

State Board for Educator Certification
Discussion and Action Session Agenda
October 9, 2009
Minutes

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 Thursday, October 9, 2009 in Room 1-104 of the William B. Travis Building, 1701 N. Congress Avenue in Austin, Texas.

Present: Dr. Cain, Dr. Glynn, Mr. Booker, Ms. Baszile, Dr. Simpson, Ms. Carter, Mr. Allard, Dr. Barnes, Ms. Robison, Ms. Druessedow, Ms. Pogue and Mr. Morris

Absent: Ms. Bridges and Mr. Trevino

2. Public Testimony

None

CONSENT AGENDA

3. Approval of August 7, 2009 Board Meeting Minutes

Motion and Vote:

Motion was made by Ms. Pogue to approve the August 7, 2009 minutes as presented. Second was made by Ms. Baszile and the Board voted unanimously in favor of the motion.

DISCUSSION AND ACTION

4. Adoption of Proposed Amendments to 19 TAC Chapter 239, Student Services Certificates

Public Testimony was provided by the following on Item 4:

1. Barbara LaRock-Schofield, Texas Educational Diagnostician Association
2. Kathryn Everest, Texas Counseling Association

Ms. Cárdenas addressed the public testimony on the Educational Diagnostician Certificate and the School Counselor Certificate. Ms. Cárdenas informed the Board that the SBEC is authorized to certify educators to serve public school students through age 22; therefore, changes cannot be made for the rule to read "from early childhood through post-secondary transition" as requested by the Texas Educational Diagnostician Association. Ms. Cárdenas informed the Board that a master's degree, in any field, is required for a counselor certificate and reminded the Board that the SBEC

has approved five alternative certification programs to offer the school counselor certificate and that those five programs do not offer a master's degree. Ms. Cárdenas also informed the Board that the only way to get a master's degree in counseling is to go to a university-based educator preparation program and, in some cases, the university may not call the degree a master's in counseling.

Motion and Vote:

Motion was made by Ms. Pogue to approve for adoption, subject to State Board of Education review, the proposed amendments to 19 TAC Chapter 239, Student Services Certificates, with an effective date of 20 days after filing as adopted with the Texas Register. Second was made by Ms. Carter and the Board voted unanimously in favor of the motion.

5. Adoption of Proposed Repeal of 19 TAC Chapter 240, American Sign Language Certificate

Ms. Cárdenas informed the Board that this chapter is being repealed, however, the American Sign Language (ASL) certificate is not being deleted. The current rules for the ASL certificate are codified in 19 TAC §231.1 and §233.15.

Motion and Vote:

Motion was made by Ms. Carter to approve for adoption, subject to State Board of Education review, the proposed repeal of 19 TAC Chapter 240, American Sign Language Certificate, with an effective date of 20 days after filing as adopted with the Texas Register. Second was made by Ms. Druessedow and the Board voted unanimously in favor of the motion.

6. Consideration of and Opportunity to Approve the Passing Standard on Texas Examinations of Educator Standards (TEXES):

- **Bilingual Generalist EC-6**
- **English as a Second Language Generalist EC-6**
- **Languages Other Than English – Spanish EC-12**
- **Languages Other Than English – French EC-12**
- **Languages Other Than English – German EC-12**

Mr. Carmody informed the Board that committees of Texas educators and stakeholders have successfully completed a review of the standards and recommended a passing standard on each examination. Mr. Carmody requested that the Board approve the passing standards on the Texas Examinations of Educator Standard (TEXES) as recommended by staff.

Motion and Vote:

Motion was made by Ms. Druessedow to approve the passing standard on the Texas Examinations of Educator Standards (TEXES). Second was made by Ms. Pogue and the Board voted unanimously in favor of the motion.

7. Consideration of and Opportunity to Approve the Proposed Memorandum of Understanding with the Texas Higher Education Coordinating Board Regarding Student Loan Default Information

Mr. Allen informed the Board that the Memorandum of Understanding (MOU) between the Texas Education Agency (TEA) and the Texas Higher Education Coordinating Board (THECB) would provide an exchange of information regarding student loan defaults. Mr. Allen informed the Board that TEA already has an agreement with the Student Guaranteed Loan Corporation which makes similar loans to the THECB; this agreement allows staff to exchange information with them. Mr. Allen also informed the Board that staff has obtained an Attorney General's Opinion that states the information is considered intragovernmental transfer and it does not become public information. Mr. Allen also informed the Board Chapter 249.15(f) allows disciplinary action against educators who are in default on student loans.

Motion and Vote:

Motion was made by Ms. Robison to approve the proposed Memorandum of Understanding with the Texas Higher Education Coordinating Board regarding student loan default information. Second was made by Ms. Baszile and the Board voted unanimously in favor of the motion

8. Adoption of Review of 19 TAC Chapter 229, Accountability System for Educator Preparation

Dr. Lopez informed the Board that this item is presented for the purpose of closing the review of 19 TAC Chapter 229.

Motion and Vote:

Motion was made by Ms. Baszile to adopt the review of 19 TAC Chapter 229, Accountability System for Educator Preparation. Second was made by Ms. Druessedow and the Board voted unanimously in favor of the motion.

9. Proposed Repeal of 19 TAC Chapter 229, Accountability System for Educator Preparation, and Proposed New 19 TAC Chapter 229, Accountability System for Educator Preparation Programs

Dr. Lopez informed the Board that the proposed rule actions are necessary as a result of Senate Bill (SB) 174, 81st Texas Legislature, 2009, which requires expanded accountability requirements for SBEC-approved educator preparation programs.

Dr. Simpson requested clarification on the following issues related to the proposed new rules: monitoring for the highly qualified teacher; required submission of information surveys, how principals are being informed and if this process applies to both student teachers and first year teachers; new demographic guidelines for gender and ethnicity; and the definition of field supervision.

Dr. Lopez and Mr. Allen addressed Dr. Simpson's request for clarification:

- Dr. Lopez explained that staff will monitor educators and educator preparation programs through data verification, program visits, curriculum reviews, and adherence to the four standards identified in the new rule. During the five-year program monitoring visits, staff reviews indicators aligned to the rules. If technical problems are found, staff will conduct a technical visit at a later date to provide assistance for improvement.
- Staff is in the process of developing a new survey for teacher performance since the Attorney General has ruled that the existing Professional Appraisal Development System (PDAS) appraisal cannot be used for this purpose. One of staff's main goals is to make the survey as short as possible. To inform principals, staff has spoken at several associations and schools districts and presented webinars to make them aware of SB 174 and its contents. Principals will be required to complete one additional survey on the preparation of beginning educators from educator preparation programs. The principal can designate an administrator who would normally handle appraisals, but not the cooperating teacher, unless qualified to do appraisals
- The new rule requires an individual to report at least one ethnic group, but the individual may report more than one. If more than one is reported, they are classified as *Other*, which is consistent with the Higher Education Act categories. The Texas Education Code, §21.045, requires staff to disaggregate in regards to gender and ethnicity.
- Field supervision for a university program is provided during student teaching. For an alternative certification program, field supervision is provided during the first year of the program (internship).

Dr. Barnes requested clarification on completer and the pass rate and the pass rate performance schedule.

Dr. Lopez and Mr. Allen addressed Dr. Barnes' request for clarification:

- In the current system the pass rate is based on completers. The Higher Education Act states that a completer can include having to pass the exam; but this would make the pass rate meaningless. Because of this staff has not used completer in defining what the pass rate is. Staff will measure the pass rate of everyone who has completed all program requirements with the exception of the test and the recommendation for certification.
- The current ASEP's initial pass rate is 70%. Programs will have time to adapt to the higher standard by academic year. The final pass rate currently is 80%, which is the standard pass rate used by the majority of other states.

Motion and Vote:

Motion was made by Ms. Pogue to approve the proposed repeal of 19 TAC Chapter 229, Accountability System for Educator Preparation, and proposed new 19 TAC Chapter 229, Accountability System for Educator Preparation Programs, for filing as proposed with the Texas Register. Second was made by Ms. Baszile and the Board voted unanimously in favor of the motions.

10. Litigation Settlement Options in Pending or Contemplated Litigation, Disciplinary Cases, and Pending Litigation

Richard Ybarra, Assistant Counsel Legal Services, provided information for default cases, proposals for decisions and motions for rehearing. Mr. Ybarra informed the Board that default cases #12 and #15, and case # 20 in proposals for decisions were removed from the agenda and will be brought back to the Board at the February 5, 2010 meeting.

Contested Cases

Defaults

Revocations

- 1) Docket No. 4029-EC-0409 State Board for Educator Certification v. Marco Antonio Zuniga; Action to be taken: Consideration of Issuance of Default Judgment.

Motion was made by Ms. Druesedow that the Board grant staff's request for the issuance of default judgment and enter an order consistent with staff's recommendations. Motion was seconded by Mr. Allard and the Board voted unanimously in favor of the motion.

- 2) Docket No. 3085-EC-0609 State Board for Educator Certification v. Brenda L. Cavazos; Action to be taken: Consideration of Issuance of Default Judgment.

Motion was made by Mr. Morris that the Board grant staff's request for the issuance of default judgment and enter an order consistent with staff's recommendations. Motion was seconded by Ms. Pogue and the Board voted unanimously in favor of the motion.

- 3) Docket No. 3081-EC-0509 State Board for Educator Certification v. Byron Keith Gilbreath; Action to be taken: Consideration of Issuance of Default Judgment.

Motion was made by Mr. Allard that the Board grant staff's request for the issuance of default judgment and enter an order consistent with staff's recommendations. Motion was seconded by Mr. Morris and the Board voted unanimously in favor of the motion.

- 4) Docket No. 3083-EC-0609 State Board for Educator Certification v. Timothy P. Hanlon; Action to be taken: Consideration of Issuance of Default Judgment.

Motion was made by Ms. Carter that the Board grant staff's request for the issuance of default judgment and enter an order consistent with staff's recommendations. Motion was seconded by Ms. Baszile and the Board voted unanimously in favor of the motion.

- 5) Docket No. 3068-EC-0409 State Board for Educator Certification v. Leon Ewell; Action to be taken: Consideration of Issuance of Default Judgment.

Motion was made by Ms. Robison that the Board grant staff's request for the issuance of default judgment and enter an order consistent with staff's recommendations. Motion was seconded by Ms. Druesedow and the Board voted unanimously in favor of the motion.

- 6) Docket No. 3082-EC-0609 State Board for Educator Certification v. Deborah Christine Petaway; Action to be taken: Consideration of Issuance of Default Judgment.

Motion was made by Ms. Pogue that the Board grant staff's request for the issuance of default judgment and enter an order consistent with staff's recommendations. Motion was seconded by Ms. Baszile and the Board voted unanimously in favor of the motion.

- 7) Docket No. 3084-EC-0609 State Board for Educator Certification v. Marion Torok; Action to be taken: Consideration of Issuance of Default Judgment.

Motion was made by Mr. Baszile that the Board grant staff's request for the issuance of default judgment and enter an order consistent with staff's recommendations. Motion was seconded by Mr. Allard and the Board voted unanimously in favor of the motion.

- 8) Docket No. 4028-EC-0409 State Board for Educator Certification v. Alana Rosenblum; Action to be taken: Consideration of Issuance of Default Judgment.

Motion was made by Ms. Baszile that the Board grant staff's request for the issuance of default judgment and enter an order consistent with staff's recommendations. Motion was seconded by Ms. Pogue and the Board voted unanimously in favor of the motion.

- 9) Mr. Rodriguez spoke on his behalf on Docket No. 2038-EC-0708 State Board for Educator Certification v. Ivan Rodriguez; Action to be taken: Consideration of Issuance of Default Judgment.

Motion was made by Mr. Morris that the Board grant staff's request for the issuance of default judgment and enter an order consistent with staff's recommendations. Motion was seconded by Ms. Carter and the Board voted unanimously in favor of the motion.

- 10) Docket No. 2064-EC-0309 State Board for Educator Certification v. Armando Villarreal, Jr.; Action to be taken: Consideration of Issuance of Default Judgment.

Motion was made by Mr. Allard that the Board grant staff's request for the issuance of default judgment and enter an order consistent with staff's recommendations. Motion was seconded by Ms. Pogue and the Board voted unanimously in favor of the motion.

- 11) Docket No. 2065-EC-0309 State Board for Educator Certification v. Lenda G. Daly; Action to be taken: Consideration of Issuance of Default Judgment.

Motion was made by Ms. Carter that the Board grant staff's request for the issuance of default judgment and enter an order consistent with staff's recommendations. Motion was seconded by Mr. Allard and the Board voted unanimously in favor of the motion.

- 12) Removed from agenda - Docket No. 2035-EC-0708 State Board for Educator Certification v. Alice F. Ragusin; Action to be taken: Consideration of Issuance of Default Judgment.

- 13) Docket No. 2063-EC-0109 State Board for Educator Certification v. Esmeralda Cordova, aka Esmarlda Vasquez; Action to be taken: Consideration of Issuance of Default Judgment.

Motion was made by Ms. Robison that the Board grant staff's request for the issuance of default judgment and enter an order consistent with staff's recommendations. Motion was seconded by Ms. Pogue and the Board voted unanimously in favor of the motion.

Dr. Cain adjourned to Executive Session at 11:25 a.m.

Dr. Cain reconvened at 12:45 p.m.

11. Action on Items Discussed in Executive Session

Pursuant to section 551.102 of the Texas Government Code, any deliberation and final action on matters discussed Executive Session may be made in an Open Meeting. For any final action that the Board discussed in Executive Session, the Board will deliberate and take its action in Open Session.

Defaults

Suspensions

- 14) Docket No. 4023-EC-0209 State Board for Educator Certification v. Sylvia Hardy; Action to be taken: Consideration of Issuance of Default Judgment.

Motion was made by Ms. Baszile that the Board grant staff's request for the issuance of default judgment and enter an order consistent with staff's recommendations. Motion was seconded by Ms. Pogue and the Board voted unanimously in favor of the motion.

- 15) Removed from the Agenda - Docket No. 2007-EC-0108 State Board for Educator Certification v. David Antonio Aquino; Action to be taken: Consideration of Issuance of Default Judgment.

- 16) Docket No. 3077-EC-0509 State Board for Educator Certification v. Karl Douglas Fertsch; Action to be taken: Consideration of Issuance of Default Judgment.

Motion was made by Ms. Robison that the Board grant staff's request for the issuance of default judgment and enter an order consistent with staff's recommendations. Motion was seconded by Mr. Allard and the Board voted unanimously in favor of the motion.

- 17) Docket No. 3078-EC-0509 State Board for Educator Certification v. Thomas F. Urrutia; Action to be taken: Consideration of Issuance of Default Judgment.

Motion was made by Ms. Druesedow that the Board grant staff's request for the issuance of default judgment and enter an order consistent with staff's recommendations. Motion was seconded by Ms. Pogue and the Board voted unanimously in favor of the motion.

- 18) Docket No. 4026-EC-0209 State Board for Educator Certification v. Pamela Kay Condra; Action to be taken: Consideration of Issuance of Default Judgment.

Motion was made by Mr. Allard that the Board grant staff's request for the issuance of default judgment and enter an order consistent with staff's recommendations. Motion was seconded by Ms. Baszile and the Board voted unanimously in favor of the motion.

Proposals for Decisions

- 19) Walter Muse presented information on behalf of Docket No. 701-09-1584.EC State Board for Educator Certification v. Gregory E. Travillion; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

Motion was made by Mr. Morris that the Board amend the Conclusions of Law No. 7, 9 and 10 as set forth in petitioner's exceptions because they accurately apply and reflect Board policy and rules, and because the proposal fails to properly apply the Board's policy regarding unworthy to instruct the youth of the state, and that the Board conclude that the respondent is unworthy to instruct the youth of the state and impose a sanction of a one-year suspension. Motion was seconded by Mr. Allard. Ms. Carter voted against the motion because she felt the suspension is based on the DWI charge alone, and believes this case will become precedent for future cases that could be based solely on DWI charges. Motion carried.

- 20) Removed from Agenda - Docket No. 701-09-1491.EC Juan Sergio Rios v. State Board for Educator Certification; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

- 21) Docket No. 701-09-2314.EC State Board for Educator Certification v. Dolia Y. Abrego-Perez; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

Motion was made by Ms. Pogue to accept the proposal for decision and issue a final order suspending Ms. Abrego-Perez's paraprofessional certificate for a one-year period. Motion was seconded by Ms. Carter and the Board voted unanimously in favor of the motion.

- 22) Docket No. 701-09-1215.EC Armando Melendez v. State Board for Educator Certification; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

Motion was made by Ms. Carter that the Board accept the proposal for decision and deny Mr. Melendez's application for a teaching certificate consistent with the Administrative Law Judge's proposal for decision. Motion was seconded by Ms. Pogue. Mr. Allard voted against the motion. Motion carried.

- 23) Greg Johnson presented information on behalf of Docket No. 701-08-3699.EC State Board for Educator Certification v. Camelita M. Anderson; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

Motion was made by Ms. Druesedow that the Board adopt the new Findings of Fact No. 20 and the new Conclusions of Law No. 9-11 as set forth in petitioner's exceptions and issue a Final Order to suspend Ms. Anderson's teaching certificate for a period of two years because they accurately apply and reflect Board policy and rules, and because the Proposal for Decision fails to properly apply the standards set forth in the Educator's Code of Ethics, Section 274.2(b)(3)(B) and finding that the child involved is a student for purposes of the Code of Ethics. Motion was seconded by Ms. Robison.

The Board discussed the length of the suspension.

Amendment to the motion was made by Ms. Robison to change the action from a two-year suspension to a non-inscribed reprimand. Second was made by Ms. Druesedow. Voting for the motion were Ms. Druesedow, Ms. Robison, Mr. Morris, and Dr. Cain. Voting against the motion were Ms. Baszile, Ms. Pogue, Ms. Carter and Mr. Allard. Motion failed.

Motion was made by Mr. Allard that the Board accept the Administrative Law Judge's recommendations that no disciplinary action be taken. Motion was seconded by Ms. Carter. Voting for the motion were Ms. Baszile, Ms. Robison, Ms. Carter and Mr. Allard. Voting against the motion were Ms. Pogue, Mr. Morris, Ms. Druesedow and Dr. Cain. Motion failed.

- 24) Tony Conners presented information on behalf of Docket No. 701-09-1575.EC State Board for Educator Certification v. Michael C. Floyd; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

Motion was made by Mr. Morris that the Board accept the proposal for decision to take no action against Mr. Floyd's teaching certificate. Motion was seconded by Ms. Carter and the Board voted unanimously for the motion.

The Board discussed the reason for taking no action and requested clarification from Legal on the ruling. Ms. Sameth stated that the Administrative Law Judge (ALJ) is the sole determiner of the credibility of the witnesses. Ms. Sameth informed the Board that the ALJ found the witnesses not credible and because of the findings, staff and the Board must accept the ALJ's ruling.

Motions for Rehearing

- 25) Docket No. 701-08-4128.EC State Board for Educator Certification v. Lino Ukele; Action to be taken: Consideration of Motion for Rehearing.

Motion was made by Mr. Allard that the Board deny the motion for rehearing of the Board's final decision and order issued on August 7, 2009. Motion was seconded by Ms. Druesedow and the Board voted unanimously for the motion.

- 26) Docket No. 701-08-2837.EC State Board for Educator Certification v. David Carl Galloway; Action to be taken: Consideration of Motion for Rehearing.

Motion was made by Ms. Pogue that the Board grant the motion for rehearing of the Board's final decision and order issued August 7, 2009. Motion was seconded by Ms. Druessedow. Mr. Morris recused himself. Motion carried.

Pending Litigation

The Board may discuss any other litigation arising after the date of posting or reasonably contemplated as of the date of the board meeting.

- 1) *Gilberto Gomez v. State Board for Educator Certification; Cause No. D-1-GN-09-000309, In the 201st Judicial District Court of Travis County, Texas.*
- 2) *Jatis McCollister v. Texas Education Agency, Educator Certification and Standards Division; Cause No. D-1-GN-09-001338, In the 250th Judicial District Court of Travis County, Texas.*
- 3) *Andrew Broughton v. Livingston Independent School District, Texas Education Agency, State Board for Educator Certification, Robert Scott, Darrell D. Myers, Nikki Wilson, I teach Corp., Inc., Cause No. 9:08CV175, In the United States District Court for the Eastern District of Texas, Lufkin Division.*
- 4) *Anthony Allen Jones v. State Board for Educator Certification, Cause No. 03-09-00223-CV, In the Court of Appeals for the Third District of Texas at Austin, Texas.*
- 5) *Texas Education Agency v. T.F.G., Cause No. 09-08-00514-CV, In the Court of Appeals for the Ninth Judicial District, Beaumont, Texas*

DISCUSSION ONLY

12. Discussion of the Requirements for a Principal Certificate

Ms. Cárdenas informed the Board this item was placed on the agenda at the Board's request to give the Board the opportunity to discuss the years of teaching experience that would be required for the issuance of the principal certificate. Ms. Cárdenas also informed the Board that staff recommended the repeal of the principal assessment rule in 19 TAC §241.35; however, this repeal must be handled through a separate rulemaking process and will be brought back to the Board at the February 5, 2010, meeting.

Ms. Cárdenas reviewed data provided by the Texas Association of School Personnel Administrators (TASPA), which shows teaching experience required by school districts. Ms. Cardenas informed the Board that the Texas Elementary Principals and Supervisors Association (TESPA) survey found that over 34% of principals have 6-10 years experience.

After discussion the Board agreed to keep the two-year teaching experience requirement for the issuance of a principal certificate.

13. Review of 19 TAC Chapter 244, Certificate of Completion of Training for Appraisers

Dr. Lopez informed the Board that it is time for the review of rules in 19 TAC Chapter 244 and that staff will present recommended changes to the Board for consideration at the February 5, 2010, meeting.

INFORMATION ONLY**14. 2007-2010 Rule Review Plan for State Board for Educator Certification Rules**

Dr. Cain reviewed this item.

15. Board Operation Policies and Procedures (BOPP)

Dr. Cain reviewed this item.

DISCUSSION AND ACTION**16. Request and/or Questions from Board Members**

Dr. Cain reminded the Board that the retreat will be held January 8, 2010. The Board agreed to a time of 10:00-2:30 with casual dress.

The Board requested the following items be placed on the retreat's agenda for discussion:

- Establish time lines for submission of written public testimony before a board meeting and amend the Board Operating Policies and Procedures (BOPP) if necessary
- Process for presenting disciplinary cases, and how to be more consistent in rulings
- The role of SBEC legal counsel and the role of TEA legal staff

17. Adjournment

Dr. Cain adjourned the meeting at 1:50 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.