



ATPE Input on SB 1222

Relating to the authority of the commissioner of education
to issue subpoenas during an investigation
of educator misconduct

May 21, 2015

SB 1222 gives subpoena power to the commissioner of education to exercise during an investigation of misconduct. **ATPE opposes the bill because the language gives the commissioner—or, practically, the Texas Education Agency (TEA) investigator—access to the subpoenaed material but does not grant the educator under investigation the same access.** This is a due process issue that currently exists but would be exacerbated under this bill.

Information collected should be shared with the certified educator under investigation.

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 become 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 even though sharing the information made it much easier to quickly resolve a complaint, reducing the burdens and costs to the Agency. 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. Language specifically providing that an educator being investigated has access to the material would address this issue.

Due process also allows an educator to show compliance or defend themselves in an efficient manner. While the material subpoenaed might be available to the educator through discovery once a formal hearing is requested, this is inefficient and costly to the state since it effectively eliminates an educator's opportunity to resolve issues at an earlier point in the process.

Subpoena power should be limited to document collection only.

The language in SB 1222 appears to be limited to document collection only, but clarification regarding the commissioner's authority to subpoena a person—or compel someone to travel to Austin for a deposition or hearing—is needed. This could be an unnecessarily burdensome request of the educator under investigation. The December 2014 Sunset Advisory Commission staff report on TEA specified that "the commissioner could not issue a subpoena to compel the attendance of a witness for the purposes of a certified educator investigation." We appreciate that the recommendation clarifies this and encourage the inclusion of such language in SB 1222.

ATPE urges legislators to oppose SB 1222 unless language is included to reflect the two recommendations above.