

§249.16. Eligibility of Persons with Criminal History for a Certificate under Texas Occupations Code, Chapter 53, and Texas Education Code, Chapter 21.

(a) Pursuant to the Texas Occupations Code (TOC), Chapter 53, and the Texas Education Code (TEC), Chapter 21, Subchapter B, the State Board for Educator Certification (SBEC) may suspend or revoke an existing valid certificate, deny an applicant a certificate, bar a person from being assessed or examined for a certificate, or take other disciplinary action because of a person's conviction of a felony or misdemeanor or certain other criminal history.

(b) Disciplinary action under the TOC, §53.021, does not apply to a person convicted only of an offense punishable as a Class C misdemeanor unless the person is an applicant for or the holder of a license that authorizes the person to possess a firearm and the person was convicted of the misdemeanor offense of domestic violence as defined by 18 United States Code, §921.

(c) When statute or SBEC rule codified in the Texas Administrative Code, Title 19, Part 7, requires an offense to directly relate to the duties and responsibilities of the education profession, an offense is considered to directly relate if the offense indicates a threat to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague; interferes with the orderly, efficient, or safe operation of a school district, campus, or activity; or indicates impaired ability or misrepresentation of qualifications to perform the functions of an educator. Offenses considered to relate directly to the duties and responsibilities of the education profession include, but are not limited to:

- (1) offenses involving moral turpitude;
- (2) offenses involving any form of sexual or physical abuse or neglect of a student or minor or other illegal conduct with a student or minor;
- (3) offenses involving any felony possession or conspiracy to possess, or any misdemeanor or felony transfer, sale, distribution, or conspiracy to transfer, sell, or distribute any controlled substance defined in the Texas Health and Safety Code, Chapter 481;
- (4) offenses involving school property or funds;
- (5) offenses involving any attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;
- (6) offenses occurring wholly or in part on school property or at a school-sponsored activity; or
- (7) felony offenses involving driving while intoxicated (DWI).

(d) Except as provided in subsection (f) of this section, the Texas Education Agency (TEA) staff, pursuant to the TOC, Chapter 53, and the requirements of this chapter, shall notify the

applicant or certificate holder in writing of the TEA staff's intent to seek disciplinary action, including denial or revocation, and the reasons for the proposed action. The applicant or certificate holder shall have the opportunity to be heard according to the procedures set forth in this chapter.

(e) The grounds for revoking or suspending a certificate provided by this section and the TOC, Chapter 53, are cumulative of the other grounds and remedies provided by the TEC, §21.060, and this chapter.

(f) The TEC, §21.058, shall control actions pursued under that section.

Statutory Authority: The provisions of this §249.16 issued under the Texas Education Code, §§21.041(b)(1), (7), and (8), 21.058(a) and (b), and 21.060; and Texas Occupations Code, §53.021 and §53.025.

Source: The provisions of this §249.16 adopted to be effective March 31, 1999, 24 TexReg 2304; amended to be effective June 21, 2009, 34 TexReg 3944; amended to be effective May 18, 2014, 39 TexReg 3710 ; amended to be effective December 28, 2014, 39 TexReg 10010.

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RULE §227.101

Purpose

(a) This subchapter provides rules for the implementation of a preliminary criminal history evaluation as provided in the Texas Occupations Code, Chapter 53, Subchapter D.

(b) The following words, terms, and phrases, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Criminal history--Criminal history record information that relates to convictions and deferred adjudications.

(2) Ineligibility--Unsuitability for certification, based on any of the grounds described in §249.12(b) of this title (relating to Administrative Denial; Appeal), as determined by the Texas Education Agency staff.

(3) Reasonably available--Provided in writing to Texas Education Agency staff by a requestor.

(4) Requestor--A person making a request for preliminary criminal history evaluation pursuant to this subchapter.

(5) Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.

(c) A person who is enrolled or planning to enroll in a State Board for Educator Certification-approved educator preparation program or planning to take a certification examination may request a preliminary criminal history evaluation letter regarding the person's potential ineligibility for certification due to a conviction or deferred adjudication for a felony or misdemeanor offense.

Source Note: The provisions of this §227.101 adopted to be effective October 28, 2010, 35 TexReg 9501

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RULE §227.103

Application

(a) A request for preliminary criminal history evaluation must be preceded by payment of the required criminal history evaluation fee specified in §230.101(a)(20) of this title (relating to Schedule of Fees for Certification Services).

(b) A request for preliminary criminal history evaluation must include the following:

(1) a signed and dated application, in the form provided on the Texas Education Agency (TEA) website, containing contact information and the date and description of each offense requested to be evaluated;

(2) an attached statement of the circumstances upon which the arrest is based and the disposition relating to each offense to be evaluated;

(3) court documentation relating to each offense, including, at a minimum, the formal disposition of the offense(s) and related charge(s) (e.g., Judgment, Order of Probation, Sentence, Deferred Adjudication Order, etc.); and

(4) a copy of the receipt for the request for preliminary criminal history evaluation fee.

(c) All required documents and information specified in subsection (b) of this section must be provided with the request for preliminary criminal history evaluation. Any documents or information not provided in the original request will not be considered reasonably available.

(d) The preliminary criminal history evaluation will be based solely on the application and court or law enforcement documents provided. Any information not provided by the requestor shall be considered not reasonably available at the time of the request and may be considered at the time the requestor subsequently applies for a certificate issued by the State Board for Educator Certification. Additional documentation that should be provided, if possible, includes the following:

(1) the formal charge(s) (e.g., indictment, information, or complaint);

(2) evidence that the condition(s) of the court have been met (e.g., completion of probation, receipt for restitution, etc.); and

(3) any available law enforcement report(s) describing the offense or the investigation of the offense.

(e) The application, the statement of circumstances, the required court documentation, and a copy of the receipt for the request for preliminary criminal history evaluation fee must be submitted to the TEA division responsible for educator investigations by United States certified mail, return receipt requested, to the address provided on the application or by facsimile to the facsimile number provided on the application.

(f) A request for preliminary criminal history evaluation is incomplete unless it includes a copy of the receipt for the request for preliminary criminal history evaluation fee, a completed application, a statement of circumstances, and the required court documentation. The TEA staff will take no action on a request that is incomplete.

(g) All documents submitted in connection with a request for preliminary criminal history evaluation, whether complete or incomplete, will not be returned to the requestor. All documents will be retained or destroyed by the TEA in accordance with the TEA records retention schedule.

Source Note: The provisions of this §227.103 adopted to be effective October 28, 2010, 35 TexReg 9501; amended to be effective February 28, 2016, 41 TexReg 1238

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RULE §227.105

Preliminary Criminal History Evaluation Letter

(a) Within 90 calendar days of receipt of a complete request for a preliminary criminal history evaluation, the Texas Education Agency (TEA) staff will notify the requestor, by email to the email address provided on the requestor's application, of the TEA's determination with regard to the requestor's potential ineligibility based on the matters described in the request for preliminary criminal history evaluation.

(b) The preliminary criminal history evaluation letter will be strictly limited to the facts stated and the documents submitted by the requestor, as of the date of the request. Any documents or information not provided by the requestor will not be considered reasonably available for purposes of evaluating the request. In the event that the requestor subsequently applies for certification by the State Board for Educator Certification, complete fingerprint-based national criminal history information will be required. The TEA staff may conduct a criminal history investigation at that time regarding the offense(s) that were the subject of the request, based on any misstatements, incomplete information, or missing documentation in the request for preliminary criminal history evaluation; additional or subsequent criminal history or inappropriate conduct; or changed circumstances.

(c) The preliminary criminal history evaluation letter relates only to whether the specific information submitted constitutes grounds for ineligibility. The evaluation letter is not a guarantee of educator certification, admission to an educator preparation program, or employment as an educator.

Source Note: The provisions of this §227.105 adopted to be effective October 28, 2010, 35 TexReg 9501; amended to be effective February 28, 2016, 41 TexReg 1238

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RULE §227.107

Fee for Request for Preliminary Criminal History Evaluation

(a) The fee to request a preliminary criminal history evaluation under this subchapter shall be in an amount sufficient to cover the cost of administration of the evaluation process and as provided in §230.101 of this title (relating to Schedule of Fees for Certification Services).

(b) A new fee will be required to reactivate a request that is incomplete because of failure to submit the required documentation within 90 calendar days of receipt by the Texas Education Agency of the initial fee.

Source Note: The provisions of this §227.107 adopted to be effective October 28, 2010, 35 TexReg 9501; amended to be effective February 28, 2016, 41 TexReg 1238

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