

Item 3:
Approval of February 5, 2010 Board Meeting Minutes

ACTION

DESIRED OUTCOME: The Board will approve the minutes of the February 5, 2010 Board meeting.

ASSOCIATE COMMISSIONER'S RECOMMENDATION: I recommend that the State Board for Educator Certification approve the minutes as recorded.

Respectfully submitted,

Jerel Booker
Associate Commissioner
Educator and Student Policy Initiatives

State Board for Educator Certification
Discussion and Action Session Agenda
February 5, 2010 at 9:00 a.m.
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 Friday, February 5, 2010 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. Barnes, Ms. Robison, Ms. Pogue, Ms. Bricker, and Mr. Morris

Ms. Druesedow arrived at 9:02; Dr. Grant arrived at 9:10.

Absent: Ms. Bridges, Mr. Allard and Mr. Trevino

Dr. Cain introduced new Board member, Laurie Bricker.

2. Recognitions and Presentations

Dr. Cain introduced and recognized past Board member, John Shirley and presented him with a plaque for his service.

Dr. Cain introduced Dr. Dennis Spuck, Dean, and Nanette Hutchinson, Certification Officer, from the University of Houston Clear Lake and recognized the university for receiving the 2009 Christa McAuliffe Award for Excellence in Teacher Education by the American Association of State Colleges and Universities.

Dr. Cain introduced Joshua Gutierrez, a bilingual elementary teacher, and Lisa Culpepper, a high school English teacher, with Dallas ISD and recognized them for receiving National Interns of the Year for 2009-2010. Dr. Cain introduced Dr. Nell Ingram, Director of Dallas ISD Alternative Certification Program and some of the Dallas ISD staff.

3. Public Testimony

Testimony on non-agenda items was provided by:

- Lea Griffin Mattson
- Barney McClure, Cleburne High School

CONSENT AGENDA

4. Approval of October 9, 2009 Board Meeting Minutes

5. Approval of January 8, 2010 Retreat Minutes

Motion and Vote:

Motion was made by Ms. Baszile to approve the October 9, 2009 minutes and the January 8, 2010 retreat minutes as presented. Second was made by Ms. Pogue and the Board voted unanimously in favor of the motion.

DISCUSSION AND ACTION**6. Adoption of 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 at the October 9, 2009, meeting the Board adopted the review of 19 TAC Chapter 229, Accountability System for Educator Preparation, and approved 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. Dr. Lopez also informed the Board that the proposed rule actions would be 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. Lopez reviewed changes recommended by staff since published as proposed. Dr. Lopez informed the Board that in proposed new §229.2, the definition of "beginning teacher" would be amended to refer to a classroom teacher with less than three years of experience and the definition of "first year in the classroom" would be amended to refer to the first year of employment as a classroom teacher. Dr. Lopez advised the Board that an intern is considered the teacher of record and is employed by the district. Mr. Allen informed the Board that the students in a university program will be appraised as beginning teachers in the year following their student teaching.

Dr. Cain requested clarification on language in proposed new §229.4(a)(3), that reads, "to the extent practicable, as valid data becomes available." Mr. Allen informed the Board that the TEA is working on its own data system to link student performance with the teacher. Dr. Lopez informed the Board that this data system will not be ready until at least 2012-2013. Dr. Cain also requested clarification on language in proposed new §229.4(a)(2), that reads, "standards must be independently developed." Dr. Lopez informed the Board that staff will work with stakeholders to actually develop the standards and the Board will approve these standards for accountability.

Ms. Bricker made reference to the fact that data is already available and several school districts are presently using TEA "performance based" and "value added" data to determine teacher performance. Ms. Bricker questioned how the TEA data will be shared with other districts and asked if there is a possibility that it may be piloted. Dr. Lopez informed the Board that the data will be tied to educator preparation programs and that the data will be a direct relationship between the student, the teacher, and the educator preparation program. Mr. Allen informed

the Board that the data will be used only to compare educator preparation programs with regard to the progress of their graduates.

Mr. Booker informed the Board that a very small percentage of districts have the student-teacher link, and because districts are using different models, staff must design its own model.

Ms. Pogue commented that because of legislative support with Senate Bill (SB) 174, staff is able to align measures with goals and see the results.

Dr. Barnes requested some type of tool or roll out plan that would give timelines for the four components of the accreditation program be developed. Dr. Lopez informed the Board that once data collection requirements are identified, staff will be able to establish timelines.

Dr. Simpson complimented staff's measures in gaining input from the field. Dr. Simpson commented that the four components represent very high stakes data and stressed the importance that these are done well. Dr. Simpson also commented on the amount of training that will be necessary and that educator preparation programs must stress the importance of the surveys with student teachers and principals.

Motion and Vote:

Motion was made by Ms. Pogue to approve for adoption, subject to State Board of Education review, 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, with an effective date of 20 days after filing as adopted with the Texas Register. Second was made by Ms. Baszile and the Board voted unanimously in favor of the motion.

7. Proposed Amendment to 19 TAC Chapter 231, Assignment of Public School Personnel, §231.1 Criteria for Assignment of Public School Personnel

Item pulled from agenda.

8. Proposed Repeal of 19 TAC Chapter 241, Principal Certificate, §241.35, Assessment Process Definition and Approval of Individual Assessments

Dr. Loonam introduced Tabita Gutierrez, Acting Director of Credentialing Services.

Ms. Gutierrez informed the Board that this item is the result of House Bill (HB) 200, 81st Texas Legislature, 2009, which repealed the principal assessment.

Motion and Vote:

Motion was made by Ms. Druesedow to approve the proposed repeal of 19 TAC Chapter 241, Principal Certificate, §241.35, Assessment Process Definition and Approval of Individual Assessments, for filing as proposed with the Texas Register. Second was made by Ms. Pogue and the Board voted unanimously in favor of the motion.

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

Dr. Lopez informed the Board that this item was first presented to the Board at the October 9, 2009, meeting. Dr. Lopez also informed the Board that the rules reviewed provide requirements for ensuring the certification of appraisers performing appraisals of teachers, administrators, and counselors employed in Texas public schools.

Dr. Lopez informed the Board that Commissioner's rules are in the process of being amended, and when completed, staff will bring an item to the Board for approval.

Motion and Vote:

Motion was made by Ms. Pogue to adopt the review of 19 TAC Chapter 244, Certificate of Completion of Training for Appraisers. Second was made by Ms. Druesedow and the Board voted unanimously in favor of the motion.

10. Adoption of Review of 19 TAC Chapter 245, Certification of Educators from Other Countries

Ms. Gutierrez informed the Board that the item is presented for the purpose of closing the review of 19 TAC Chapter 245.

Motion and Vote:

Motion was made by Ms. Pogue to adopt the review of 19 TAC Chapter 245, Certification of Educators from Other Countries. Second was made by Ms. Druesedow and the Board voted unanimously in favor of the motion.

11. Proposed Amendments to 19 TAC Chapter 245, Certification of Educators from Other Countries

Ms. Gutierrez informed that Board that the revisions are a result of the stakeholders' meeting held in September 2009, and the amendments would update the rules to reflect current law, add specificity, and update the language to be consistent with terminology. Ms. Gutierrez reviewed substitute text for 19 TAC Chapter §245.5(b) that was added for clarification.

Motion and Vote:

Motion was made by Ms. Pogue to approve the proposed amendments to 19 TAC Chapter 245, Certification of Educators from Other Countries, with changes, for filing as proposed with the Texas Register. Second was made by Ms. Baszile and the Board voted unanimously in favor of the motion.

12. Consideration of an Opportunity to Approve a New Educator Preparation Program

Dr. Lopez introduced one program for Board approval and advised the Board that staff recommends the approval of the new educator preparation program.

- Texas A & M Corpus Christi seeks approval to offer a teacher alternative certification program.

Ms. Druesedow requested verification of the number of clock hours. Dr. Linda Kelly, Director of the Texas A & M Corpus Christi Alternative Certification Program, stated that the program requires 303 actual clock hours. Ms. Druesedow also requested that Dr. Kelly address the written essay that is required. Dr. Kelly informed the board that it will be short essay that will provide the program an example of the candidate's writing ability.

Motion and Vote:

Motion was made by Ms. Pogue to approve the new educator preparation program as recommended. Second was made by Ms. Druesedow and the Board voted unanimously in favor of the motion.

13. Consideration of and Opportunity to Approve an Additional Class of Certificate for an Educator Preparation Program Currently Rated Accredited

Dr. Lopez introduced and reviewed the program seeking approval for an additional class of certificate and advised the Board that staff recommends the approval of the additional class of certificate.

- Texas State University, Master Mathematics Teacher EC-4

Motion and Vote:

Motion was made by Ms. Baszile to approve the additional class of certificate as recommended. Second was made by Ms. Pogue and the Board voted unanimously in favor of the motion.

14. Consideration of and Opportunity to Approve Passing Standards on the Texas Examination for Master Teachers (TExMaT): Master Technology Teacher

Mr. Carmody informed the Board that the Master Technology Teacher exam was recently updated to include new questions and performance tasks. Mr. Carmody advised the Board that a committee of educators reviewed three forms of the exam and recommended the passing standard for the Board's approval.

Dr. Barnes suggested that in the staff's summary presented to the Board, staff change the wording "stakeholders were convened to set a new passing standard" to "stakeholders were convened to recommend a new passing standard". Ms. Druesedow requested explanation on the passing score (average of the Round 3 judgments). Mr. Carmody explained that the detailed process goes through three rounds of evaluation on the questions and performance tasks; Round 3 is the final round.

Motion and Vote:

Motion was made by Ms. Pogue that the Board approve the passing standards on the Texas Examination for Master Teachers (TExMaT): Master Technology Teacher as recommended. Second was made by Ms. Druesedow and the Board voted unanimously in favor of the motion.

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

Merle Dover, Associate Deputy Counsel, provided information for default cases and proposals for decisions and informed the Board that Cases No. 6 and No.11 have been removed.

I. Defaults

- 1) Docket No. 2075-EC-0709 State Board for Educator Certification v. Alesia Marie Lozano; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Revocation

- 2) Docket No. 2079-EC-0809 State Board for Educator Certification v. Adrian K. Hudson; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Revocation

- 3) Docket No. 3089-EC-0809 State Board for Educator Certification v. Francisco Munoz, Jr.; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Revocation

- 4) Docket No. 2067-EC-0609 State Board for Educator Certification v. Antonio Perez; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Revocation

- 5) Docket No. 2079-EC-0609 State Board for Educator Certification v. Demetrius M. Johnson; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Revocation

- 6) *Removed from the agenda* - Docket No. 4051-EC-1009 State Board for Educator Certification v. Tamara Attra; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Revocation

- 7) Docket No. 4035-EC-0709 State Board for Educator Certification v. Mark Matthew Martich; Action to be taken: Consideration of Issuance of Default Judgment.
- Staff recommendation: 1 year Suspension
- 8) Docket No. 4045-EC-0809 State Board for Educator Certification v. Sophia Gaona; Action to be taken: Consideration of Issuance of Default Judgment.
- Staff recommendation: Revocation
- 9) Docket No. 4040-EC-0709 State Board for Educator Certification v. John Berry; Action to be taken: Consideration of Issuance of Default Judgment.
- Staff recommendation: Revocation
- 10) Docket No. 4037-EC-0709 State Board for Educator Certification v. Joel S. Perez; Action to be taken: Consideration of Issuance of Default Judgment.
- Staff recommendation: Revocation
- 11) *Removed from the agenda* - Docket No. 6041-EC-0909 State Board for Educator Certification v. Daniel Clay; Action to be taken: Consideration of Issuance of Default Judgment.
- Staff recommendation: Revocation
- 12) Docket No. 6010-EC-0608 State Board for Educator Certification v. Kenneth Nero; Action to be taken: Consideration of Issuance of Default Judgment.
- Staff recommendation: Revocation
- 13) Docket No. 0752-EC-0709 State Board for Educator Certification v. Geneva Cadena; Action to be taken: Consideration of Issuance of Default Judgment.
- Staff recommendation: Revocation
- 14) Docket No. 0747-EC-0609 State Board for Educator Certification v. Jesus Garcia; Action to be taken: Consideration of Issuance of Default Judgment.
- Staff recommendation: Revocation
- 15) Docket No. 0802-EC-0809 State Board for Educator Certification v. Walter J. Aikens, Jr.; Action to be taken: Consideration of Issuance of Default Judgment.
- Staff recommendation: Revocation
- 16) Docket No. 0751-EC-0709 State Board for Educator Certification v. Jeffrey W. Rowe; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Revocation

- 17) Docket No. 0738-EC-0409 State Board for Educator Certification v. Robert P. Couture; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: Revocation

- 18) Docket No. 3094-EC-1009 State Board for Educator Certification v. Kara Barcroft; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: 1 year Suspension

- 19) Docket No. 0739-EC-0409 State Board for Educator Certification v. Martha Dunn; Action to be taken: Consideration of Issuance of Default Judgment.

Staff recommendation: 1 year Suspension

Motion and Vote:

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 on all default cases except on removed cases #6 and #11. Motion was seconded by Ms. Baszile and the Board voted unanimously in favor of the motion.

Dr. Cain adjourned to Executive Session at 10:49 a.m.

Dr. Cain reconvened at 12:05 p.m.

16. 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 in 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.

II. Proposals for Decision

- 20) Docket No. 701-09-3484.EC State Board for Educator Certification v. Mark Howard; 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 and issue a final order consistent with the Administrative Law Judge's recommendation and permanently revoke Respondent's educator certification. Motion was seconded by Ms. Bricker and the Board voted unanimously in favor of the motion.

- 21) Docket No. 701-09-3305.EC State Board for Educator Certification v. Brandy Susan Jumper; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

Motion was made by Ms. Pogue that the Board make the technical correction to the Proposal for Decision Conclusions of Law No. 6 and re-number the Conclusions of Law to 6a and 6b; that the Board adopt the Findings of Fact and Conclusions of Law Nos. 1-5 and 6b-7 as set forth in the Proposal for Decision; that the Board amend Conclusion of Law 6a as follows:

Based on the Findings of Fact and Board policy, Respondent is unworthy to instruct the youth of Texas, pursuant to 19 TAC §249.15(c)(2); that the Board make this change because an educator's conduct in taking a student to an unlicensed tattoo parlor to obtain a tattoo without parental consent is conduct that does not comply with standard practices and ethical conduct toward students and exemplifies the absence of moral and mental qualities required by SBEC in order to implement its primary duty to safeguard the interests of Texas students;

that the Board find that the Administrative Law Judge (ALJ) did not properly interpret the definition of "unworthy to instruct" in 19 TAC §249.3(45) because the Board does not require the finding of a criminal violation in order to determine that an educator is unworthy to instruct. Reading the definition to require a finding of criminal violation is not consistent with prior administrative decisions. See State Board for Educator Certification v. Graydon S. Love, SOAH Docket No. 705-03-2367.W (2003); Marris v. Matthews, 270 S.W.586, 588 (Tex. Civ. App.-Texarkana 1925,writ ref'd). This interpretation is consistent with the Board's General Principles as stated in 34 Tex. Reg. 5422;

Finally, that the Board rejects the proposed sanction of a reprimand based upon the following Findings of Fact:

- 1) Respondent misrepresented facts regarding a student on the three occasions, not one, as discussed by the Administrative Law Judge; Findings of Fact Nos. 12, 22 and 23-24;*
- 2) Respondent disregarded written school policy in transporting a student off campus without permission; Finding of Fact No. 14.*

Based upon these findings, the proposed sanction is too lenient to be effective in that Respondent misrepresented a familial relationship with a student, denied her involvement in the minor student's effort to obtain a tattoo to the student's parent and instructed the student and his sister not to disclose her involvement (and, therefore, misrepresented facts regarding the students). In addition, Respondent engaged in an activity without the parents' knowledge and consent and violated written school district policy by removing and transporting a student off campus. These actions demonstrate a pattern of direct and indirect misrepresentation to parents impinging on parental rights over the student, and are sufficiently serious to require a more significant sanction to ensure that Respondent's and other educators' conduct comply with the Code of Ethics Standards 3.3 and 1.7. In addition, it is the Board's policy that educators should be truthful and honest in their dealings with parents.

Therefore, motion is made that the Board issue a Final Order suspending Ms. Jumper's teaching certificate for two (2) years.

Motion was seconded by Ms Baszile and the Board voted unanimously in favor of the motion.

- 22) Juan Palacios presented information on behalf of Docket No. 701-09-4354.EC Andrew Moreno 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. Bricker that the Board accept the recommendation of the Administrative Law Judge (ALJ) in the Proposal for Decision and issue a Final Order granting the educator's application for certification. Motion was seconded by Ms. Robison. Voting for the motion were Ms. Bricker and Ms. Robison. Voting against the motion were Dr. Cain, Ms. Pogue, Ms. Baszile, Ms. Druesedow and Mr. Morris. Motion failed.

Motion was made by Ms. Pogue that the Board adopt Findings of Fact Nos. 1-19 and amend Findings of Fact No. 20 and Conclusions of Law No. 8 and No. 9, to reflect that the Board does have a basis to deny Mr. Moreno's application for educator certification because his conduct has shown that he is unworthy to instruct and issue a final order denying Mr. Moreno's teaching certificate; that the Administrative Law Judge did not interpret the definition of "unworthy to instruct" in a manner consistent with Board policy, and that the Board order the denial of Mr. Moreno's application for certification due to the seriousness of his crime involving federal felony possession of a controlled substance with intent to distribute, for which he served 46 months incarceration in the custody of the United States Bureau of Prisons, rendering Mr. Moreno unworthy to instruct the youth of Texas. It is the primary purpose of SBEC to ensure the safety and welfare of Texas school children and not enough time has passed since the conclusion of Petitioner's term of community supervision to convince the Board that Petitioner is sufficiently rehabilitated. Motion was seconded by Ms. Druesedow. Voting for the motion were Ms. Pogue, Ms. Baszile, Dr. Cain, Ms. Druesedow and Mr. Morris. Ms. Bricker expressed her views on her original motion of granting the application. Voting against the motion were Ms. Bricker and Ms. Robison. Motion carried.

- 23) Docket No. 701-08-1498.EC State Board for Educator Certification v. Cheree Shepardson; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order.

Motion was made by Ms. Bricker that the Board accept the Proposal for Decision to take no action against Ms. Shepardson's educator certificate. Motion was seconded by Ms. Pogue and the Board voted unanimously in favor of the motion.

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

Motion was made by Ms. Baszile that the Board make the following technical corrections to the Proposal for Decision: the two Findings of Fact that have both been numbered 5 are amended to Finding of Fact 5a and Finding of Fact 5b; Finding of Fact No. 13 is corrected to refer back to Finding of Fact No. 12 rather than Finding of Fact on No. 10 below; that the Board adopt Findings of Fact Nos. 1-19 in the Proposal for Decision as amended above and adopt Conclusions of Law Nos. 1-8 in the Proposal for Decision, as if stated herein

and adopt amended Conclusions of Law Nos. 9-11 as stated below and issue a Final Order suspending Ms. Anderson's teaching certificate for one year. Motion was seconded by Ms. Pogue. Voting for the motion were Ms. Baszile, Ms. Pogue, Ms. Druessedow, Ms. Bricker. Voting against the motion were Dr. Cain, Ms. Robison, and Mr. Morris. Motion carried.

- 25) Docket No. 701-09-4985.EC Caleb Lujan Henson 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. Druessedow that the Board accept the Proposal for Decision and issue a Final Order consistent with the Administrative Law Judge's recommendation and affirming the denial of certification for Mr. Henson. Motion was seconded by Ms. Pogue and the Board voted unanimously in favor of the motion.

III. Motions for Rehearing

- 26) *Removed from the agenda* - Docket No. 2064-EC-0309 State Board for Educator Certification v. Armando Villarreal, Jr.; Action to be taken: Consideration of Motion for Rehearing.

- 27) Cheryl Rausher presented information on behalf of 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. Robison that the Board amend its Final Decision and Order issued on August 18, 2009 with the following changes: 1) Give Mr. Galloway 90 days to complete 12 hours of ethics training; and 2) A two-year suspension because the increased sanction is due to the seriousness of Mr. Galloway's conduct and due to the stated violations in the Conclusions of Law found in the Proposal of Decision. The Board believes that, although the Administrative Law Judge's (ALJ) recommendation is written as a Conclusion of Law, it is merely a suggested recommendation for sanctions. It is within the SBEC's authority to impose sanctions against those holding an educator certificate. Based on the ALJ's Findings of Fact No.12, No.14 and No. 15, and Conclusions of Law No. 4 and No. 5, the SBEC believes that an increase in the sanction recommended by the ALJ is warranted. Motion was seconded by Ms. Pogue. Voting for the motion were Dr. Cain, Ms. Baszile, Ms. Pogue, Ms. Robison. Voting against the motion was Ms. Bricker. Mr. Morris recused himself from the vote. Motion carried.

Ms. Baszile informed the Board that she needed to re-open Docket No. 701-08-3699.EC State Board for Educator Certification v. Carmelita M. Anderson; Action to be taken: Consideration of Proposal for Decision and Issuance of Final Order in order to justify and have that information on record.

Motion was made by Ms. Baszile that the Board make the following technical corrections to the Proposal for Decision: the two Findings of Fact that have both been numbered 5 are amended to Finding of Fact 5a and Finding of Fact 5b; Finding of Fact No. 13 is corrected to refer back to Finding of Fact No. 12 rather than Finding of Fact on No. 10; that the Board re-designate Finding of Fact No. 20 according to its true nature as a Conclusion of Law, duplicative of Conclusion of Law No. 10 below; that the Board adopt Findings of Fact Nos. 1-19 in the Proposal for Decision as amended above and adopt Conclusions of Law Nos. 1-8 in the Proposal for Decision, as if stated herein and adopt amended Conclusions of Law Nos. 9-11 as stated below and issue a Final Order suspending Ms. Anderson's teaching certificate for one year. Under Conclusions of Law No. 9, Respondent violated the Educators' Code of Ethics, 19 TAC §247.2(b)(3)(B); the Administrative Law Judge's (ALJ) Conclusion of Law No.9 is incorrect in that it fails to properly apply or interpret SBEC rules and policy. Findings of Facts Nos. 5, 7, 8, 9 and 10 establish that Respondent, an educator of special needs students, treated a special needs student in a manner that adversely affected the student's learning, physical health, mental health, or safety. SBEC's General Principles state that the relevant conduct of an educator is not limited to conduct that occurs while performing the duties of a professional educator, 34 Tex. Reg. 5422; additionally, the Board states that children who attend school are students, and an educator who has control of a student, whether related or not, must meet the standard of care established by Code of Ethics Standard 3.2. Therefore, Respondent's conduct violated 19 TAC §247.2(b)(3)(B). Under Conclusion of Law No. 10, the Board has authority to discipline Respondent for her conduct pursuant to 19 TAC §249.15(b)(3), The Board has authority to discipline Respondent, as Respondent violated the Educator's Code of Ethics Standard 3.2, and 19 TAC §249.15(b)(3) authorizes disciplinary action upon satisfactory evidence of a violation of the educators' code of ethics. Under Conclusion of Law No. 11 based on the foregoing findings, the Board should suspend Respondent's educator certificate for a period of one year. Motion was made that the Board impose this sanction because the ALJ failed to accord the educator and the student their appropriate statues and taking no action would fail to deter the Respondent and other educators from this conduct in the future. Due to Respondent's serious use of bad judgment in disciplining a special needs child by abandoning him on an isolated stretch of roadway in Houston, Texas at dusk, motion is made that the Board order that Carmelita Anderson's teaching certificate be suspended for 1 year. This sanction is in accordance with the Board's mission to protect the safety and welfare of children and is in accordance with the Board's interpretation and the interpretation of other Administrative Law Judges and decision that "unworthy to instruct" does not require a criminal law violation, but rather, requires a determination that the conduct at issue renders the person unworthy to hold an educator's certificate. Motion was seconded by Ms. Pogue. Voting for the motion were Ms. Baszile, Ms. Pogue, Ms. Druessedow. Voting against the motion were Dr. Cain, Ms. Robison, Ms. Bricker and Dr. Cain. Motion failed.

Motion was made by Ms. Bricker to re-open for discussion and vote. Motion was seconded by Ms. Pogue. Voting for the motion was Ms. Baszile, Ms. Pogue, Ms. Bricker and Ms. Druessedow. Voting against for the motion was Dr. Cain, Mr. Morris and Ms. Robison. Motion to re-open carried.

Motion was made by Ms. Bricker that the Board issue a Final Order for a two-year suspension. Motion failed due to the lack of a second.

Motion was made by Ms. Robison that the Board take no action. Motion was seconded by Mr. Morris. Voting for the motion were Ms. Robison, Dr. Cain and Mr. Morris. Voting against the motion were Ms. Baszile, Ms. Pogue, Ms. Bricker and Ms. Druessedow. Motion failed.

Ms. Dover informed the Board that if the Board decides to change a Proposal for Decision from the Administrative Law Judge's decision, the Board must state on the record the reasons for changing and the justifications. Ms. Dover also informed the Board that the original motion from Ms. Baszile did change the Proposal for Decision from no action to a one year suspension so all legal reasons were stated within her motion; therefore, Ms. Dover suggested that Ms. Bricker read the reasons into the record but change the sanction from one year to revocation. Dr. Cain reminded the Board that there are several sanctions between revocation and no action.

Motion was made by Ms. Bricker that the Board make the following technical corrections to the Proposal for Decision: the two Findings of Fact that have both been numbered 5 are amended to Finding of Fact 5a and Finding of Fact 5b; Finding of Fact No. 13 is corrected to refer back to Finding of Fact No. 12 rather than Finding of Fact No. 10; that the Board re-designate Finding of Fact No. 20 according to its true nature as a Conclusion of Law, duplicative of Conclusion of Law No. 10 below; that the Board adopt Findings of Fact Nos. 1-19 in the Proposal for Decision as amended above and adopt Conclusions of Law Nos. 1-8 in the Proposal for Decision, as if stated herein and adopt amended Conclusions of Law Nos. 9-11 as stated below and issue a Final Order revoking Ms. Anderson's teaching certificate. Under Conclusions of Law No. 9, Respondent violated the Educators' Code of Ethics, 19 TAC §247.2(b)(3)(B); the Administrative Law Judge's (ALJ) Conclusion of Law No. 9 is incorrect in that it fails to properly apply or interpret SBEC rules and policy. Findings of Facts Nos. 5, 7, 8, 9 and 10 establish that Respondent, an educator of special needs students, treated a special needs student in a manner that adversely affected the student's learning, physical health, mental health, or safety. SBEC's General Principles state that the relevant conduct of an educator is not limited to conduct that occurs while performing the duties of a professional educator, 34 Tex. Reg. 5422; additionally, the Board states that children who attend school are students, and an educator who has control of a student, whether related or not, must meet the standard of care established by Code of Ethics Standard 3.2. Therefore, Respondent's conduct violated 19 TAC §247.2(b)(3)(B). Under Conclusion of Law No. 10, the Board has authority to discipline Respondent for her conduct pursuant to 19 TAC §249.15(b)(3). The Board has authority to discipline Respondent, as Respondent violated the Educator's Code of Ethics Standard 3.2, and 19 TAC §249.15(b)(3) authorizes disciplinary action upon satisfactory evidence of a violation of the educators' code of ethics. Under Conclusion of Law No. 11 based on the foregoing findings, the Board should revoke Respondent's educator certificate. Motion was made that the Board impose this sanction because the ALJ failed to accord the educator and the student their appropriate statues and taking no action would fail to deter the Respondent and other educators from this conduct in the future. Due to Respondent's serious use of

bad judgment in disciplining a special needs child by abandoning him on an isolated stretch of roadway in Houston, Texas at dusk, motion is made that the Board order that Carmelita Anderson's teaching certificate be revoked. This sanction is in accordance with the Board's mission to protect the safety and welfare of children and is in accordance with the Board's interpretation and the interpretation of other Administrative Law Judges and decisions that "unworthy to instruct" does not require a criminal law violation, but rather, requires a determination that the conduct at issue renders the person unworthy to hold an educator's certificate. Motion failed for lack of a second.

Motion was made by Ms. Pogue that the Board accept the previous motion by Ms. Baszile to order Carmelita Anderson's teaching certificate be suspended for one year. Motion was seconded by Ms. Baszile. Voting for the motion were Ms. Baszile, Ms. Pogue, Ms. Bricker, and Ms. Druessedow. Voting against the motion were Ms. Robison, Dr. Cain, and Mr. Morris. Motion carried.

B. 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) *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.*
- 2) *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.*
- 3) *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.*
- 4) *Texas Education Agency v. T.F.G., Cause No. X-828, In the 252nd Judicial District Court of Jefferson County, Texas.*
- 5) *Leah Mullins, Don Madden, and David Jeffers v. The State Board for Educator Certification, Cause No. D1-GN-08-00979, In the 345th Judicial District Court of Travis County, Texas.*
- 6) *Gregory Travillion v. Texas Education Agency, Educator Certification and Standards Division; Cause No. D-1-GN-09-004381.*

IV. Appeals

- 1) *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.*

DISCUSSION ONLY**17. Review of 19 TAC Chapter 247, Educators' Code of Ethics**

Mr. Allen informed the Board that this begins the review of 19 TAC Chapter 247.

18. Review of 19 TAC Chapter 250, Agency Administration

Mr. Allen informed the Board that this begins the review of 19 TAC Chapter 250.

INFORMATION ONLY**19. 2007-2010 Rule Review Plan for State Board for Educator Certification Rules**

Dr. Cain reviewed this item.

20. Board Operation Policies and Procedures (BOPP)

Dr. Cain reviewed this item.

DISCUSSION AND ACTION**21. Requests and/or Questions from Board Members**

Ms. Pogue requested an agenda item or some type of policy statement to define student.

Dr. Simpson requested that staff research the possible development of an online Code of Ethics module for required training by candidates in educator preparation programs.

Mr. Booker informed the Board that staff is giving presentations on this issue and will review the possibility of a module. Mr. Booker also stated that staff will continue to provide assistance to the educator preparation programs, to teachers, and associations on the ethics issues.

17. Adjournment

Dr. Cain adjourned the meeting at 12.57 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.