



# State Board for Educator Certification

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OPINION COMMITTEE

RQ-0541-JC

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Honorable John Cornyn, Texas Attorney General  
Office of the Attorney General  
Price Daniel, Jr., State Office Bldg.  
209 West 14<sup>th</sup> St.  
Austin, TX 78701

FILE # ML-42585-02  
I.D. # 42585

**Re: State Board for Educator Certification  
Request for Attorney General Opinion**

Dear General Cornyn:

As the Executive Director of the State Board for Educator Certification (SBEC or Board), I am requesting your legal advice in the form of an Attorney General Opinion on the following issues related to the certification of educators from other countries:

1. May SBEC require foreign educators who are applying for Texas certification to produce a "Letter of Good Standing" verifying that the foreign educator's certificate or credential is currently in good standing and has not been revoked, suspended, or sanctioned for misconduct and is not pending disciplinary or other adverse action? 19 TEX. ADMIN. CODE § 245.10(a)(3). Does it matter whether the foreign applicant comes from a country whose foreign certifying authority will not provide such a letter?

If SBEC cannot require a "Letter of Good Standing" because the foreign certifying authority will not provide one, what other evidence of validity of the foreign credential can SBEC demand?

I have enclosed a letter written by Ms. Rosa de Armas to SBEC regarding this issue on behalf of Cuban refugee educators seeking Texas certification.

2. Are foreign applicants for Texas educator certification exempt from any or all of SBEC's statutory or regulatory requirements because the United States has granted them asylum or refugee status or some other special category of entry or residence?
3. Must SBEC ascertain and condition educator certification on the citizenship or alien status of an applicant originally certified by a foreign jurisdiction? If so, what evidence may SBEC obtain or at least demand to demonstrate such eligible or qualified status?

### **Background of Board's Powers and Duties**

The Texas Legislature established the State Board for Educator Certification (SBEC) in 1995 to, among other things, regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators of public school educators. TEX. EDUC. CODE ANN. § 21.031(a). (Vernon 1996). The Legislature further provided that, in proposing rules, the Board must ensure that all candidates for certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of Texas. TEX. EDUC. CODE ANN. § 21.031(b). (Vernon 1996).

Additionally, the Board must provide for the issuance of an educator certificate to a person who holds a similar certificate issued by a foreign country, subject to Section 21.052, Education Code. TEX. EDUC. CODE ANN. § 21.041(b)(5). (Vernon 1996). Section 21.052 allows the Board to issue a certificate to an educator who holds a degree from a foreign institution, holds an appropriate certificate or other credential issued by another country, and passes certification exams prescribed by the Board. TEX. EDUC. CODE ANN. § 21.052 (Vernon Supp. 2002).

The Legislature recently amended Section 21.052(a)(3). Act of May 23, 2001 (H.B. 1721), 77<sup>th</sup> Leg., R.S., ch. 1306, § 1, 2001 Tex. Gen. Laws 3198. Eff. June 16, 2001. The 2001 amendment allows educators from other countries to obtain standard Texas certification without further testing if their certifying jurisdiction required passage of certification exams “similar to and at least as rigorous as” SBEC’s tests.

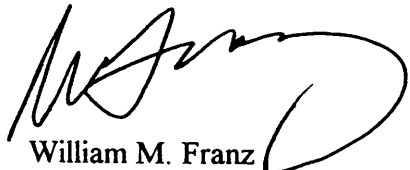
Subsection (b) of Section 21.052 states, “For purposes of Subsection (a)(2), a person is considered to hold a certificate or other credential if the credential is not valid solely because it has expired.” This provision assumes that SBEC can deem a foreign certificate invalid for other reasons, including revocation as a result of disciplinary action by the foreign certifying authority. To verify the current validity of the foreign certificate for reasons other than expiration SBEC’s demands evidence in the form of a “Letter of Good Standing” from the foreign certifying authority.

For certificate applicants from Texas, SBEC can run a state criminal history background check through the Texas Department of Public Safety (DPS). Tex. Educ. Code § 22.082; Tex. Gov’t Code § 411.090. For educators from other states in this country, SBEC can obtain professional disciplinary histories from other states’ educator certification or licensing authority or from the National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Identification Clearinghouse. But for educators from other countries, these methods would not turn up any criminal or professional disciplinary history arising in the foreign jurisdiction where they initially received their credentials. For this reason, SBEC asks for the “Letter of Good Standing.”

Ms. de Armas suggests in her letter that SBEC cannot impose requirements on foreign educators that exceed the conditions set out in the statute. That issue is inherent in my question about SBEC's authority to require the "Letter of Good Standing." I believe the statute sets minimal conditions that SBEC cannot ignore but can go beyond in certifying foreign educators. Section 21.052(a) says that SBEC "*may* issue a certificate to an educator" from another state or country who meets the minimum requirements set out in the statute. The discretionary language used in the statute shows that the Legislature anticipated SBEC may impose other conditions on these applicants, such as reasonably ensuring they do not pose a risk of harm to Texas's public schoolchildren. Moreover, the statute does not cover any federal immigration laws, treaties, or international trade agreements that supersede state law and that SBEC may have to consider in qualifying foreign educators.

Thank you for timely considering this important matter. If you need to clarify this request or require further information, please contact me at 469-3005.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Franz', written over a large, stylized, circular flourish.

William M. Franz  
Executive Director

encl.

cc: Mr. James Harris, Chairman, SBEC  
Ms. Rosa de Armas

APR 15 2002

Rosa de Armas  
923 Dandelion Drive  
Mesquite, Texas 75149  
(972) 288-3358

April 9, 2002

Mr. Dan Junell, Attorney  
State Board of Education Certification  
1001 Trinity  
Austin, Texas 78701

Regarding: House Bill 1721  
State Board of Educator Certification for Out-Of-Country

Dear Sir:

I am the spokesperson for some of the Cubans professionals residing in the Dallas/Fort Worth area.

In the past four year there have been an influx of professionals arriving in the Dallas areas with different types of Baccalaureate and PhD degrees. Presently, because of House Bill 1721 effective on September, 2001, many of them with Bachelor's degree in Education with specialization in (math, Spanish, literature, physical education, counseling, etc.) who have had their degree accredited by the Foreign Credentials of America and have been teaching in different capacities for the different school districts in the area, have approached me for guidance and the impact House Bill 1721 will have with their credentials and years of experience in the education field.

The first person to seek Out-Of-Country certification was Mr. Benito Castillo, whose letter, herewith attached, give me authorization to use his name and to release any pertinent information related to this issue.

Mr. Castillo sent an Out-Of-Country application to the State Board of Educator Certification in January, 2002. On March 6, 2002 he received a reply from the SBEC stating that in order to process his request the following action needed to taken:

*"Letter of Professional Standing from the Ministry of Education in Cuba (in English or translated into English) indicating that your certificate has not been revoked, suspended or sanctioned for misconduct, and is not pending disciplinary or adverse action. This letter may also include the certification areas and grade levels of your certification."*

Mr. Castillo replied to this letter on March 11, 2002, see attached copy. On March 27, 2002, Mr. Castillo received a reply to his March 11 letter, see attached copy, which stated that *“regardless of the country of origin or the conditions of the individual’s immigration to the United States... the letter of Professional standing cannot be waived.”*

Seeking a letter from the Ministry of Education of countries where their emigration was/ still is due to political reason such as Cuba, whose emigrants has had to renounce all their civil rights, possessions and ownership and whose government negates any certification or documentation attesting to their birth certificate, educational degrees, civil status, etc., has a disparate impact to Cuban citizens as well as those citizens born in places like Vietnam, China, etc. whose government WILL NOT provide them with this information.

Therefore, the statement *“regardless of the country of origin or the conditions of the individual’s immigration to the United States”* seems to be in violation of the Uniform Guidelines On Employee Selection Procedures published in the *Code of Federal Regulations (20 C.F.R. Part 1607)* which recommend that employers be able to demonstrate that selection procedures that have an adverse impact are valid. Any selection procedure that has an adverse impact on the hiring or selection process of any protected class will be presumed discriminatory and inconsistent with the guidelines since when rules applies to all candidates it has a more inhibiting effect on a protected class.

In this particular case, you are not questioning the job qualification as it can be provided by the required accreditation document from the United States. You are not questioning their legal status as it can be provided by INS documentation, which by the way conducts a background check to include fingerprinting PRIOR to issuing documentation for processing individuals for residency or citizenship status. You are not questioning the ability to speak English as you have one of four criteria that they can meet. Instead, you are requiring a documentation from emigrants of countries who are unable to provide the documentation due to their political beliefs. Your reasoning is due to a background check and to attest that certification was not revoked. For these particular emigrants certification WAS revoked due to leaving their country for political reasons. A background check was covered by the Department of Justice through INS when the person was given a work permit to include **fingerprinting** which you are now considering for other teachers.

An alternative was offered to you and was probably dismissed or not taken into consideration. Some of the Cuban emigrants are ALREADY working for different Independent School District in Texas, some are seeking the opportunity to work in their profession as teachers, and most of them are working in companies where a background check is needed. It was suggested that two letters of recommendation could be provided to attest of the veracity, trustworthiness, moral integrity and ethics of the individual seeking the out-of-country teaching certification. I do not see any valid reason why this cannot suffice to cover your seemingly discriminatory requirement.

In reading House Bill 1721, I could not find where the Act requires the mentioned above letter from the Ministry of Education. I checked with other States such as Florida, New York, New Jersey and Pennsylvania and this seems not to be a requisite for Out-Of-Country Certification on their states

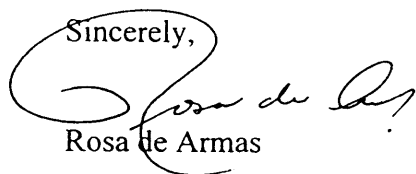
On January 8, 2002, President Bush signed into law the reauthorization of the Elementary and Secondary Education Act, "No Child Left Behind" (NCLB) which is regarded as the most important piece of education legislation in thirty-five years and it is certain to have a lasting impact on classroom, school districts, and students. This new legislation call for a multi-faceted approach to holding school accountable for improving the academic achievement of disadvantaged students and districts will be permitted greater flexibility in addressing the specific needs of students while strengthening the professional skills of teachers. Even though, this act reflect mostly in the financial impact of how districts use entitlement funds, the State of Texas cannot afford to overlook the present disadvantage that Hispanic children face in their school system. The TEA and the SBEC should look beyond and realize that ultimately this act mean that parents will be given the essential information they need about the quality of their children's schools, teachers and programs and they will be empowered to make clearer decisions to transfer their children from schools to be under-performing.

I am offering an opportunity to be flexible in your reasoning to handle Out-Of-Country education credentials as the State of Texas students will be missing the opportunity to be taught by very dedicated, highly educated, ethical and experienced teachers.

I am hereby requesting that consideration be given to those individuals who emigrate from countries whose system of government is in total contrast to the Democratic system that rules the United States.

I would appreciate a reply at your earliest convenience.

Sincerely,



Rosa de Armas

Cc: First Lady Laura Bush  
Governor Rick Perry  
Lt. Governor Bill Ratliff  
Senator Leticia Van de Pute  
Senator Phil Gramm  
Senator Kay Bailey Hutchinson  
Mr. William Franz  
Dr. Arturo Almendarez  
Mr. Felipe Alanis  
Ms. Geraldine Miller  
Mr. Will Harrell - ACLU  
The Cuban American National Foundation