

Public Comments on Proposed Amendments to 19 TAC Chapter §249.17, Decision-Making Guidelines for Contract Abandonment
Submitted November 1, 2021

The representatives of the undersigned organizations are writing to oppose proposed rule changes to 19 TAC Chapter §249.17, Decision-Making Guidelines for Contract Abandonment. The beauty of Texas Education Code, Chapter 21 is that it offers protections for both school districts and teachers, and those protections are what make a teacher's resignation different from a resignation in the public sector that has no employee/employer protections. The goal of district and campus leaders is to make certain that students receive a quality education, and we know that appropriately certified teachers provide that learning opportunity for those students. We urge you to consider the following input before making any unnecessary changes to rules governing contract abandonment that would conflict with, or exceed, contract provisions in Chapter 21 statute:

TEA data is clear and does not show a need for expansion of teacher contract abandonment provisions.

- TEA data shared with SBEC in July shows that the opened cases sent to SBEC to review for contract abandonment issues during the last six years has ranged from 120 — 284 of the state's 375,222 teachers. The source is TEA PEIMS data at <https://tea.texas.gov/sites/default/files/employed-teacher-demographics-tgs210603.pdf>
- Recent TEA data indicate the percentage of teachers in the state that have had sanctions assigned by SBEC, is less than one tenth of one percent. This demonstrates that the proposed rules are a solution looking for a problem.
- TEA data clearly show that a *vast majority* of contract abandonment cases are handled internally and the few cases that are sent to SBEC for review are from one independent school district.

The expansion of good cause and mitigating factors for contract abandonment goes beyond the directives of HB 2519 passed during the regular 87th Legislative Session at a time when students are most in need of stability.

- Students need consistency and stability with instruction provided by teachers that they know and that know of their academic strengths and weaknesses. The proposed rules could potentially allow for an increase in the number of teachers who leave their students during a school year, adding to the instability in our system already fraught with change and unpredictability due to the pandemic.
- The most important duty of school leaders is to ensure that every child and every classroom has a qualified teacher, and the proposed rule changes could leave Texas students with substitute teachers who lack credentials or the necessary expertise. In a worst-case scenario, teachers leaving the classroom could leave students with no teacher at all. Small, rural districts often do not receive numerous applicants, especially for specialized courses tied to graduation requirements for students; therefore, staffing issues can cause a significant loss in teaching/learning time for students.

Proposed TAC §249.17(d)(1)(D) Contract Abandonment, Good Cause, "Reasonable Belief".

- It would be a disservice to stakeholders, including district HR departments and students, if a teacher does not follow statute, policy, or contract requirements that mandate resignation notice be given directly to school trustees or their designee. *Teachers are professionals who should be expected to follow protocol.*
- Proposed rule that would allow good cause for an educator's "reasonable" belief that the educator had written permission from the school district administration to resign, is based on a situation with one school district that had an automated system, which mistakenly sent out notice that a teacher's resignation was accepted. The district has since resolved issues with the automated system.
- A year and a half ago, stakeholders were not able to reach consensus on adding language that would have allowed "apparent" authority for the acceptance of an educator's resignation. There are several legal cases that demonstrate "apparent" authority is not legally binding in a school district context. You either have authority or you do not. The same applies to the proposed rule regarding "reasonable" belief as a legally binding precedent.

Proposed TAC §249.17(d)(2)(G) Contract Abandonment, Mitigating Factors, Change in Career or Certification Class.

- SBEC's draft rule that would call for a change in career within the education field as a mitigating factor is not needed as demonstrated by the data showing the number of abandonment cases sent to SBEC, and because it is already covered under TAC §249.17 (c)(10) that requires SBEC to consider *any other relevant circumstances or facts* when deciding about contract abandonment.

Proposed TAC §249.17(d)(2)(H) Contract Abandonment, Mitigating Factors, Reduction in Base Pay.

- The provision that would allow good cause for a reduction in base pay, as compared to the educator’s base pay for the prior year at the same school district is based on one instance shared with SBEC in a school district in which a change in the educator’s assignment, required a lower base pay due to fewer days worked and fewer responsibilities. It is important to note that in the referenced instance, the commissioner of education determined that the district provided appropriate notice of the reduction in pay. Adding a statewide rule, for one outlier and/or without data showing this is a statewide issue, is not efficient or necessary.

Proposed TAC §249.17(d)(2)(I) Contract Abandonment, Mitigating Factors, Change in Educator’s Assignment.

- This provision is not needed as it is already included in good cause rule TAC §249.17(d)(A) and (C) that addresses serious illness or health condition and changes in the educator’s family needs.
- Superintendents have statutory authority for final placement of a teacher transferred because of enrollment shifts or program changes in the district. The proposed rule directly contradicts statutory authority and removes local control for personnel decisions.
- Superintendents are charged in statute with teacher assignments, and with ensuring the best teachers are assigned to the campuses with the neediest students (e.g., Teacher Incentive Allotment). The proposed rule directly contradicts this statutory authority.
- The TEA explanation concerning the rule that would allow a teacher to abandon his/her contract because a change in campus assignment could affect driving time/carpool schedule and thus lead to a “significant adverse impact on their health or family needs” would be in direct contradiction to statute that includes teacher assignments as a critical part of district improvement plans; collaboration between school trustees and superintendents; and strategic leadership for maximizing student performance for all district students.
- We are not aware of any other employee contract in a professional career environment that allows employees to abandon the terms of their contract because of driving time.

Proposed TAC §249.17(d)(2)(J) Contract Abandonment, Mitigating Factors, Working Conditions That Reasonably Pose an Immediate Threat of Significant Physical Harm to the Educator.

- We are unsure of the term “reasonably pose” in a legal context and what that would involve.
- Superintendents are charged with oversight of a district’s programs, services and facilities as well as overseeing compliance with commissioner standards for school facilities. It is unclear if the proposed rule is attempting to address this kind of “working condition”?
- If a working condition poses an immediate threat of significant physical harm to an educator, the condition could also be a threat to students and should be addressed elsewhere in rule or statute to protect all stakeholders.

We appreciate the opportunity to provide public comments on the proposed rules.

Respectfully,

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Texas Association of Community Schools (TACS),
Texas Association of Rural Schools (TARS)
Texas Association of School Administrators (TASA),
Texas Association of School Personnel Administrators (TASPA),
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