers Association (TSTA)
5. J.P. Lund, A+ Teachers

Mr. Echazarreta highlighted changes recommended after stakeholder meetings in addition to other technical changes. Board members discussed concerns about the Temporary Teacher Certificate and its guidelines. Mr. Echazarreta explained the process for accountability for school districts compared to educator preparation programs.

Motion and Vote:

Motion was made by Ms. Baszile to adopt the review of 19 TAC Chapter 232, General Certification Provisions. Second was made by Mr. Shirley and the Board voted unanimously in favor of the motion.

Motion was made by Ms. Baszile to approve the proposed revisions to 19 TAC Chapter 232, General Certification Provisions, as shown in Attachment II, for filing as proposed with the Texas Register, with the exception of §232.5 regarding the Temporary Teacher Certificate. Second was made by Mr. Shirley.

Board members discussed the motion.

Motion was made to call for the question by Ms. Johnson and the board voted unanimously in favor of the motion.

Hand vote for the motion: Ms. Baszile, Mr. Trevino, and Mr. Shirley. Those voting against the motion: Ms. Pogue, Ms. Johnson, Mr. Barbic, Ms. Abbott, Ms. Druessedow and Ms. Cain.

Motion was made by Ms. Pogue to approve the proposed revisions to 19 TAC Chapter 232, General Certification Provisions, as shown in Attachment II, for filing as proposed with the Texas Register. Second was made by Mr. Barbic. Ms. Baszile, Mr. Trevino and Mr. Shirley voted against the motion. Members voting for the motion: Ms. Pogue, Ms. Johnson, Mr. Barbic, Ms. Abbott, Ms. Druessedow and Ms. Cain. Motion passed.

10. Adoption of the Review of and Proposed Amendments to 19 TAC Chapter 233, Categories of Classroom Teaching Certificates.

Public testimony was provided by the following people on Item 10:

1. Holly Eaton, Texas Classroom Teachers Association (TCTA)
2. Alejandra Martin, Texas Association of School Personnel Administrators (TASPA)

Ms. Joan Allen, Deputy General Counsel, Texas Education Agency, advised the Board that she had worked with staff and Ms. Eaton on proposed language to deal with the small percentage of people who have the extenuating circumstances indicated. She stated that it may be beneficial for the Board to consider in the future an umbrella rule that would apply to all sorts of waivers or exceptions granted by agency staff. In the meantime, the following language was proposed to §233.1(e) without objection by legal staff:

An exception may be granted for a period of two years after the elimination of the examination for catastrophic illness of the educator or immediate family member or military service.

Motion was made by Ms. Baszile to adopt the review of 19 TAC Chapter 233, Categories of Classroom Teaching Certificates. Second was made by Ms. Pogue and the Board voted unanimously in favor of the motion.

Motion was made by Ms. Baszile to approve the proposed amendments to 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, as shown in Attachment II, with language added in §233.1(e) to include that exceptions may be granted for a period of two years after the elimination of the examination for catastrophic illness of the educator or an immediate family member or military

service of the applicant, for filing as proposed with the Texas Register. Second was made by Ms. Abbott and the Board voted unanimously in favor of the motion.

The Board took a break at 11:40 a.m.

Dr. Cain called the meeting back to order at 11:50 a.m.

Mr. Trevino did not return after the break.

11. Disciplinary Cases and Pending Litigation

The following people presented information regarding disciplinary cases:

1. M.A. Khalili on behalf of Docket No. 701-06-2992.EC Esmail Khalili v State Board for Educator Certification. Andrew Allen, Assistant Counsel, Educator Quality and Standards, presented information for SBEC in this case. Presenters responded to questions from board members.
2. Russell Ramirez on behalf of Docket No. 701-07-0536.EC State Board for Educator Certification v Natalie Greco. Chris Jones, Senior Counsel Texas Education Agency and Ms. Leslie Booker, Texas Education Agency Counsel presented information for SBEC in this case. Presenters responded to questions from board members.
3. Paula Wilder on behalf of Docket No. 701-07-0972.EC State Board for Educator Certification v Dennis Diggs. Chris Jones, Senior Counsel Texas Education Agency presented information for SBEC in this case. Presenters responded to questions from board members.

Mr. Jones provided additional information about Docket No. 701-07-0174.EC State Board for Educator Certification v Anthony Allen Jones. He responded to questions from board members.

Mr. Jones provided additional information about Docket No. 701-07-2282.EC State Board for Educator Certification v George L. Washington. He responded to questions from board members.

Dr. Cain adjourned to Executive Session at 1:09 p.m.

Ms. Pogue reconvened at 1:48 p.m.

Board members not present: Dr. Cain

Dr. Hetzler arrived at 1:52 p.m.

a) Disciplinary Cases

1. **Docket No. 701-06-2992.EC Esmail Khalili v. State Board for Educator Certification; Action to be Taken: Consideration of Proposal for Decision and Issuance of Final Order.**

Motion and Vote:

Motion was made by Ms. Druesedow to accept a proposal for decision and enter an order consistent with the Administrative Law Judge's decision in the following case: Docket No. 701-06-2992.EC Esmail Khalili v. State Board for Educator Certification. Motion was seconded by Mr. Barbic and the Board voted unanimously in favor of the motion.

2. Docket No. 701-07-0174.EC State Board for Educator Certification v. Anthony Allen Jones; Action to be Taken: Consideration of Proposal for Decision and Issuance of Final Order.

Motion was made by Ms. Johnson to accept the findings of fact 1-43 in the proposal for decision and the conclusions of law 1-4 in the following case: Docket No. 701-07-0174.EC State Board for Educator Certification v Anthony Allen Jones. She further moved that the Board should adopt the following additional conclusions of law: based on the findings of fact 24, 32, 37 and 38, Mr. Jones has shown that he is presently unworthy to instruct the children of this state pursuant to 19 TAC 249.17(c). Based upon respondents violation of SBEC rules his educator certificate is suspended for 3 years from the date that this order is finalized. Based upon respondent's violation of SBEC rules in three separate incidents during which Mr. Jones had inappropriate physical contact with special needs students he shows a pattern of inappropriate treatment of special education students. During the period of suspension and before reapplication respondent is directed to take 30 hours of anger management training and 30 hours of classroom management for special education teachers classroom discipline. Second by Ms. Baszile and the Board voted unanimously in favor of the motion.

3. Docket No. 701-07-0536.EC State Board for Educator Certification v. Natalie Greco; Action to be Taken: Consideration of Motion for Rehearing.

Motion and Vote:

No motion was taken.

4. Docket No. 701-07-0972.EC State Board for Educator Certification v. Dennis Diggs; Action to be Taken: Consideration of Proposal for Decision and Issuance of Final Order.

Motion and Vote:

Motion was made by Mr. Barbic to accept a proposal for decision and enter an order consistent with the Administrative Law Judge's recommendation in the following case: Docket No. 701-07-0972.EC State Board for Educator Certification v. Dennis Diggs. Motion was seconded by Ms. Abbott and the Board voted unanimously in favor of the motion.

5. Docket No. 701-07-2282.EC State Board for Educator Certification v. George L. Washington; Action to be Taken: Consideration of Proposal for Decision and Issuance of Final Order.

Motion was made by Ms. Baszile to accept the findings of fact 1-19 and 21-23 and the conclusions of law 1-3 and 5 -9 in the following case: Docket No. 701-07-2282.EC State Board for Educator Certification v George L. Washington. She further moved that the Board adopt the following conclusion of law 4. Mr. Washington did violate SBEC rule 19 TAC 249.15 (c)(3) regarding unworthiness to instruct or to supervise the youth of this state. She further moved that the Board adopt the following conclusion of law 10. The educator certificate of George L. Washington is hereby suspended for the period of 2 years pursuant to 19 TAC 249.15(c)(3) with the first year of suspension actively served and the remainder of the suspension probated. Further the respondent is directed to take 16 hours of continuing education in the area of anger management and 16 hours of continuing education in classroom discipline. Second by Ms. Abbott and the Board voted unanimously in favor of the motion.

6. Docket No. 701-07-2816.EC State Board for Educator Certification v. Garfield Dooley, Jr.; Action to be Taken: Consideration of Proposal for Decision and Issuance of Final Order.

Motion and Vote:

Motion was made by Mr. Barbic to accept a proposal for decision and enter an order consistent with the Administrative Law Judge's recommendation in the following case: Docket No. 701-07-2816.EC State Board for Educator Certification v. Garfield Dooley, Jr. Motion was seconded by Ms. Abbott and the Board voted unanimously in favor of the motion.

7. Docket No. 701-07-2894.EC State Board for Educator Certification v. Darrin J. McCluskey; Action to be Taken: Consideration of Proposal for Decision and Issuance of Final Order.

Motion and Vote:

Motion was made by Ms. Druesedow to accept a proposal for decision and enter an order consistent with the Administrative Law Judge's decision in the following case: Docket No. 701-07-2894.EC State Board for Educator Certification v. Darrin J. McCluskey. Motion was seconded by Ms. Barbic and the Board voted unanimously in favor of the motion.

8. Docket No. 701-07-3262.EC State Board for Educator Certification v. Glenn Malone; Action to be Taken: Consideration of Proposal for Decision and Issuance of Final Order.

Motion and Vote:

Motion was made by Mr. Barbic to accept a proposal for decision and enter an order consistent with the Administrative Law Judge's recommendation in the following case: Docket No. 701-07-3262.EC State Board for Educator Certification v. Glenn Malone. Motion was seconded by Mr. Barbic and the Board voted unanimously in favor of the motion.

9. Docket No. 701-07-3286.EC State Board for Educator Certification v. Mark Anthony Haynes; Action to be Taken: Consideration of Proposal for Decision and Issuance of Final Order.

Motion and Vote:

Motion was made by Ms. Abbott to accept a proposal for decision and enter an order consistent with the Administrative Law Judge's recommendation in the following case: Docket No. 701-07-3286.EC State Board for Educator Certification v. Mark Anthony Haynes. Motion was seconded by Mr. Shirley and the Board voted unanimously in favor of the motion.

10. Docket No. 701-07-3341.EC State Board for Educator Certification v. LeRoy Van Putten; Action to be Taken: Issuance of Default of Judgment.

Motion was made by Mr. Shirley to grant staff's request for the issuance of default judgment and enter an order consistent with the staff's recommendation in the following case: Docket No. 701-07-3341.EC State Board for Educator Certification v. LeRoy Van Putten. Motion was seconded by Ms. Druesedow and the Board voted unanimously in favor of the motion.

11. Docket No. 701-07-3569.EC State Board for Educator Certification v. Darrick Pounders; Action to be Taken: Issuance of Default of Judgment.

Motion was made by Mr. Shirley to grant staff's request for the issuance of default judgment and enter an order consistent with the staff's recommendation in the following case: Docket No. 701-

07-3569.EC *State Board for Educator Certification v. Darrick Pounders*. Motion was seconded by Ms. Druesedow and the Board voted unanimously in favor of the motion.

12. Docket No. 701-07-3575.EC State Board for Educator Certification v. Betsy Castillo; Action to be Taken: Issuance of Default of Judgment.

Motion was made by Mr. Shirley to grant staff's request for the issuance of default judgment and enter an order consistent with the staff's recommendation in the following case: Docket No. 701-07-3575.EC *State Board for Educator Certification v. Betsy Castillo*. Motion was seconded by Ms. Druesedow and the Board voted unanimously in favor of the motion.

13. Docket No. 701-07-3694.EC State Board for Educator Certification v. Alejandro Cervantes; Action to be Taken: Consideration of Proposal for Decision and Issuance of Final Order.

Motion and Vote:

Motion was made by Mr. Shirley to accept a proposal for decision and enter an order consistent with the Administrative Law Judge's recommendation in the following case: Docket No. 701-07-3694.EC *State Board for Educator Certification v. Alejandro Cervantes*. Motion was seconded by Ms. Baszile and the Board voted unanimously in favor of the motion.

14. Docket No. 701-08-0040.EC State Board for Educator Certification v. Martha L. Perry; Action to be Taken: Consideration of Proposal for Decision and Issuance of Final Order.

Motion and Vote:

Motion was made by Ms. Abbott to accept a proposal for decision and enter an order consistent with the Administrative Law Judge's recommendation in the following case: Docket No. 701-08-0040.EC *State Board for Educator Certification v. Martha L. Perry*. Motion was seconded by Ms. Druesedow and the Board voted unanimously in favor of the motion.

15. Docket No. 701-08-0041.EC State Board for Educator Certification v. Cynthia Taylor; Action to be Taken: Consideration of Proposal for Decision and Issuance of Final Order.

Motion and Vote:

Motion was made by Mr. Barbic to accept a proposal for decision and enter an order consistent with the Administrative Law Judge's recommendation in the following case: Docket No. 701-08-0041.EC *State Board for Educator Certification v. Cynthia Taylor*. Motion was seconded by Ms. Abbott and the Board voted unanimously in favor of the motion.

b) Pending Litigation

1. *State Board for Educator Certification vs. Greg Abbott, Attorney General of Texas, Cause No. GV500234; In the 98th Judicial District Court, Travis County, Texas*

Motion and Vote:

Motion was made by Ms. Johnson to grant the Board chair the authority to enter into a settlement agreement dismissing this pending lawsuit. Motion was seconded by Ms. Baszile and the Board voted unanimously in favor of the motion.

Chris Jones, Senior Counsel, Texas Education Agency read the motion at the request of board members. This motion cannot be heard on the tape recording.

12. Action on Items Discussed in Executive Session

13. Requests and/or Questions from Board members

Ms. Pogue provided information about a workshop that will be held at the Texas Higher Education Coordinating Board regarding teacher effectiveness and other related topics.

14. Adjournment

Ms. Pogue adjourned the meeting at 2:01 p.m.

The Board may meet in closed executive session, Texas Government Code, section 551.071 to seek legal advice regarding any item on this agenda.