



ATPE Input on Sunset Commission Recommendations for the Texas Education Agency and State Board for Educator Certification

October 17, 2014

The Association of Texas Professional Educators (ATPE) offers the following formal input regarding the October 2014 Sunset Advisory Commission Staff Report on the Texas Education Agency (TEA) and the State Board for Educator Certification (SBEC).

Issue 1

ATPE supports recommendation 1.1 with one caveat. We believe the Legislature, not TEA, should determine which contracts are considered “major” by establishing a dollar amount threshold in statute above which any contract would be considered “major” and subject to the process outlined in the recommendation.

ATPE supports recommendations 1.2 and 1.3.

Issue 2

ATPE supports recommendations 2.1 and 2.2. We believe stakeholder participation and transparency are critical.

Issue 4

On recommendation 4.3, ATPE offers a concurring opinion that the Legislature should consider revising the law calling for periodic evaluations of open-enrollment charter schools not for the purpose of giving the agency more flexibility but rather to foster the creation of meaningful reports that will provide real guidance and insight to lawmakers and policymakers. This is consistent with a goal of improving state oversight of charter schools. Necessary elements of the charter evaluation should be delineated in statute rather than determined by the commissioner, with the ability for the independent entity conducting the evaluation to provide additional information it believes to be relevant. We would prefer to see a report provided every two years so that every legislature has the benefit of more timely information under a robust statute.

ATPE supports recommendation 4.4 as finally proposed with the modifications recommended by TEA, so long as the new rules retain the provisions now included in TEC 21.254(d) which provide that parties when acting together have the right to reject a hearing officer for any reason or when acting alone have the right to reject a hearing officer for cause.

ATPE opposes recommendation 4.9 to eliminate the requirement for districts to report the terms of severance agreements with superintendents and a corresponding reduction in the district's allotment. This provision was added to the law in response to the frequency of very large severance agreements being entered into by superintendents and boards of trustees. The statute recognized that large severance agreements paid with taxpayer funds did not always serve the best interests of the public education system, and the provision was intended as an incentive for boards to make fiscally sound choices in these matters. The 2012 Sunset Commission Staff Report noted that 10 to 20 severance agreements were reviewed annually with an average amount of \$11,600 recouped by TEA. The reference to the amount of severance pay recouped is as much an indication of the law's success at achieving its purpose of limiting severance payments as it is an indication of small financial returns. Though the earlier staff report provided no statistics on the staff time required for each review, we assume the burden is minimal considering that TEA staff is required only to "do the math." Thus, even if the total amount recouped is small in comparison to the total budget for public education, we believe this is a valuable, efficient tool that should be retained as a matter of good public policy.

Issue 6

ATPE disagrees with staff recommendation 6.1 insofar as we oppose transferring SBEC's powers and duties to the Commissioner of Education. Our member-adopted Legislative Program states as follows: "ATPE supports the maintenance of a separate, independent state board that allows educators to govern their own profession and enforce the Educator Code of Ethics. ATPE recommends that a majority of the board's voting members be public educators elected by the profession." We obviously would prefer to see a restructuring of SBEC to create a truly independent board, similar to that of the Texas State Bar, such that its composition would reflect the actual makeup of the certified education profession, which is dominated by teachers. The absence of such a board does a disservice to the education profession in Texas by sending a message to current and future educators that the Legislature does not trust them to make decisions about the governance of their own profession.

With regard to SBEC's disciplinary and accreditation roles, we oppose handing over such decision-making power to a single, appointed commissioner who may or may not have experience in the public education profession. Resting rulemaking authority in an independent board ensures a transparent process, with board meetings offering a convenient public forum for stakeholder input. We fear that the public's knowledge of and ability to participate in the rulemaking process would be substantially limited by giving rulemaking authority in the areas of educator preparation and certification to the appointed commissioner.

ATPE opposes staff recommendation 6.2 concerning SBOE review of educator preparation and certification rules. We have steadfastly maintained that the current SBOE oversight function establishes accountability in the SBEC rule adoption process, in light of the fact that the entire SBEC board is appointed by the governor. In the event that the Legislature decides to transfer authority for educator preparation and certification rulemaking from SBEC to the appointed commissioner, the board's oversight becomes even more important. ATPE would consider supporting elimination of SBOE oversight only in the event that the current SBEC board is replaced by a truly independent board elected directly by certified educators, in much the same way that the State Bar's licensed attorneys elect their own governing board.

ATPE supports recommendation 6.3 with qualification. The mandatory creation of an advisory committee made up of educators would be absolutely essential in the event that SBEC is eliminated and all regulatory authority is transferred to the commissioner. Furthermore, such an enabling statute should not merely *permit* the committee to report to the commissioner but should *require* regular interaction. We agree that a committee should select its own presiding officer and should comply with the Government Code. We agree that such a committee might mitigate the need for other committees such as the Educator Certification and Standards Advisory Committee. However, our overarching recommendation is that rulemaking for governance of the education profession must rest with an *independent* board that is selected by and truly reflective of the profession. Educators, including mostly teachers, should make up the majority of the board and be elected by their peers, as is the case with other professional governing boards.

Issue 7

ATPE supports recommendation 7.1 and agrees that there is a need for clarification of the requirements for reporting educator misconduct. We note, however, that modifying a superintendent's investigation standard from "reasonable cause" to "reasonable suspicion" is a semantic change that is unlikely to make much difference in application. "Suspicion" is as subjective a standard as "cause."

On recommendation 7.2, ATPE would not oppose giving administrative subpoena power to the commissioner as long as any information released to the agency pursuant to such a subpoena must also be released to the certified educator who is being investigated. Otherwise, the educator does not have a fair opportunity to defend himself by addressing evidence, such as witness accounts. In our experience, TEA has been reticent in sharing information with accused educators unless required to do so and in some cases ordered by the Attorney General to release the information. We agree that a state licensing agency must have access to the information needed for it to carry out its regulatory mission, but due process must also be respected. We appreciate that the recommendation now clarifies that the commissioner should not be allowed to issue a subpoena to compel the appearance of a witness.

Related to Issue 7, ATPE would like to see more transparency related to the agency's collection and maintenance of enforcement and case data. This information, including statistics and trends, should be readily available to public stakeholders.

Issue 8

ATPE supports all of the staff recommendations for the regulation of educator preparation programs. There is a definite need for more consistency in the renewal process, better information-sharing with the public and more effective means of monitoring and sanctioning programs under a robust accountability system.

Issue 10

ATPE supports recommendation 10.1 and continuation of the Texas Education Agency.

In general, ATPE opposes recommendation 10.2, although there may be some instances in which the articulated authorities of the commissioner or TEA should be tweaked in statute. We do not necessarily agree that a reference to commissioner or TEA duties should be removed from a statute solely because those duties are listed in another statute. While it may seem redundant, there is often a practical benefit to listing such duties in more than one section of the Texas Education Code. We disagree with the recommendation to eliminate TEC Section 7.021 (b)(2); the mere fact that the legislature has failed to sufficiently fund the agency does not negate the importance of having a state education agency that is responsible for "research, analysis, and reporting to improve teaching and learning." Similarly, we disagree with the staff recommendation to eliminate TEC Section 7.021(b)(3) as "unnecessary." Despite the fact that other provisions of the Education Code govern the typical hearings related to a school district's violation of school law or stemming from the termination or nonrenewal of an educator's contract, there could be some other type of hearing that TEA might need to conduct. Retaining this authority in statute gives the agency more flexibility to deal with unexpected situations that might arise in the future. Related to this issue of commissioner duties, we also believe there are some areas of the law relating to student assessment and accountability in which the state should explore the possibility of assigning additional oversight to the State Board of Education.

In conclusion, ATPE appreciates the opportunity to provide this input on behalf of our membership and looks forward to participating in the upcoming public hearings on these important issues.