

SUNSET ADVISORY COMMISSION

State Board for
Educator Certification



Staff Report
February 2002

STATE BOARD FOR EDUCATOR CERTIFICATION

SUNSET STAFF REPORT

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SUMMARY



Sunset Staff Report

State Board for Educator Certification

Summary

The Legislature created the State Board for Educator Certification (SBEC) in 1995 to give educators the authority to govern the standards of their profession. SBEC oversees all aspects of the preparation, certification, continuing education, and standards of conduct of public school educators. While the Texas Education Agency and the State Board of Education remain responsible for the performance of the public school system in Texas, SBEC focuses on the quality of the educators who work with Texas children in schools throughout the state. SBEC should continue in this roll.

The Sunset staff review of SBEC found an agency that has had increasing success in fulfilling its mission of ensuring the highest level of educator preparation and practice. In the years immediately following its creation, SBEC struggled at times to effectively and quickly perform its certification and enforcement duties. However, SBEC has now reduced the time required to process certifications, strengthened testing standards and procedures, and eliminated backlogs of enforcement cases waiting for resolution. SBEC has also implemented new certification and continuing education requirements for Texas educators, and begun to implement recent legislation to simplify certification of teachers from out of state.

A recent study found that 98 percent of educators teaching in Texas classrooms are either fully certified or are degreed individuals fulfilling requirements for educator certification.¹ Teacher shortages in certain subject and geographic areas require employment of individuals who have not yet achieved a teaching certificate. SBEC has developed a workable system for alternative certification to attract those who change careers to the teaching profession. In addition, the Texas Education Agency can, and does, waive certification requirements to allow uncertified persons to teach in classrooms under certain circumstances.

Ninety-eight percent of Texas public school educators are either fully certified or working towards certification.

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However, the review showed that SBEC has several areas needing improvement. First, SBEC is the only Governor-appointed executive board that must subject its rules to possible veto by another executive board. This situation inhibits effective and timely rulemaking. Early input from all interested parties, including the State Board of Education and TEA,

would improve the process. The agency also needs to strengthen background checks of applicants to prevent persons with a serious criminal history from entering Texas classrooms as a certified teacher. Finally, SBEC needs to standardize the agency's complaint investigation process to better ensure fairness and to improve performance.

Issues / Recommendations

Issue 1 Replace the State Board of Education's Authority to Reject SBEC Rules With Greater Participation in the Rule Development Process.

Key Recommendations

- Replace the State Board of Education's statutory authority to reject rules proposed by SBEC with a 45-day review and comment period.
- Require SBEC to develop guidelines for the early involvement of stakeholders in its rulemaking process.

Issue 2 SBEC's Limited Background Searches May Allow Unsuitable Individuals to Teach Texas Schoolchildren.

Key Recommendations

- Require SBEC to collect fingerprints and conduct national criminal history checks of all applicants for educator certification.
- Require SBEC to adopt rules setting fees for fingerprinting and national criminal history background checks.
- Authorize SBEC to retain educators' fingerprints at the Department of Public Safety.

Issue 3 SBEC's Disciplinary Rules Do Not Ensure Consistent Investigation of Complaints Against Educators.

Key Recommendations

- Require the Board to adopt comprehensive rules outlining the process for investigating disciplinary violations.
- SBEC should include educators in development of the new disciplinary process rules.

Issue 4 Texas Has a Continuing Need for the State Board for Educator Certification.

Key Recommendation

- Continue the State Board for Educator Certification for 12 years.

Fiscal Implication Summary _____

This report contains one issue that would have a fiscal impact to the State. The chart below summarizes this impact.

- *Issue 2* - Conducting fingerprint-based background checks of new applicants for certification would help ensure the agency does not certify unsuitable individuals to teach Texas children. Application fees of approximately \$42 will cover the expenditures required for processing fingerprint checks.

Fiscal Year	Cost to the General Revenue Fund	Revenue Generated by New Fees	Change in FTEs from FY 2001
2003	\$940,800	\$940,800	+5
2004	\$940,800	\$940,800	+5
2005	\$940,800	\$940,800	+5
2006	\$940,800	\$940,800	+5
2007	\$940,800	\$940,800	+5

¹ Institute for School-University Partnerships, *Teacher Demand Study 2001-2002: Prepared for the Texas A&M University System / Texas Education Agency, Partnership for Texas Public Schools*, (Bryan, Texas, January 2002), p.7.

ISSUES / RECOMMENDATIONS

Issue 1

Replace the State Board of Education's Authority to Reject SBEC Rules With Greater Participation in the Rule Development Process.

Summary

Key Recommendations

- Replace the State Board of Education's (SBOE) statutory authority to reject rules proposed by SBEC with a 45-day review and comment period.
- Require SBEC to develop guidelines for the early involvement of stakeholders in its rulemaking process.

Key Findings

- The State Board of Education has the authority to reject rules proposed by SBEC.
- SBOE's veto authority has significantly delayed and prevented SBEC policy development.
- No other board appointed by the Governor must submit proposed rules to another executive branch board for approval or veto.
- SBEC can obtain input from SBOE and the Texas Education Agency in a more workable manner.
- SBEC does not have a regular process for obtaining early stakeholder involvement in rule development.

Conclusion

SBOE should have a better means, other than outright veto authority, to provide input on rules governing the certification of educators. In 1995, the Legislature created SBEC for educators to have a direct role in the oversight of their profession. While SBOE oversight of the SBEC rulemaking process was intended to ensure that the then newly-created SBEC continued to make rules consistent with the education system, such oversight authority has delayed the approval, adoption, and implementation of key rules surrounding educator certification.

The Sunset review examined the need to continue the unusual situation of having one executive board submit its rules to another. While the veto of certain rules led to discussions of how to improve those rules, that input could have been obtained earlier in the rule development process. Mechanisms to obtain early input, especially that of SBOE, would clearly serve Texas educators better than the delay caused by the vetoes.

Support

The State Board of Education has the authority to reject proposed rules by SBEC.

- SBEC must submit a written copy of each proposed rule to the State Board of Education for review. SBOE may reject, but not modify or approve, a proposed rule by a vote of at least two-thirds of the present members. If SBOE fails to reject a proposal before the 90th day after the date on which it received the proposal, the proposal takes effect as a rule of SBEC.¹
- SBOE has exercised this statutory privilege of veto three times within the last five years. The textbox, *SBOE Veto of Proposed SBEC Rules*, describes the rejected rules and any follow-up action taken.

SBOE Veto of Proposed SBEC Rules

SBOE rejected proposed SBEC rules that would have:

- established disciplinary proceedings for sanctioning educators and enforced the Educators' Code of Ethics (*vetoed by SBOE in November 1997; adopted by SBEC March 31, 1999*);
- required that parents be notified when their child is taught for more than 30 instructional days by an inappropriately certified individual (*vetoed by SBOE in March, 1999; adopted by the Legislature in May 1999*); and
- created a new Transitional Permit designed to collapse various types of permits and nonstandard certificates into a single temporary credential (*vetoed by SBOE February 2001; no subsequent action taken.*).

SBOE veto authority has significantly delayed and prevented SBEC policy development.

- SBEC's disciplinary rules, including ethics-offense investigation rules, were delayed from October 1997 to March 1999 as a result of an SBOE rules veto. During this time, ethics investigations and other disciplinary proceedings were delayed, resulting in a large backlog of cases. The time line, *Significant Events in the Development of Disciplinary Rules*, located on the following page, illustrates the delay.

In October 1997, SBEC proposed to establish disciplinary proceedings rules, including those for enforcing ethics offenses. In November 1997, SBOE voted unanimously to reject the proposed disciplinary rules.² Nearly one and a half years later, after making some changes including creating a review process for ethics enforcement, SBEC once again submitted the proposal to SBOE, which became effective in March 1999.³ While the perception is that some of the modifications were beneficial, the delay in SBEC's ability to adopt the measure resulted in the agency not being able to effectively enforce the statute during that time.

An SBOE veto delayed educator disciplinary rules for more than a year.

Significant Events in the Development of Disciplinary Rules	
1997	Sept 3 — Commissioner of Education rules that neither he nor SBEC has jurisdiction to hear or to decide cases involving the Educators' Code of Ethics.
	Oct 3 — SBEC proposes disciplinary proceedings rules to SBOE.
	Nov 6-7 — SBOE reviews and vetoes the proposal.
1998	Jan 26 — Stakeholder organizations meet with SBEC staff.
	Mar 4 — Drafting committee formed, SBEC staff prepare revisions to the proposal.
	April 3 — Stakeholders consider the revisions.
	May - Sept — SBEC discusses and considers the revisions.
	Sept 22 — SBEC proposes a second set of disciplinary proceedings rules.
	Nov 12-13 — SBOE reviews the proposed rules.
	Jan 8 — SBOE attempts to veto the new proposal, veto fails.
1999	Jan 22 — SBEC adopts the new rules.
	March 31 — New rules, including provisions for enforcement of the Educators' Code of Ethics, become effective.

- SBOE vetoed rules creating a single, transitional permit in February 2001. SBEC had designed the transitional permit to consolidate three types of nonstandard certificates into one credential, simplifying the whole temporary credential structure. The textbox, *Proposed Transitional Permit*, highlights the measure.

As a result of SBOE veto, SBEC could not modify the rules regulating individuals teaching on nonstandard certificates. For example, the current rule structure allows an individual up to three years, in some cases, to teach without passing a certification exam. The proposed rule would have required the transitional permit holder to pass the appropriate subject matter examination(s) within the first year of teaching in the classroom. Again, while the veto may

Proposed Transitional Permit

The proposed Permit would have consolidated emergency permits, one-year and probationary certificates into one temporary credential as follows:

Reduced the number of years an individual has to pass the appropriate certification exam from up to 3 years down to one year.

Specified that individuals serving on transitional permits must comply with parental notifications on certification.

Required at least a bachelor's degree and subject matter knowledge in the teaching assignment.

Strengthened and expanded the mentoring requirement for permit holders by requiring school districts to provide trained mentors.

Limited the amount of time a school district may assign a certified teacher to teach outside their certification area to no more than a total of two school years.

result in appropriate changes to contested parts of the proposed rule, SBEC is unable to make any of the improvements to the certification process envisioned by its Board.

- Rules acceptable to SBOE are also delayed by the process. The length of time it takes SBEC to finalize rules through the current system averages approximately six months, while the estimated average for most state agencies is four months.⁴ This situation is due to the timing of SBOE's 90 day review period. For example, rules stemming from legislation exempting out-of-state educators from further testing, and the re-write of guidelines for the educator preparation accountability system, were proposed to SBOE in August 2001.⁵ SBEC was not able to adopt the rules until January 2002. SBEC staff explained the reasons for delay were due, in part, to SBOE requiring two separate meetings within the review period to discuss and then take action on proposed measures.⁶

No other board appointed by the Governor must submit proposed rules to another executive branch board for approval or veto.

Subjecting rules of a governor-appointed board to another board's veto is highly unusual.

- Under the Texas Constitution, the Governor has the authority to appoint boards and commissions to carry out state government functions. Texas law grants boards the power to establish rules to carry out their statutorily assigned duties. In the case of SBEC, these duties include providing for the regulation of educators; specifying the classes of educator certificates to be issued; and providing for the adoption, amendment, and enforcement of an Educators' Code of Ethics.
- In Texas, boards direct state agencies by adopting rules governing their programs and operations. The Administrative Procedure and Texas Register Act (APA) sets out general rulemaking procedures.⁷
- A review of state statutes did not show any other executive branch board whose rules are subject to the veto authority of another board. The closest example was the authority of the Health and Human Services Commission (HHSC) to review the proposed rules of its 12 component agencies.⁸ However, HHSC only reviews component agencies' rules to ensure compliance with legislative mandates and the non-duplication of services; and may amend those rules in writing, but not reject a proposed rule.⁹ Also, HHSC and its component agencies share an almost hierarchal relationship for the coordination and delivery of services which SBOE and SBEC do not.

SBEC can obtain input from SBOE and TEA in a more workable manner.

- State law makes the State Board of Education and the Texas Education Agency generally responsible for most facets of public

education in Texas. While the Legislature moved the certification of teachers to the newly-created SBEC in 1995, SBOE and TEA continue to maintain oversight of the performance of the school districts where teachers work. This significant overlap likely led to the concept of providing SBOE with veto authority over SBEC rules.

- In most cases where state agencies' duties overlap, the agencies enter into agreements delineating the interactions and responsibilities of the two agencies. In some cases, such as with HHSC (as discussed above), agencies are provided a formal review and comment period during the development of rules.
- SBEC has not extensively involved SBOE or TEA in rule development. While TEA staff have occasionally participated in some rule development or stakeholder meetings, this process is not established or assured.¹⁰ Involving TEA staff in early development of rules affecting the educational community, would allow for identification of potential problems long before the rules are officially proposed.

Unless the issues are contentious, SBEC does not consistently seek stakeholder input.

SBEC does not have a regular process for obtaining early stakeholder involvement in rule development like other agencies.

- SBEC does not have a consistent practice of including the input of educators in the development of rules.¹¹ While SBEC does have a six-step rulemaking process that provides some opportunities for stakeholder input, these measures are not set out in statute and are modified in some cases to allow SBEC to meet targeted implementation dates.¹² However, SBEC has often solicited considerable educator input on large contentious issues, such as the Code of Ethics revisions.¹³
- The Texas Department of Health (TDH), a large agency with a diverse constituency¹⁴ has created a "stakeholder development process," as a method for obtaining input from outside sources.¹⁵ This process includes a checklist of rule development methods that, to the extent appropriate, should be followed; and a broad and expandable definition of "stakeholder." The process ensures that stakeholders have an early and active role in the concepts of rule development.
- The Texas Water Development Board (TWDB) has recognized the importance of public participation in the rulemaking process. One of the primary elements of the State Water Plan is to include public participation in each step of the process. Water, like education, touches all Texans and TWDB established a goal of public participation to facilitate the creation of a workable solution.¹⁶

Other agencies regularly seek early stakeholder involvement in policy and rule development.

Recommendation

Change in Statute

1.1 Replace SBOE's statutory authority to reject rules proposed by SBEC with a 45-day review and comment period.

This recommendation would allow SBEC to fully operate as an independent agency by removing the statutory authority for the State Board of Education to reject its rules. This change will clarify that SBEC, like all other executive branch agencies, has the authority and responsibility to adopt rules to carry out its legislatively mandated responsibilities.

Currently, SBOE does not have the ability to be involved in the *development* of SBEC rules. SBEC must propose rules to SBOE, without any indication of whether those rules will be vetoed. Instead, SBEC should formally submit a proposed rule to SBOE for a 45-day review and comment period, simultaneous with the submission of the rules to the Texas Register.

1.2 Require SBEC to develop guidelines for the early involvement of stakeholders in its rulemaking process.

Removal of SBOE's veto authority necessitates that SBEC develop a process that ensures all interested parties have an opportunity to participate in the development of rules. Some state agencies have developed rulemaking processes that ensure the early inclusion of advice and opinions from those who will be most affected by a proposed rule.

In developing these guidelines, SBEC should use TDH's stakeholder development process as a general model. The process should include methods SBEC will follow to obtain the early advice and opinions of interest groups affected by a proposed rule, before it is published. At minimum, the guidelines must include appropriate TEA staff and establish a means of identifying persons affected, such as (but not limited to): educators, other state agency personnel, school district administrators, and, if applicable, parents.

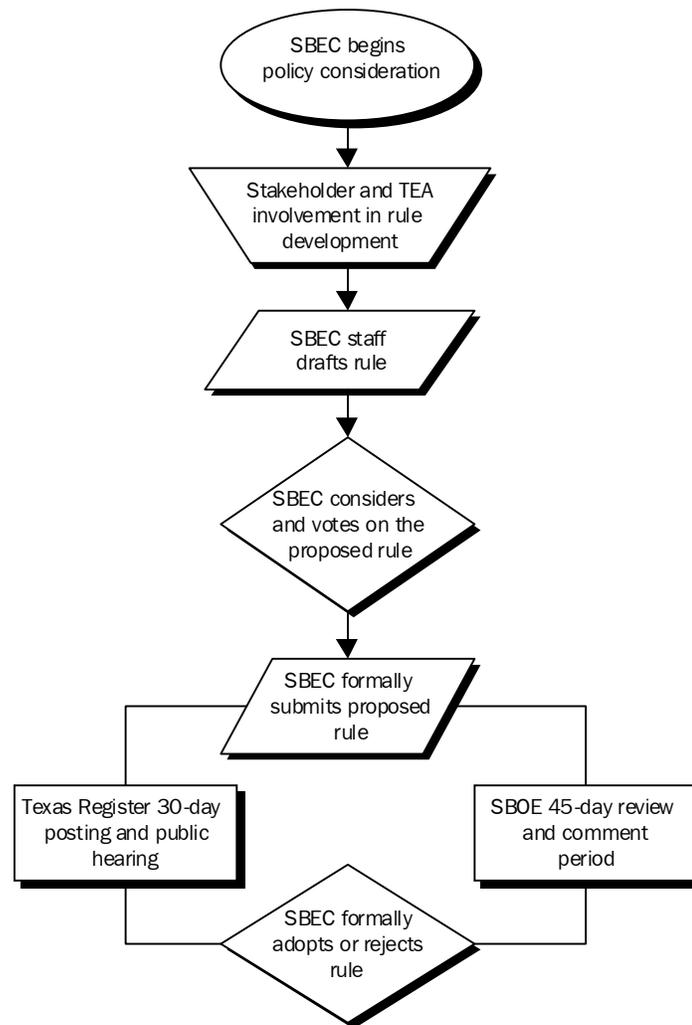
Using stakeholder involvement, SBEC staff will develop proposed rules for consideration by its Board. SBEC determines the content of rules formally proposed and published according to APA requirements. SBOE then receives a 45-day review and comment period. SBEC may finalize a rule only after the 45-day review and comment period has expired. The chart, *Proposed SBEC Rulemaking Process*, located on the following page details this process.

This process provides the education community with the opportunity for a strong role in the development of the rules, before formal proposal in the Texas Register. Stakeholders who may not agree with the proposed rules will continue to have an opportunity to oppose or suggest alternatives during the public comment period provided in the APA rulemaking process.

Impact

These recommendations would establish a fair, productive balance between SBEC's role in ensuring qualified teachers in Texas classrooms and SBOE/TEA's responsibility for the education process. The recommendations would remove SBOE veto authority over SBEC's proposed rules and change SBOE's role to that of a special participant in the process. SBOE would have a 45-day review and

Proposed SBEC Rulemaking Process



comment period once SBEC proposes rules. Before that point, Texas Education Agency staff would be involved in the early development stage of the rules. SBEC must also include stakeholders, such as groups representing teachers, administrators, and school districts, in the development of rules.

Removal of SBOE veto privilege would vest SBEC with the rulemaking authority similar to other state boards and commissions. The rulemaking process would be streamlined, thereby avoiding long delays in enforcing rules. SBEC's authority to establish policies affecting educators will be clearly set out in statute.

Currently, SBOE's Planning Committee reviews all SBEC proposals and recommends action to the full Board. These recommendations would allow that practice to continue. In addition, the 45-day review and comment period would be consistent with APA guidelines, which require that agencies provide a "reasonable time" for public comment.¹⁷

These recommendations call for SBEC to determine how it can best work with stakeholders to provide them opportunities to participate in the rule development process. SBEC should ensure that stakeholders are included in the decisionmaking process for issues surrounding the preparation, certification, and discipline of educators.

Fiscal Implication

These recommendations will not have a fiscal impact to the State.

¹ As provided by, Tex. Gov't. Code Ann., chapter 2001, sec. 2001.001 et seq. (Vernon's 2000 and supp. 2002) [hereinafter the "Administrative Procedure Act"].

² 13 members were present, one absent.

³ The ethics enforcement review process includes review by a committee comprised of three Board members, one of whom is a teacher.

⁴ Telephone interview with Texas Register staff. (Austin, Texas, January 28, 2002).

⁵ House Bill 1721, 77th Legislature (2001).

⁶ Additional factors that may cause time variance include SBEC scheduling of its board meetings. Telephone interview with SBEC staff. (Austin, Texas, January 25, 2002).

⁷ Administrative Procedure Act.

⁸ Component agencies include the Texas Department of Health, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Department of Protective and Regulatory Services, Texas Department on Aging, Texas Commission for the Blind, Texas Commission for the Deaf and Hard of Hearing, Texas Commission on Alcohol and Drug Abuse, Texas Rehabilitation Commission, the Interagency Council on Early Childhood Intervention Services, and the Health Care Information Council. The Texas Health and Human Services Commission Web page: http://www.hhsc.state.tx.us/about/hhsc/HHS_Agencies.html. Accessed on January 28, 2002.

⁹ State law empowers HHSC to review all proposed rules of its component agencies for compliance with its coordinated strategic plan, existing statutory authority, rules of other health and human services agencies, and budgetary implications. Tex. Admin. Code, chapter 351, Rule sec. 315.1 and Tex. Gov't Code Ann., sec. 531.034 (Vernon's 2002).

¹⁰ While SBEC routinely works with TEA staff to ensure a proposal is on the SBOE agenda, SBEC only involves TEA staff if an issue has "overlapping jurisdiction," such as measures related to bilingual or special education. Telephone interview with SBEC staff. (Austin, Texas, January 29, 2002).

¹¹ Telephone interviews with Texas State Teachers' Association and Texas Classroom Teachers' Association (Austin, Texas, January 23, 2002). [hereinafter, Associations Interview].

¹² SBEC Rulemaking Process. SBEC Web page: <http://www.sbec.state.tx.us/brdagenrule/ruleprocess.htm>. Accessed on January 29, 2002.

¹³ Associations Interview.

¹⁴ For example, TDH oversees the license and certification of drug and medical devices, migrant and youth camps, general and special hospitals, vended water manufacturers, frozen yogurt providers, paramedics and EMTs, athletic trainers, midwives, opticians, and crab meat processors. The Texas Department of Health Web page: <http://www.tdh.state.tx.us/license.htm>. Accessed on January 29, 2002.

¹⁵ Texas Department of Health, *Comprehensive Strategic and Operational Plan Fiscal Years 2001-2002*, (last updated January 2, 2001). Online. Available; www.tdh.state.tx.us/stateplan01/bpappf.pdf. Accessed: January 25, 2002.

¹⁶ Senate Bill 1, 75th Legislature (1997).

¹⁷ The APA requires that an agency post a proposed rule for 30 days [Tex. Gov't Code Ann., chapter 2001, sec. 2001.023 (Vernon's 2000)] and provide the public with a reasonable time period for comments [Tex. Gov't Code Ann., chapter 2001, sec. 2001.029 (Vernon's 2000)].

Issue 2

SBEC's Limited Background Searches May Allow Unsuitable Individuals to Teach Texas Schoolchildren.

Summary

Key Recommendations

- Require SBEC to collect fingerprints and conduct national criminal history checks of all applicants for educator certification.
- Require SBEC to adopt rules setting fees for fingerprinting and national criminal history background checks.
- Authorize SBEC to retain educators' fingerprints at the Department of Public Safety.

Key Findings

- SBEC conducts limited criminal history background checks on educators.
- Limited criminal history checks do not prevent Texas from certifying educators with criminal records.
- SBEC has begun to effectively use other tools to identify educators with hidden criminal histories, but these also have weaknesses.
- Most other states fingerprint applicants for educator certification.

Conclusion

The State Board for Educator Certification has the important responsibility of ensuring that not only are educators well prepared and able to teach children, but that Texas educators are individuals with high standards of professional conduct and character. While most individuals who apply for educator certification do so with an unquestionable background, the Sunset review was able to identify weaknesses in the methods SBEC currently uses to check criminal histories. These weaknesses have led to situations in which the safety of children has been compromised, and which could have been prevented had SBEC used more thorough methods of checking backgrounds.

The Sunset review evaluated the methods used by other state agencies and other states for ensuring the suitability of prospective employees and licensees, and recommends that SBEC use fingerprint-based criminal history checks. Though the costs of instituting a fingerprint check program are higher than the current method SBEC uses, fingerprinting provides the most effective and thorough means of searching criminal histories.

Support

SBEC conducts limited criminal history background checks on educators.

- SBEC regulates the certification of educators to teach Texas public school children. Before an individual can be certified, SBEC must conduct a criminal history background check to ensure an applicant's suitability to interact with children. Working with the Texas Department of Public Safety (DPS), the agency conducts statewide criminal history checks on all applicants for educator certification.

In FY 2001, SBEC indicated that the agency conducted approximately 70,000 background checks; of these, Sunset staff estimate 22,400 were unduplicated background checks.¹ DPS returned approximately 12 percent with various levels of criminal history. If SBEC finds a criminal history, the agency investigates and, depending upon the offense, either denies or issues a certificate.

- SBEC and DPS use only an applicant's name when conducting the background searches described above. However, criminal history checks can be requested at one of three levels of thoroughness. The least thorough search involves a name-only search of Texas' criminal records. A full Texas-wide search involves a name and fingerprint search of DPS records. The most complete check involves a fingerprint search of Federal Bureau of Investigation (FBI) and state databases. The criminal history checks using fingerprints cost substantially more than a name-only check.
- SBEC has proposed expanding criminal history background checks to include fingerprint checks. However, authority to expend fee revenue for this purpose was not included in the 2002-2003 General Appropriations Act.

Limited criminal history checks do not prevent Texas from certifying educators with criminal records.

- Studies show that criminal histories based on a name-only search are unreliable. A July 1999 U.S. Attorney General study on the efficacy of name checks found that name-only checks are ineffective and criminal histories based solely on names can result in significant errors of both false positives and false negatives. In contrast, modern automated fingerprint imaging systems have error rates of less than one percent.²

The study conducted both name and fingerprint-based criminal history checks on 93,274 applicants for state employment or licensing in Florida. Almost 12 percent of the names found to have no criminal history using a name-only check, were found to have criminal histories when fingerprints were used. Although the

SBEC checks the name of applicants in DPS' Texas criminal history database.

Each year, Texas could unknowingly certify 2,400 educators with criminal histories.

report's findings relate to Florida's experience only, the U.S. Attorney General determined that the results can be viewed as relevant to the efficacy of names check generally.³ Using these same results against the estimated 20,000 that cleared their name-only criminal history check, Texas could unknowingly have approved certifications for approximately 2,400 educators with criminal histories.

- Name-only criminal history searches do not catch people who change names. For example, both DPS and SBEC staff indicated that individuals hired by one school district and fired for incurring a criminal record, could be hired by another Texas school district if using a different name.

In addition, according to SBEC, DPS, and teachers associations, Texas has a reputation as a state that will easily certify educators with criminal history records that have prevented employment in other states.

- A December 2001 State Auditor's Report found that SBEC's background checks are not comprehensive, thus increasing the risk that individuals with criminal backgrounds could be certified to teach.⁴
- The U.S. Congress has repeatedly endorsed fingerprint-based background histories as the only reliable means of checking a criminal history, and the definitive way of knowing who has a criminal record. For examples, see the textbox, *Federal Laws Supporting the Use of Fingerprint-Based Criminal History Checks*.⁵

Federal Laws Supporting the Use of Fingerprint-Based Criminal History Checks

1993 National Child Protection Act – Established procedures for allowing national fingerprint-based criminal history checks for volunteers and employees of organizations with access to children.

1998 Volunteers for Children Act – Amended the 1993 act to allow organizations dealing with children to use national fingerprint-based checks to screen out employees with relevant criminal records, and if not, to be held liable for hiring a criminal. As a result, courts have charged some entities with “negligible hiring.”

FY 1999 Omnibus Appropriations Act – Enables nursing facilities and home health care agencies to request fingerprint-based national criminal history checks on employees or job applicants.

Most other states fingerprint applicants for educator certification.

- Thirty-three states require fingerprinting of educators for certification or employment. Four other states are planning to require fingerprinting within the next two years. The remainder have no official policy but indicated criminal history checks may include fingerprinting.⁶

All but one state passes the fees for FBI fingerprint checks on to the applicants. For example, New York began fingerprinting educators in July 2001 at a cost of \$75 per applicant. Other states' fees range from \$15 to \$75.⁷

One Texas school district has successfully used fingerprint checks to identify unsuitable applicants.

Fingerprint checks are commonly used by some Texas school districts and State agencies to identify licensees or employees with criminal histories.

- The Fort Worth Independent School District has chosen to better protect school children by requiring fingerprint-based criminal history checks on all district employees who have one-on-one contact with children. See the textbox, *Fort Worth School District Fingerprinting Program Facts*, for program specifics.⁸ While some other districts may randomly conduct fingerprint checks, fingerprinting is not common practice among Texas school districts.⁹

Fort Worth School District Fingerprinting Program Facts

The Ft. Worth school district board began funding a fingerprinting program in March 1997.

- Authorized the purchase of a digital fingerprinting machine costing \$50,000 (an additional \$30,000 was required to interface with DPS's database).
- Has an agreement with the local sheriff's office to retain a sheriff's deputy full-time.
- Bears the costs of fingerprinting each individual at a cost of \$28 per set of fingerprints.
- Budgets \$250,000 a year for the program (\$175,000 for the criminal checks, the remainder for the sheriff's salary and the maintenance agreement on the equipment).
- Fingerprints new hires only, including all occupations.
- Conducts a statewide name check once a year of all 10,000 school district employees.

Using fingerprinting, the district can retrieve a state criminal history within minutes and an FBI history within approximately 24 hours.

During the 2000-2001 school year, the district fingerprinted 2,994 people, and found approximately 10 percent with a criminal history. Of those, approximately 30 had an unacceptable criminal history incurred outside of Texas. Of those, 10 were found to have committed sexual offenses.

- Other licensed professionals and volunteers who work with children are also required to be fingerprinted as part of a criminal history check.¹⁰ For example, the employees of facilities such as child care centers, which the Department of Protective and Regulatory Services licenses, must be fingerprinted as a condition of employment.
- Many other Texas agencies fingerprint regulated persons to better protect the public. For example, the Board of Law Examiners requires applicants for licensure as attorneys to submit fingerprints as part of the Declaration of Intention to Study Law.¹¹ Like educators, attorneys with certain criminal histories are barred from practicing the profession. Also, the Department of Protective and Regulatory Services fingerprints employees, contractors, and volunteers providing services to not only children as mentioned above, but to the elderly or persons with disabilities. Other agencies that conduct fingerprint-based checks are listed in the textbox, *Fingerprinting of Licensed Professions and State Employees*.

Fingerprinting of Licensed Professions and State Employees

Agencies that may deny licensure or permits if any applicant fails to provide a complete set of fingerprints.

Board of Medical Examiners – may deny a license to practice medicine.

State Board of Public Accountancy – may deny licensure to accountants.

Commission on Alcohol and Drug Abuse – may deny counseling licenses.

Department of Health – may deny a paramedic's license.

Commission on Law Enforcement Officer Standards and Education – may deny law enforcement officer's licenses.

Office of Consumer Credit Commissioner – may deny credit counseling licenses.

County Bail Bond Boards – may deny licenses to bail bond sureties.

State Comptroller – may deny a tobacco distribution permit.

Alcoholic Beverage Commission – may deny alcohol sales permits.

Racing Commission – may deny racetrack licenses.

Commission on Private Security – may deny a private investigator's license.

Department of Licensing and Regulation – may deny a license to professional employer organizations.

Department of Insurance – may deny a license to sell insurance.

Finance Commission – may deny a mortgage broker's license and licenses to exchange or transmit currency.

Agencies that may deny employment if an applicant fails to provide a complete set of fingerprints.

Lottery Commission – employees.

Higher Education Institutions – employees.

Health and Human Services Commission – may deny employment or volunteer status in a local mental health or mental retardation center.

Texas Workforce Commission – may deny employment in security sensitive positions, such as those dealing with funds or confidential information.

SBEC has begun to effectively use other tools to identify educators with hidden criminal histories, but these also have weaknesses.

- SBEC has begun to examine the criminal histories of presently certified educators. The agency attempted to remedy the weaknesses of name-only background checks by conducting searches comparing the social security numbers (SSN) of DPS' registered sex offenders with those of individuals in SBEC databases. The search yielded 389 matching SSNs.

SBEC found 67 certified educators previously unknown to SBEC as sex offenders.¹² In addition, using SSN resulted in 138 alias or invalid numbers that did not match a name (meaning an individual had falsified or mistakenly entered social security information). The remainder consisted of 184 names already known to SBEC staff.

- SBEC's follow-up on currently certified educators is limited. The agency conducts only one criminal history check at the time of application for certification. Although the Education Code requires school districts to notify SBEC if they have knowledge of an educator who incurs a criminal history after certification, SBEC staff indicate some school districts have failed to report in a timely fashion, or at all. In this case, the agency only becomes aware of a criminal history through a complaint.¹³

Therefore, a criminal record incurred after certification is never made known to SBEC unless it becomes public or the school district reports it to SBEC. For example, an educator that had been certified in 1972 was convicted of a child pornography offense in 1996. However, he continued to work in Texas until SBEC found his criminal record using the SSN search mentioned above.

Students investing in educator preparation programs may find they can not be certified.

- Criminal history checks are done only after students complete their educator preparation. However, students are not aware of the criminal history check requirements when they enter the educator preparation programs. While most students understand that some criminal behavior is likely to prevent certification as a teacher, SBEC does not distribute information illustrating what might be considered an acceptable or unacceptable criminal history.

Recommendation

Change in Statute

2.1 Require SBEC to collect fingerprints and conduct national criminal history checks of all applicants for educator certification.

This recommendation would ensure that SBEC is specifically required to collect fingerprints at the time of application, and that all new and out-of-state applicants wishing to be certified as educators must consent to fingerprinting or be denied certification. This recommendation would also ensure that SBEC uses the fingerprints to access state and national criminal history databases to fully determine the suitability of applicants for educator certification.

Listed below are several options for collecting educators' fingerprints. SBEC could use any one, or a combination of the options, to ensure that the fingerprint requirement is not a burden for particular residents of Texas. For example, an applicant living in a remote area, far from an Education Service Center (ESC), may have easier access to a local sheriff's office to obtain fingerprinting services.

- **Vendor in ESCs** – SBEC could contract with a vendor to provide fingerprinting in each of the 20 ESCs. In 2001, SBEC and DPS identified a vendor willing to install digital fingerprinting machines in each of the ESCs at no cost to the state, provided that the state could guarantee a minimum number of educator applicants each year.¹⁴ The vendor estimated the ability to recover all costs, based upon the number of applicants for certification and a plan to allow the fingerprinting services to also be used by other professionals required to be fingerprinted.
- **Local Law enforcement entities** – Certification applicants could use the fingerprinting services of local law enforcement entities.¹⁵
- **Contracts with local law enforcement officers** – Finally, some local law enforcement entities allow officers to contract during off-duty hours to provide fingerprinting services to

the public.¹⁶ SBEC could arrange fingerprinting sessions at locations such as education preparation schools or the ESCs.

In all of the scenarios, applicants would pay the fingerprinting fee directly to the responsible party. SBEC would collect the remainder of the fingerprinting fees as part of the total fees for certification and disperse the necessary funds to the FBI and DPS. This recommendation would not require SBEC to collect fingerprints from educators certified before September 1, 2003.

2.2 Require SBEC to adopt rules setting fees for fingerprinting and national criminal history background checks.

This recommendation would ensure that the costs of fingerprint-based criminal history checks for all out-of-state and first-time, in-state applicants for educator certification are paid by the applicant. This includes the costs of submitting the fingerprints to DPS and the FBI.

2.3 Authorize SBEC to retain educators' fingerprints at the Department of Public Safety.

This recommendation would provide that arrests and convictions made after certification could be easily matched to a database, allowing the Department of Public Safety to notify SBEC of an educator's possible criminal activity. Upon notification, SBEC should immediately open an investigation into that educator's continued suitability for certification.

Management Action

2.4 SBEC should develop information on situations that may prevent certification for distribution to all students in preparation programs.

This recommendation would ensure that students working towards a degree and certification are aware of SBEC's standards for entering the profession. SBEC should assist educator preparation programs in providing standard information to students to help ensure that someone who has a criminal history, which may prevent certification, does not expend unnecessary time and expense towards a certificate.

Impact

Requiring SBEC to fingerprint all new and out-of-state applicants for educator certification will help to prevent Texas from certifying educators who could be harmful to children. Fingerprint-based criminal history checks provide benefits to both the State, to schools, and to educators.

Fingerprinting may reduce the number of complaints against educators by ensuring that those individuals who have already proven themselves unworthy of working with children are not certified to work in the profession. Also, by fingerprinting all out-of-state applicants, Texas schools will not hire individuals with criminal records in other states. Finally, fingerprinting eliminates most false positive criminal histories, which are a burden for educators who must bear the cost of clearing their names.

Authorizing SBEC to retain fingerprints with DPS, and permitting DPS to notify SBEC of a currently certified educator's arrest, allows SBEC to act more quickly to investigate misconduct and take

action if warranted. Providing information on criminal history checks to students in educator preparation programs allows individuals to know what situations may prevent them from being certified long before they finish the program, take the tests, and pay fees.

Fiscal Implication

These recommendations would result in no net fiscal impact to the State. Based on the number of educator applications in FY 2001, SBEC would conduct 22,400 national criminal history searches at a cost of \$940,800. However, the agency would recoup all costs recovered by an approximate \$42 fee charged to the applicants, as part of their overall certification fees.

To conduct the criminal history checks using fingerprints, Sunset staff estimates that SBEC would need one additional FTE to investigate an expected 12 percent increase in cases likely to arise from more thorough criminal history checks.¹⁷ In addition, Sunset staff estimates that DPS would need 4 additional FTEs, such as clerks, technicians, and film operators. Using the estimate of 22,400 individual fingerprint criminal history checks, DPS' current crime records data entry and fingerprinting processing workload will increase by approximately three percent.¹⁸

SBEC would charge the approximately \$42 fee to certification applicants, to be broken down and distributed as shown in the chart, *Fee Breakdown*.

The fees required by a vendor or local law enforcement offices for the actual fingerprinting, range from \$0 to \$10, and would be paid directly to those entities.

Fee Breakdown	
Purpose	Fee Amount
The Federal Bureau of Investigation's fee for conducting fingerprint searches of the Bureau's databases.	\$24
The Department of Public Safety's fee for conducting fingerprint searches of the Department's and for the administrative costs associated with receiving the requests and submitting them to the FBI.	\$15
SBEC's fee to cover administrative costs associated with analyzing the increased number of positive criminal histories returned by DPS, as well as investigatory costs as necessary.	\$3
Total	\$42

Fiscal Year	Cost to the General Revenue Fund	Revenue Generated by New Fees	Change in FTEs from FY 2001
2003	\$940,800	\$940,800	+5
2004	\$940,800	\$940,800	+5
2005	\$940,800	\$940,800	+5
2006	\$940,800	\$940,800	+5
2007	\$940,800	\$940,800	+5

¹ State Board for Educator Certification, Director, Professional Discipline Unit, “DPS Hits,” e-mail to Sunset Advisory Commission, November 15, 2001; and telephone interviews with SBEC Credentialing and Professional Discipline Unit staff (Austin, Texas, January 29, 2002). In FY 2001, SBEC sent a total of 70,965 criminal history check requests to DPS. However, some of the requests were duplicates of individuals reapplying for additional certificates in the same year, or individuals who did not pass all of the certification tests at one time. The agency was unable to provide an exact number of unduplicated criminal history checks. If SBEC were to use fingerprinting to determine criminal histories, the need for duplicating the checks would be eliminated. Therefore, Sunset staff estimated – using the number of individuals certified, the test failure rate, and the numbers denied certification because of criminal histories – the criminal history check workload to be approximately 22,400 a year. Sunset staff used this figure to create all estimate figures in this issue.

Of the FY 2001 requests DPS returned with positive criminal histories, 400 were subject to further investigation while the rest were considered minor infractions – for example, misdemeanor theft arrests made at least ten years prior to certificate application date; all first offenses for DWI or DUI; or misdemeanor traffic offenses – and cleared by staff without further investigation.

² U.S. Attorney General, *Interstate Identification Index Name Check Efficacy: Report of the National Task Force to the U.S. Attorney General*, (Washington, DC, July 1999), p.6.

³ *Ibid.*, p.4.

⁴ State Auditor’s Office Small Agency Internal Control and Financial Processes SAO Report No. 02-016, December 19, 2001, p.7.

⁵ Negligible hiring - An employer has a clear duty to use “reasonable care” in hiring and retaining employees who are competent and fit for their positions. (*Ponticas v. K.M.S. Investments*, 331 N.W.2d 907 (Minn. 1983); *Evans v. Morsell*, 395 A.2d 480 (Md.1978); *Welsh Mfg., Div. of Textron v. Pinkerton’s*, 474 A.2d 436 (R.I. 1984); *Thatcher v. Brennan*, 657 F.Supp. 6 (S.D.Miss. 1986).

⁶ The National Association of State Directors of Teacher Education and Certification, *Manual on the Preparation and Certification of Educational Personnel for the Year 2000*, Fifth Edition, (Mashpee, Massachusetts, 2000) Section J, p.15.

⁷ The National Association of State Directors of Teacher Education and Certification, *Manual on the Preparation and Certification of Educational Personnel for the Year 2000*, Fifth Edition, (Mashpee, Massachusetts, 2000) Section C, p. 2; and New York State Education Department, *Fingerprinting, Clearances for Employment and Certification - The new SAVE Legislation*. Online. Available: <http://www.highered.nysed.gov/tcert/ospra/>. Accessed: December 20, 2001.

⁸ Telephone interview with Fort Worth Independent School District, School Security Officer (Austin, Texas, January 16, 2002).

⁹ Telephone interview with staff of Crime Records Service, Department of Public Safety, (Austin, Texas, January 9, 2002).

¹⁰ Telephone Interview with Program Specialist, Child Care Licensing Staff, Department of Protective and Regulatory Services (Austin, Texas, January 28, 2002).

¹¹ All applicants to practice law must submit fingerprints. The Board of Law Examiners uses a random selection of the prints to run an FBI criminal history check through DPS to check for criminal activity in Texas. Government Code Sec. 82.001 et seq.

¹² As a result, SBEC opened new investigation cases on those 67 educators. Interviews with State Board for Educator Certification, Professional Discipline Unit staff (Austin, Texas, January 2 and 3, 2002).

¹³ State Board for Educator Certification, Professional Discipline Unit, Director, “RE: Questions from Sunset re fingerprinting (FP),” e-mail to Sunset Advisory Commission, December 20, 2001.

¹⁴ If the state were to purchase the machines, costs range from \$45,000 to \$25,000 per machine. Telephone interview with Department of Public Safety staff, Crime Records Service, (Austin, Texas, November 8, 2001).

¹⁵ While not all local law enforcement offices provide fingerprinting services, all sheriff’s office do. Telephone interview with staff of Crime Records Service, Department of Public Safety staff, (Austin, Texas, January 8, 2002).

¹⁶ Telephone interview with staff of Crime Records Service, Texas Department of Public Safety, (Austin, Texas, January 29, 2002).

¹⁷ Sunset staff used the percentage of positive criminal histories returned using fingerprints, as indicated in the U.S. Attorney General’s report, to estimate the increase in SBEC’s disciplinary workload.

¹⁸ DPS staff used the current number of criminal history checks, which includes duplicated checks, to estimate that their workload would increase by three percent. Using fingerprints in the future will eliminate the need for duplicated criminal history checks. Therefore, Sunset staff used the adjusted figure of 22,400 to estimate that DPS’ workload would increase by three percent. White Paper from Texas Department of Public Safety, “Fingerprint Background Checks on State Board of Educator Certification Applicants,” (Austin, Texas, January 8, 2002).

Issue 3

SBEC's Disciplinary Rules Do Not Ensure Consistent Investigation of Complaints Against Educators.

Summary

Key Recommendations

- Require the Board to adopt comprehensive rules outlining the process for investigating disciplinary violations.
- SBEC should include educators in development of the new disciplinary process rules.

Key Findings

- SBEC uses two separate processes to investigate complaints against educators.
- SBEC's process and procedure rules for investigation of traditional disciplinary violations are incomplete.
- Incomplete procedural rules have led to misperceptions, lack of confidence in the disciplinary process, and frustration for educators.
- Lack of procedural rules does not allow educators a formal role in development of SBEC's complaint process.

Conclusion

SBEC rules are missing several standard elements of a licensing agency's investigations process, resulting in some educators' concerns about and a lack of confidence in the way SBEC addresses complaints. The Sunset review examined SBEC's current rules and compared them to those of other licensing agencies and a standard licensing model. While SBEC has included standard elements in the disciplinary rules governing violations of the Educators' Code of Ethics, the process used to investigate traditional statutory violations – approximately 90 percent of complaints against educators – did not include several important elements. The recommendation would require SBEC to adopt rules to ensure a consistent investigation of complaints alleging statutory violations.

Also, while SBEC has made efforts to include the education community, the agency has not established a formal means to consistently include stakeholders in rule development. To address this, SBEC should involve educators in the development of the new disciplinary process rules, providing stakeholders a strong role in determining how complaints against their peers will be handled.

Support

SBEC uses two separate processes to investigate complaints against educators.

- The Education Code requires SBEC to adopt rules on disciplinary proceedings for violations of education statutes and the Educators' Code of Ethics.¹ The agency prosecutes the violations under two separate processes. For a graphical description of SBEC's investigatory processes, see *Appendix D*.
- SBEC's rules outline a complete investigation procedure for violations of the Educators' Code of Ethics, including notification requirements and time frames for receipt and review of complaints.

Complaint and Investigation Processes			
Elements	Licensing Model	SBEC Rules	
		Traditional Disciplinary Complaints ²	Code of Ethics Complaints ³
Time frames establishing limits for each part of the investigation process	U		U
Prioritization of incoming complaints according to severity	U		NA
Clear procedures for investigating and documenting investigations	U		U
Administrative dismissal	U	U	
Complainant has ability to appeal administrative dismissal			U

Rules on the proceedings for statutory violations, also referred to as traditional disciplinary violations, do not contain these elements. See the chart, *Complaint and Investigation Processes*, which compares the two processes with model standards developed by the Sunset staff from its review of more than 70 licensing programs dating back to 1977.

- SBEC handles a significant volume of complaints. In FY 2001, the agency received a total of

1,794 jurisdictional complaints. Approximately 90 percent of the complaints concerned traditional disciplinary violations. The remainder were Code of Ethics complaints.

SBEC's process and procedure rules for investigation of traditional disciplinary violations are incomplete.

- The Board has not established a complete procedure for the investigation of statutory violations. For example, while the rules require investigations of traditional complaints to be resolved efficiently, SBEC has no set time frames for each of the events in the investigatory process.

Data shows that SBEC handles current cases in an appropriate time frame; however SBEC has had difficulty in the past ensuring investigations are timely completed.

- Rules do not exist to set the priority of complaints upon receipt. Instead, the rules are discretionary – providing only that staff may set priorities to address the immediacy of a complaint.⁴

While current SBEC staff prioritize case severity to manage their caseload, without rules no assurance of consistency of application exists now or in the future.⁵ Also, the educator community has had no role in setting these priorities.

- SBEC does not have rules governing notification to educators during investigations of complaints alleging traditional disciplinary violations. A December 2001 State Auditor’s report recommended that SBEC strengthen complaint notification to ensure that educators are aware of the status and disposition of complaints.⁶

Some educators lack full confidence in SBEC’s complaint investigation practices.

Incomplete procedural rules have led to misperceptions, lack of confidence in the disciplinary process, and frustration for educators.

- Without established complaint and investigation procedures, SBEC risks the appearance of unfairness or careless investigations. Based on responses to a survey of educators, respondents questioned the validity and consistency of the process, and expressed apprehension about SBEC’s current complaint investigation practices.⁷

For example, a significant number of educators perceived investigations to be insufficient, and questioned if independent investigations are conducted on all complaint cases.⁸ However, Sunset staff determined that SBEC does investigate each jurisdictional complaint and also found, upon an examination of a random set of investigation files, that SBEC appears to conduct full investigations. However, without specific rules in place, educators are not fully aware of how SBEC conducts investigations, and lack full confidence in the process.

Lack of procedural rules does not allow educators a formal role in development of SBEC’s complaint process.

- One likely cause of educators’ concerns about the complaint investigation process is the lack of educator participation in the development of the process. SBEC does not have a consistent practice for including the input of educators during development of the agency’s rules. However, in the case of rule development for the Code of Ethics investigations, educators were extensively involved. As a result, Sunset staff heard few complaints about this process.

SBEC does not consistently include stakeholder input during rule development.

Without involving educators in the development of complaint investigation rules, SBEC has overlooked an opportunity to obtain input and endorsement of the investigatory process.

The Legislature and other state agencies have affirmed the necessity of rules formally outlining the elements of a complete investigation process.

- In 2001, the Legislature demonstrated support for standardized complaint and investigation procedures by requiring the Health Professions Council to study the procedures of certain healthcare regulatory entities, and make recommendations on a standard procedure for the handling of complaints.⁹
- Model licensing standards identified by Sunset staff recommend that a licensing agency establish a complete complaint and investigation process in rule, clearly laying out policies for all phases of the process, including complaint receipt, notification, and investigation.¹⁰
- Other licensing agencies have established rules defining complaint and investigation procedures. For example, regarding notification practices, nine of the Health Professions Council's 14 member agencies immediately notify a licensee that a complaint has been received and request the licensee to respond, and 13 of the agencies have established priorities for investigation.¹⁰

In addition, SBEC itself has rules defining a complete process for one of the two types of complaints within the agency's jurisdiction, those alleging a violation of the Educators' Code of Ethics.

Recommendation

Change in Statute

3.1 Require the Board to adopt rules comprehensively outlining the process for investigating disciplinary violations.

This recommendation would require SBEC to adopt rules for a complete investigation process for complaints alleging traditional violations. The rules should define time frames for all actions, notification requirements, and case severity for consistently prioritizing caseload management.

Management Action

3.2 SBEC should include educators in development of the new disciplinary process rules.

As discussed in Issue 1 of this report, SBEC should provide stakeholders an opportunity to participate in the development of all rulemaking affecting the profession. The ability to affect development of

rules, rather than simply being able to comment on a proposed rule, ensures that the Board has an opportunity to make a fully informed decision, including educators' assessment of the impact of a rule. Given the present misperceptions regarding the investigation process, SBEC should fully include the education community in the early development of rules regarding the disciplinary process.

Impact

Establishing agency processes in rule ensures that both the public and the regulated community have an opportunity to guide the development of the rules. Further, the rules help ensure consistent application of investigatory processes and decisions. This consistency can continue even if agency personnel change over time.

In addition, formal rule development may ease misperceptions about the investigation process. Involving educators in rulemaking should also help to increase awareness of SBEC procedures, alleviating concerns with the process.

Fiscal Implication

This recommendation will not have a significant fiscal impact to the State.

¹ Texas Education Code, ch. 21, sec. 21.041(b)(7) and (8).

² 19 TAC Ch. 249 Subch. A.

³ 19 TAC Ch. 249 Subch. F.

⁴ 19 TAC §249.17.

⁵ As established in practice, SBEC staff prioritize severity of incoming complaints as follows: sexual misconduct, violence, drug use, sexual harassment, official misconduct, fraud, burglary, theft, hazing, miscellaneous, contract abandonment, or code of ethics violations.

⁶ State Auditor's Office Small Agency Internal Control and Financial Processes SAO Report No. 02-016, December 19, 2001, p.6.

⁷ Sunset survey of educators, school districts, and professional educators associations, October-December 2001.

⁸ Ibid.

⁹ "Study of the Complaint Procedures of Health Profession Council Member Agencies Summary Administrative Report," draft, (Austin, TX, December 31, 2001).

¹⁰ "Study of the Complaint Procedures of Health Profession Council Member Agencies Summary Administrative Report," draft, (Austin, TX, December 31, 2001) p. 4.

Issue 4

Texas Has a Continuing Need for the State Board for Educator Certification.

Summary

Key Recommendation

- Continue the State Board for Educator Certification for 12 years.

Key Findings

- Texas has a continuing interest in preparing and certifying educators.
- SBEC has generally accomplished its mission of ensuring Texas has suitable, well prepared individuals to teach Texas children.
- No substantial benefits would result from transferring the Board's functions to another agency.

Conclusion

Texas has a continuing need to ensure that elementary and secondary public schools have access to well prepared educators. The Sunset review evaluated the need for a single independent agency to certify and maintain the quality of public school educators. The review assessed whether or not SBEC ensures that appropriately certified individuals are teaching, uses the most effective means to accredit and assess educator preparation programs, and effectively deals with professional misconduct.

The review also assessed whether another agency could better conduct SBEC's functions. Sunset staff found that while other agencies may be able to conduct the functions, no significant savings or improvements would result from a transfer. SBEC has generally been successful at ensuring that the majority of educators are either fully certified or working towards certification. SBEC has also been successful at initiating new methods of attracting and retaining educators. With a credible track record, and no substantial advantages to consolidation with another agency, SBEC should remain an independent agency.

Support

The State Board for Educator Certification’s mission is to ensure the highest level of educator preparation and practice to ensure student excellence.

- The Legislature created SBEC in 1995 to provide educators with a strong role in governing the standards of their profession. The Board’s composition places a majority of educators, with the possibility of former teachers among the public members, in a policymaking position. The textbox, *SBEC Composition*, outlines the structure of the Board.
- SBEC oversees a total of approximately 250,000 certified educators teaching over four million public school students.¹ To accomplish this oversight, the agency performs three primary functions.

SBEC Composition
<p>The Board has 15 members, including:</p> <ul style="list-style-type: none"> • four public school teachers; • two administrators; • one counselor; • five public members (three of whom haven’t been employed by or appointed to an education institution within the last five years); and • three non-voting ex officio members.

SBEC oversees approximately 250,000 certified Texas educators.

Accreditation – The agency accredits preparation programs to ensure that educators are well trained in how to teach – referred to as pedagogy – as well as in specific subject areas. For the 2001-2002 school year, SBEC accredited 86 educator preparation programs located in colleges, universities, and Educational Service Centers.

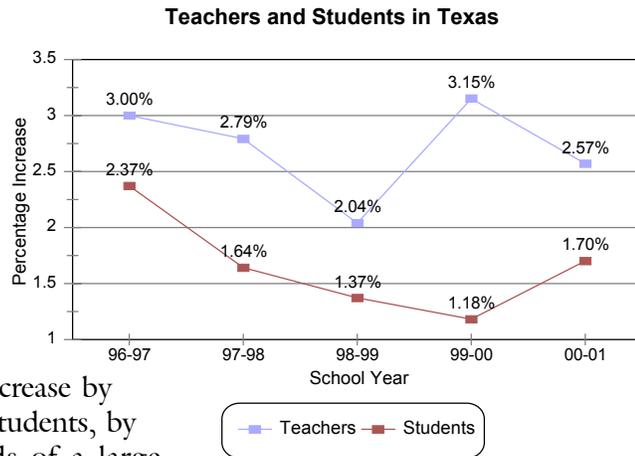
Certification – The agency certifies individuals who have successfully completed university-based educator preparation programs and alternative certification programs. SBEC issued approximately 20,000 certificates to new educators in FY 2001.

Enforcement – SBEC helps to ensure that classrooms are a safe environment by screening certification applicants and investigating complaints against educators. SBEC received a total of 1,794 jurisdictional complaints in FY 2001 and issued disciplinary action in 23 percent of the cases. For example, SBEC revoked 200 certificates in FY 2001.

Texas has a continuing interest in preparing and certifying educators.

- Texas’ population, one of the fastest growing in the US, grew by almost 15 percent during the 1990s, with a five percent increase just since the 2000 census.² Twenty-eight percent of the population was under 18 years old in 2000.³

- According to a recent study, Texas school districts were able to exceed the anticipated need for certified educators during the 2001-2002 school year.⁴ The chart, *Teachers and Students in Texas*, illustrates the percentage fluctuation of teacher versus student populations. As illustrated in the chart, the growth in teacher population has exceeded student population growth for the last five years.



However, the student population will increase by 60 percent, or approximately 2 million students, by 2030.⁵ To address the education needs of a large population and help prevent teacher shortages, Texas needs to continue efforts to train and certify teachers who adhere to high standards of professional conduct.

SBEC has generally accomplished its mission of ensuring Texas has suitable, well prepared individuals to teach Texas children.

- Most Texas educators are certified, or are individuals working towards certification under alternative certification programs, or emergency and temporary permits. Based on a study by the Institute for School-University Partnerships, only two percent of the teachers in classrooms during the current school year – those teachers hired under TEA granted permits⁶ – are uncertified and not working towards certification.⁷ SBEC has no role in the TEA waiver or permit program.
- SBEC has improved certification functions. In an attempt to expedite certification, SBEC designed an online system that will streamline the process, including background checks. Previously, certification sometimes took months between application and when the educator received the certificate. The new online certification system will be operational in Spring 2002 and allow SBEC to issue certificates in less than one month.
- SBEC has increased the accessibility of educator preparation programs to individuals wishing to enter the teaching profession. The agency accredited 14 percent more programs during the current school year than in 2000-2001; with an additional 14 programs accredited under a preliminary status. For more information on accreditation, see the Agency Information section of this report.⁸
- To attract greater numbers of qualified individuals to the teaching profession, SBEC has increased awareness of alternative routes to certification for non-traditional students. Since the Legislature

Texas' student population will increase 60 percent by 2030.

created SBEC, the number of alternatively certified educators grew from 2,602 in 1996, to 3,508 in 2001; an average increase of 15 percent per year.⁹

- SBEC has introduced methods of retaining educators in the face of growing needs. Almost 37 percent of new teachers leave their jobs within the first three years.¹⁰ To prevent attrition, the agency initiated a retention program in 1999 designed to support new teachers by providing orientation and mentoring during the crucial first and second years. Educators in a beginning teacher support program remained on the job almost 15 percent more than those not supported.
- SBEC enforcement functions have improved over the past few years. For example, SBEC has significantly reduced a backlog of complaint investigations – from 1,829 pending cases in FY 1999 to 386 in FY 2001 – while improving investigation procedures. In addition, the recidivism rate of sanctioned educators who were allowed to retain their licenses was zero in FY 2001.¹¹ In 1998, the Board established new rules under which the agency would, for the first time, begin investigating and prosecuting complaints involving the Educators' Code of Ethics. SBEC has investigated more than 400 ethics complaints since beginning enforcement in April 1999. For more information on SBEC's disciplinary procedures, see Issue 2 of this report.

SBEC significantly reduced the backlog of complaint cases from 1,829 to 386 in two years.

No substantial benefits would result from transferring the Board's functions to another agency.

- While other agencies could perform the primary regulatory functions of SBEC, no distinct advantages were identified to justify a transfer. Although the Texas Education Agency (TEA) had previously issued teaching certificates, the program is considerably different today.

Since 1995, the Legislature has given significant accreditation and certification responsibilities to SBEC.

The Legislature has given significant responsibilities to SBEC since the program was housed in TEA in 1995. These include continually reassessing and intensifying teacher certification exams, determining the comparability of Texas' exams with those of other states for out-of-state certification, accreditation of educator preparation programs, and full enforcement of the Educators' Code of Ethics.

Sunset staff determined these new functions, as well as the functions previously administered by TEA, are a necessary part of ensuring a high quality education system in Texas. Should SBEC be consolidated with any other agency, these functions and the staff to conduct them, would continue to be needed, whether at TEA or at SBEC. As a result, moving SBEC functions to TEA would not provide substantial financial or functional advantages.

- While the Texas Higher Education Coordinating Board has responsibility for promoting quality and access to Texas' universities and colleges, that agency's focus is on gathering data and setting policies to ensure that studies are consistent among the State's higher education institutions. SBEC's focus on ensuring the quality of public school teachers is quite different. No advantage to such a transfer was identified.
- Sunset staff also considered the Texas Department of Licensing and Regulation (TDLR), an umbrella licensing agency. However, TDLR focuses on regulating professions for the purpose of consumer protection and safety, such as air conditioner contractors and elevator inspectors. The necessary functions of ensuring high standards of preparation and testing of teachers are dissimilar from TDLR activities.

Recommendation

Change in Statute

4.1 Continue the State Board for Educator Certification for 12 years.

This recommendation would continue the State Board for Educator Certification as an independent agency responsible for the preparation, certification, and discipline of teachers.

Impact

The intent of this recommendation is to continue the agency responsible for ensuring that the individuals hired to educate Texas children have been well prepared and are able to provide a learning environment that is both challenging and safe. In turn, by ensuring that Texas schools have enough certified and well prepared educators, SBEC helps ensure that the quickly growing school-age population does not lag behind other states in educational attainment.

Fiscal Implication

If the Legislature continues the current functions of SBEC as discussed in this report, the agency's annual appropriation of approximately \$15 million would continue to be required for the operation of the agency.

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- ¹ Educators include not only teachers but superintendents, principals, and teaching aides.
- ² Steve H. Murdock, *Texas Population Growth Leads Nation*, <http://txsdc.tamu.edu/rbsp971.php>, Accessed January 15, 2002; and, <http://factfinder.census.gov/home/en/pep.html>, Accessed January 15, 2002.
- ³ <http://www.census.gov/main/www/cen2000.html>, Accessed January 15, 2002.
- ⁴ Institute for School-University Partnerships, *Teacher Demand Study 2001-2002: Prepared for the Texas A&M University System/ Texas Education Agency, Partnership for Texas Public Schools*, (Bryan, Texas, January 2002), p.11.
- ⁵ Center for Demographic and Socioeconomic Research and Education, *Texas Challenged: The Implications of Population Change for Public Service Demand in Texas*, A report prepared for the Texas Legislative Council, (Austin, Texas, February 1996).
- ⁶ The Education Code allows for some exceptions to certification requirements. For example, under certain circumstances, a school district may apply to the Commissioner of Education for a certification waiver - allowing a certified educator to teach classes in another content area; or approval of a school district teaching permit - allowing a school district to hire an uncertified, but qualified, individual to teach. During the academic year 2000-2001, the Texas Education Agency approved 111 certification waivers and 753 individual school district teaching permits.
- ⁷ Institute for School-University Partnerships, *Teacher Demand Study 2001-2002: Prepared for the Texas A&M University System/ Texas Education Agency, Partnership for Texas Public Schools*, (Bryan, Texas, January 2002), p.11.
- ⁸ "Teacher Preparation Programs Making the Grade," State Board for Educator Certification, Austin, Texas, November 12, 2001 (press release).
- ⁹ "Initial Certificate Production for Years 1994-2000 by Educator Preparation Program," materials provided to Sunset Staff by the State Board for Educator Certification (Austin, Texas, November 13, 2001) p.22; and, State Board for Educator Certification, General Counsel, "State Board for Educator Certification Sunset Report," e-mail to the Sunset Advisory Commission (Austin, Texas, January 30, 2002).
- ¹⁰ State Board for Educator Certification, *Texas Beginning Educator Support System*, September 2000, Austin, Texas (pamphlet).
- ¹¹ State Board for Educator Certification, "Professional Discipline Performance Measures," materials SBEC staff gave to Sunset staff during agency overview meetings, (Austin, Texas, October 2002).

ACROSS-THE-BOARD RECOMMENDATIONS

State Board for Educator Certification	
Recommendations	Across-the-Board Provisions
	A. GENERAL
Already in Statute	1. Require at least one-third public membership on state agency policymaking bodies.
Apply	2. Require specific provisions relating to conflicts of interest.
Already in Statute	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Apply	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Modify	5. Specify grounds for removal of a member of the policymaking body.
Already in Statute	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	7. Require training for members of policymaking bodies.
Already in Statute	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Apply	9. Provide for public testimony at meetings of the policymaking body.
Apply	10. Require information to be maintained on complaints.
Apply	11. Require development of an equal employment opportunity policy.
Apply	12. Require information and training on the State Employee Incentive Program.

State Board for Educator Certification	
Recommendations	Across-the-Board Provisions
B. LICENSING	
Apply	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Apply	2. Provide for notice to a person taking an examination of the results of the examination within a reasonable time of the testing date.
Already in Statute	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Modify	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Apply	5. Authorize the staggered renewal of licenses.
Modify	6. Authorize agencies to use a full range of penalties.
Do Not Apply	7. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Already in Statute	8. Require the policymaking body to adopt a system of continuing education.

AGENCY INFORMATION

Agency Information

Agency At a Glance

The State Board for Educator Certification (SBEC) oversees the preparation and regulation of public school educators. The Legislature created SBEC in 1995 in a rewrite of the Texas Education Code. Before 1995, the Texas Education Agency was responsible for teacher certification. The State Board of Education retains a 90-day veto authority over SBEC's rule proposals.

SBEC's major functions include:

- ensuring the quality of educators upon entry into the teaching profession through testing, certification, and the accreditation of educator preparation programs;
- enforcing the professional standards of conduct;
- creating and promoting strategies for the recruitment and retention of educators in the public school system; and
- promoting continuous professional development of educators.

Key Facts

- **Funding.** In fiscal year 2001, SBEC operated with an annual budget of \$19 million, including approximately \$2.5 million of a Department of Education reimbursement grant. SBEC received more than \$11 million in licensing fees, most of which went into General Revenue.
- **Staffing.** SBEC employed 52 staff in FY 2001, all located in Austin.
- **Accountability.** For the 2000-2001 school year, SBEC accredited 86 Texas educator preparation programs. Fourteen new programs were rated accredited – preliminary status, meaning these programs were approved to offer educator preparation but could not be evaluated until candidates completed the programs.¹
- **Certifications.** In FY 2001, 291,906² individuals were certified as Texas educators; approximately 13,000³ of those were new teachers.
- **Professional Discipline.** In FY 2001, SBEC received a total of 1,794 jurisdictional complaints and issued disciplinary action in 23 percent of the cases. Of those, SBEC revoked 200 certifications. The recidivism rate of sanctioned educators was zero.

Mission Statement

The mission of the State Board for Educator Certification is to ensure the highest level of educator preparation and practice to achieve student excellence.

On the Internet

Information about SBEC is available at www.sbec.state.tx.us.

Major Events in Agency History

- 1995** The 74th Legislature rewrites the Education Code and creates SBEC by transferring the educator preparation and certification functions from TEA to the new agency.
- 1997** SBEC becomes administratively independent of TEA.
- 2001** The 77th Legislature passes legislation allowing SBEC to issue certificates to out-of-state certified teachers who have passed examinations as rigorous as those given by Texas, thereby making it easier for qualified educators to relocate to Texas. As a result, SBEC began a study of educator certification exams nationwide to determine which out of state applicants could be exempted from further testing.

Organization

Policy Body

The 15-member Board is composed of 12 voting members, appointed by the Governor with the advice and consent of the Senate; and three non-voting members – one employee of the Texas Education Agency appointed by the commissioner of education, one employee of the Texas Higher Education Coordinating Board appointed by the commissioner of higher education, and one dean of a Texas college of education appointed by the Governor. The chart, *State Board for Educator Certification*, details the Board's membership.

Texas law requires that SBEC submit all proposed rules to the State Board of Education (SBOE) for a 90-day review period. SBOE may reject a proposed rule by a two-thirds vote, but may not modify the rule. Unless rejected, the rule becomes effective after the review period. SBOE rejected three proposed SBEC rules within the last four years, two of which were passed at a later date after modifications.

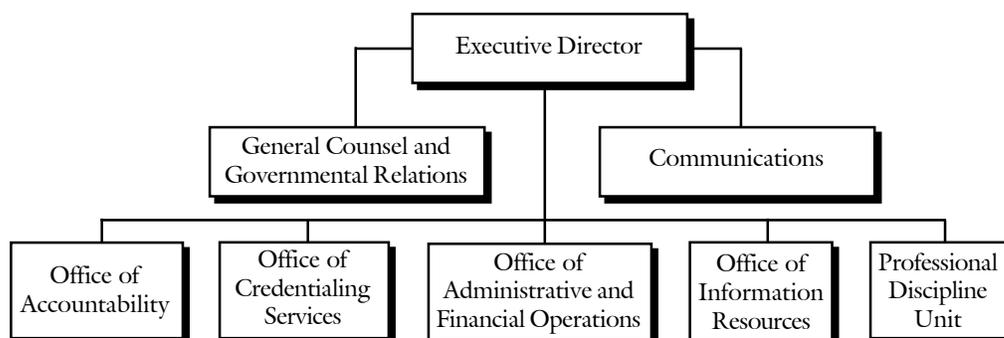
SBEC submits all proposed rules to SBOE for review and possible veto.

Staff

The *State Board for Educator Certification Organizational Chart*, depicts the structure of the agency. In FY 2001, SBEC employed 52 FTEs, all located in its Austin headquarters. SBEC has no field offices, but does fund at least one educator certification position at each of the 20 independent regional Education Service Centers (ESC) throughout the state. Additionally, SBEC contracts with the Region 20 ESC in San Antonio for 12 staff to operate SBEC's Information and Support Center (ISC). *Appendix E* depicts the locations of each ESC region. A comparison of SBEC's workforce composition to the minority civilian labor force is provided in *Appendix B*.

State Board for Educator Certification			
Member Name	Term	Appointed By	Qualification
James Harris, Hum.D. Chair	2-3-97 to 2-1-03	Governor	Teacher Lubbock ISD
James Price Vice Chair	2-3-97 to 2-1-03	Governor	Citizen Cooper
Cecilia Phalen Abbott	11-30-01 to 2-1-07	Governor	Citizen Austin
Carlen Pool Floyd	11-30-01 to 2-1-07	Governor	Teacher Austin ISD
Annette Griffin, Ed.D.	5-10-99 to 2-1-05	Governor	Administrator Carrollton-Farmers Branch ISD
Art Lacy	2-3-97 to 2-1-03	Governor	Citizen McKinney
Adele M. Quintana	11-30-01 to 2-1-07	Governor	Teacher Dumas ISD
Mary Margaret Rucker	2-3-97 to 2-1-03	Governor	Counselor Clear Creek ISD
Antonio Sanchez	5-10-99 to 2-1-05	Governor	Teacher Mission ISD
Troy Simmons, D.D.S.	11-30-01 to 2-1-07	Governor	Citizen Longview
Keith Sockwell	2-3-97 to 2-1-03	Governor	Administrator Northwest ISD
James M. Windham	11-30-01 to 2-1-05	Governor	Citizen Houston
Arturo Almendarez, Ph.D. (non-voting)	At will of Commissioner	Commissioner of Education	Texas Education Agency Austin
John J. Beck, Jr., Ph.D. (non-voting)	7-24-00 to 2-1-05	Governor	Dean of College of Education Southwest Texas State University
Leticia Hinojosa, Ph.D. (non-voting)	At will of Commissioner	Commissioner of Higher Education Coordinating Board	Higher Education Coordinating Board Austin

**State Board for Educator Certification
Organizational Chart**

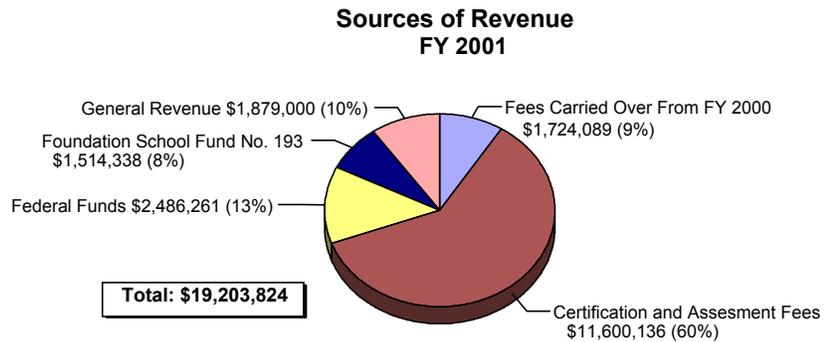


Funding

Revenues

In fiscal year 2001, SBEC received \$19,203,824 as shown in the chart, *Sources of Revenue*. SBEC's revenue included the second installment in a Department of Education reimbursement grant, received over a three-year period under the Teacher Quality Enhancement Program. Currently, the agency has budgetary authority to carry over unexpended balances of assessment and certification fees.

SBEC is participating in a federal grant program for teacher quality enhancement.

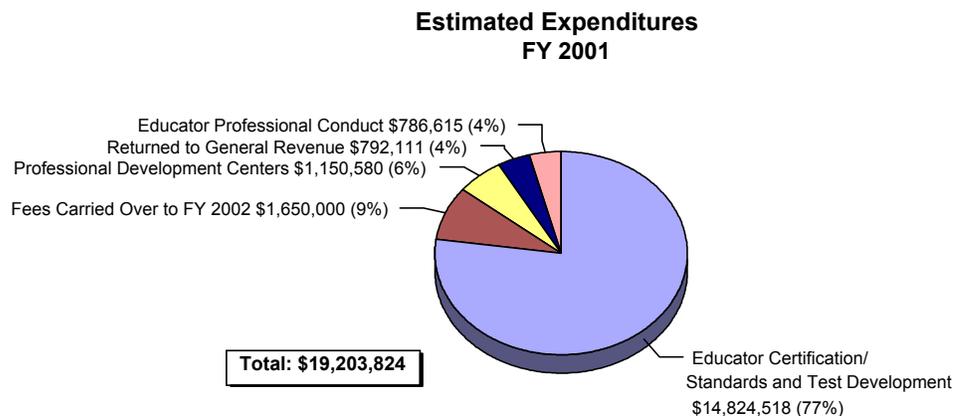


Expenditures

SBEC spent revenue on a single goal, divided into three strategies for FY 2001: educator certification/standards and test development, educator professional conduct, and professional development centers. Expenditures are shown in detail in the chart, *Estimated Expenditures*.

The agency's FY 2001 expenditures remain estimated at this time due to encumbered funds and outstanding federal reimbursement Teacher Quality Enhancement Grant funds, which have not yet been claimed by the grantee programs.

Appendix A shows SBEC's use of Historically Underutilized Businesses (HUBs) in purchasing goods and services.



Agency Operations

SBEC's major programs described below fall into four main categories: educator preparation, assessment and accountability of educator preparation programs, certification (also called credentialing), and investigation and enforcement of professional conduct. These categories generally correspond with the agency's goal of ensuring the highest level of educator preparation to achieve student excellence.

SBEC accredits educator preparation programs and certifies program graduates.

Office of Accountability

The Office of Accountability oversees the accreditation of educator preparation programs, develops educator standards, develops and administers teacher certification exams, coordinates educator recruitment efforts with other state agencies, and has developed a beginning educator retention program system.

Educator Preparation Programs

In 1999, the Board began to develop new educator standards and a process for preparing educators centered around Texas Essential Knowledge and Skills (TEKS), Texas' required curriculum for public school students. As shown in the textbox, *TEKS Components*, TEKS establishes required student learning standards. Certification preparation students must be able to teach TEKS and pass the Examination for the Certification of Educators in Texas (ExCET), a test of an educator's professional development. Certification preparation is delivered by institutions of higher education, regional education service centers, public school districts, community colleges, or other entities with programs accredited by SBEC.

All educator preparation programs are rated and monitored by SBEC through the Accountability System for Educator Preparation (ASEP). For definitions, see the textbox, *ASEP Accreditation Ratings*. A program's accreditation is primarily based on an annual report of the performance of candidates on the ExCET. For FY 2001, the agency accredited 86 educator preparation programs. Eleven of these were rated accredited-under review.

In addition to ASEP, the federal government monitors the accountability of educator preparation programs. Title II of the Higher Education Act requires states to submit a report card containing institutional and state passage rates on certification exams, rankings of educator preparation programs by test performance, and designations of performance levels.

TEKS Components

TEKS in the classroom means that each student must:

- become a more effective reader;
- know and apply more complex mathematics;
- develop a stronger understanding of science concepts, especially in biology, chemistry, and physics;
- master social studies skills and content necessary to be responsible adult citizens; and
- master a wider range of technology.

ASEP Accreditation Ratings

Accredited - an entity has met the ASEP accreditation standards, and the program has either a 70 percent pass rate on ExCET exams in the first year or a cumulative 80 percent pass rate overall and for each demographic category.

Accredited-Under Review - an entity has not met accreditation standards and SBEC appoints an oversight team to assist the program. If, after one year, the program has not fulfilled the recommendations of the oversight team, an administrator may be appointed to manage the program's operations.

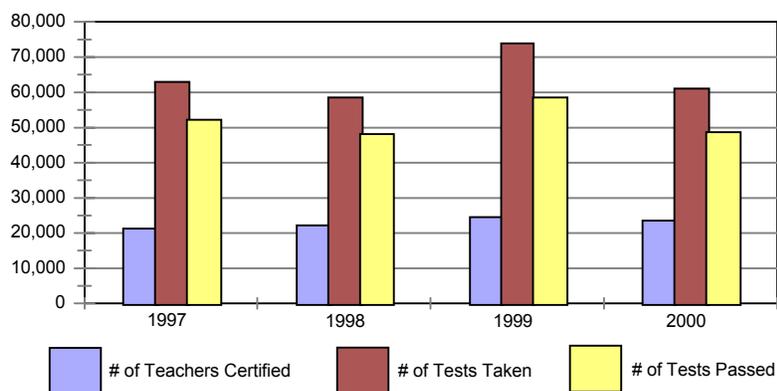
Not Accredited - an entity has not met accreditation standards after being rated Accredited-Under Review for three consecutive years. The entity may reapply for reinstatement in the future.

SBEC designed the rules on educator preparation to promote flexibility and creativity in the design of programs, including alternative routes to certification. The agency accredits alternative certification programs, which are discussed further in the section of this report on credentialing services.

Certification Exams

Texas law requires that an individual must pass the ExCET and content area tests for grades and subject areas in which they seek certification. These tests measure the prospective educator’s knowledge of the subject

Educator Certification Exam Statistics by Year



area and pedagogy (learning theories, classroom management, and “how to teach”), and ensure that an educator has the necessary knowledge and skills to teach in Texas. The chart, *Educator Certification Exam Statistics by Year*, illustrates the numbers of exams and certifications during the four years that SBEC has rated preparation programs. In the 2000-2001 school year, candidates passed 79 percent of the certification exams.⁴

As of January 2002, educators moving to Texas from certain states are exempted from additional testing.

In 2001, the Legislature exempted educators certified in another state from additional testing if the original licensing state has a certification exam similar to or at least as rigorous as Texas’ exams. In September 2001, the agency began an on going comparability study to look at certification exams nationwide. Since the ExCET program is comprised of more than 50 tests and testing processes vary widely in other states, the study will be conducted in phases. The first phase will review ExCET tests most frequently taken by out-of-state teachers and the states that have had the highest numbers of teachers taking the ExCET since 1999. In January 2002, SBEC approved passing standards on certain comparable tests used in Arizona, Colorado, New Mexico, and Oklahoma. Further results are expected in Spring 2002.

Educator Recruitment

In 2001, representatives from SBEC, Texas Education Agency (TEA), the Higher Education Coordinating Board (THECB), universities, education associations, school districts, businesses, and local communities formed a coordinating committee to develop a statewide campaign to attract qualified educators, addressing teacher shortages and the low numbers of fully certified teachers. The committee is seeking private foundation grants to fund its activities.

Retention of New Teachers

Traditionally, one in five beginning educators will leave the classroom after only one year. To combat high attrition rates of new teachers, SBEC introduced the Texas Beginning Educator Support System (TxBESS) in 1999. Funded by an approximately \$10 million reimbursement grant from the U.S. Department of Education's Teacher Quality Enhancement Grant program and a 50 percent state match, TxBESS provides support to new teachers with the goal of increasing the retention rate. Under the program, new teachers receive training, mentoring, and professional feedback from experienced teachers and principals. Since the inception of TxBESS, SBEC has worked with almost 4,000 first and second-year teachers. The retention rate of teachers in the program after the first year was 88 percent, a 15 percent increase over a sample of non-TxBESS participants. The retention rate of second-year TxBESS teachers was 98 percent.

One in five educators leave teaching after only one year.

Office of Credentialing Services

The Texas Education Code authorizes SBEC to regulate the certification, continuing education, and standards of conduct of public school educators; and to specify the classes, period of validity, and requirements for issuance and renewal of all certificates. The Office of Credentialing Services issues educator credentials, reviews and approves emergency permits on a hardship basis, and coordinates an applicant's criminal history check to ensure that only qualified individuals are certified. The textboxes, *Classes of Certificates* and *Types of Certificates*, provide more specific details on certification.

Routes to Educator Certification

University-based Programs. These traditional programs, which vary by institution, are usually delivered as part of a university or college baccalaureate degree program, in which a student studies a personally chosen major subject area, plus no more than 18 credit hours (24 credit hours if the student is involved in field training) of education courses. Upon graduation, the student is eligible to take the ExCET and content area tests.

Alternative Certification Program (ACP). Alternative preparation programs for educators, place already degreed individuals who wish to become teachers, in a classroom with mentor support and program supervision while they complete certification requirements. ACP training can be completed in one to two years. Many higher education institutions, local school districts, ESCs, and community colleges operate ACPs. Upon completion of the program, the individual is eligible to take the ExCET and content area tests.

Classes of Certificates

The class of a certificate illustrates the particular characteristics of an educator's position. SBEC issues the following classes of certificates.

- Superintendent
- Principal
- Master Teacher
- Classroom Teacher
- School Librarian
- School Counselor
- Educational Diagnostician
- Educational Aide
- Instructional Educator, including Reading Specialist

Types of Certificates

The type of certificate held by an educator prescribes the period of validity of a certificate.

Lifetime - Issued before September 1999; remains valid unless revoked, canceled, or suspended.

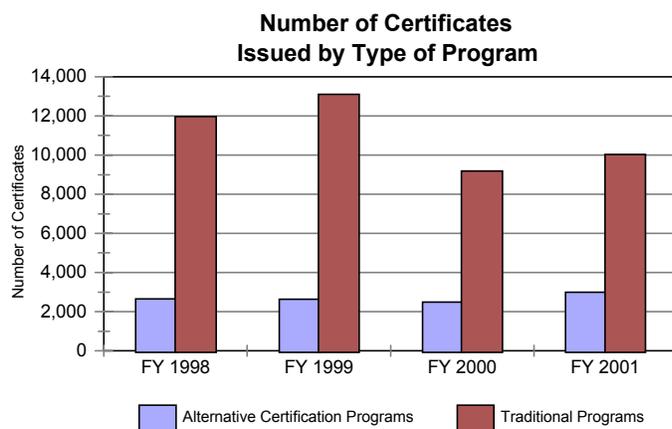
Standard Renewable - Issued after September 1999; valid for five years.

One-year - Issued to and allows out-of-state educators to work in public schools while completing requirements for standard Texas credentials.

Probationary - Issued to educators in alternative certification programs or a post-baccalaureate program in conjunction with the teaching internship phase of a preparation program; valid for one year.

Emergency - Issued to certified individuals to fill positions for which they are not certified; valid for not more than three school years.

Temporary Professional - Issued to certified educators for the positions of assistant principal, principal, and superintendent; valid for five years.



Certification Based on Credentials from Another State or Country. SBEC may issue Texas educator certificates to individuals who hold acceptable certificates issued by another state or country. As discussed previously, SBEC is developing a process to compare Texas certification exams to those in other states. If the agency determines that an out-of-state educator's credentialing exam is comparable to Texas', the educator may apply for a Texas certificate without further testing.

The chart, *Number of Certificates Issued by Type of Program*, depicts trends in the issuance of educator credentials over the last four years.

Emergency Teaching Permits

Another route to teaching is through an emergency permit. First, under hardship conditions, a public school superintendent can apply for an emergency permit and hire a non-certified individual to fill a vacancy when a certified individual is unavailable. The superintendent must demonstrate a good faith effort to recruit a qualified certificate holder, and that the non-certified individual is qualified. Individuals who are employed on emergency permits must meet annual requirements for renewal of the permit and must be working toward standard certification in an ACP. A certified teacher may also receive an emergency permit when the district requires the person to teach outside their area of certification.

SBEC approved almost 9,000 emergency permits during the 2000-2001 school year.

SBEC directly certifies all Texas educators. However, the agency delegated the authority to process all emergency permit requests to the 20 Educational Service Centers located around the state. These centers mainly assist school districts with their operations, including business support and administration, and are primarily funded by the Texas Education Agency. SBEC provides a minimum of \$8,500 to each Center for the issuance of emergency permits. Through the Centers, SBEC approved 8,858 emergency permits during the 2000-2001 school year, and 4,837 as of December of the 2001-2002 school year.

Information and Support Center

The agency also operates an Information and Support Center located in the Region 20 ESC in San Antonio. Since 1997, the Center has responded to the majority of the routine telephone and email inquiries SBEC receives, and provided the general public with information about the services and functions of the agency. Since December 2000, the Center also processes routine applications for additional certification.

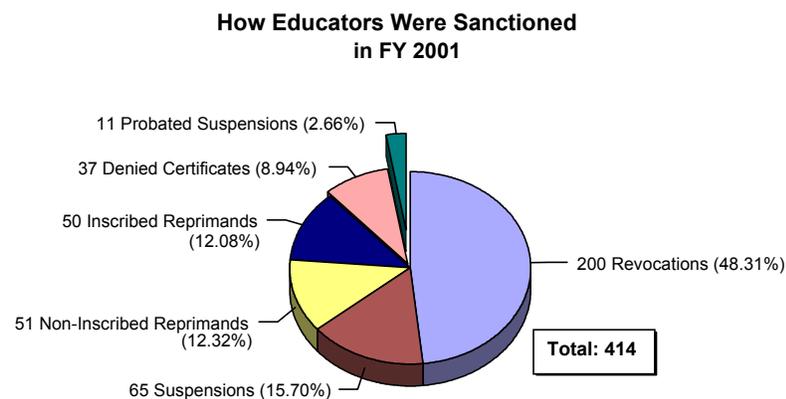
Certificate Renewals

Beginning with standard certificates issued after August 1999, SBEC requires all certificates to be renewed on a five-year basis, contingent upon fulfillment of continuing professional education (CPE) hours. The number of required CPE hours is based upon certification class, and can be delivered either through higher education institutions, ESCs, school districts or a contracted provider. All public schools are approved as CPE providers, however if the service is contracted out, the school district is responsible for the content. Of the CPE hours, 80 percent must be directly related to the certificate class being renewed.

All educator certificates issued after August 1999 must be renewed every five-years.

Professional Discipline Unit

The Texas Education Code requires SBEC to provide disciplinary proceedings for violations of Texas education statutes and the Educators’ Code of Ethics. The Professional Discipline Unit carries out this mandate by investigating complaints against an educator and, if necessary, prosecuting any discipline matters before the Board. In FY 2001, 414, or 24 percent, of jurisdictional complaints resulted in disciplinary action. The textbox, *SBEC Sanctions Against Certificate Holders*, illustrates the types of sanctions issued by the Board. The chart, *How Educators Were Sanctioned in FY 2001*, illustrates the disposition of all 414 cases.



Statutory violations for which the Board may issue sanctions include violence or sexual misconduct. In FY 2001, 51 percent of the statutory violations involved these offenses.⁵ The chart, *Caseload as of August 2001*, illustrates the caseload by all types of violations.

The Educators’ Code of Ethics, found in *Appendix C*, defines the appropriate principles of conduct for educators. All states do not have a Code of Ethics, and only Texas and Nebraska include principles on conduct towards parents. A new version of the Code is due out in

SBEC Sanctions Against Certificate Holders

Reprimand

- Incribed - An educator must return all certificates or permits to SBEC in exchange for a substitute showing the reprimand on the face of the certificate.
- Non-incribed - An educator may retain all certificates or permits without inscription but a non-public record shall be maintained in the person’s case file.

Restriction

- An educator must return all certificates or permits to SBEC in exchange for a substitute showing a restriction to practice.

Suspension/Probated Suspension

- A limitation on the ability to teach for a set period of time.

Cancellation and Revocation

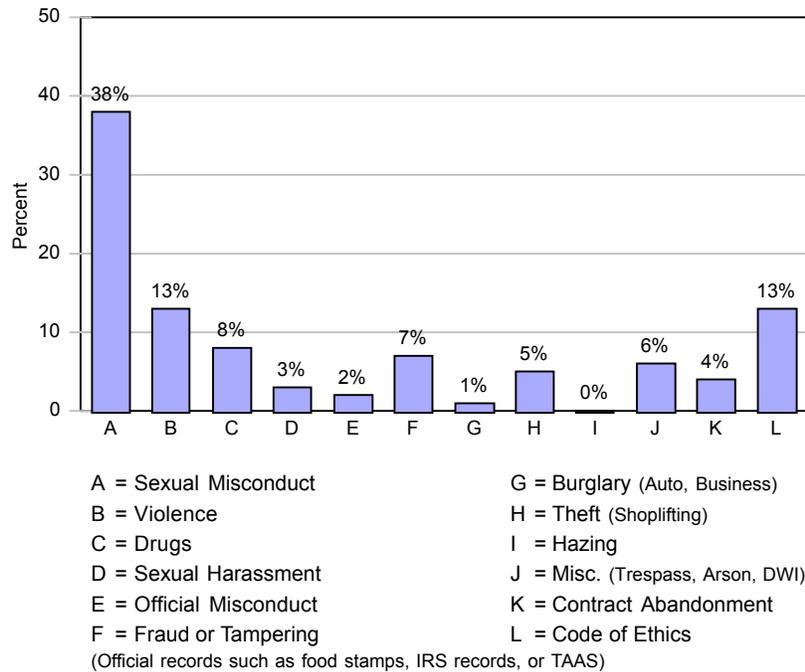
- Includes accepting the surrender of a certificate without opportunity for reapplication for a set term, or permanently.

Fines

- SBEC does not issue administrative fines.

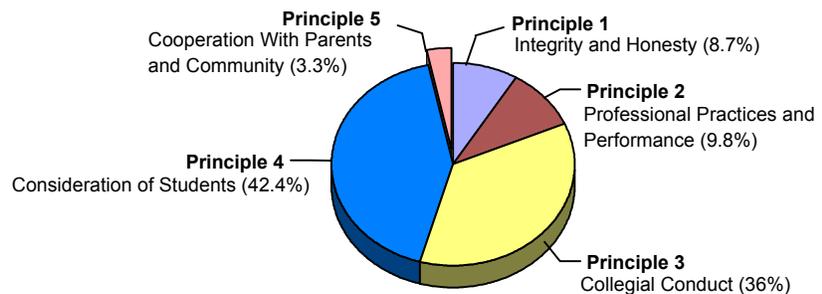
Fifty percent of complaints against educators involve sexual misconduct and violence.

Caseload as of August 2001



early 2002. The chart, *Code of Ethics Violations*, illustrates the percentage of violations by each of the behavior principles outlined in the Code. In FY 2001, 13 percent of the professional discipline cases involved ethics violations.⁶

**Code of Ethics Violations
FY 2001**



Complaint and Investigation Processes

Depending upon the type or the source of a complaint against an educator, SBEC follows three separate processes of investigating and prosecuting complaints. *Appendix D* includes flowcharts for all three processes.

Traditional Process. The first type of complaint includes those filed by parents or others, and alleges a violation of the statute and SBEC’s

rules outlining criminal behavior or fitness to practice as an educator. Two-thirds of the cases follow this process.

Investigations of Applicants. The DPS background check of an applicant may reveal serious criminal infractions or misdemeanors. If so, SBEC notifies the applicant, and initiates an investigation of the record. Based upon established criteria – see the textbox, *Criteria Used to Determine Applicant Eligibility* – the applicant will either be denied or granted a certification. Statistics on these types of cases are not separated from those of the traditional process.

Complaints That Allege Violations of the Code of Ethics. Before the creation of SBEC, the Commissioner of Education was responsible for sanctioning of educators. In 1995, Legislature transferred that responsibility to SBEC and included the requirement to enforce the Educators' Code of Ethics. For this purpose, SBEC established a separate process for investigating Code of Ethics complaints. The majority of ethics complaints allege disparagement of students, failure to protect a student, or wrongful discipline. In FY 2001, 343 educators were accused of ethics violations.

**Criteria Used to Determine
Applicant Eligibility**

SBEC's rules provide that the agency may deny an application for certification if:

- the person committed a crime related to the education profession;
- the person lacks good moral character; or
- the person is unworthy to instruct youth.

¹ "Teacher Preparation Programs Making the Grade", State Board for Educator Certification, Austin, November 12, 2001 (press release).

² State Board for Educator Certification, *Annual Report on Measures, Fiscal Year 2001*, (Austin, Texas, October 8, 2001).

³ Telephone interview with Patrick Shaughnessy, Director of Communications, State Board of Education (Austin, Texas, November 15, 2001).

⁴ Because some teachers may take more than one content area exam, SBEC uses an overall statistic to indicate passing rates rather than a statistic that indicates the percentage of candidates who passed all exams. State Board for Educator Certification, General Counsel, "SBEC Sunset Report," e-mail to Sunset Advisory Commission, January 29, 2002.

⁵ State Board for Educator Certification, *Professional Discipline Unit Case / Investigation Historical Coding*, Austin, Texas, October 2001 (information sheet).

⁶ Ibid.

APPENDICES

Appendix A

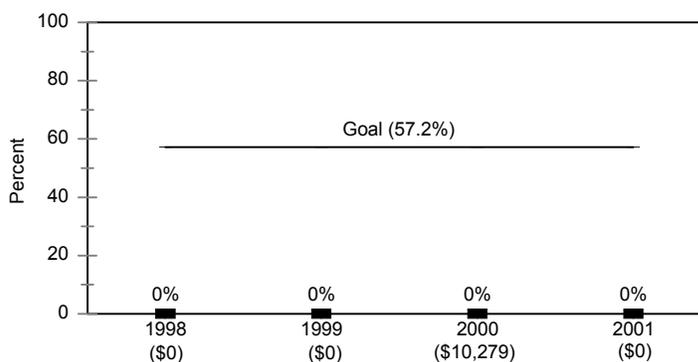
Historically Underutilized Businesses Statistics

1998 to 2001

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.¹ While SBEC has a designated HUB coordinator and adopted HUB rules, the agency generally does not satisfy state requirements concerning HUB purchasing, including development of subcontracting plans and a HUB forum, and implementing a Mentor Protege Program.

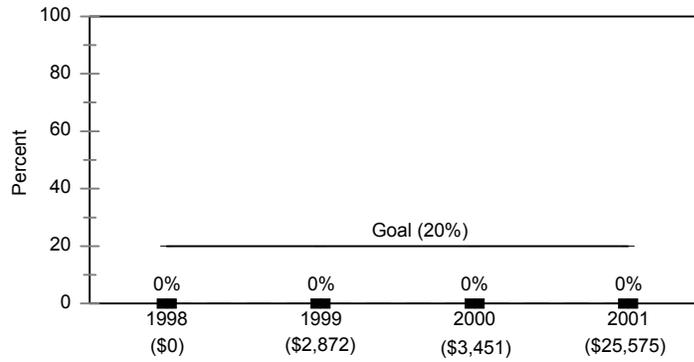
The following material shows trend information for the State Board for Educator Certification use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in the Texas Building and Procurement Commission's statute.² In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Texas Building and Procurement Commission. The dashed lines represent the percentage of agency spending with HUBs in each purchasing category from 1998 to 2001. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category. SBEC has not met the State goal's except for the purchase of commodities.

Special Trade

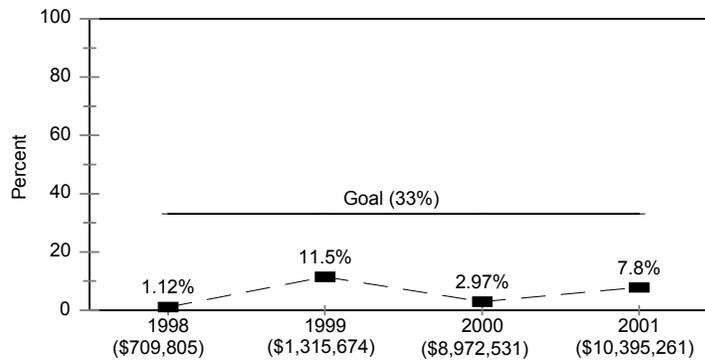


Appendix A

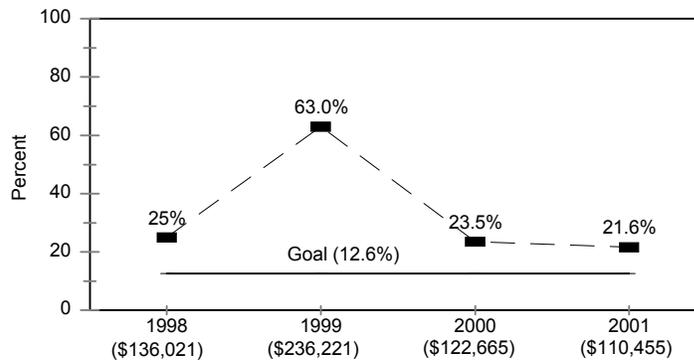
Professional Services



Other Services



Commodities



¹ Texas Government Code Ann., ch. 325, sec. 325.011(9)(B) (Vernon 1999).

² Texas Government Code Ann., ch. 2161.

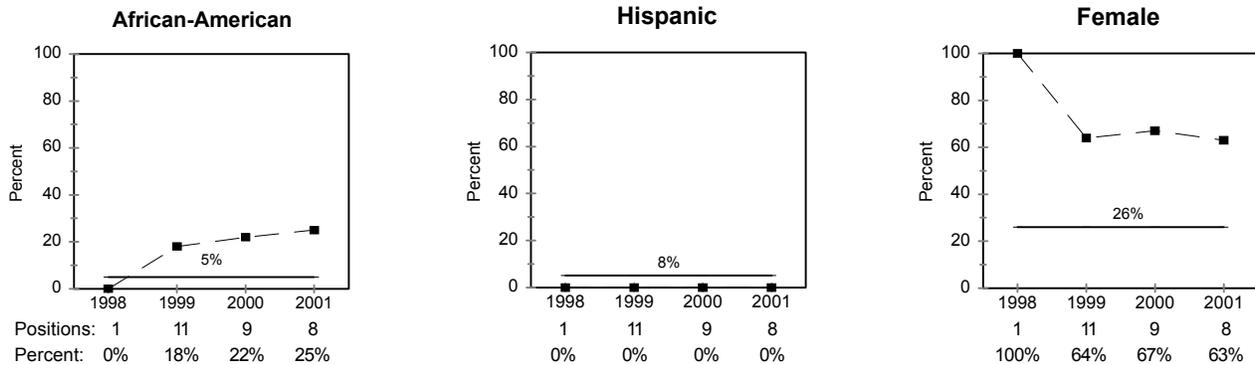
Appendix B

Equal Employment Opportunity Statistics

1998 to 2001

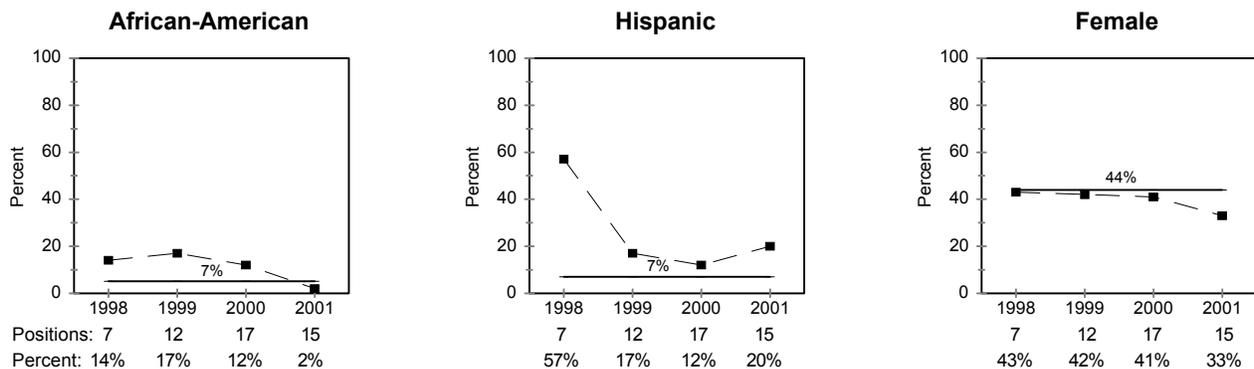
In accordance with the requirements of the Sunset Act,¹ the following material shows trend information for the agency's employment of minorities and females in all applicable categories. The agency maintains and reports this information under guidelines established by the Texas Commission on Human Rights.² In the charts, the flat lines represent the percentages of the statewide civilian labor force that African-Americans, Hispanics, and females comprise in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The dashed lines represent the agency's actual employment percentages in each job category from 1998 to 2001.

State Agency Administration



The agency far exceeded the civilian labor force percentage for females in this category but had no Hispanic representation during the last four years.

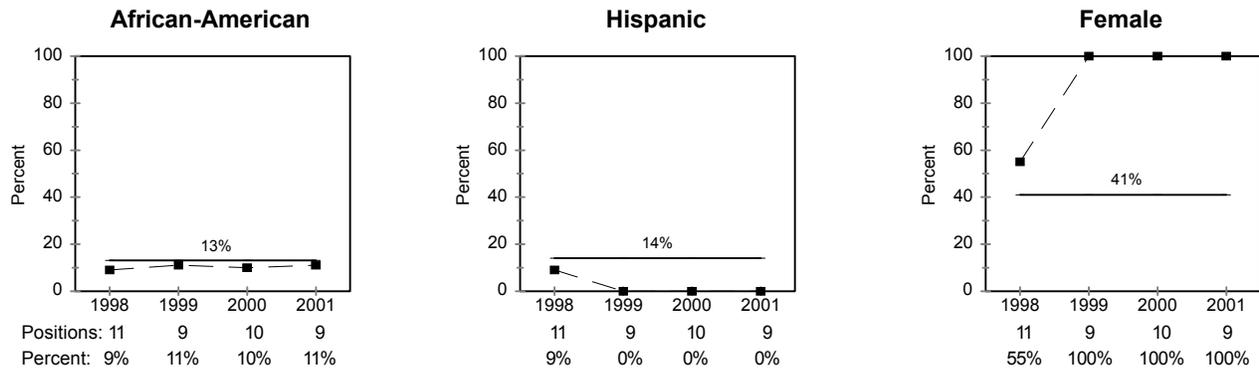
Professional



The agency generally met or exceeded the civilian labor force for African-Americans and Hispanics, but the female representation was below standard during the last for years.

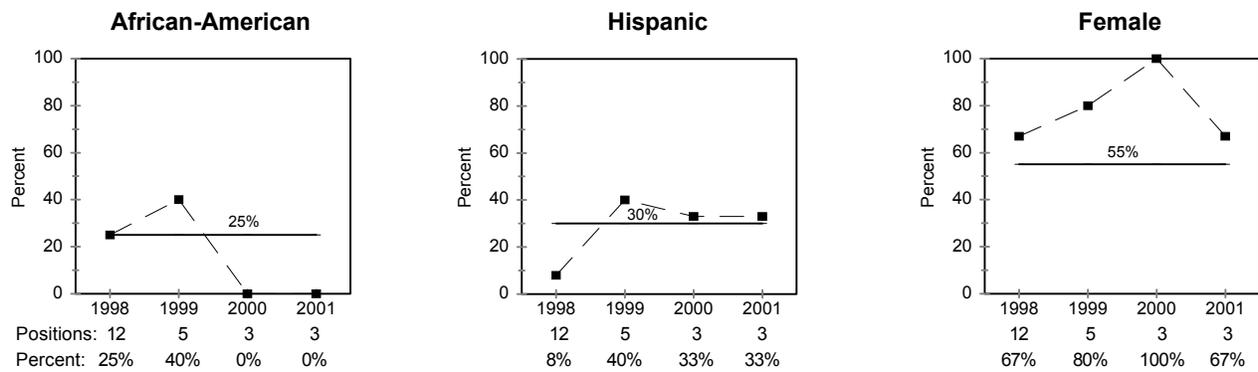
Appendix B

Technical



While the agency far exceeded the civilian labor force percentage for females, it fell below the standard in employment of African-Americans and Hispanics in this category.

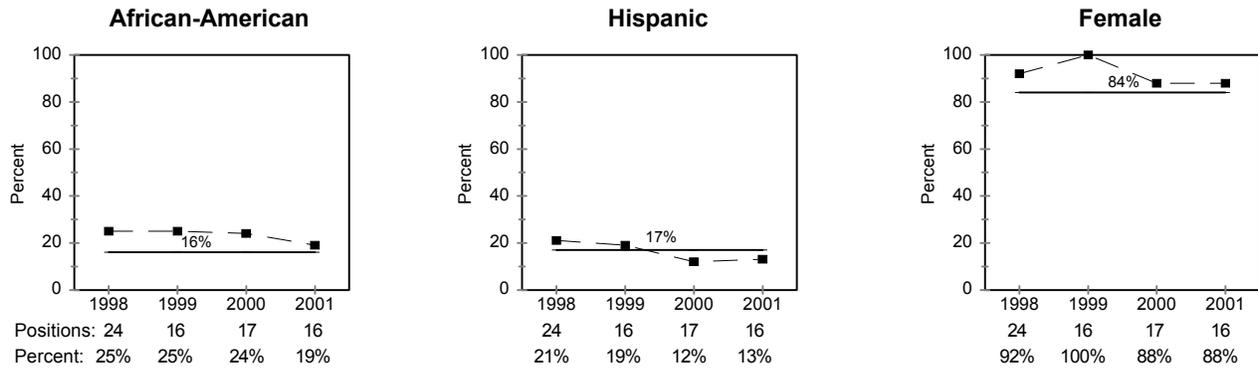
Paraprofessional



The agency generally met or exceeded the civilian labor force for Hispanics and females in this category, but African-American representation was below the standard for the last two years.

Appendix B

Administrative Support



The agency exceeded the civilian labor force standard for African-Americans and females but fell below standard in the employment of Hispanics in the last two years.

¹ Texas Government Code Ann., ch. 325, sec. 325.011(9)(A).

² Texas Labor Code Ann., ch. 21, sec. 21.501.

Appendix C

Educators' Code of Ethics¹

Code of Ethics and Standard Practices for Texas Educators

Professional Responsibility. The Texas educator should strive to create an atmosphere that will nurture to fulfillment the potential of each student. The educator shall comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community. In conscientiously conducting his or her affairs, the educator shall exemplify the highest standards of professional commitment.

Principle I: Professional ethical conduct. The Texas educator shall maintain the dignity of the professional by respecting and obeying the law, demonstrating personal integrity, and exemplifying honesty.

- (1) Standard 1. The educator shall not intentionally misrepresent official policies of the school district or educational institution and shall clearly distinguish those views from personal attitudes and opinions.
- (2) Standard 2. The educator shall honestly account for all funds committed to his or her charge and shall conduct financial business with integrity.
- (3) Standard 3. The educator shall not use institutional or professional privileges for personal or partisan advantage.
- (4) Standard 4. The educator shall accept no gratuities, gifts, or favors that impair professional judgment.
- (5) Standard 5. The educator shall not offer any favor, service, or thing of value to obtain special advantage.
- (6) Standard 6. The educator shall not falsify records, or direct or coerce others to do so.

Principle II: Professional practices and performance. The Texas educator, after qualifying in a manner established by law or regulation, shall assume responsibilities for professional administrative or teaching practices and professional performance and shall demonstrate competence.

- (1) Standard 1. The educator shall apply for, accept, offer, or assign a position or a responsibility on the basis of professional qualifications and shall adhere to the terms of a contract or appointment.
- (2) Standard 2. The educator shall not deliberately or recklessly impair his or her mental or physical health or ignore social prudence, thereby affecting his or her ability to perform the duties of his or her professional assignment.
- (3) Standard 3. The educator shall organize instruction that seeks to accomplish objectives related to learning.
- (4) Standard 4. The educator shall continue professional growth.
- (5) Standard 5. The educator shall comply with written local school board policies, state regulations, and other applicable state and federal laws.

Appendix C

Educators' Code of Ethics (cont.)

Principle III: Ethical conduct toward professional colleagues. The Texas educator, in exemplifying ethical relations with colleagues, shall accord just and equitable treatment to all members of the profession.

- (1) Standard 1. The educator shall not reveal confidential information concerning colleagues unless disclosure serves lawful professional purposes or is required by law.
- (2) Standard 2. The educator shall not willfully make false statements about a colleague or the school system.
- (3) Standard 3. The educator shall adhere to written local school board policies and state and federal laws regarding dismissal, evaluation, and employment processes.
- (4) Standard 4. The educator shall not interfere with a colleague's exercise of political and citizenship rights and responsibilities.
- (5) Standard 5. The educator shall not discriminate against, coerce, or harass a colleague on the basis of race, color, religion, national origin, age, sex, disability, or family status.
- (6) Standard 6. The educator shall not intentionally deny or impede a colleague in the exercise or enjoyment of any professional right or privilege.
- (7) Standard 7. The educator shall not use coercive means or promise of special treatment in order to influence professional decisions or colleagues.
- (8) Standard 8. The educator shall have the academic freedom to teach as a professional privilege, and no educator shall interfere with such privilege except as required by state and/or federal laws.

Principle IV: Ethical conduct toward students. The Texas educator, in accepting a position of public trust, should measure success by progress of each student toward realization of his or her potential as an effective citizen.

- (1) Standard 1. The educator shall deal considerately and justly with each student and shall seek to resolve problems including discipline according to law and school board policy.
- (2) Standard 2. The educator shall not intentionally expose the student to disparagement.
- (3) Standard 3. The educator shall not reveal confidential information concerning students unless disclosure serves lawful professional purposes or is required by law.
- (4) Standard 4. The educator shall make reasonable effort to protect the student from conditions detrimental to learning, physical health, mental health, or safety.
- (5) Standard 5. The educator shall not deliberately distort facts.
- (6) Standard 6. The educator shall not unfairly exclude a student from participation in a program, deny benefits to a student, or grant an advantage to a student on the basis of race, color, sex, disability, national origin, religion, or family status.

Appendix C

Educators' Code of Ethics (cont.)

(7) Standard 7. The educator shall not unreasonably restrain the student from independent action in the pursuit of learning or deny the student access to varying points of view.

Principle V: Ethical conduct toward parents and community. The Texas educator, in fulfilling citizenship responsibilities in the community, should cooperate with parents and others to improve the public schools of the community.

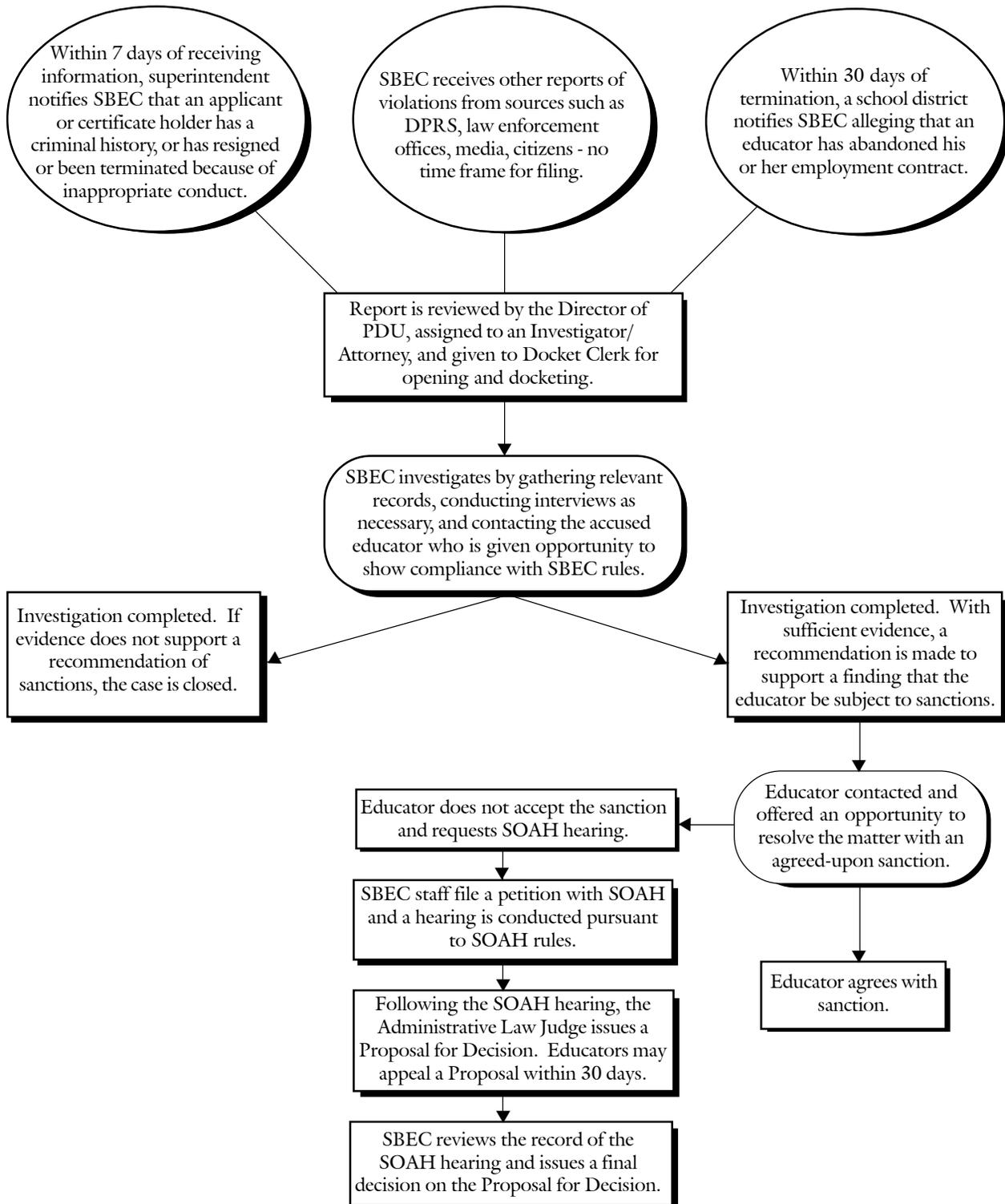
- (1) Standard 1. The educator shall make reasonable effort to communicate to parents information that lawfully should be revealed in the interest of the student.
- (2) Standard 2. The educator shall endeavor to understand community cultures and relate the home environment of students to the school.
- (3) Standard 3. The educator shall manifest a positive role in school public relations.

¹ 19 TAC §247.2. Currently undergoing revisions by the Board.

Appendix D

I. Professional Discipline Process

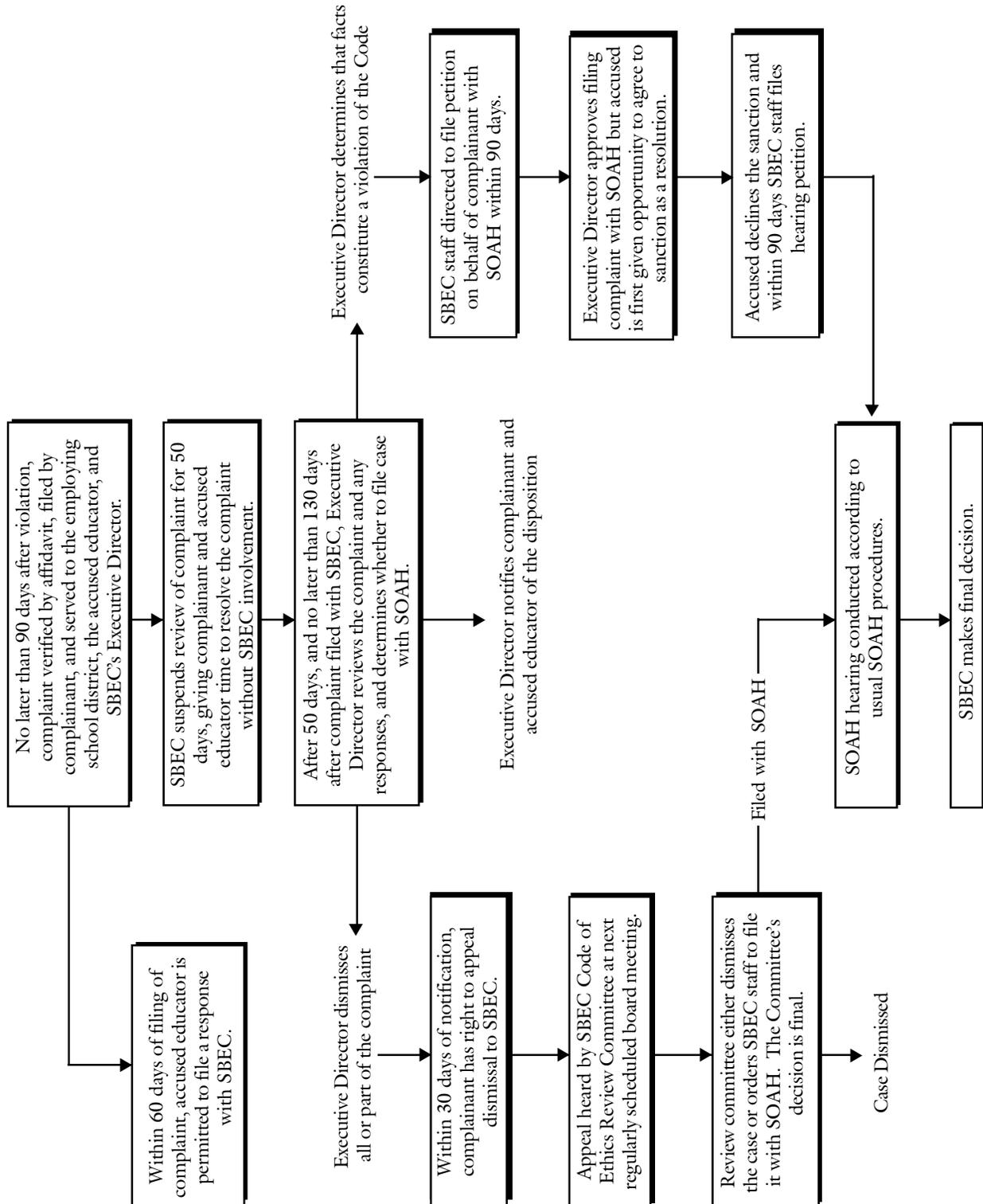
Complaints Against Certified Educators That Allege a Violation of SBEC Rules



Appendix D

II. Professional Discipline Process

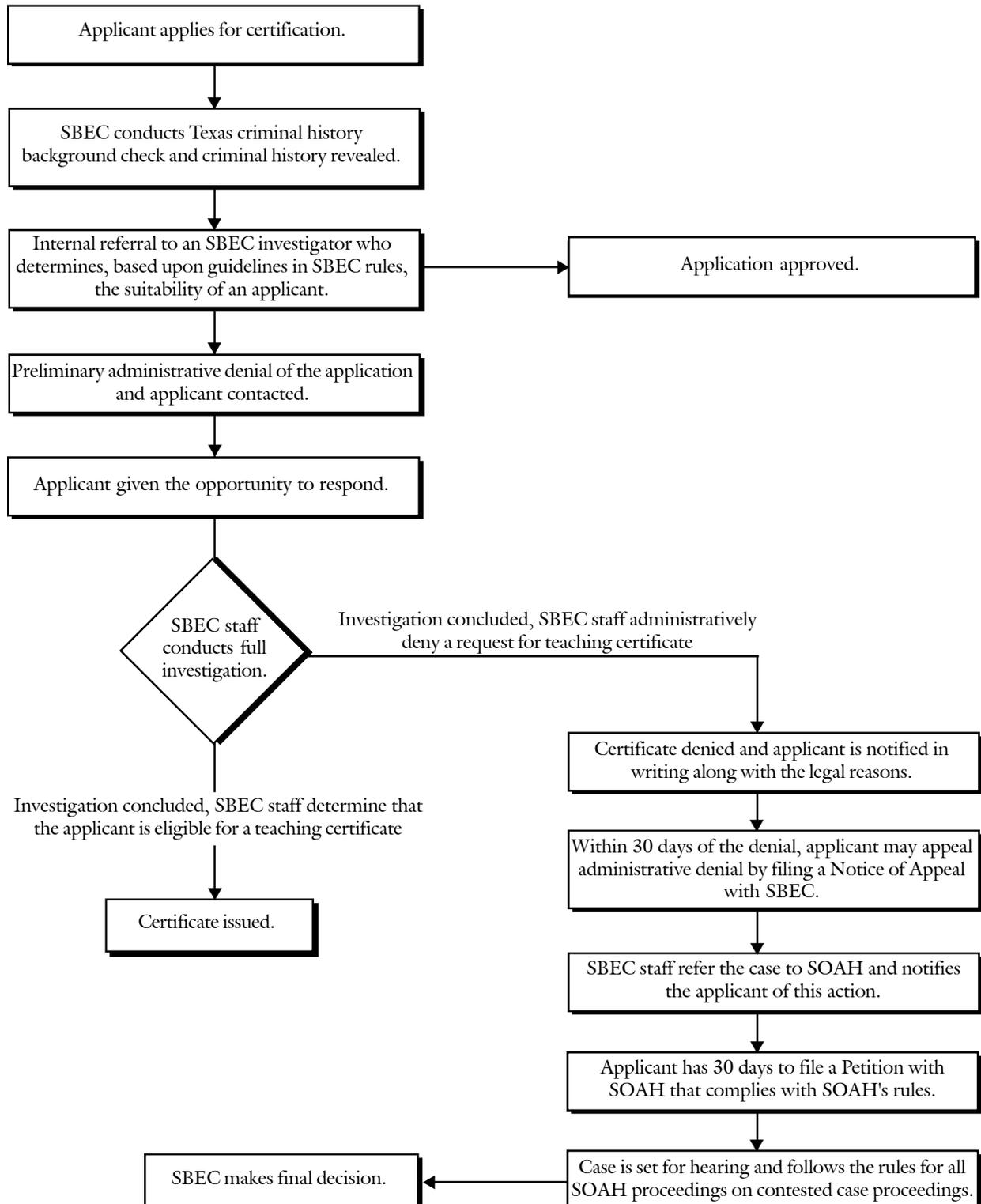
Procedure for Filing and Reviewing Complaints of Violations of the Code of Ethics



Appendix D

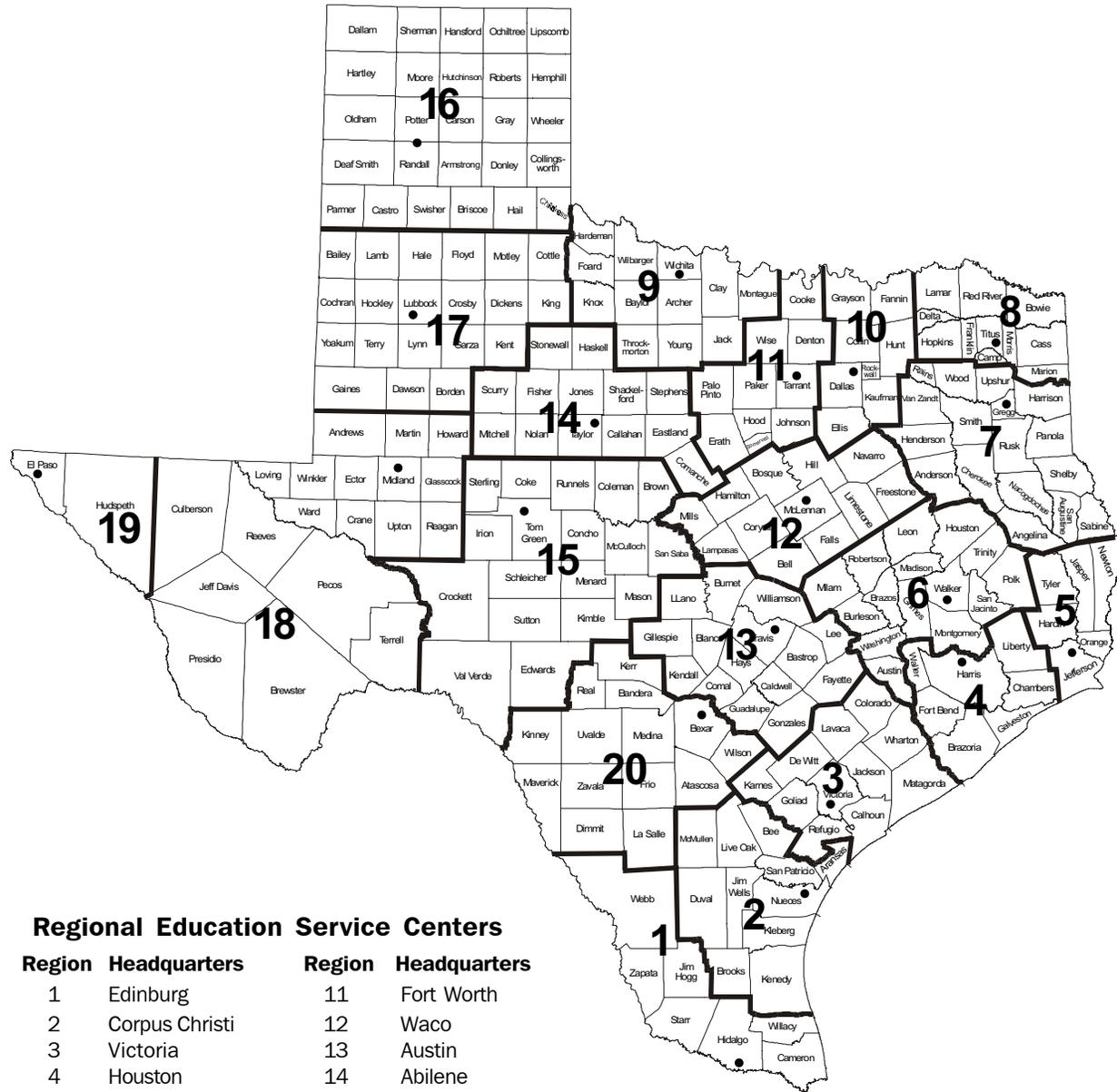
III. Professional Discipline Process

Investigations of Applicants



Appendix E

Regional Education Service Centers



Regional Education Service Centers

Region	Headquarters	Region	Headquarters
1	Edinburg	11	Fort Worth
2	Corpus Christi	12	Waco
3	Victoria	13	Austin
4	Houston	14	Abilene
5	Beaumont	15	San Angelo
6	Huntsville	16	Amarillo
7	Kilgore	17	Lubbock
8	Mount Pleasant	18	Midland
9	Wichita Falls	19	El Paso
10	Richardson	20	San Antonio

Appendix F

Staff Review Activities

The Sunset staff engaged in the following activities during the review of the State Board for Educator Certification.

- Worked with SBEC's Executive Director, management and staff.
- Interviewed SBEC Board members; both in person and by phone.
- Reviewed agency documents, reports, and complaint files.
- Attended SBEC board meetings and reviewed the minutes of past meetings.
- Interviewed State Board of Education members.
- Attended conferences related to the implementation of legislation to exempt out-of-state educators from further certification exams.
- Toured the Region 20 Education Service Center (ESC).
- Toured SBEC's Information Support Center.
- Attended SBEC conferences for the development of certification standards and visited with attendees on the certification process.
- Reviewed reports from the State Auditor's Office, Legislative Budget Board, Comptroller's Office, Texas Legislative Council, Texas Education Agency (TEA), Texas Department of Protective and Regulatory Services (DPRS), Texas Department of Health (TDH), Texas Department of Public Safety (DPS), Institute for School-University Partnerships, and the U.S. Attorney General's Office.
- Interviewed SBEC's former Executive Director.
- Met in person, or interviewed over the phone, the Texas Secretary of State's Office, the Higher Education Coordinating Board, TEA, DPS, DPRS, ESCs, and Ft. Worth and San Antonio school districts.
- Interviewed key legislators' staff.
- Met in person, or interviewed over the phone, representatives of the Association of Texas Professional Educators, Texas Educational Diagnosticians' Association, Texas Classroom Teachers Association, Texas Federation of Teachers, Texas State Teachers Association, and the National Association of State Directors of Teacher Education and Certification.
- Contacted and solicited comments from educator preparation programs placed on "Accredited-Under Review" status in 2001: ESC 11, ESC 18, Jarvis Christian College, Southwestern Adventist University, Texas A&M International¹, Texas Southern University, University of Houston-Clear Lake, University of Texas at Dallas, University of Texas at El Paso, University of Texas-Permian Basin, and Wiley College.
- Solicited written comments from school districts, educator preparation programs, institutes of higher education, interests groups, and individuals.

Appendix F

Staff Review Activities (cont.)

- Attended a meeting of the Joint Advisory Committee, a committee working on a coordinated plan for Texas higher education made up of the Texas Higher Education Coordinating Board, State Board of Education, Texas Council on Workforce and Economic Competitiveness, Texas Workforce Commission, and the State Board for Educator Certification.
- Reviewed Texas' and other states' statutes, legislative reports, and previous legislation.
- Reviewed literature on national certification standards, information on the use of fingerprinting by other states and other licensed professions for criminal background checks, information from national law enforcement departments, and information from national education organizations.
- Surveyed by phone, and the Internet, several Texas law enforcement entities on their provision of fingerprinting services to the public.
- Performed background and comparative research using the Internet.

¹ SBEC revised Texas A&M International's rating to "Accredited" in February 2002.

**SUNSET REVIEW OF THE
STATE BOARD FOR EDUCATOR CERTIFICATION**

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