

**Presented:**  
2013 School Law Conference

February 21-22, 2013  
Austin, Texas

## **SBEC Update**

**Julie D. Leahy**

**Julie D. Leahy  
Texas Classroom Teachers Association  
P.O. Box 1489  
Austin, TX 78767  
(512) 477-9415  
jleahy@tcta.org**

## **I. Introduction**

Most school law practitioners have encountered the State Board for Educator Certification (“SBEC”) and its investigation and enforcement process. However, many are unfamiliar with some of the nuances of the law that govern that process. This is particularly true in matters in which SBEC’s rules are silent, but case law or an alternate statutory provision applies. This article will examine the investigation and enforcement process, including the filing of a complaint and a discussion of tips for negotiating with SBEC staff, an educator’s right to judicial review of an SBEC order and an update of recent decisions issued by SBEC. Along the way, we will attempt to identify some of the misconceptions that surround that process and provide some practice points for the school law attorney who represents educators before SBEC.

## **II. Investigation and pre-hearing matters**

Upon receiving a complaint regarding a certified educator that suggests that the educator may have violated SBEC’s enforcement rules<sup>1</sup>, SBEC staff will initiate an investigation into the events that form the basis of that complaint. After accepting the case for investigation, if the alleged conduct indicates a risk to the health, safety, or welfare of a student or minor, SBEC staff will place a warning on the educator’s virtual certificate.<sup>2</sup> Staff will also send a notice to the educator, informing the educator of the investigation and the basis of the complaint, and providing the educator an opportunity to show cause why the notice should not be placed on the virtual certificate. This notice may be sent either before or after the warning is placed on the certificate, depending on the nature of the allegation.<sup>3</sup> This type of “show cause” opportunity is not intended to be the educator’s opportunity to argue the merits of the complaint; rather, it is intended to verify that the educator has been correctly identified and is indeed the subject of the specified investigation. An investigative notice may remain on the certification records of an

educator for a period not to exceed 240 calendar days, unless the alleged actions that form the basis of the investigation are the subject of a pending criminal action, in which case the time limits are tolled until the criminal investigation has been closed or otherwise resolved.<sup>4</sup> Most educators who are the subject of an SBEC investigation experience significant difficulty finding employment while the investigative warning remains on the certificate and should be prepared to explain the reasons for the warning during the employment process.

At the conclusion of the investigation, the educator will ordinarily be invited to submit a statement or attend an informal conference with an SBEC investigator or attorney. The purpose of this statement or conference is to give the educator an opportunity to show compliance with SBEC's rules. SBEC staff is required by law to give the educator this opportunity prior to the imposition of sanctions.<sup>5</sup> However, it is not specifically required to hold a conference.<sup>6</sup> A conference is held in the majority of cases in order to facilitate an agreed-upon resolution of the complaint prior to the initiation of a contested case proceeding before the State Office of Administrative Hearings ("SOAH"). After considering the information presented by the educator, SBEC staff will determine whether sufficient evidence exists to support a finding that the educator has failed to comply with SBEC's rules. If sufficient evidence is found, SBEC staff will typically propose a sanction that it will accept to resolve the complaint without the necessity of a hearing.

It is difficult to predict with any amount of certainty what sanction SBEC staff will propose to resolve a case in any given situation. This lack of certainty stems in part from the fact that SBEC enjoys considerable discretion in determining what comprises sanctionable conduct. However, SBEC also does not publish its decisions or otherwise offer its rationale for imposing sanctions to the public in an easily accessible format. This makes consistency all but impossible.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: SBEC Update

Also available as part of the eCourse

[Educator Misconduct: Off-Duty Misconduct; and SBEC Investigations](#)

First appeared as part of the conference materials for the  
28<sup>th</sup> Annual School Law Conference session

"SBEC Update: A Review of the Investigative Process and Recent Decisions"